Code of Criminal Procedure

Warning: this is not an official translation. Under all circumstances the original text in Dutch language of the Code of Criminal Procedure (Wetboek van Strafvordering) prevails. The State accepts no liability for damage of any kind resulting from the use of this translation.

(Text valid on: 08-10-2012) in which the following have been incorporated in anticipation of their coming into effect as from 1-1-2013: Act on the Partial Amendment of a Number of Acts in the Area of Security and Justice [*Verzamelwet Veiligheid en Justitie*] (Bulletin of Acts and Decrees [*Staatsblad*] 2011, 500), Act on the Reinforcement of the Position of the Examining Magistrate [*Wet Versterking Positie Rechter-Commissaris*] (Bulletin of Acts and Decrees 2011, 600), Act of 1 December 2011 for Amendment of the Code of Criminal Procedure [*Wetboek van Strafvordering*] in connection with the Review of Rules pertaining to Case Documents, Reporting by the Investigating Officer and Several Other Issues (Review of Rules pertaining to the Case Documents in Criminal Cases [*Herziening Regels betreffende de Processtukken in Strafzaken*]) (Bulletin of Acts and Decrees 2011, 601), Reform of the Judicial Map [*Wet Herziening Gerechtelijke Kaart*] (Bulletin of Acts and Decrees 2012, 313), Act on the Establishment and Amendment of the Police Act [*Invoerings- en Aanpassingswet Politiewet 2012*] (Bulletin of Acts and Decrees 2012, 316), Mutual Recognition and Enforcement of Sanctions involving Deprivation of Liberty and Suspended Sanctions Act [*Wet Wederzijde Erkenning en Tenuitvoerlegging Vrijheidbenemende en Voorwaardelijke Sancties*](Bulletin of Acts and Decrees 2012, 333) and Implementation of the Framework Decision no. 2008/978/JHA of the Council of the European Union of 18 December 2008 on the European Evidence Warrant for the Purpose of Obtaining Objects, Documents and Data for Use in Proceedings in Criminal Matters (OJEU L 350) (32717)

Code of Criminal Procedure

Book One. General Provisions

Part I. Criminal Proceedings in General

Chapter One. Introductory Provision

Section 1

Criminal proceedings shall be solely conducted in the manner provided by law.

Chapter Two. Territorial Jurisdiction of the District Courts to try Criminal Offences.

Section 2

[1.]The following District Courts [*Rechtbanken*] shall have equal jurisdiction:

those courts within whose area of jurisdiction the offence is committed;

those courts within whose area of jurisdiction the suspect has his place of residence or abode;

those courts within whose area of jurisdiction the suspect is;

those courts within whose area of jurisdiction the suspect had his last known place of residence or abode;

those courts before which the suspect is already being prosecuted for another offence;

those courts whose area of jurisdiction borders on the territorial sea and the **Amsterdam District Court**, if the offence is committed at sea outside the area of jurisdiction of a District Court or on

board a vessel that is being taken offshore;

the Amsterdam District Court, the Oost-Brabant District Court, the Oost-Nederland District Court and the Rotterdam District Court, if the public prosecutor at the National Office of the Public Prosecution Service [*Landelijk Parket*] is charged with the prosecution of the criminal offence;

the Amsterdam District Court, the Oost-Brabant District Court, the Oost-Nederland District Court and the Rotterdam District Court in regard of criminal offences to be designated by Governmental Decree, with whose prosecution the public prosecutor at the National Office of the Public Prosecution Service for Financial, Economic and Environmental Offences [*Functioneel Parket*] is charged.

[2.] In the event of simultaneous prosecution at more than one District Court, the District Court, which has a higher position in this order of precedence, shall have exclusive jurisdiction, or, in the case of District Courts which have the same position in this order of precedence, the District Court at which the criminal proceedings were first instituted.

Section 3 [Repealed as of 01-01-2002]

Section 4

For the purpose of determining the jurisdiction of the courts, criminal offences committed on board a Dutch vessel or aircraft shall be deemed to have been committed in the Kingdom at the place where the owner of the vessel or aircraft resides or the company has its registered office or the vessel is registered.

Section 5

If the preceding sections do not designate a competent court, the **Amsterdam District Court** shall have jurisdiction.

Section 6

[1.] Where more than one person participates in the same criminal offence, jurisdiction in regard of one of the persons liable as offenders or accomplices shall also imply jurisdiction in regard of the others.

[2.] In the event of simultaneous prosecution at several competent District Courts, the court before which the persons liable as offenders are being prosecuted shall have exclusive jurisdiction. Where such persons are not being prosecuted before the same court, the court at which criminal proceedings against one of them were first instituted, shall have exclusive jurisdiction.

[3.] If several criminal offences have been committed by more than one person, whether or not in concert, and these offences are related to one another in such a way that it is deemed desirable to try all offences before one District Court, in the application of subsection (1) of this section, these offences shall be deemed to have been committed in participation.

Chapter Three. Prosecution of Criminal Offences

Section 7

The procurator general at the Supreme Court [*Hoge Raad*] shall be charged with the prosecution of those criminal offences which are tried at first instance by the Supreme Court.

Section 8

The Board of Procurators General [*College van Procureurs-Generaal*] shall ensure proper prosecution of the criminal offences tried by the District Courts and the Courts of Appeal. For that purpose, it shall give the necessary instructions to the heads of the Offices of the Public Prosecution Service.

Section 9

1. The public prosecutor at the Office of the Public Prosecution Service attached to the District Court shall be charged with the prosecution of criminal offences which the District Court tries.

2. The public prosecutor at the National Office of the Public Prosecution Service shall be charged with the prosecution of criminal offences designated for that purpose by Governmental Decree.

3. The public prosecutor at the National Office of the Public Prosecution Service for Financial, Economic and Environmental Offences shall be charged with the prosecution of criminal offences whose detection is deemed to be part of the duties of a special investigation service under section 3 of the Act on Special investigation Services [*Wet op de Bijzondere Opsporingsdiensten*].

4. The advocate general at the Office of the Public Prosecution Service attached to the Court of Appeal shall be charged with the prosecution of criminal offences which the Court of Appeal tries.

Section 10

1. The public prosecutor, who is authorised to conduct any investigation, may also conduct, or have others conduct, a specific investigative act within the area of jurisdiction of a District Court other than the one to which he is attached. In that case he shall timely notify his counterpart attached to the District Court in question.

2. In the case of urgent necessity, the public prosecutor may transfer a specific investigative act to the public prosecutor who is attached to the District Court within whose area of jurisdiction the investigative act has to be conducted.

3. The public prosecutor, who is authorised to be present at any investigation by a judicial authority, may also be present in such capacity within the area of jurisdiction of a District Court other than the one to which he is attached, if this investigation is conducted there.

Section 11

[Repealed.]

Chapter Four. Complaint against Non-Prosecution of Criminal Offences

Section 12

1. If a criminal offence is not prosecuted, the prosecution of a criminal offence is discontinued, or the criminal offence is prosecuted by means of the issuance of a punishment order, the directly interested party may file a complaint against said decision with the Court of Appeal within whose area of jurisdiction the decision of non-prosecution or discontinuance of prosecution is taken or the punishment order is issued. If the decision is taken by a public prosecutor at the National Office of the Public Prosecution Service or at the National Office of the Public Prosecution Service for Financial, Economic and Environmental Offences, **the Hague Court of Appeal** shall have jurisdiction.

2. "Directly interested party" shall also be understood to mean a legal person which, according to its objects and as evidenced by its actual activities, promotes interests that are directly affected by the decision of non-prosecution or discontinuance of prosecution.

Section 12a

1. The clerk to the court of Appeal, which has received the written complaint, shall send a written acknowledgement of receipt to the complainant.

2. After receipt of the written complaint, the Court of Appeal shall instruct the Advocate General to prepare a written report on this complaint.

Section 12b

If the complaint does not fall within the jurisdiction of the Court of Appeal, it shall decline jurisdiction. If the Court of Appeal is of the opinion that another Court of Appeal, or, in the case of section 13a, the Supreme Court is competent, then the Court of Appeal shall refer the case to the court it considers competent and shall send, at the same time, the written complaint and a copy of the decision given by the Court of Appeal in chambers.

Section 12c

If the complaint of the complainant is manifestly inadmissible or is manifestly ill-founded, the Court of Appeal may declare said complaint inadmissible or ill-founded without any further hearing of the claim being required.

Section 12d

1. The Court of Appeal shall decide only after it has heard the complainant, or at any rate has properly called the complainant for that purpose, except for the cases referred to in sections 12b and 12c.

2. The Court of Appeal may decline to call the complainant to appear before it if the complainant has previously filed a complaint about the same offence, unless the complainant has presented new facts and circumstances which, if they had been known to the Court of Appeal, could have led the Court of Appeal to reach a different decision on that previous complaint.

3. If the complaint is filed by more than two persons, the Court of Appeal may suffice by calling the two persons whose names and addresses are first mentioned in the written complaint.

Section 12e

1. The Court of Appeal may call the person whose prosecution is requested to appear before it in order to give him the opportunity to respond to the request made in the written complaint and to the grounds on which the complaint is based. A copy of the written complaint or a specification of the offence to which the complaint relates shall be enclosed with the notice.

2. An order as referred to in section 12i(1) shall be given only after the person whose prosecution is requested has been heard by the Court of Appeal, or at any rate has been properly called for that purpose. Section 273(1) shall apply mutatis mutandis.

Section 12f

1. The complainant and the person whose prosecution is requested may have legal representation when appearing before the Court of Appeal in chambers. They may be represented by a defence counsel, provided this defence counsel declares that he has been given specific authorisation for that purpose, or by an authorised representative who has been given a special written power of attorney for that purpose . Information regarding the right to have legal representation present and the possibility of applying for assignment of defence counsel shall be provided in the notice.

2. The presiding judge of the Court of Appeal shall permit the complainant and the person whose prosecution is requested, and their defence counsels or authorised representatives, at their request, to inspect the documents pertaining to the case, except in the cases referred to in sections 12b and 12c. The presiding judge shall determine the manner in which these documents may be inspected. The presiding judge may, ex officio or on application of the advocate general, exclude certain documents from this inspection in the interest of protecting private life or the detection or prosecution of criminal offences or for compelling reasons of public interest.

3. The presiding judge may, ex officio or on application of the advocate general, determine that copies of certain documents or parts thereof shall not be provided in the interest of protecting private life or the detection or prosecution of criminal offences or for compelling reasons of public interest.

4. **In the case referred to in subsection (3), the complainant or the person whose prosecution is requested shall be informed in writing that he will not be provided with copies of certain documents or parts thereof.**

Section 12g

The person whose prosecution is requested shall not be obliged to answer questions posed to him at the Court of Appeal in chambers. He shall be informed of this right before he is heard by the court and this shall be noted in the court record.

Section 12h

One of the members of the Court of Appeal may also be charged with hearing the complainant and the person whose prosecution is requested.

Section 12i

1. If the Court of Appeal has jurisdiction to hear the complaint, the complaint of the complainant is admissible and the Court of Appeal is of the opinion that prosecution or further prosecution should have taken place, the Court of Appeal shall order institution or continuation of prosecution of the offence to which the complaint relates. Unless the Court of Appeal determines otherwise, the prosecution may not be instituted or continued by the issuance of a punishment order.

2. The Court of Appeal may also refuse to issue such order for reasons of public interest.

3. In this order the Court of Appeal may also instruct the public prosecutor to make the application, as referred to in section 181, **requesting the examining magistrate to conduct certain investigative acts,** or to summon the person whose prosecution is requested to appear before the court.

4. In all other cases, the Court of Appeal shall dismiss the complaint, subject to the provisions of section 12b.

Section 12j

The members of the Court of Appeal who ruled on the complaint shall preferably not participate in the trial.

Section 12k

1. If a punishment order is issued, the complaint must be filed within three months after the date on which the directly interested party learned thereof.

2. The complaint may also be filed after this period, if the punishment order is not fully enforced.

Section 12l

1. A complaint shall not be allowed in regard of criminal offences for which the prosecution against the suspect has been stopped or a decision given in chambers which states that the case has ended and which has been served on the suspect.

2. If the complaint relates to a criminal offence for which the suspect has been served with notice of a decision to discontinue prosecution, then the complaint must be filed within three months after a circumstance has occurred from which it follows that the directly interested party learned of the notice.

Section 12m [Repealed as of 01-01-1994]

Section 12n [Repealed as of 01-01-1994]

Section 12o [Repealed as of 01-01-1994]

Section 12p [Repealed as of 01-01-1994]

Section 13

[1.] If an application, as referred to in section 510, is not submitted, then the directly interested party may file a complaint about the non-submission of this application with the Court of Appeal within the area of jurisdiction to which such application should be submitted. The Court of Appeal may instruct the advocate general to prepare a report on this matter and may also order the submission of the written request.

[2.] The Court of Appeal may also refuse to issue such order for reasons of public interest.

3. The complaint shall be heard in accordance with sections 12a to 12l inclusive.

Section 13a

Where the complaint relates to a criminal offence which is tried at first instance by the Supreme Court, the provisions of section 12-12*j* in regard of the Court of Appeal, the members and the advocate general and in regard of the Supreme Court, the members and the procurator general at that Court shall apply.

Chapter Five. Suspension of Prosecution

Section 14

[1.] If the assessment of the offence as charged in the indictment depends on the evaluation of an issue in dispute in civil proceedings, the court may, irrespective of the stage of the prosecution, suspend the prosecution for a specific period in order to await the decision of the civil court on this issue in dispute.

[2.] The suspension may be extended each time for a specific period of time and may be revoked at all times.

Section 14a

In cases concerning minor defendants, the prosecution may be suspended if, at the same time as the prosecution, an application to remove parental authority from both parents or one of them or strip both parents or one of them of the right to exercise parental authority, or strip the guardian of the right to exercise guardianship over the defendant or an application for placement of the defendant under a supervision order has been filed, and namely until the decision thereon has become final.

Section 15

After notice of further prosecution or, if no notice has been given, after issuance of the summons to appear before the court, the defendant may only apply for a suspension by reason of the existence of an issue in dispute in civil proceedings, either by notice of objection that may be filed against this notice or summons, or at the court session.

Section 16

1. If the defendant suffers from such mental disease or defect to the extent that he lacks the capacity to understand the purpose of the prosecution instituted against him, the court shall suspend the prosecution, irrespective of the stage of prosecution.

[2.] The suspension shall be revoked as soon as the defendant’s recovery has been established.

Section 17

[1.] In the case of suspension of the prosecution, the court may nevertheless order urgent measures to be taken.

[2.] The court may order that the suspension shall not extend to the pre-trial detention.

Section 18 [Repealed as of 01-01-1994]

Section 19

1. The decisions on a suspension shall be taken, either ex officio, or on the application of the Public Prosecution Service or the defendant or his defence counsel. They shall be given by the court of first instance, before which the case is being prosecuted or otherwise, was last prosecuted.

2. All decisions given in chambers shall be promptly served on the defendant.

Section 20

[1.] The Public Prosecution Service may file an appeal against decisions of suspension given in chambers within fourteen days thereafter and the defendant within fourteen days after service thereof. However, if the main case is not open to appeal then only appeal in cassation is permitted within the same periods of time. Appeal in cassation may be filed against decisions given by the Court of Appeal in chambers within the same periods of time.

[2.] The Supreme Court, the Court of Appeal or the District Court shall render a decision as soon as possible. Section 19, last subsection, shall apply.

Chapter Six. Matters heard by the Court in Chambers

Section 21

[1.] In all cases where a decision rendered by the court at the court session is not prescribed or is not taken there ex officio, such matters shall be heard by the court in chambers. However, all applications, requests or proposals made at the court session shall be heard and decided on at this session.

[2.] The court in chambers shall be composed as follows:

a. at the District Courts, of three members or, if subsection 5(first sentence) applies, of one member;
b. at the Courts of Appeal, of three members or, if subsection 6 applies, of one member;
c. at the Supreme Court, of five members or, in accordance with section 75(3) of the Judicial Organisation Act [*Wet op de Rechterlijke Organisatie*], of three members.

[3.] If the court in chambers has to render a decision after the commencement of the court hearing, it shall be composed as much as possible of the members who sat in the case at the court session.

[4.] The member or deputy member who conducted any investigation in the case as examining magistrate attached to the District Court or the Court of Appeal shall not, under penalty of nullity, sit in the matter before the court in chambers, unless the investigation was exclusively conducted under section 316(2) and the examining magistrate may also sit in the case at the continued court hearing.

5. The single-judge division of the District Court may hear a case if the case is of a non-complex nature. The case shall be heard in any case by a single-judge division, if the single judge division of the Sub-District Court Sector hears and decides on the case. The three-judge division shall hear in any case an appeal against a decision of the examining magistrate, as well as the application of the Public Prosecution Service for remand detention or arrest as referred to in section 65, 66(3, last sentence) or 66a.

6. The single-judge division of the Court of Appeal may hear a case if it is a case as referred to in

section 411(2) and if it involves an application for extension of the remand detention as referred to in section 75(1).

7. If the member of the District Court referred to in subsection (5) or the member of the Court of Appeal referred to in subsection (6) is of the opinion that the case should be heard by a three-judge division, he shall refer the case to this division. The referral may be made at any stage at which the matter is being heard. The referred case shall be heard at the stage in which it was before referral. In the assessment of the case, events which took place at the hearing of the court in chambers and led to referral of the case may be taken into account.

Section 22

1. The session of the court in chambers shall not take place in public, unless prescribed otherwise.

2. If a public court session is prescribed, the court in chambers may order that the entire session or part of the session shall be held behind closed doors. This order may be given in the interest of public decency, public order and state security, and if required in the best interests of minors, or in the interest of respect for the personal life of the defendant, other participants in the criminal proceedings or persons otherwise involved in the case. Such order may also be given if the District Court considers that a hearing in public would seriously prejudice the interest of the proper administration of justice.

3. An order, as referred to in subsection (2), shall be given in chambers ex officio or on application of the Public Prosecution Service or of the defendant or other participants in the criminal proceedings. The court in chambers shall not give the order until it has heard the Public Prosecution Service, the defendant and other participants in the criminal proceedings on this matter, if required behind closed doors.

4. The court in chambers shall be authorised to establish the identity of the defendant in the manner referred to in section 27a(1, first sentence) and (2), and of the witness in the manner referred to in section 27a(1, first and second sentence), if there is any doubt about the identity of the defendant or the witness. Section 29a(2) shall apply mutatis mutandis to the witness.

5. The presiding judge may grant persons special leave to attend the closed session.

Section 23

1. The court in chambers shall be authorised to give the necessary orders in order to ensure that the hearing, which must precede its decision, takes place in accordance with the provisions of this Code.

2. The court in chambers shall hear, or at any rate call for such purpose, the Public Prosecution Service, the defendant and other participants in the criminal proceedings, unless prescribed otherwise. Section 22(4) shall apply mutatis mutandis.

3. The defendant and other participants in the criminal proceedings may have the legal representation of a defence counsel or lawyer at the session of the court in chambers.

4. The Public Prosecution Service shall submit the documents pertaining to the case to the court in chambers. The defendant and the other participants in the criminal proceedings, and their defence counsel or lawyer, may inspect these documents.

5. Subsections (2) to (4) inclusive shall not apply, insofar as their application would seriously prejudice the interest of the investigation.

Section 24

1. The decision given in chambers shall be reasoned.

If a public session of the court in chambers is prescribed, the decision shall be pronounced in

public.

2. The decision given in chambers shall state the names of the members of the bench, and by whom and the date on which it was rendered. It shall be signed by the presiding judge and by the clerk to the court who was present at the session of the court in chambers.

3. In the absence of the presiding judge, a member of the court in chambers shall sign. If the clerk to the court is unable to sign, this shall be stated in the decision given in chambers.

4. The decision given in chambers shall be promptly sent to the defendant and other participants in the criminal proceedings, unless prescribed otherwise.

5. The requirement of prompt sending, referred to in subsection (4), shall not apply if, under section 23(5), the defendant and other participants in the criminal proceedings have not been called to appear before the court. The decision shall be sent as soon as the interest of the investigation permits such.

Section 25

[1.] The clerk to the court shall prepare a record of the hearing at the court in chambers, which record shall contain the substance of the statements made and other events that took place at that hearing.

[2.] If a defendant, witness or expert witness or the defence counsel or the lawyer wishes to have any statement recorded verbatim, this shall be done as much as possible, insofar as the statement does not exceed reasonable limits.

[3.] The presiding judge or one of the other members of the court in chambers and the clerk to the court shall confirm the court record and sign it as soon as possible after the close of the hearing. Insofar as the clerk to the court is unable to perform various duties, this shall be done without his assistance and his absence shall be stated at the end of the court record.

[4.] It shall be added together with the decision given in chambers and the other documents submitted during the hearing of the court in chambers to the case documents.

Section 26 [Repealed as of 01-01-2002]

Part II. The Suspect or the Defendant

Section 27

[1.] Before prosecution has been initiated, a person shall be regarded as a suspect when a reasonable suspicion that he is guilty of having committed **a** criminal offence can be derived from the facts or the circumstances.

[2.] Thereafter, a person **who** is being prosecuted shall be regarded as a defendant.

3. The rights conferred on the suspect or the defendant shall also be conferred on the convicted offender against whom a criminal financial investigation has been instituted or in regard of whom an irrevocable decision on an application of the Public Prosecution Service, as referred to in section 36*e* of the Criminal Code [*Wetboek van Strafrecht*], has not been rendered.

Section 27a

1. For the purpose of establishing the identity of the suspect, he shall be asked to state his surname, forenames, place of birth and date of birth, the address at which he is registered in the Municipal Personal Records Database and his actual place of abode. The establishment of his identity shall also include an examination of an identity document as referred to in section 1 of the Compulsory Identification Act [*Wet op de Identificatieplicht*]. In the cases referred to in section 55c(2) and (3), the establishment of his identity shall also include taking one or more photographs and

fingerprinting.

2. In cases where the suspect's fingerprints have been taken and processed in accordance with this Code, the establishment of his identity shall include for the purpose of verification taking his fingerprints and comparing these fingerprints to his processed fingerprints. In other cases the establishment of his identity shall include an examination of an identity document as referred to in section 1 of the Compulsory Identification Act.

Section 27b

1. **Our Minister of Security and Justice** shall allocate a criminal law chain number to the suspect after establishment of his identity, unless he has already been allocated a criminal law chain number. The criminal law chain number shall not contain any information about the suspect.

2. The criminal law chain number may only be used for the exchange of personal details of suspects and convicted offenders for the implementation of criminal law and the implementation of the Foreign Nationals Act 2000 [*Vreemdelingenwet 2000*] in cases to be designated by Governmental Decree.

3. The officials and agencies charged with implementing criminal law shall use the criminal law chain number in the exchange of personal details about suspects and convicted persons with one another and in the exchange of these personal details with officials who are charged with implementing the Foreign Nationals Act 2000.

4. The criminal law chain number and other data necessary to establish the identity of suspects and convicted persons and which is designated by Governmental Decree, shall be processed in the criminal law chain database. **Our Minister of Security and Justice** shall be responsible for this database.

5. Rules pertaining to the processing of the data, referred to in subsection (4), shall be set by or pursuant to Governmental Decree.

Section 28

[1.] The suspect or the defendant shall have the right to legal representation by one or more defence counsel of his choice or an assigned defence counsel in accordance with the provisions of **the Third** Part of this Code.

[2.] To that end, on each occasion that he requests to speak to his defence counsel, he shall be given the opportunity to do so **as much as possible**.

Section 29

[1.] In all cases where a person is being questioned as a suspect or defendant, the judge or officer, who is conducting the questioning, shall refrain from any act aimed at obtaining a statement which cannot be said to have been freely given. The suspect or the defendant shall not be obliged to answer any questions.

[2.] Before the suspect or the defendant is questioned, he shall be informed that he is not obliged to answer any questions.

[3.] The statement of the suspect or the defendant, in particular those statements that contain an admission of guilt, shall be included as much as possible verbatim in the official record of the questioning. The statement referred to in subsection (2) shall be noted in the official record.

Section 29a

1. In all cases where the suspect or the defendant is questioned or is present at any questioning, the judicial officer shall establish the identity of the suspect or the defendant in the manner referred to in section 27a(1, first sentence). The judicial officer shall also be authorised to establish the identity

of the suspect or the defendant, referred to in section 27a(2), if there is any doubt about his identity.

2. The suspect or the defendant shall be obliged, by order of a judicial officer, to provide an identity document as referred to in section 1 of the Compulsory Identification Act for inspection and to cooperate with fingerprinting.

Section 30

1. **During the preliminary investigation the Public Prosecution Service shall permit the suspect, at his request, to inspect the case documents.**

2. **If the public prosecutor fails to provide the case documents for inspection, the examining magistrate may, on application of the suspect, set a period of time within which the public prosecutor will provide the case documents to the suspect for his inspection. The examining magistrate shall hear the public prosecutor before deciding on the application.**

3. **Nonetheless, the public prosecutor may withhold certain case documents from the suspect, if required in the interest of the investigation.**

4. **In the case referred to in subsection (3), the suspect shall be notified in writing of the incompleteness of the documents provided for his inspection. The suspect may submit a notice of objection to the examining magistrate within fourteen days after the date of the notification referred to in subsection (3), and thereafter each time after periods of thirty days. The examining magistrate shall hear the public prosecutor and shall give the suspect the opportunity to present his views before taking a decision.**

Section 31

Full inspection of the following documents may not be withheld from the suspect:

a. **the official records of his questionings;**
b. **the official records pertaining to questionings or investigative acts, at which he or his defence counsel had the right to be present, unless and insofar as a circumstance which, in the interest of the investigation, should not be disclosed to him for the time being, is mentioned in an official record, and in which connection an order, as referred to in section 50(2), has been issued;**
c. **the official records of questioning, whose entire contents were verbally relayed to him.**

Section 32

1. **The suspect may obtain copies of the documents he is permitted to inspect at the Office of the Public Prosecution Service or the court registry; however this may not cause any delay in the investigation.**

2. **The public prosecutor may determine that copies of certain documents or parts thereof shall not be provided in the interest of protecting private life or the detection or prosecution of criminal offences or for compelling reasons of public interest. If documents are added to the case file during the court hearing, the court determining questions of fact, before which the case is being prosecuted, may, ex officio or on application of the public prosecutor or of the suspect or the injured party, decide in accordance with the preceding sentence.**

3. **In the case referred to in subsection (2, first sentence), the suspect shall be notified in writing that copies of certain documents or parts thereof shall not be provided to him.**

4. **The suspect may submit a notice of objection to the examining magistrate within fourteen days after the date of the notification referred to in subsection (3). The examining magistrate shall hear the public prosecutor before taking a decision.**

5. **Rules pertaining to the provision of copies and extracts and the manner in which the case**

documents may be inspected shall be set by Governmental Decree.

Section 33

Subject to the provisions of section 149b, the inspection of all original case documents or copies thereof may not be withheld from the suspect as soon as the summons to appear before the court of first instance has been served on him or a punishment order has been issued.

Section 34

1. **The suspect may request the public prosecutor to add to the case documents specifically described documents that he considers relevant for the assessment of the case. The request shall be made in writing and shall be reasoned.**

2. **With a view to substantiating his request, the suspect may request the permission of the public prosecutor to inspect the documents referred to in subsection (1).**

3. **If the public prosecutor fails to give a decision on the adding of the documents or their inspection, the examining magistrate may, on application of the suspect, set a period of time within which a decision has to be taken. The examining magistrate shall hear the public prosecutor and the suspect before taking a decision on the application.**

4. **The public prosecutor may refuse to add the documents or provide them for inspection if he is of the opinion that the documents cannot be deemed to be case documents or if he considers this to be irreconcilable with one of the interests referred to in section 187d(1). He shall require written authorisation for that purpose, to be granted by the examining magistrate on his application.**

Section 35

[1.] The court which is called upon to render any decision in the case, shall be authorised to give the suspect the opportunity to be heard in the case.

[2.] An application to that effect from the suspect shall be complied with, unless the interest of the investigation prohibits such.

[3.] Section 23(4) shall apply.

Section 36

[1.] If prosecution is discontinued, the court of first instance, before which the case was last prosecuted, may declare, on application of the suspect or **at the proposal of the examining magistrate pursuant to section 180**, that the case is closed.

[2.] The court may reserve its decision on the application at any time for a certain period if the Public Prosecution Service adduces evidence demonstrating that the matter will still be prosecuted.

3. Before the court gives its decision, it shall call the directly interested party, who is known to the court, in order to hear this party's views on the suspect's application.

4. The decision given in chambers shall be promptly served on the suspect.

Section 36a Repealed

Section 36b Repealed

Section 36c Repealed

Section 36d Repealed

Section 36[e] Repealed

Part III. The Defence Counsel

General Provision

Section 37

Only those lawyers who are registered in the Netherlands may be admitted as defence counsel. The persons referred to in section 16b or 16h of the Lawyers Act [*Advocatenwet*], if they collaborate with a defence counsel registered in the Netherlands in accordance with the provisions of sections 16 or 16j respectively of the Lawyers Act , shall also be admitted.

Chapter One. Choice of Defence Counsel

Section 38

[1.] The suspect shall have the right to choose one or more defence counsel at all times.

[2.] The suspect's legal representative shall also have the right to choose one or more defence counsel .

[3.] If the suspect is not capable of expressing his will in this respect and he does not have a legal representative, then his spouse or civil registered partner or the most suitable of his relatives by consanguinity or affinity, up to and including the fourth degree, may make this choice.

[4.] The defence counsel chosen under subsections (2) or (3) shall step down as soon as the suspect has chosen a defence counsel himself.

Section 39

[1.] The chosen defence counsel shall, if the public prosecutor is already involved in the case, give written notice of his appointment in this capacity to the clerk to the court. If that is not the case, then he shall give written notice of his appointment to the assistant public prosecutor involved in the case.

[2.] If he replaces a chosen or assigned defence counsel, he shall also give notice thereof in accordance with the provisions of the preceding subsection.

[3.] The clerk to the court shall promptly notify in writing the contents of any notice addressed to him in accordance with this section to the Public Prosecution Service, and in addition, **if he conducts any investigative acts by virtue of sections 181 to 183 inclusive, the examining magistrate**, and, in the case of the preceding subsection, the replaced defence counsel.

[4.] This notice shall terminate the services of the assigned or previously chosen defence counsel who has been replaced.

Chapter Two. Assignment of Defence Counsel

Section 40

1. The board of the Legal Aid Council [*Raad voor Rechtsbijstand*] may assign the provision, in rotation, of legal aid to suspects taken into police custody to registered lawyers who have expressed their willingness to provide such services.

2. If a defence counsel, who has been granted such an assignment under the preceding subsection, is available for the provision of legal aid to a suspect taken into police custody, then he shall act as his defence counsel for the duration of the police custody. The public prosecutor or an assistant public prosecutor shall promptly inform the defence counsel of the police custody.

3. In cases where there is no defence counsel available to provide legal aid in accordance with the provisions of the preceding subsections, the public prosecutor or the assistant public prosecutor shall promptly notify the District Court thereof. This court shall instruct the board of the Legal Aid Council to assign defence counsel to the suspect for the duration of the police custody.

4. The instructions and notifications referred to in this section shall be given in accordance with the provisions to be set by **Our Minister of Security and Justice**.

5. Subsections (2) and (3) shall not apply if the suspect has a chosen defence counsel.

6. The defence counsel assigned under subsection (2) or (3) shall also act as defence counsel for the suspect when the District Court hears the appeal of the public prosecutor as referred to in section 59c.

Section 41

1. The board of the Legal Aid Council shall assign a defence counsel to the suspect who does not have a defence counsel:

a. where his remand in custody or arrest has been ordered, or, if the suspect was not taken into police custody, where his remand in custody or arrest was ordered ex officio by the presiding judge of the District Court;
b. where appeal is filed against the final judgment rendered at the court of first instance and it is a case for which his pre-trial detention has been ordered ex officio by the presiding judge of the Court of Appeal.

[2.] The Public Prosecution Service shall promptly notify the presiding judge of the District Court, or of the Court of Appeal, that an order under subsection (1) is required.

Section 42

[1.] The board of the Legal Aid Council shall, on application of the suspect, assign him a defence council, where he - other than under a police custody order - has been deprived of his liberty by law and prosecution has been initiated against him, unless the duration of the deprivation of liberty cannot or shall not prejudice his defence.

[2.] The presiding judge of the District Court, or the presiding judge of the Court of Appeal, before which the case must be tried, shall be authorised to order the assignment of a defence counsel in accordance with the preceding subsection.

3. Insofar as assignment of defence counsel is not provided for in another manner by law, the board of the Legal Aid Council may, on application of the suspect, assign him a defence counsel in accordance with the provisions of section 44 of the Legal Aid Act [*Wet op de Rechtsbijstand*].

Section 43

1. The assignment of a defence counsel, other than under section 40, shall be made for the entire period that the criminal proceedings are conducted before one court.

2. Assignment of a defence counsel to a person who is detained under a pre-trial detention order shall be free of charge at every court.

Section 44

1. The suspect shall be informed of his right to apply for assignment of defence counsel:

a. in the case of any investigation by the examining magistrate, by this examining magistrate or by the person whom the examining magistrate has charged to hear the suspect at the first hearing;
b. in the case of appeal or appeal in cassation, by the clerk to the court.

2. Moreover, on service of the summons **up to the first questioning by the examining magistrate who conducts investigative acts under sections 181 to 183 inclusive**, of the summons at the court session, of notice of further prosecution, of an appeal or appeal in cassation filed by the Public Prosecution Service, and of notice of the date of the hearing of the appeal in cassation, the right of the suspect to apply for assignment of a defence counsel shall be stated in the judicial letter whose issue effects such service.

Section 45

[1.] In the absence or nonappearance of the assigned defence counsel, a new defence counsel shall be assigned to the suspect if necessary.

[2.] On application of the assigned defence counsel or of the suspect, a new defence counsel may be assigned.

3. A new defence counsel shall be assigned by the board of the Legal Aid Council which assigned the defence counsel to be replaced. In the event that the defence counsel was assigned by order of a judicial authority, the replacement shall be made after issue of an order to that effect from that authority.

4. If the defence counsel's absence or nonappearance only becomes apparent at the court session, the presiding judge shall order assignment of another defence counsel.

Section 46

[1.] The assigned defence counsel may have another defence counsel replace him for the conduct of certain activities.

[2.] If the assigned defence counsel gives a mandate in accordance with the preceding subsection, because he would otherwise have to provide legal aid in the district of a District Court other than the one in which he is registered, and the defence counsel who replaces him is registered in that district, then the latter, in regard of the replacement, shall be deemed to be the assigned defence counsel.

Section 47

Each assignment of defence counsel made by the board of the Legal Aid Council shall be promptly notified, in the manner to be determined by **Our Minister of Security and Justice**, to the Public Prosecution Service, the defence counsel, the suspect and also, **in the event he conducts investigative acts under sections 181 to 183 inclusive,** the examining magistrate.

Section 48

Rules pertaining to the remuneration of assigned defence counsel - including lawyers who act as defence counsel in accordance with section 40(1) and (2) - and the reimbursement of their expenses incurred, and, if necessary, pertaining to the manner of its determination by the court, may be set by Governmental Decree. In addition to this, it may be stipulated in these rules that judicial decisions on said matters will not be open to appeal and appeal in cassation.

Section 49

[1.] If a defence counsel is assigned, his remuneration and reimbursement may be recovered from the suspect's property, insofar as is considered desirable by **Our Minister of Security and Justice**. Rules pertaining to the calculation of the amount of the remuneration or the reimbursement may be set by Governmental Decree.

[2.] Recovery shall be made only with the authorisation of said Minister by force of a writ of execution to be issued by the presiding judge of the court to be designated by Governmental Decree, in the manner to be determined therein. Recovery may no longer be made if three months have expired

since the date of the writ of execution.

Chapter Three. The Rights of Defence Counsel in regard of Communication with the Suspect and Inspection of the Case Documents

Section 50

1. The defence counsel shall have free access to the suspect who has been deprived of his liberty by law and may confer with him in private and exchange letters with him which may not be inspected or read by others, under the required supervision and subject to the internal rules and regulations, and such access may not cause any delay in the investigation.

2. If specific circumstances give rise to the strong suspicion that the free flow of information between the defence counsel and the suspect will serve either to inform the suspect about any circumstance which, in the interest of the investigation, he should not be informed about for the time being or is abused in attempts to impede the finding of the truth, then during the preliminary investigation the public prosecutor may order each time that the defence counsel shall not have access to the suspect or be permitted to confer with him in private and that letters or other documents exchanged between the defence counsel and the suspect shall not be handed out. The order shall describe the specific circumstances referred to in the preceding sentence; it shall not restrict the free flow of information between the defence counsel and the suspect any greater or any longer than is required by these circumstances, and shall, in any case, be in effect for maximum six days. The defence counsel and the suspect shall be notified in writing of the order.

3. The public prosecutor shall promptly submit the order for the decision of the District Court to which he is attached. The District Court shall decide as soon as possible after having heard the defence counsel, or at any rate having given him written notice to appear before it. The District Court may revoke, amend or supplement the order in its decision.

4. All restrictions on the free flow of information between the defence counsel and the suspect, which are ordered under one of the preceding subsections, shall end as soon as the summons has been served on the suspect.

Section 50a

1. In the event an order as referred to in section 50 is issued, the public prosecutor or the examining magistrate shall promptly notify the presiding judge of the District Court thereof. This judge shall promptly assign a defence counsel to the suspect.

2. The defence counsel assigned under subsection (1) shall act in such capacity for as long as the order is in effect and insofar as the free flow of information between the defence counsel and the suspect is restricted as a result thereof.

Section 51

In regard of the right of the defence counsel to inspect the case documents and receive copies thereof, sections 30-34 shall apply mutatis mutandis. The defence counsel shall promptly receive copies of all documents disclosed to the suspect under this Code, **subject to the provisions of section 32(2)**.

Part IIIA. The Victim

Chapter One. Rights of the Victim

Section 51a

1. A person who has incurred financial loss or another loss as a direct result of a criminal offence shall be deemed a victim. The legal person, which has suffered financial loss or another loss as a direct result of a criminal offence shall be considered as equivalent to the victim.

2. The public prosecutor shall be responsible for ensuring that the victim is treated appropriately.

3. At the victim's request, the police and the public prosecutor shall keep the victim informed on the commencement and progress of the case against the suspect. In particular, the police shall at least provide written notification of discontinuance of the investigation or the forwarding of an official report against the suspect. The public prosecutor shall give written notification of the commencement and continuation of the prosecution, of the date and time of the court session and of the final judgment in the criminal case against the suspect. In cases designated for that purpose and in any case, if it concerns a serious offence as referred to in section 51e(1), he shall also, where requested, notify the release of the suspect or the convicted offender.

4. At the victim's request, information on how he can obtain compensation shall also be provided to him.

Section 51b

1. At the victim's request, the public prosecutor shall grant him permission to inspect the case documents of relevance to him. During the court hearing this leave shall be granted by the court of first instance, before which the case is being prosecuted, and for the rest by the public prosecutor.

2. The victim may request the public prosecutor to add to the case file **documents** that he considers relevant for the assessment of the case against the suspect or his claim against the suspect.

3. **The public prosecutor may refuse to add documents or permit inspection thereof if he is of the opinion that the documents cannot be regarded as case documents or if he considers the addition of said documents or their inspection to be incompatible with the interests referred to in section 187d(1).**

4. **The public prosecutor shall require written authorisation for the application of subsection (3), to be granted by the examining magistrate on his application. The public prosecutor shall notify his decision in writing to the victim.**

5. The manner in which case documents are to be inspected shall be arranged by Governmental Decree.

6. The victim may obtain copies of the documents he has been permitted to inspect at the court registry in accordance with the provisions by or pursuant to section 17 of the Act on Remunerations in Criminal Cases [*Wet Tarieven in Strafzaken*]. **Section 32(2) to (4) inclusive shall apply mutatis mutandis.**

Section 51c

1. The victim may have legal representation.

2. The victim may be represented at the court session by a lawyer, provided this lawyer declares that he has been given express authorisation, or by an authorised representative who has been given a special written power of attorney for that purpose .

3. If the victim is not fluent or sufficiently fluent in the Dutch language, he may have the assistance of an interpreter.

Section 51d

Sections 51a to 51c inclusive shall apply mutatis mutandis to the surviving relatives within the meaning of section 51e(3) and (4), and to the persons referred to in section 51f(2).

Section 51e

1. The right to make a verbal statement at the court session may be exercised if the offence as charged in the indictment is a serious offence which carries a statutory term of imprisonment of at

least eight years, or any of the serious offences referred to in sections 240b, 247, 248a, 248b, 249, 250, 285, 285b, 300(2) and (3), 301, (2) and (3), 306 to 308 inclusive and 318 of the Criminal Code and section 6 of the Road Traffic Act 1994 [*Wegenverkeerswet 1994*].

2. The victim, the father or the mother of a minor victim who has a close relationship with that victim and persons who take care of or raise that victim as part of their family and have a close and personal relationship with the child, may, jointly or each separately, make a statement about the impact that the criminal offences referred to in subsection (1) have had on them at the court session. The person concerned shall notify in writing his intention to make such statement to the public prosecutor before the start of the court session so that the public prosecutor is able, in good time, to invite him to appear at the court session. The presiding judge may, ex officio or on application of the public prosecutor, deny or restrict the right of the father or mother or caretakers, referred to in the first sentence, to make a verbal statement, if he determines that this would be contrary to the minor victim's best interests.

3. The right to make a verbal statement at the court session, referred to in subsection (1), may also be exercised by a surviving relative who has made it known that he wishes to make a statement about the impact that the victim's decease has had on him at the court session. The surviving relative who wishes to exercise the right to make a verbal statement at the court session shall notify this intention in writing before the start of the court session so that the public prosecutor is able, in good time, to invite him to appear at the court session.

4. The surviving relatives, who are eligible to be called to appear at the court session under subsection (3), shall include:

a. the spouse or civil registered partner or other partner, and
b. the relatives by consanguinity in the direct line and those up to and including the fourth degree of the collateral line.

If more than three surviving relatives, referred to in (b), have indicated that they wish to exercise their right to make a verbal statement, and they fail to agree among themselves which of them will address the court, the presiding judge shall decide which three persons may exercise the right to make a verbal statement.

5. The victims or surviving relatives who may exercise the right to make a verbal statement shall include the minor who has reached the age of twelve years. This shall also apply for the minor who has not yet reached that age and who can be deemed capable of reasonably assessing his interests in that respect.

6. If the victim or a surviving relative has not yet reached the age of twelve years, the right to make a verbal statement at the court session may be exercised by his legal representatives insofar as this representation is not contrary to the minor's best interests. The legal representatives may also, jointly or each separately, make a statement about the impact the criminal offences referred to in subsection (1) have had on them. The presiding judge may, ex officio or on application of the public prosecutor, decide to deny the legal representative the right to make a verbal statement at the court session, if he determines that this would be contrary to the minor's best interests.

7. If the victim or the surviving relative is actually incapable of exercising the right to make a verbal statement, the person referred to in subsection (4)(a) and one of the persons referred to in subsection (4)(b) may exercise the right to make a verbal statement about the impact the criminal offence has had on this victim or surviving relative at the court session.

Chapter Two. Compensation

Section 51f

1. The person who has incurred direct damage as a result of a criminal offence may join the criminal proceedings in his capacity as injured party and claim compensation.

2. If the person referred to in subsection (1) has died as a result of the criminal offence, his heirs may

also join the criminal proceedings in regard of their claim acquired under universal title and the persons, referred to in section 6:108(1) and (2) of the Civil Code [*Burgerlijk Wetboek*] in regard of the claims referred to in that section.

3. The persons referred to in subsections (1) and (2) may also join the criminal proceedings for a part of their claim.

4. Those persons who require legal representation or must be represented in order to appear in civil court proceedings, shall also require legal representation or representation in order to be able to join the criminal proceedings in accordance with subsection (1). An authorisation of the single judge division of the Sub-District Court Sector, as referred to in section 1:349(1) of the Civil Code, shall not be required for that representative. The provisions pertaining to legal representation or representation, necessary in civil cases, shall not apply to the defendant.

5. If the public prosecutor institutes or continues prosecution, he shall notify the injured party thereof in writing as soon as possible. If the case is to be tried at a court session, the public prosecutor shall notify the date and time of the court session to the injured party as soon as possible.

Section 51g

1. In the case of notification of institution of prosecution against a suspect under section 51a(3), the public prosecutor shall send a joinder form. Before the start of the court session the joinder shall be effected by handing over a statement of the claim and the grounds on which it is based to the public prosecutor who is charged with prosecution of the criminal offence. This statement shall be made by means of a form established by Our Minister of Security and Justice.

2. The public prosecutor shall notify the joinder to the defendant as soon as possible and, in the case referred to in subsection (4), to his parents or guardian.

3. At the court session the joinder shall be effected by submission of the statement, referred to in subsection (1, first sentence), to the court before the public prosecutor is given the opportunity to address the court in accordance with section 311 at the latest. This statement may also be given verbally.

4. If the claim of the injured party relates to an act to be considered as an act of a suspect who has not yet reached the age of fourteen years and to whom this act could be imputed as an unlawful act if not for his age, it shall be deemed to be directed against his parents or guardian.

Section 51h

1. The Public Prosecution Service shall see to it that the police inform the victim and the suspect of the option of mediation at the earliest possible stage.

2. If mediation between the victim and the suspect has resulted in an agreement, the court shall, if it imposes a punishment or measure, take this agreement into account.

3. The Public Prosecution Service shall encourage mediation between the victim and the convicted offender, after it has made certain that the victim agrees to such mediation.

4. Further rules pertaining to mediation between the victim and the suspect or between the victim and the convicted offender may be set by Governmental Decree.

Part IIIC. : The Expert Witness

Section 51i

1. An expert witness shall be appointed and given the assignment to provide information about or to conduct an investigation in a field in which he has specific or special knowledge in the manner prescribed by law.

2. The assignment which must be fulfilled for the purpose of the hearing in the criminal case and the period of time within which the expert witness must issue the written report shall be stated in the appointment.

3. The expert witness shall also be charged to submit a true and complete report to the best of his knowledge.

4. Rules pertaining to the qualifications that certain expert witnesses must have and the manner in which in other cases the specific expertise of persons can be determined or tested, shall be set by Governmental Decree.

Section 51j

1. Each person appointed as expert witness shall be obliged to render the services charged by the court.

2. The court may impose an obligation of secrecy on the expert witness.

3. The expert witness may assert privilege in the cases referred to in sections 217 to 219a inclusive.

4. The expert witness shall receive a remuneration to be paid out of the Treasury in the manner prescribed by law. The examining magistrate may decide, without prejudice to section 591, that the remuneration of an expert witness who, on application of the suspect, conducted an investigation which proved to be relevant to the investigation, shall be paid out of the Treasury. This remuneration shall not exceed the remuneration paid to an expert witness appointed on application of the public prosecutor.

Section 51k

1. There shall be a national public register of court expert witnesses, which shall be managed in the manner to be determined by Governmental Decree. The body to be charged with carrying out these duties shall be established by this Governmental Decree.

2. In the event of the appointment of an expert witness who is not included in the register, referred to in subsection (1), the reasons why he is considered to be an expert witness shall be given.

Section 51l

1. The expert witness shall submit a reasoned report to the party who instructed him. In this report he shall indicate, where possible, which method he has applied, to what extent this method and the results thereof can be considered reliable and his ability in the application of the method.

2. The report shall be submitted in writing, unless the court determines that it may be given verbally.

3. The expert witness shall declare that he has prepared a true and complete report to the best of his knowledge. The report shall be based on the insights he has gained from his own expertise and knowledge about the subject on which his opinion is sought.

Section 51m

1. The court may hear the expert witness ex officio or on application of the public prosecutor or the defendant. The court may order that he be called to appear before the court. Sections 211 to 213 inclusive shall apply mutatis mutandis to the expert witness and the hearing of his testimony.

2. The expert witness shall take an oath to give testimony truthfully and in good conscience at the court session.

3. Detention for failure to comply with a judicial order shall not be imposed on the expert witness.

Part IV. Several Special Coercive Measures

Chapter One. Arrest and Police Custody

Section 52

Any investigating officer shall have the power to establish the identity of the suspect in the manner referred to in section 27a(1, first sentence), and to stop and question him for that purpose.

Section 53

[1.] If the suspect is caught red-handed, any person may arrest the suspect.

[2.] In such case the public prosecutor or the assistant public prosecutor shall be authorised to take the suspect, after his arrest, to a location for questioning; he may also order his arrest or arraignment.

[3.] If the arrest is made by another investigating officer, then this officer shall be responsible for ensuring that the arrested person is brought before the public prosecutor or one of his assistant public prosecutors as soon as possible.

[4.] If the arrest is made by another person, then this person shall promptly hand over the arrested person to an investigating officer, subject to the surrender of objects that may have been seized to this officer, who in that case shall act in accordance with the provisions of the preceding subsection and, where necessary, **section 156**.

Section 54

[1.] The public prosecutor shall also be authorised to arrest a suspect, who is not caught red-handed, for any criminal offence for which pre-trial detention is permitted and to take him to a location for questioning; he may also order his arrest or arraignment.

[2.] If action on the part of the public prosecutor cannot be awaited, then the same authority shall be conferred on each of his assistant public prosecutors. The assistant public prosecutor shall promptly notify the arrest in writing or verbally to the public prosecutor.

[3.] If action on the part of one of the assistant public prosecutors cannot be awaited either, then any investigating officer shall have the power to arrest the suspect, subject to the obligation to ensure that he is promptly brought before the public prosecutor or one of his assistant public prosecutors. The second sentence of the preceding subsection shall apply to the assistant public prosecutor before whom the suspect is brought.

4. The power to arrest a suspect, who is not caught red-handed, shall be conferred on a person in the public service of a foreign state who exercises in the Netherlands the right of cross-border pursuit in the manner permitted under international law, subject to the obligation to treat the arrested person in the manner specified in subsection (3).

Section 55

[1.] In cases where the suspect is caught red-handed in the commission of a criminal offence, any person may, for the purpose of arresting the suspect, enter any place, with the exception of a dwelling without the consent of the occupant and the places referred to in section 12 of the General Act on Entry into Dwellings [*Algemene Wet op het Binnentreden*] (*Bulletin of Acts and Decrees* 1994, 572).

[2.] Any investigating officer may enter any place for the purpose of arresting the suspect, irrespective of whether the suspect is caught red-handed or not.

Section 55a

1. In cases where the suspect is caught red-handed in the commission of a criminal offence or where he is suspected of having committed a serious offence as defined in section 67(1), any investigating officer may search any place for the purpose of arresting the suspect. Save in the

case of urgent necessity, the investigating officer must be authorised by the public prosecutor for that purpose. In the latter case the public prosecutor shall be promptly informed of the search.

2. If the public prosecutor has authorised an investigating officer to search of a dwelling without the consent of the occupant for the purpose of arresting the suspect, the investigating officer concerned shall not be required to have an authorisation, as referred to in section 2 of the General Act on Entry into Dwellings, in order to enter that dwelling.

Section 55b

1. The civil servants designated by or pursuant to section 141 as well as specific categories of other persons charged with the detection of criminal offences designated by **Our Minister of Security and Justice** shall have the power to search the clothing of a suspect stopped for questioning or arrested, and to examine the objects he is carrying on him and with him, insofar as is necessary for the establishment of his identity.

2. The civil servants, referred to in subsection (1), shall exercise the powers referred to in subsection (1) in public only where such is reasonably necessary in order to prevent disposal of or damage to objects which could establish the suspect's identity.

3. They shall prepare an official record of the exercise of the powers, referred to in subsection (2), which shall be provided to the public prosecutor.

Section 55c

1. The civil servants, referred in section 141, and the police officers, referred to in section 3(1)(b) of the Police Act 1993 [*Politiewet 1993*], who are also special investigating officers as referred to in section 142, shall establish the identity of the arrested suspect in the manner referred to in section 27a(1, first and second sentence).

2. The civil servants, referred to in subsection (1), shall take one or more photographs and fingerprints with a view to establishing the identity of a suspect who has been arrested for a serious offence as defined in section 67(1) or who is being questioned on account of a serious offence as defined in section 67(1) without having been arrested. The fingerprints shall be compared to the fingerprints of suspects processed under this Code and, if the suspect is believed to be a foreign national, with fingerprints processed in accordance with the Foreign Nationals Act 2000.

3. The public prosecutor or the assistant public prosecutor shall order that one or more photographs and fingerprints shall be taken of any suspect, other than the suspect referred to in subsection (2), whose identity is in doubt. Subsection (2, last sentence) shall apply mutatis mutandis.

4. The photographs and fingerprints, referred to in subsections (2) and (3), may also be processed for the prevention, detection, prosecution and trial of criminal offences and the establishment of the identity of a body.

5. Rules pertaining to the processing of photographs and fingerprints, referred to in subsections (2) and (3), shall be set by or pursuant to Governmental Decree.

Section 56

1. The public prosecutor or the assistant public prosecutor before whom the suspect is brought or who has personally arrested the suspect, may, in the case of serious suspicions against this person, determine that the suspect's body or clothing will be searched in the interest of the investigation.

2. The public prosecutor may determine in the case of serious suspicions against the suspect that he will undergo a body cavity search in the interest of the investigation. A body cavity search shall mean: external examination of the orifices and cavities of the lower body, X-ray, echography and internal manual examination of orifices and cavities of the body. The body cavity search shall be

conducted by a medical doctor. The search shall not be conducted if this would be undesirable for special medical reasons.

3. The searches referred to in subsections (1) and (2) shall be conducted at a private location and, insofar as is possible, by persons of the same sex as the suspect.

[4.] The other investigating officers shall have the power to search the clothing of the arrested person against whom there are serious suspicions.

Section 57

[1.] The public prosecutor or the assistant public prosecutor before whom the suspect is brought or who has personally arrested the suspect, may, after having questioned him, order that he remain at the disposal of the justice authorities during the investigation and for that purpose be taken into police custody at a location indicated in the order. Police custody shall be ordered in the interest of the investigation, which shall also be understood to mean in the interest of presenting notifications about the criminal case to the suspect in person.

[2.] The suspect shall have the right to have a defence counsel present during questioning. The defence counsel shall be given the opportunity to make such comments as he sees fit during questioning.

[3.] The public prosecutor or the assistant public prosecutor, who issues the order, shall prepare an official record of the questioning. This official record shall be added to the case documents.

[4.] The assistant public prosecutor shall promptly notify the public prosecutor of his order.

[5.] The public prosecutor shall order the release of the suspect as soon as the interest of the investigation permits. If the sole remaining interest of the investigation is presenting a notification about the criminal case to the suspect in person, this notification shall be presented as soon as possible and the suspect shall then be released.

Section 58

1. The police custody order shall only be issued in the case of a criminal offence for which pre-trial detention is permitted.

2. The police custody order shall only be in effect for a maximum of three days. In the case of urgent necessity, the public prosecutor may extend it one time for a maximum of three days.

3. The assistant public prosecutor shall order the release of the suspect as soon as the interest of the investigation permits. Otherwise, he shall propose an extension of the police custody to the public prosecutor. The public prosecutor may order that the suspect be brought before him for questioning.

Section 59

1. The police custody order or its extension shall be dated and signed. The order may also be signed by an assistant public prosecutor by order and on behalf of the public prosecutor who issued the order.

2. It shall specify as precisely as possible the criminal offence, the grounds on which it is issued and the specific circumstances that led to the assumption of these grounds.

3. The suspect shall be designated by his name, and if his name is not known, he shall be described as clearly as possible.

4. A copy of the order shall be promptly presented to him.

5. The director of the Probation and After-Care Service Foundation shall be promptly notified of the

police custody order.

6. The police station shall serve as a facility for police custody. In special cases the public prosecutor may order that the police custody will take place in a detention centre.

Section 59a

1. The suspect shall be arraigned before the examining magistrate in order to be heard not later than within three days and fifteen hours, to be calculated as from the time of arrest.

2. The examining magistrate shall promptly set, after having received an application to that effect from the public prosecutor, the time and place at which the suspect is to be arraigned before him and he shall notify the public prosecutor, the suspect and the defence counsel thereof.

3. The suspect shall have the right to have a defence counsel present. The defence counsel shall be given the opportunity to make such comments as he sees fit during the arraignment. The public prosecutor may be present at the arraignment and make such comments as he sees fit.

4. The suspect may request the examining magistrate to release him at the arraignment.

5. If the examining magistrate finds that the suspect's arrest was unlawful, he shall order his release. Otherwise, the examining magistrate shall note his decision in the official record of arraignment or, if the suspect has requested his release, the examining magistrate shall reject the request. The examining magistrate shall certify the decision.

6. The decision shall be dated, signed and reasoned. The examining magistrate shall promptly send the decision to the public prosecutor and the suspect.

Section 59b

Section 59*a* shall no longer apply as soon as the suspect has been released by the public prosecutor or the assistant public prosecutor under section 57(5) or section 58(3).

Section 59c

1. The public prosecutor may file an appeal with the District Court against the examining magistrate's decision ordering the immediate release of the suspect under section 59a(5) within fourteen days thereafter.

2. The suspect shall be heard, or at any rate properly called to appear before the court, unless the District Court immediately dismisses the appeal. The District Court may order that he be forcibly brought to court.

3. The District Court shall render a decision as soon as possible. The decision given in chambers shall be reasoned and shall be notified in writing to the public prosecutor and the suspect.

Section 60

The public prosecutor before whom the suspect is brought or who personally arrested the suspect, shall, if he is of the opinion that he should be remanded in pre-trial detention, promptly arrange his arraignment before the examining magistrate.

Section 61

1. If the suspect is not taken into police custody in accordance with section 57 nor arraigned before the examining magistrate in accordance with section 60, he shall be released, unless he is detained for investigative purposes for maximum six hours by order of the public prosecutor or the assistant public prosecutor before whom the suspect was brought or who personally arrested the suspect. The suspect shall be questioned while he is being detained for investigative purposes.

2. If the suspect is detained for the purpose of establishing his identity and he is suspected of a criminal offence for which pre-trial detention is not permitted, the period of six hours referred to in subsection (1) may be extended one time for a maximum of six hours by order of the public prosecutor or the assistant public prosecutor before whom the suspect was brought or who personally arrested the suspect.

3. Detention as referred to in subsections (1) and (2) shall take place in the interest of the investigation, which shall also be understood to mean in the interest of presenting notifications about the criminal case to the suspect in person.

4. In the calculation of the periods of time referred to in subsections (1) and (2), the time between midnight and nine a.m. shall not be included.

5. The extension order shall be dated and signed.

6. The order shall contain a brief description of the criminal offence suspected and the facts or circumstances on which the suspicion is based.

7. The suspect shall be designated by his name, and if his name is not known, he shall be described as clearly as possible.

8. A copy of the order shall be promptly presented to him.

9. If the sole remaining interest of the investigation is presenting a notification about the criminal case to the suspect in person, this notification shall be presented as soon as possible and the suspect shall then be released. In that case subsection (4) shall not apply.

Section 61a

1. Measures to be taken against the suspect detained for investigative purposes may be ordered in the interest of the investigation. Such measures may include, inter alia:

    a. taking photographs and making video recordings;
    b. taking measurements and prints of palms, feet, toes, ears and shoes;
    c. using a one-on-one or line-up identification procedure;
    d. using a sniffer dog test;
    e. shaving or cutting off moustache, beard or head hair or letting them grow;
    f. wearing certain clothing or certain items for the purpose of a one-on-one or line-up identification procedure;
    g. placement in an observation cell;
    h. checking for gunshot residue on the suspect's body.

2. The measures listed in subsection (1) may only be ordered in cases where the suspect is suspected of having committed a serious offence as defined in section 67(1).

3. Further rules pertaining to the use of measures in the interest of the investigation may be set by or pursuant to Governmental Decree.

Section 61b [Repealed as of 01-03-2002]

Section 61c [Repealed as of 01-03-2002]

Section 62

1. The suspect taken into police custody shall not be subjected to any restrictions other than those that are absolutely necessary in the interest of the investigation and in the interest of order.

2. Without prejudice to the provisions of section 50, measures to be taken against the suspect, referred to in subsection (1), may be ordered in the interest of the investigation. Such measures may include inter alia, in addition to the measures listed in section 61a(1)(a) to (h) inclusive:

a. restrictions on receiving visitors, telephone communications, exchanging letters and providing newspapers, reading matter or other data carriers, or other measures relating to the stay in the context of the deprivation of liberty;
b. transfer to a hospital, or another institution where medical supervision is guaranteed, or a stay in a cell equipped for that purpose under medical supervision.

3. The treatment of suspects taken into police custody and the requirements the facilities designed for police custody have to meet shall be determined by Governmental Decree in accordance with principles to be set by or pursuant to the law.

4. If as a result of the notification referred to in 59(5) a report is prepared, the public prosecutor shall read that report before submitting an application for remand in custody.

5. If the measures, referred to in subsection (2)(a), are taken against the suspect, he shall be informed of the possibility of objection included in section 62a(4).

Section 62a

1. The public prosecutor may order measures to be taken in the interest of the investigation.

2. If action on the part of the public prosecutor cannot be awaited, then during the period of detention for investigative purposes and the police custody the authority referred to in subsection (1), except for the authority to issue an order to take the measure referred to in section 61a(1)(e), shall be conferred on the assistant public prosecutor who ordered the detention for investigative purposes or the police custody.

3. The director of the detention centre, if the suspect is detained in such a facility, and otherwise the person to be designated in the order, shall be responsible for the enforcement of the order.

4. The suspect may file a notice of objection against the order, as referred to in section 62(2)(a), to the District Court or, if the order is issued in the context of pre-trial detention, to the court that rules on the continuation of the pre-trial detention. The order shall not be enforced pending the judicial decision, unless the person who issued the order considers immediate enforcement to be absolutely necessary in the interest of the investigation.

Chapter Two. Pre-Trial Detention

§ 1. Pre-Trial Detention Orders

Section 63

[1.] The examining magistrate may, on application of the public prosecutor, issue an order remanding the suspect in custody. The public prosecutor shall promptly notify the defence counsel, in writing or verbally, of the application.

[2.] If the examining magistrate immediately finds that there are no grounds to issue such an order, he shall reject the application.

[3.] Otherwise, before taking a decision, he shall hear this suspect on application of the public prosecutor, unless the prior hearing of the suspect cannot be awaited, and he may for that purpose order that he be summoned to appear before him, where necessary with an attached order to forcibly bring him.

[4.] The suspect shall have the right to have a defence counsel present when he is arraigned before the examining magistrate. The defence counsel shall be given the opportunity to make such comments as he sees fit during the arraignment.

Section 64

1. The order remanding the suspect in custody shall be in effect for a period to be set by the

examining magistrate, subject to a maximum of fourteen days, which shall take effect as from the time of enforcement.

2. As soon as the examining magistrate or the public prosecutor is of the opinion that the grounds on which the order for remand in custody was issued no longer exist, he shall order the release of the suspect.

3. The public prosecutor may file an appeal with the District Court against the decision ordering the immediate release of the suspect given by the examining magistrate under subsection (2) within fourteen days thereafter.

Section 65

[1.] The District Court may, on application of the public prosecutor, order the remand detention of the suspect who is remanded in custody. The suspect shall be heard prior to issuing such order, unless he has declared in writing that he waives his right to be heard. The District Court or the presiding judge, may, notwithstanding such declaration, order that the suspect be forcibly brought to court.

2. Except for the case of section 66a(1), the District Court may, ex officio or on application of the public prosecutor, after the start of the court hearing, order the arrest of the suspect. Where advisable, the District Court shall hear him beforehand; it is authorised for that purpose to order that he be summoned to appear, where necessary with an attached order that he be forcibly brought to court.

3. The District Court may also issue a warrant of arrest, if this is necessary in order to obtain the extradition of the suspect.

Section 66

[1.] The warrant of arrest or the remand detention order shall be in effect for a period to be set by the District Court, subject to a maximum of ninety days, which shall take effect as from the time of enforcement.

2. When the order is issued at the court session, or the hearing has started within the period of time set under subsection (1), the order shall remain in effect for a period of sixty days after the date of the final judgment.

[3.] The period during which the order is in effect may be extended by the District Court maximum two times, on application of the public prosecutor, before the start of the court hearing, on the understanding that the term of the warrant of arrest or the remand detention order together with its extension shall not exceed a period of ninety days. The suspect shall be given the opportunity to be heard on the application. In the case of suspicion of a terrorist offence, the term of the warrant of arrest or the remand detention order may be extended, after ninety days, by periods that do not exceed ninety days for a maximum period of two years. In that case an application for extension shall be heard in public.

[4.] The first three subsections of this section shall apply mutatis mutandis to extension orders in accordance with the preceding subsection.

Section 66a

1. When the term of validity of the warrant of arrest or the remand detention order expires, the public prosecutor may apply as soon as possible, also before the start of the court hearing, for the arrest of the suspect who has not yet been released, if

a. the public prosecutor has failed to submit the application for extension on time,
b. the conditions for the imposition of pre-trial detention still exist, and
c. the pre-trial detention order was issued on the basis of suspicion of a serious offence which carries a statutory term of imprisonment of at least eight years.

2. The District Court shall give the suspect, who is present at the court session, the opportunity to be heard on the application.

3. The application for arrest shall be promptly served on the suspect, who is not present at the court session, in person. The District Court shall not take a decision before it has heard, or at any rate properly called the suspect to appear before it. It may order that the suspect be forcibly brought to court.

4. The District Court shall render a decision on the application within 24 hours after its submission. The suspect shall not be released pending the decision on the application for arrest.

5. If a summons has not yet been issued, the provisions of subsection (2) to (4) inclusive shall be applied by the court in chambers.

6. The periods of time, referred to in sections 75(3) and 282, shall apply mutatis mutandis.

Section 67

[1.] A pre-trial detention order may be issued on the basis of suspicion of:

a. a serious offence which carries a statutory term of imprisonment of at least four years;
b. any of the serious offences defined in sections 132, 138a, 138ab, 138b, 139c, 139d(1) and (2), 141a, 161sexies(1)(1°) and (2),137c (2), 137d(2), 137e(2), 137g(2), 184a, 254a, 248d, 248e, 285(1), 285b, 300(1), 321, 323a, 326c(2), 350, 350a, 351, 395, 417bis and 420quater of the Criminal Code;
c. any of the serious offences defined in:
section 122(1) of the Animal Health and Welfare Act [*Gezondheids- en Welzijnswet voor Dieren*];
section 175(2)(b) or (3) in conjunction with (1)(b) of the Road Traffic Act 1994;
section 30(2) of the Civil Authority Special Powers Act [*Wet Buitengewone Bevoegdheden Burgerlijk Gezag*];
sections 52, 53(1) and 54 of the Conscientious Objections against Military Service Act [*Wet Gewetensbezwaren Militaire Dienst*];
section 31 of the Betting and Gaming Act [*Wet op de Kansspelen*];
section 11(2) of the Opium Act [*Opiumwet*];
section 55(2) of the Weapons and Ammunition Act [*Wet Wapens en Munitie*];
sections 5:56, 5:57 and 5:58 of the Financial Supervision Act [*Wet op het Financieel Toezich*t];
section 11 of the Temporary Home Exclusion Order Act [*Wet Tijdelijk Huisverbod*].

2. The order may also be issued if it cannot be established that the suspect has his permanent place of residence or abode in the Netherlands and he is suspected of a serious offence which is tried by the District Courts and which carries a statutory term of imprisonment.

[3.] The preceding subsections of this section shall apply only if it can be shown on the basis of facts or circumstances that there are serious suspicions against the suspect.

4. In derogation of subsection (3), serious suspicions shall not be required for a remand in custody order in the case of suspicion of a terrorist offence.

Section 67a

[1.] An order may be issued under section 67 only if:

a. it can be shown on the basis of certain acts of the suspect or certain circumstances that personally affect him that he poses a serious risk of flight;
b. it can be shown on the basis of certain circumstances that compelling reasons of public safety require the immediate deprivation of liberty.

2. In the application of the preceding subsection, a compelling reason of public safety may be taken

into account only if:

1°.the suspicion exists that the suspect has committed an offence which carries a statutory term of imprisonment of at least twelve years and that offence has deeply rocked the legal order;
2°. there is a serious risk that the suspect will commit a serious offence:

which carries a statutory term of imprisonment of at least six years or which may jeopardise the safety of the State or the health or safety of persons, or create a general danger to property;

3°. If the suspicion exists that the suspect has committed any of the serious offences defined in sections 285, 300, 310, 311, 321, 322, 323a, 326, 326a, 350, 416, 417bis, 420bis or 420quater of the Criminal Code, whereas five years have not yet expired since the date on which the suspect was convicted of any of these serious offences in a final judgment and sentenced to a punishment or measure involving deprivation of liberty, to a measure involving restriction of liberty or to community service or community service was imposed on him by an irrevocable punishment order and there is a serious risk that the suspect will again commit any of these serious offences;
4°. if the pre-trial detention may be reasonably considered necessary in order to establish the truth by methods other than through the suspect's statements.

[3.] A pre-trial detention order may not be issued if the possibility has to be seriously taken into account that, if convicted, the suspect will not be sentenced to unconditional imprisonment or a measure involving deprivation of liberty, or that enforcement of the order would deprive the suspect of his liberty for a longer period than the term of the punishment or measure.

4. An irrevocable conviction, as referred to in subsection (2)(3°), shall also mean an irrevocable conviction for similar offences rendered by a criminal court in another member state of the European Union.

Section 67b

1. If during enforcement of the pre-trial detention the public prosecutor initiates prosecution or proceeds further with prosecution of an offence other than the one specified in the pre-trial detention order or exclusively in regard of an offence related to the offence specified in that order and pre-trial detention may be ordered for that other offence, he may request in the application for remand detention or its extension that the pre-trial detention be ordered jointly or solely for that other offence.

2. If the application referred to in subsection (1) is granted, the other offence shall be deemed to be included in the specification referred to in section 78(2).

3. After service of the summons in the criminal proceedings at the court of first instance, no other offences shall be included in the specification.

4. Sections 77 and 78 shall apply mutatis mutandis.

Section 68

1. The period during which a pre-trial order is in effect shall not run during the period that the suspect has evaded the further enforcement of the order or has been deprived of his liberty by law for other reasons. If at the time of issuance of the pre-trial detention order the suspect is serving a custodial sentence, then enforcement of the punishment shall be stayed by operation of law for as long as the order is in effect. In that case the time spent in pre-trial detention shall be deducted as far as possible from that sentence.

2. When a notice of objection is filed in accordance with section 262 within the period of time referred to in subsection (1, first sentence), the order shall remain, - without prejudice to the provisions of section 66(2), - in force until thirty days have expired since the date on which an irrevocable decision was rendered on the notice of objection.

3. In the event that the District Court, in accordance with the provisions of section 262, has postponed the start of the court hearing, the District Court may determine, on application of the public prosecutor, that the pre-trial detention order shall remain in effect for a period of time to be set by it, subject to a maximum of thirty days, with effect from the date on which the term of validity of the warrant of arrest or the remand detention order expired.

4. If after postponement of the start of the court hearing, a notice of objection is filed against the notice of summons and accusation in accordance with the provisions of section 262(1), subsection (2) shall apply mutatis mutandis.

Section 69

[1.] The District Court may revoke the pre-trial detention order. It may do so ex officio or on application of the suspect, or - insofar as a warrant of arrest or a remand detention order is involved - on the proposal of the examining magistrate or on application of the public prosecutor.

[2.] On the occasion of the suspect's first application for revocation of the pre-trial detention order, he shall, unless the District Court immediately decides to grant the application, be heard, or at any rate be called to be heard, on the application.

[3.] Pending the decision of the District Court on an application or a proposal for revocation of a warrant of arrest or a remand detention order, the public prosecutor may order the release of the suspect. If the District Court dismisses the application or proposal, the further enforcement of the order shall be promptly carried out.

Section 70

[1.] If the public prosecutor gives the suspect notice of a decision to discontinue prosecution of an offence for which pre-trial detention has been imposed, any pre-trial detention order shall be thus revoked by operation of law and this shall be stated in the notice. The notice shall be served on the suspect.

[2.] If the notice is given solely on the grounds that the public prosecutor is of the opinion that the District Court lacks jurisdiction and that another court does have jurisdiction, then he may determine that the order will remain in effect for another three days after this notice is given. This shall be stated in the notice.

Section 71

1. The suspect may file an appeal with the Court of Appeal against the decision taken by the District Court to issue a warrant of arrest or a remand detention order not later than three days after the enforcement. The period of time referred to in section 408(1) shall not apply.

2. The suspect may file an appeal against an order extending the remand detention within the same period, but only if he did not file an appeal either against the remand detention order or a previous extension order. This restriction shall not apply if on extension of the remand detention order the offence specified in the order was supplemented or amended in accordance with the provisions of section 67*b*(1).

3. In the event that the District Court, other than on application of the public prosecutor, has revoked the pre-trial detention order, the public prosecutor may file an appeal with the Court of Appeal against this decision given in chambers not later than fourteen days thereafter.

4. The Court of Appeal shall render a decision as soon as possible. The suspect shall be heard, or at any rate shall be called to be heard.

Section 72

1. In the case of decisions declaring lack of jurisdiction or stopping the prosecution, which have been given in chambers, the pre-trial detention order shall be revoked.

2. In the case of a declaration of lack of jurisdiction, the court may, if it finds that another court does have jurisdiction to try the offence, determine that the order will remain in effect for another six days after its decision becomes final.

3. The pre-trial detention order shall be revoked in all final judgments - subject to the provisions of subsection (6) and section 17(2) - , if, neither a custodial sentence of a longer duration than the time the suspect has already spent in pre-trial detention nor a measure which involves or can involve unconditional deprivation of liberty has been imposed on him in regard of the offence for which that order was issued.

4. If the duration of the unconditional custodial sentence imposed exceeds the time already spent in pre-trial detention by less than sixty days and a measure which involves or may involve unconditional deprivation of liberty has not been imposed, the pre-trial detention order shall, without prejudice to the provisions of section 69, be revoked in the final judgment with effect from the time that the duration of this detention is equal to that of the punishment.

5. In the application of subsections (3) and (4) of this section, the time spent in pre-trial detention shall include the time during which the suspect was held in police custody.

6. The court may determine in its final judgment declaring the summons null and void that this order shall remain in effect during a period to be set by it, subject to a maximum of thirty days, with effect from the date of the final judgment, if that order has been issued on suspicion of a serious offence which carries a statutory term of imprisonment of at least eight years. If an appeal is filed against the final judgment, the order shall remain in effect until thirty days have expired since the date on which an irrevocable decision on the appeal has been rendered. Sections 66(2) and 67*a*(3) shall apply mutatis mutandis.

Section 72a

1. The suspect may file an appeal with the Court of Appeal against the decision of the District Court referred to in section 72(6) not later than three days after the judgment.

2. The Court of Appeal shall render a decision as soon as possible. The suspect shall be heard, or at any rate shall be called to be heard.

Section 73

1. Subject to the provisions of section 72(4), pre-trial detention orders and those orders revoking them shall be immediately enforceable.

2. A pre-trial detention order shall take effect at the time of the suspect's arrest for the purpose of enforcement of that order or at the time the enforcement of another order involving deprivation of liberty, issued in the same case, expires.

Section 74

If the Court of Appeal or the Supreme Court is called to render any decision before appeal has been filed against the final judgment, the revocation of the pre-trial detention order shall also be ordered, if this follows from the decision.

Section 75

1. After appeal has been filed against the final judgment, the warrants of arrest, the remand detention orders or their extension shall be issued by the highest court determining questions of fact. Sections 65(2), 66(2) and 67 to 69 inclusive shall apply mutatis mutandis to these orders. An order based on section 67 may also be issued or extended on the grounds that a punishment or measure involving deprivation of liberty for a period at least equal to the time spent by the suspect in pre-trial detention after extension was imposed in the disputed judgment.

2. Except for the cases referred to in section 66a(1), warrants of arrest may only be issued before the

start of the court hearing if serious suspicions have arisen against the suspect. Serious suspicions may also include a convicting judgment rendered by the previous court determining questions of fact.

3. An order, which remains in effect under section 66(2), may be extended by the highest court determining questions of fact by maximum one hundred and twenty days before the appeal court hearing, on application of the Public Prosecution Service. The term of validity of such order may be extended twice, on the understanding that the duration of the warrant of arrest or the remand detention order together with its extension shall not exceed a period of one hundred and eighty days, to be calculated as from the date of the final judgment rendered at the court of first instance. The suspect shall be given the opportunity to be heard on the application.

[4.] Until the start of the court hearing at the highest court determining questions of fact, the pre-trial detention may be extended only if an unconditional custodial sentence was imposed at the previous court determining questions of fact and the duration of the enforcement of this sentence is at least equal to the time spent by the suspect in pre-trial detention after extension, or if a measure which entails or can entail unconditional deprivation of liberty has been imposed. The pre-trial detention may nevertheless be extended, where appeal is filed against a final judgment which contains a declaration of lack of jurisdiction and stipulates that the pre-trial detention order shall remain in effect.

[5.] After the final judgment is rendered by the highest court determining questions of fact, the order shall remain in effect, without prejudice to the provisions of the last subsection of this section, until the judgment has become absolute. If a final judgment, as referred to in subsection (4, last sentence) is quashed, the court may determine that the order shall remain in effect in accordance with section 72(6).

[6.] Except for the cases provided for in section 72, the highest court determining questions of fact shall revoke the order with effect from the date on which the duration of the time spent in pre-trial detention is equal to the duration of the enforcement of the unconditional custodial sentence, unless a measure that entails or can entail unconditional deprivation of liberty has been imposed.

[7.] In the application of subsections four and six of this section, the time spent in pre-trial detention shall include: the time during which the suspect was held in police custody.

[8.] If the Supreme Court remits or refers the case in accordance with section 440(2), the order shall remain in effect for thirty days thereafter, without prejudice to the provisions of subsection (6).

Section 76

In the case of pre-trial detention, sections 62 and 62a shall apply mutatis mutandis.

§ 2. The Hearing of the Suspect remanded in Pre-Trial Detention

Section 77

[1.] If the suspect is not verbally informed that a pre-trial detention order is to be issued against him during his questioning, he shall be heard within twenty-four hours after his admission to the place where he is to be held in pre-trial detention.

[2.] During the preliminary investigation this hearing shall be conducted by the examining magistrate; after the start of the hearing at the court of first instance, by a member of the District Court to be designated by it; after appeal has been filed against the final judgment, by a member of the highest court determining questions of fact to be designated by this court.

[3.] A record of the hearing, including the hearing conducted by the member of the District Court or of the Court of Appeal designated for that purpose, shall be prepared, subject to the application mutatis mutandis of sections 171-176.

§ 3. Contents of Orders and Their Service

Section 78

[1.] The pre-trial detention order or the order for extension of its term of validity shall be dated and signed.

[2.] It shall specify as precisely as possible the criminal offence in regard of which the suspicion has arisen and the facts or circumstances on which the serious suspicions against the suspect are based, as well as the conduct, facts or circumstances which show that the conditions set in section 67*a* have been met.

[3.] The suspect shall be designated by his name, - or, if his name is not known, he shall be described as clearly as possible - in the order.

[4.] The order may also state, in connection with the special personal circumstances of the suspect, the place where he is to be held in pre-trial detention.

[5.] It shall be served on the suspect before or upon enforcement.

Section 79

The orders revoking a pre-trial detention order and the decision whereby such revocation is refused, shall be promptly served on the suspect.

§ 4. Suspension of Pre-Trial Detention

Section 80

1. The court may - ex officio, on application of the Public Prosecution Service or of the suspect – order that the pre-trial detention be suspended as soon as the suspect has stated, whether or not subject to the provision of security in the form to be designated by the court, that he is prepared to comply with the conditions to be attached to the suspension. The application of the Public Prosecution Service or of the suspect shall be reasoned.

2. The conditions for suspension shall always include:

1°. that the suspect, if revocation of suspension should be ordered, shall not evade the enforcement of the pre-trial detention order;
2°. that the suspect, in the event he should be sentenced for the offence, for which pre-trial detention was ordered, to a punishment other than a default custodial sentence, shall not evade its enforcement;
3°. that the suspect, insofar as conditions concerning the suspect's conduct are attached to the suspension, shall cooperate with fingerprinting for the purpose of establishing his identity or provide an identity document, as referred to in section 1 of the Compulsory Identification Act, for inspection.

3. The provision of security to ensure compliance with the conditions shall consist either of the payment of cash equivalents by the suspect or a third party or of the undertaking given by a third party as surety. In the latter case a written letter of intent from the surety shall be submitted together with the application.

4. The suspect and the surety shall be given the opportunity to be heard on the application referred to in subsection (1). The court may decline to hear the suspect and the surety, if the application is not reasoned and also, if the suspect has already been heard on an application for suspension.

5. The court shall determine for which amount and in which way security is to be provided in its decision.

6. In the supervision of compliance with the conditions pertaining to the conduct of the suspect, the identity of the suspect shall be established in the manner referred to in section 27a(1, first sentence) and (2).

7. In cases where leave may be granted under the provisions set by or pursuant to the Custodial Institutions (Framework) Act [*Penitentiaire Beginselenwet*], this section shall not apply.

Section 81

1. The court may, ex officio or on application of the Public Prosecution Service or of the suspect, amend the decision granting suspension.

2. If a new surety is proposed, a written letter of intent from this surety shall be submitted together with the application.

Section 82

[1.] The court may, ex officio or on application of the Public Prosecution Service, order suspension at all times.

[2.] Before issuing such order, the court shall hear the suspect where possible and may order that he be summoned to appear for that purpose, where necessary with an attached order to forcibly bring him to court.

Section 83

[1.] If the suspension is revoked on account of failure to comply with the conditions then in the decision revoking the suspension, the court may also declare that the security will fall to the State. If the security consists of an undertaking given by the surety, then in that case he will be ordered in that decision to pay the amount set as security to the State, which amount may also be recovered from him by means of detention for failure to comply with a judicial order.

[2.] The decision shall be deemed to be an irrevocable decision of the civil court and shall be enforced as such.

[3.] The maximum term of detention for failure to comply with a judicial order shall be set in the decision and in the case of proven inability to pay shall in no event exceed six months, save for resumption, if the convicted offender is able to pay the sum owed by him at a later date.

[4.] If the suspect, after revocation of the suspension, evades enforcement of the pre-trial detention order, the security shall be declared to fall to the State, if this has not already been done. The security shall also be declared to fall to the State, even if revocation of the suspension has not been ordered, if the suspect fails to comply with the condition referred to in section 80(2)(2°). The decision shall be given ex officio or on application of the Public Prosecution Service. The preceding subsections shall apply.

Section 84

[1.] If the suspect fails to comply with the conditions, or if specific circumstances demonstrate the existence of the risk of flight, his arrest may be ordered by the Public Prosecution Service which is authorised to apply for revocation of the suspension and by the public prosecutor attached to the District Court of the district in which the suspect is, subject to the obligation, as far as the last-mentioned civil servant is concerned, to promptly notify the first-mentioned Public Prosecution Service.

[2.] If it still considers the arrest made to be necessary, it shall promptly submit its application to the court, which shall render a decision within two times twenty four hours.

Section 85

If it is no longer necessary to continue the provision of security, the court shall order, ex officio or on application of the Public Prosecution Service or of the suspect or his surety, where necessary after hearing the suspect and his surety, that the paid cash equivalents be returned to the person who has provided the security, or that his undertaking be revoked.

Section 86

1. All judicial decisions under this section shall be taken by the court authorised - either at first instance, or in appeal - to order or revoke the pre-trial detention, or to decide on the extension of its duration.

2. The suspect shall have the right to have a defence counsel present when he is arraigned before the examining magistrate. The defence counsel shall be given the opportunity to make such comments as he deems fit during the arraignment.

3. In the case of revocation of the pre-trial detention order, the court shall also order the return of the paid cash equivalents to the person who provided the security, or the revocation of his undertaking.

4. The decisions shall be promptly served on the suspect and his surety.

5. The decisions of suspension and the decisions revoking or amending such decisions shall be immediately enforceable.

Section 87

[1.] The public prosecutor may file with the District Court or the Court of Appeal an appeal against the decisions of suspension or the decisions amending such a decision given by the examining magistrate or by the District Court in chambers respectively, not later than within fourteen days thereafter.

[2.] The suspect who has applied for suspension or termination of pre-trial detention to the District Court, may file one time with the Court of Appeal an appeal against a decision rejecting that application not later than three days after service. The suspect who has filed an appeal against a decision rejecting an application for suspension, may not file an appeal thereafter against a decision rejecting an application for termination. The suspect who has filed an appeal against a decision rejecting an application for termination, may not file an appeal thereafter against a decision rejecting an application for suspension.

[3.] A decision shall be rendered on the appeal as soon as possible.

Section 88

Where reference is made in this section to suspension, this shall also mean postponement.

Chapter Two A. Compensation

Section 89

1. If the case ends without any punishment or measure being imposed or such punishment or measure is imposed but for an offence for which pre-trial detention is not permitted, the court may, on application of the former suspect, grant him compensation to be paid by the State for the damages he has incurred as a result of the time spent in police custody, clinical observation or pre-trial detention. These damages shall include loss other than pecuniary loss.

2. Compensation, as referred to in the preceding subsection, may also be granted for the damages the former suspect has incurred as a result of the deprivation of liberty he has undergone abroad in connection with an application from the Dutch authorities for his extradition.

3. The application may only be submitted within three months after the end of the case. The hearing of the application by the court in chambers shall take place in public.

4. The court in chambers shall be composed, as much as possible, of the members who sat in the case at the court session.

5. The court determining questions of fact, before which the case was being or would be prosecuted when it ended or was otherwise last prosecuted, shall be authorised to grant compensation.

6. An application for compensation of the damages incurred by the former suspect may also be filed by his heirs and the compensation may also be awarded to them. This award shall not include compensation for loss other than pecuniary loss. If the former suspect has become deceased after filing his application or after filing an appeal, the award shall be made to his heirs.

Section 90

1. Compensation shall always be awarded if and insofar as the court is of the opinion, taking all circumstances into account, that there are grounds of fairness.

2. In the determination of the amount of compensation, the former suspect's circumstances shall also be taken into account.

3. If the court decides to award compensation, the amount to be paid out shall be set off against fines and other sums of money owed to the State, which the applicant has been ordered to pay by a judgment or appeal judgment which has become final in a criminal case or which the applicant is obliged to pay on the basis of a punishment order issued against him which has become irrevocable, insofar as he has not already made said payment.

4. As an alternative to awarding compensation, the court may decide in chambers that the days the former suspect has spent in detention under a police custody and pre-trial detention order will be deducted - in part or in whole - upon enforcement of an irrevocable custodial sentence imposed for other reasons.

5. The decision given in chambers shall be promptly notified to the former suspect or his heirs.

Section 91

1. An appeal against the decision taken by the District Court may be filed with the Court of Appeal by the public prosecutor within fourteen days thereafter and the former suspect or his heirs within one month after its service.

2. Sections 447-455 shall apply mutatis mutandis to the former suspect or his heirs, on the understanding that the provisions of these sections pertaining to the defence counsel shall also apply to their lawyer.

3. Section 90, last subsection, shall apply.

Section 92 [Repealed as of 28-07-1975]

Section 93

[1.] The presiding judge of the court shall issue a writ of execution for the amount of compensation.

[2.] The clerk to the court shall pay out compensation.

Chapter Three. Seizure

§ 1. General Provisions

Section 94

1. All objects that may serve to reveal the truth or demonstrate unlawfully obtained gains, as referred to in section 36*e* of the Criminal Code, shall be liable to seizure.

2. Furthermore, all objects whose confiscation or withdrawal from circulation may be ordered shall be liable to seizure.

3. The investigating officer who seizes an object shall prepare a notice of seizure, even where the power of seizure is conferred on the examining magistrate or the public prosecutor. A receipt for the object shall be issued, as far as possible, to the person from whom it was seized. The investigating officer shall place the notice in the hands of the assistant public prosecutor as soon as possible so that he can decide whether the seizure should be maintained.

Section 94a

1. In the case of suspicion of a serious offence for which a fine of the fifth category may be imposed, objects may be seized in order to preserve the right of recovery in respect of any fine to be imposed for that serious offence.

2. In the case of suspicion of or conviction for a serious offence for which a fine of the fifth category may be imposed, objects may be seized in order to preserve the right of recovery in respect of an obligation to be imposed in response to that serious offence for payment of a sum of money to the State for the purpose of special confiscation of unlawfully obtained gains.

3. Objects which belong to a person other than the person on whom, in the case referred to in subsection (1), the fine may be imposed or the person who, in the case referred to in subsection (2), may be deprived of the unlawfully obtained gains, may be seized if there are sufficient indications that these objects have become, in whole or in part, the property of this other person with the evident aim of hindering or preventing the sale of these objects, and this person knew or could reasonably suspect this to be the case.

4. In the case referred to in subsection (3), other objects belonging to the person concerned may also be seized up to maximum the value of the objects referred to in subsection (3).

5. Objects shall mean all property of any description, whether corporeal or incorporeal.

Section 94b

In the application of sections 94 and 94*a*:

1°. receivables shall be seized and such seizure terminated by written notice to the debtor;
2°. order or bearer rights shall be seized by seizure of the paper;
3°. registered shares and securities shall be seized and immovable registered property shall be seized and its seizure lifted through a bailiff with due observance of the formalities applicable under the Code of Civil Procedure [*Wetboek van Burgerlijke Rechtsvordering*] in regard of notice or notification of the seizure, or the service of the official record of seizure, the entry, registration or cancellation thereof in registers and the service thereof on third parties;
4°. ships and aircraft shall be seized and their seizure terminated with due observance of the formalities applicable under the Code of Civil Procedure in regard of the service of the official record of seizure, and under any regulation pertaining to registered ships or aircraft in regard of the registration or cancellation thereof in registers.

Section 94c

Part Four of Book Three of the Code of Civil Procedure shall apply mutatis mutandis to the seizure referred to in section 94a, save that:

a. the power of seizure may be exercised without the leave of the District Court judge hearing applications for provisional relief or any fear of embezzlement being required;
b. a maximum amount for which the right of recovery is to be exercised must be stated in the official record of seizure or the writ of seizure;
c. provisions pertaining to the time limits within which the principal claim must be brought before the court after seizure shall not apply mutatis mutandis;
d. in the case of movable property that is not registered property and bearer or order rights, the preparation of an official record of seizure and the issuance of a receipt to the person from whom the objects have been seized by an investigating officer shall also suffice;
e. failure to comply with the time limits within which the seizure must be served, except for the

cases under section 94b (3°), shall not invalidate the seizure;

f. Section 721 of the Code of Civil Procedure shall not apply mutatis mutandis; in the event that the principal claim is brought before the court after seizure, the public prosecutor shall give the third party written notice thereof as soon as possible;
g. Section 722 of the Code of Civil Procedure shall not apply mutatis mutandis;
h. Sections 117 and 118 shall apply to seized movable property which is taken into custody;
i. the seizure shall be terminated with due observance of the provisions of this Code.

Section 94d

1. For the purpose of preserving the right of recovery, the public prosecutor may exercise on behalf of the State the powers which, under the Civil Code and the Code of Civil Procedure, are conferred on a creditor whose chances of recovery are prejudiced as a consequence of a legal act gratuitously performed by the debtor. Section 94c(c) and (e) shall apply mutatis mutandis.

2. In the application of sections 3:46 and 3:47 of the Civil Code, the presumption of knowledge, referred to in these sections, shall apply in regard of legal acts performed by the suspect or the convicted offender within one year before the prosecution was instituted against him.

3. Furthermore, for the purpose of preserving the right of recovery, the public prosecutor shall be authorised to act on behalf of the State as creditor in the bankruptcy of the suspect or the convicted offender. Until the amount of the fine or the unlawfully obtained gains to be deprived has been determined, the public prosecutor shall be deemed to be asserting a conditional claim.

4. The public prosecutor shall retain the powers referred to in subsections (1) and (2), notwithstanding a bankruptcy, insofar as the objects to which the gratuitously performed legal acts relate are not claimed by the trustee or the receiver under sections 42 to 51 inclusive of the Bankruptcy Act [*Faillissementswet*].

§ 2. Seizure by Investigating Officers or Special Persons

Section 95

[1.] Any person who arrests or stops and questions a suspect may seize objects which he has with him and are liable to seizure.

2. Section 56 shall apply to a search of the body or body cavities or the clothing of the arrested suspect.

Section 96

1. In cases where the suspect is caught red-handed in the commission of a criminal offence or where he is suspected of having committed a serious offence as defined in section 67(1), the investigating officer shall have the power to seize objects liable to seizure and to enter any place for that purpose.

2. The investigating officer may, while awaiting the arrival of the judge or civil servant who is authorised to search the place for the purpose of seizure, take any measures that are reasonably necessary in order to prevent objects liable to seizure being disposed of, rendered unusable, inactivated or damaged. These measures may restrict the freedom of persons who are at the location in question.

Section 96a

1. In the case of suspicion of a serious offence as defined in section 67(1), the investigating officer may order a person, who must be reasonably believed to be the holder of an object liable to seizure, to surrender said object for the purpose of seizure.

2. The order shall not be given to the suspect.

3. The following persons shall not be obliged to comply with the order on the basis of their right of privilege:

a. the persons referred to in section 217;
b. the persons referred to in section 218, insofar as the surrender would violate their duty of secrecy;
c. the persons referred to in section 219, insofar as the surrender would expose them or one of their relations referred to in that section to the risk of criminal prosecution.

4. The order may only be given in regard of letters, if these letters are from the suspect, are intended for him or relate to him, or if they are the subject of the criminal offence or were used in its commission.

5. Subsection (1) shall not apply to postal parcels, letters, postal packets and other messages which have been entrusted to a postal carrier service as referred to in the Postal Services Act 2009 [*Postwet 2009*] or a registered party under section 2.1(4) of the Telecommunications Act [*Telecommunicatiewet*] or to another carrier service.

Section 96b

1. In cases where the suspect is caught red-handed in the commission of a criminal offence or where he is suspected of having committed a serious offence as defined in section 67(1), the investigating officer shall have the power for the purpose of seizure to search a means of transport, with the exception of the living area thereof without the consent of the occupant, and for that purpose to gain entry to this means of transport.

2. If such is necessary with a view to exercising the power conferred under subsection (1), the investigating officer may:

a. request the driver to stop the means of transport, and
b. then take the means of transport or charge the driver to take it to a location designated by him.

Section 96c

1. In cases where the suspect is caught red-handed in the commission of a criminal offence or where he is suspected of having committed a serious offence as defined in section 67(1), the public prosecutor may for the purpose of seizure search any place, with the exception of a dwelling without the consent of the occupant and an office of a person who has the right to assert privilege as referred to in section 218.

2. In the case of urgent necessity and if action on the part of the public prosecutor cannot be awaited, an assistant public prosecutor may exercise this power. He must be authorised by the public prosecutor for that purpose. If such authorisation cannot be applied for on time due to the speed required or the fact that the public prosecutor cannot be reached, the public prosecutor may grant the authorisation three days after the search. If the public prosecutor refuses to grant authorisation, then he shall ensure that the consequences of the search are reversed to the maximum extent possible.

3. The public prosecutor or, if subsection (2) applies, the assistant public prosecutor, shall be in charge of the search of places in accordance with the provisions of subsection (1).

4. Section 96(2) shall apply mutatis mutandis.

Section 97

1. In cases where the suspect is caught red-handed in the commission of a criminal offence or where he is suspected of having committed a serious offence as defined in section 67(1), the public prosecutor may, in the case of urgent necessity and if action on the part of the examining magistrate cannot be awaited, search for the purpose of seizure the following places:

a. a dwelling without the consent of the occupant, and
b. an office of a person who has the right to assert privilege as referred to in section 218.

2. The public prosecutor shall require for a search as referred to in subsection (1) the authorisation of the examining magistrate. This authorisation shall be reasoned.

3. If action on behalf of the public prosecutor cannot be awaited either, the power to conduct a search shall be conferred on the assistant public prosecutor. Subsections (1) and (2) shall apply mutatis mutandis. Authorisation from the examining magistrate shall be requested, where possible, through the public prosecutor.

4. If the examining magistrate has granted authorisation to an assistant public prosecutor to search for the purpose of seizure a dwelling without the consent of the occupant, the assistant public prosecutor shall not be required to have authorisation as referred to in section 2 of the General Act on Entry into Dwellings in order to enter that dwelling.

5. Section 96(2) shall apply mutatis mutandis.

Section 98

1. Letters or other documents which are subject to the duty of secrecy of persons who have the right to assert privilege, as referred to in section 218, shall not be seized from them, unless with their consent.

2. Unless such persons have consented to a search, a search shall only be conducted at their premises insofar as this search can be conducted without violating clerical secrecy, professional privilege or official secrecy and it shall not include letters or documents other than those which are the subject of the criminal offence or have been used in its commission.

Section 99

1. Unless required in the interest of the investigation, seizure in a dwelling shall take place only after the occupant, or in his absence one of his housemates present at that time, has been questioned and invited, in vain, to voluntarily surrender the object for the purpose of seizure.

2. Insofar as the interest of the investigation permits, the investigating officer shall give the occupant, or in his absence one of his housemates present at that time, the opportunity to make a statement regarding the objects seized at the scene. The same applies for the suspect, if he is present.

Section 99a

The suspect may have the legal representation of his defence counsel during the search of places, provided that this does not delay the search.

Section 100

1. In cases where the suspect is caught red-handed in the commission of a criminal offence or where he is suspected of having committed a serious offence as defined in section 67(1), the public prosecutor may order for the purpose of seizure the surrender, against issuance of a receipt, of postal parcels, letters, postal packets and other messages entrusted to a postal carrier service as referred to in the Postal Services Act 2009 or a registered party under section 2.1(4) of the Telecommunications Act or to another carrier service; insofar as said postal parcels, letters, postal packets and other messages evidently originate from the suspect, are intended for him or relate to him, or if they are evidently the subject of the criminal offence or were used in its commission.

2. Any person who has or acquires the possession of such items for said carriage shall provide the public prosecutor or the assistant public prosecutor at his request with the information pertaining to these items which he requires. Sections 217-219 shall apply mutatis mutandis.

Section 101

1. The public prosecutor shall promptly return for dispatch the seized postal parcels, letters, postal packets and other messages entrusted to a postal carrier service as referred to in the Postal Services Act 2009 or a registered party under section 2.1(4) of the Telecommunications Act or to another carrier service, if the seizure is lifted.

2. The public prosecutor may only examine the contents of other items, insofar as they are sealed, following authorisation for that purpose from the examining magistrate.

3. The authorisation may be applied for and granted both verbally and in writing.

4. If the authorisation is refused, the public prosecutor shall promptly return the items to the carrier for dispatch.

Section 102

[1.] If the items, after having been opened, appear to be relevant to the investigation, the public prosecutor shall add them to the case documents or the convicting pieces of evidence. In the opposite case, the public prosecutor shall promptly send them, after sealing them, to their destination.

[2.] Insofar as the interest of the investigation permits, they shall be certified beforehand by the public prosecutor.

[3.] The public prosecutor shall maintain secrecy in regard of the contents of the items he has opened, insofar as these items have not been added to the case documents or the convicting pieces of evidence. The public prosecutor and the assistant public prosecutor shall observe similar secrecy in regard of the information referred to in section 100(2), insofar as said information is not contained in the case documents.

[4.] The public prosecutor shall prepare an official record of the seizure, the return, the opening and the dispatch, which shall be added to the case documents.

Section 102a

1. The assistant public prosecutor or the investigating officer shall promptly provide seized sealed letters to the public prosecutor.

2. The public prosecutor shall promptly return the sealed letters, whose seizure has been lifted, to the person from whom they were seized.

3. Sections 101(2), (3) and (4) and 102 shall apply mutatis mutandis, on the understanding that the letters which are not added to the case documents or the convicting pieces of evidence shall be returned to the person from whom they were seized.

§ 2a. Seizure under Section 94a

Section 103

1. Seizure under section 94a may only be carried out or maintained with written authorisation to be granted by the examining magistrate on application of the public prosecutor.

2. The warrant authorising the seizure or maintenance of the seizure shall be served, as soon as possible, on the suspect or the convicted offender, and in the case of attachment by garnishment, on this garnishee as well, by the public prosecutor in the manner prescribed by this Code or by the bailiff in accordance with the procedure for service of the leave referred to in section 702(2) of the Code of Civil Procedure.

§ 3. Seizure by the Examining Magistrate

Section 104

[1.] The examining magistrate shall be authorised to seize all objects liable to seizure. **Except in the case that he conducts investigative acts under sections 181 to 183 inclusive, the examining magistrate shall seize objects only on application of the public prosecutor.**

[2.] Section 98(1) shall apply.

Section 105

1. The examining magistrate may, on application of the public prosecutor and **if he conducts investigative acts under sections 181 to 183 inclusive**, also order ex officio that any person, who may be reasonably believed to be the holder of an item liable to seizure, shall surrender this object to him or shall bring it to the District Court Registry for the purpose of seizure within the period of time and in the manner to be determined in the order. The application shall state the criminal offence and if known, the name or otherwise the most precise description possible of the suspect, as well as the facts or circumstances which show that the statutory conditions for the exercise of the power have been met.

2. The order shall be given either verbally or in writing. In the latter case the order shall be served.

3. Section 96a(2), (3) and (4) shall apply mutatis mutandis.

Section 106 [Repealed as of 01-02-2000]

Section 107 [Repealed as of 01-02-2000]

Section 108

[1.] On application of an interested party, the examining magistrate may order the clerk to the court to issue to him free of charge a certified copy of the letters or documents which have been surrendered or brought.

[2.] In the case of an original document in the custody of a public custodian, the copy may be used instead of the original document until it is returned.

Section 109

If the document to be brought is part of a register from which it cannot be separated, the examining magistrate may order that the register be brought for inspection or to be copied for the period of time to be set in the warrant.

Section 110

1. The examining magistrate may, on application of the public prosecutor and **if he conducts investigative acts under sections 181 to 183 inclusive,** also search ex officio any place for the purpose of seizure. In doing so, he may be accompanied by persons specifically designated by him. The application shall state the criminal offence and if known, the name or otherwise the most precise description possible of the suspect, as well as the facts or circumstances which show that the statutory conditions for the exercise of the power have been met.

2. The examining magistrate, in the presence of the public prosecutor or, in his absence, of an assistant public prosecutor, shall be in charge of the search of places conducted in accordance with the provisions of subsection (1).

3. Sections 98, 99 and 99a shall apply mutatis mutandis.

Section 111 [Repealed as of 01-02-2000]

Section 112 [Repealed as of 01-02-2000]

Section 113 [Repealed as of 01-02-2000]

Section 114

1. **Sections 100 to 102 inclusive shall apply mutatis mutandis to the examining magistrate who conducts investigative acts under sections 181 to 183 inclusive.**

2. The examining magistrate shall be authorised to determine that the contents of seized sealed postal parcels, letters, postal packets and other messages entrusted to a postal carrier service as referred to in the Postal Services Act 2009 or a registered party under section 2.1(1) of the Telecommunications Act or to another carrier service shall be examined, insofar as said postal parcels, letters, postal packets and other messages evidently originate from the suspect, are intended for him or relate to him, or if they are evidently the subject of the criminal offence or were used in its commission.

Section 115 [Repealed as of 01-02-1959]

§ 4. Return and Custody of Seized Objects

Section 116

1. The assistant public prosecutor or the public prosecutor, who has been informed of the notice of seizure under section 94(3), shall decide on the continuation of the seizure in the interest of the criminal proceedings. If this interest is not, or no longer, present, he shall terminate the seizure and return the object to the person from whom it was seized. If advisable, the assistant public prosecutor shall consult with the public prosecutor before he takes the decision.

2. If the person from whom the object was seized declares in writing before the examining magistrate, the public prosecutor or an investigating officer that he waives his right to the object, the assistant public prosecutor or the Public Prosecution Service may:

    a. instruct the return of the object to the person who may be reasonably regarded as the person entitled thereto;
    b. order that the object remain in custody for the benefit of the person entitled thereto, if it is not yet possible to return it to the person who may be reasonably regarded as the person entitled thereto;
    c. if the person from whom the object has been seized states that it belongs to him, order that it be treated as though it had been confiscated or withdrawn from circulation.

3. If a declaration, as referred to in subsection (2), is not made, then the Public Prosecution Service may nevertheless take the decision referred to in (a) or (b) if, within fourteen days after the Public Prosecution Service has given notice of its intention to take such decision to the person from whom the object has been seized, he has not filed a complaint against such decision or the complaint filed by him has been declared ill-founded. Part IX of Book Four shall apply mutatis mutandis to the complaint.

4. If a declaration, as referred to in subsection (2), is not made and the Public Prosecution Service intends to return the object to the person who may be regarded as the person entitled thereto, it shall be authorised to immediately place it in the custody of this person, pending the possibility of return, if the person from whom the object was seized evidently removed or withheld it from the person entitled thereto by means of a criminal offence. In that case, the person to whom the object has been released shall be entitled to use it.

5. If the Public Prosecution Service in accordance with subsections (2) or (4) or the District Court in accordance with section 353(2) has ordered that the object be taken into custody, the Public Prosecution Service shall, after the person entitled to the object has been established, return it to him.

6. The decisions referred to in this section shall be without prejudice to any person’s right to the object.

Section 117

1. The seized objects may be sold, destroyed, relinquished or used for a purpose other than the investigation only with authorisation.

2. The Public Prosecution Service may grant the authorisation referred to in subsection (1) in regard of objects

a. which are not suitable for storage;
b. whose custody costs are not in reasonable proportion to their value;
c. which are replaceable and whose equivalent value can be easily determined.

Seized objects, which are of such nature that their uncontrolled possession is in violation of the law or contrary to the public interest, shall only be granted authorisation for destruction.

3. The authorisation referred to in subsection (1) shall be directed to the custodian or to the civil servant who has possession of the objects pending their transportation to the custodian. The person to whom the authorisation is directed shall ensure that the value of the object is set at the price it would have reasonably fetched if sold at that time.

4. If the seized objects are sold for a profit with the authorisation of the Public Prosecution Service, the proceeds obtained shall continue to be subject to seizure, without prejudice to the provisions of section 116.

5. If within six weeks the Public Prosecution Service fails to take a decision on the custodian's written request to grant him the authorisation referred to in subsection (1), the custodian shall be authorised to take action in accordance with subsection (1).

Section 117a

If the Public Prosecution Service takes one of the decisions referred to in sections 116 and 117 **while the examining magistrate is conducting investigative acts under sections 181 to 183 inclusive**, it shall notify the examining magistrate thereof.

Section 118

1. In the application of section 116(2)(b) or, if return is not permitted in the interest of the criminal proceedings and authorisation as referred to in section 117(1) is not granted, the seized objects shall be placed by order of the Public Prosecution Service in the custody of a custodian designated by Governmental Decree as soon as the interest of the investigation permits. Sections 116 and 117 shall apply.

2. Seized objects may also be placed in the custody of the law with another custodian designated by the Public Prosecution Service, if such is reasonably necessary for the preservation, the use or the safety of these objects.

3. The custodian shall have the power to terminate the custody of seized objects, insofar as these objects are movable properties other than money, after a period of time of two years, to be calculated as from the date of seizure. In that case he shall deal with the object in accordance with section 117(1).

4. If the seized object is kept in custody on the basis of the order as referred to in section 353(2)(c), the custodian may not exercise the power to terminate the custody conferred on him under subsection (3) until three months have expired after the final judgment became irrevocable.

5. The custodian shall not exercise the power referred to in subsection (3) or subsection (4), if within fourteen days after the custodian has given written notice of the existence of the power, the Public Prosecution Service informs him of its objections to the exercise of this power.

Section 118a

1. The Public Prosecution Service may, ex officio or on application of the person subject to seizure or of another interested party, return an object that was seized under section 94*a* against provision of security.

2. The security shall consist of the payment of cash equivalents by the person subject to seizure or a third party, or of the undertaking of a third party as surety, for an amount and in a manner that is acceptable to the Public Prosecution Service.

Section 118b [Repealed as of 01-01-1996]

Section 119

1. An order to return a seized object that has been given in custody shall be directed to the custodian.

2. If the custodian is unable to comply with the order to return a seized object because the custody of the object has been terminated in accordance with the authorisation referred to in section 117(2), or in the manner prescribed in section 118(3), the custodian shall pay out the price which the object fetched or would have reasonably fetched when sold by him.

3. If the custodian, except for the cases referred to in subsection (2), is unable to comply with the order to return a seized object, the custodian shall keep the object available for the party entitled thereto until the power to terminate the custody is conferred on him under section 118(3). In the case referred to in section 353(2)(*b*) or (*c*), the custodian shall nevertheless, even where he would have the aforementioned power, keep the object available for the party entitled thereto for at least three months after the final judgment has become irrevocable.

4. The custodian shall not return the object while it is still subject to a garnishee order under Book II, Parts 2, 3 and 4, and Book III, Part 4, of the Code of Civil Procedure, unless the person who ordered the return of the object explicitly stipulates otherwise.

Section 119a

Rules pertaining to the application of sections 117(1) to (3) inclusive, 118(2) and 118*a* concerning the manner in which seized objects are given to the custodian, the manner in which said objects are held in custody and kept available for the investigation, shall be set by or pursuant to Governmental Decree.

Section 120 [Repealed as of 01-01-1996]

Section 121 [Repealed as of 01-01-1996]

Section 122 [Repealed as of 01-01-1996]

Section 123 [Repealed as of 01-01-1996]

C**hapter Four. Maintaining Order during the performance of Official Acts**

Section 124

[1.] During the performance of official acts the presiding judge of the court, or the judge or civil servant, who is in charge of the execution of these acts, shall ensure that order is maintained.

[2.] He shall take the necessary measures so that these official acts can be performed without interference.

[3.] If, on such occasion, any person disturbs the peace or makes a nuisance of himself in any way, the presiding judge or the judge or civil servant in question may, after having given this person a warning if necessary, order him to leave and, if he refuses, have him forcibly removed and detained until the official acts have been completed.

[4.] An official record of such matters shall be prepared and added to the case documents.

5. **Police officers, appointed for the performance of police duties,** or other civil servants or officials, insofar as these civil servants or officials have been designated by **Our Minister of Security and Justice,** shall be charged with the services of the court. These civil servants or officials shall follow the instructions of the presiding judge of the court, or the judge or the civil servant referred to in subsection (1).

Chapter Five. Measures during an Inspection or a Search

Section 125

1. In the case of an inspection or a search of places, the judge or civil servant charged with the conduct thereof may take or have others take the necessary measures to ensure that said places are guarded or closed off and may order that no-one leave the scene of the investigation or use telecommunication facilities available at the scene of the investigation without his express permission until the investigation at that place has been completed.

2. He may have any persons who violate the order held and detained until the completion of the investigation.

Section 125a [Repealed as of 01-03-1993]

Section 125b [Repealed as of 01-03-1993]

Section 125c [Repealed as of 01-03-1993]

Section 125d [Repealed as of 01-03-1993]

Section 125e [Repealed as of 01-03-1993]

Part Six

Section 125f [Repealed as of 01-02-2000]

Section 125g [Repealed as of 01-02-2000]

Section 125h [Repealed as of 01-02-2000]

Chapter Seven. Search for the Purpose of Recording Data

Section 125i

The power to search a place for the purpose of recoding data stored or recorded in a data carrier at this place shall be conferred on the examining magistrate, the public prosecutor, the assistant public prosecutor and the investigating officer under the same conditions as referred to in sections 96b, 96c(1), (2) and (3), 97 (1) to (4) inclusive, and 110 (1) and (2). They may record this data in the interest of the investigation. Sections 96(2), 98, 99 and 99a shall apply mutatis mutandis.

Section 125j

1. In the case of a search, a computerised device or system located elsewhere may be searched for data stored in that device or system that is reasonably required in order to reveal the truth from the place where the search takes place. If such data is found, then it may be recorded.

2. The search shall be limited to the extent that the persons, who normally work or reside at the place where the search is being conducted, have access thereto from that place with the consent of the person entitled to use the computerised device or system.

Section 125k

1. Insofar as is specifically required in the interest of the investigation, the person who may be reasonably believed to have knowledge of the security system of a computerised device or system may be ordered, if section 125i or section 125j is applied, to provide access to the computerised devices or systems present or parts thereof. The person who is ordered to do so must comply with this order, if requested, by providing the knowledge about the security system.

2. Subsection (1) shall apply mutatis mutandis if encrypted data is found in a computerised device or system. The order shall be directed to the person who may be reasonably believed to have knowledge of the manner of encryption of this data.

3. The order, referred to in subsection (1), shall not be given to the suspect. Section 96a(3) shall apply mutatis mutandis.

Section 125l

Data entered by or on behalf of persons who have the right to assert privilege, as referred to in section 218, shall not be examined, unless with their consent, insofar as their duty of secrecy extends to said data. A search in a computerised device or system in which such data has been stored shall, unless with their consent, only be carried out insofar as this can be done without violating clerical secrecy, professional privilege or official secrecy.

Section 125la

If during a search to record data at the premises of a public telecommunication network or a public telecommunication service, data is found that is not intended for or originated from said network or service, the public prosecutor shall only be authorised to determine that this data will be inspected and recorded, insofar as said data evidently originates from the suspect, is intended for him or relates to him or served for commission of the criminal offence, or the criminal offence was evidently committed in relation to that data. The public prosecutor shall require prior written authorisation for that purpose, to be granted by the examining magistrate on application of the public prosecutor.

Section 125m

1. If data is recorded or disabled as a result of a search, then the persons concerned shall be notified in writing, as soon as possible, of this recording or disablement and of the nature of the data recorded or disabled. This notification shall not be given if it is not reasonably possible to do so.

2. The public prosecutor or, if the examining magistrate has exercised the search power, the examining magistrate, may determine that the giving of notice to the person concerned, referred to in subsection (1), will be postponed until the interest of the investigation permits.

3. The following persons shall be deemed to be a person concerned within the meaning of this section:

    a. the suspect;
    b. the person responsible for the data;
    c. the person entitled to use a place where a search has been conducted.

4. If the person concerned is the suspect, the notice shall not be required to be given if he learns of the recording of data and of the nature of the recorded data through the inclusion of this information in the case documents.

Section 125n

1. As soon as it becomes apparent that data recorded during a search is not relevant to the investigation, said data shall be destroyed.

2. The data shall be destroyed by or by order of the person who recorded it. An official record of the destruction of said data shall be prepared and added to the case documents.

3. The public prosecutor may determine that data recorded during a search, can be used for:

a. a criminal investigation other than the investigation for which the power was exercised;
b. processing with a view to obtaining insight into the involvement of persons in serious offences and acts as referred to in section 10(1)(a) and (b), of the Police Data Act [*Wet Politiegegevens*].

4. In derogation of subsection (1), if subsection (3)(a) is applied, the data shall not have to be destroyed until the other investigation has ended. If subsection (3)(b) is applied, the data shall not have to be destroyed until such time as storage of the data is no longer permitted under the Police Data Act.

Section 125o

1. If the search of a computerised device or system reveals data in relation to which the criminal offence was committed or which was used in the commission of the criminal offence, the public prosecutor or **if he conducts this search, the examining magistrate** may determine that this data will be disabled insofar as is necessary for the purpose of stopping the criminal offence or preventing new criminal offences.

2. Disabling data shall mean taking measures to ensure that the administrator of the computerised device or system referred to in subsection (1) or third parties can no longer read or make use of that data and to prevent further dissemination of that data. Disabling shall also mean removal of the data from the computerised device or system, while retaining the data for the criminal proceedings.

3. As soon as the measures, referred to in subsection (2), are no longer required in the interest of the criminal proceedings, these measures shall be revoked and the public prosecutor or, **if he conducts this search, the examining magistrate,** shall return the data to the administrator of the computerised device or system.

Chapter Nine. Criminal Financial Investigation

Section 126

1. In the case of suspicion of a serious offence, for which a fine of the fifth category may be imposed and as a result of which substantial financial gains may have been obtained, a criminal financial investigation may be instituted in accordance with the provisions of this Chapter.

2. A criminal financial investigation shall be aimed at determining the unlawful gains obtained by the suspect, with a view to the special confiscation thereof under section 36e of the Criminal Code.

3. The criminal financial investigation shall be instituted pursuant to a reasoned authorisation granted by the examining magistrate, on application of the public prosecutor who is charged with the detection of the criminal offence.

4. The application of the public prosecutor shall be reasoned. The application shall be submitted together with a list of objects that have already been seized under section 94a(2), (3) and (4).

5. The public prosecutor shall periodically inform the examining magistrate, either voluntarily or at his request, about the progress of the criminal financial investigation. The examining magistrate shall inform the District Court, if he considers such necessary in view of section 126e(1). The examining magistrate shall notify the public prosecutor thereof.

Section 126a

1. Pursuant to the authorisation granted under section 126, the investigating officer charged with the criminal financial investigation, on presentation of a copy of the authorisation, shall have the power, in order to obtain information and insight into the financial position of the person under investigation, to order any person at his first request:

a. to specify or provide information on and insight into or a copy of documents or of data, not being data as referred to in section 126nd(2)(third sentence);
b. to state whether, and if so, which property and assets he has or has had in his possession which belong or belonged to the person under investigation;

and to seize written documents thus provided.

2. The order shall not be directed to the person under investigation.

3. Section 96a(3) shall apply mutatis mutandis.

4. On the occasion of the first interview of the person under investigation, the judge or civil servant who is questioning him shall present him with a copy of the application and authorisation referred to in section 126.

5. The person to whom the application referred to in subsection (1) is directed, shall, in the interest of the investigation, maintain secrecy in regard of all information he has learned of by virtue of the request.

Section 126b

1. During the criminal financial investigation the public prosecutor shall be authorised to order the seizure of objects under section 94*a* without further judicial authorisation.

2. If the public prosecutor considers such seizure necessary in the interest of the criminal financial investigation, he shall request the examining magistrate to search a place or exercise other powers conferred on him under subsection (3) for the purpose of seizure.

3. During the criminal financial investigation the examining magistrate shall be vested with the same powers **as when he conducts investigative acts under section 181**, on the understanding that:

a. he shall also be authorised to order the surrender of letters, which can serve to demonstrate the unlawfully obtained gains of the person under investigation, for the purpose of seizure;
b. he shall not be obliged to permit the person under investigation or his defence counsel to be present at any investigative act to be conducted by him.

Section 126c

1. In the case of urgent necessity, the public prosecutor may for the purpose of seizure search any place, including a dwelling without the consent of an occupant or an office of a person who has the right to assert privilege as referred to in section 218, if documents or data as referred to in section 126a or objects as referred to in section 94a are presumed to be at such places.

2. Section 97(2)(3) and (4) shall apply mutatis mutandis.

Section 126d

Sections 98, 99 and 99a shall apply mutatis mutandis, on the understanding that the search referred to in section 98(2) shall also extend to letters and documents which may serve to demonstrate unlawful gains obtained by the person under investigation.

Section 126e

1. The District Court shall see to it that the criminal financial investigation is not unduly delayed.

2. On application of the person under investigation, it may have the documents of the investigation submitted to it and order immediate or speedy termination of the investigation.

Section 126f

1. As soon as the public prosecutor decides that the criminal financial investigation is completed or that there are no grounds to justify its continuation, he shall close the investigation by means of a written dated decision.

2. If the suspect is not convicted by final judgment of the criminal offence or the serious offence referred to in section 36e(1) or (3) of the Criminal Code, the prosecutor shall likewise close the criminal financial investigation. In that case the prosecutor shall be authorised to apply to the examining magistrate to reopen the criminal financial investigation, as soon as the suspect is convicted, after all, of the offence as charged in the indictment.

3. The prosecutor shall send a copy of his decision to close the criminal financial investigation to the examining magistrate and shall have a copy of his decision served on the person to whom it is directed, informing him of his right to inspect the documents of the investigation.

4. Without prejudice to the provisions of subsection (2), sections 511d, (2) and (3), 511e(2) and 511g(2)(c), a closed criminal financial investigation may be reopened pursuant to a further authorisation granted by the examining magistrate on application of the public prosecutor. Section 126(4) shall apply.

5. A further authorisation, together with the application on which it is based, shall be served as soon as possible on the person under investigation. The preceding subsections shall apply.

Section 126fa

1. Except for the cases referred to in section 126f(4), a criminal financial investigation may, on application of the public prosecutor, be instituted or reopened, if a final judgment is rendered on the application referred to in section 36e of the Criminal Code.

2. The public prosecutor shall close the investigation as soon as the judgment has become final.

Part IVA. Special Investigative Powers

Chapter One. Systematic Surveillance

Section 126g

1. In the case of suspicion of a serious offence, the public prosecutor may, in the interest of the investigation, order an investigating officer to systematically follow a person or systematically observe his movements or behaviour.

2. In the case of suspicion of a serious offence as defined in section 67(1), which serious offence in view of its nature or the relation to other serious offences committed by the suspect constitutes a serious breach of law and order, the public prosecutor may determine, in the interest of the investigation, that an enclosed place, not being a dwelling, will be entered without the consent of the person entitled to use the premises, for the purpose of executing the warrant.

3. The public prosecutor may determine that a technical device will be used for the purpose of executing the warrant, insofar as no confidential information is recorded by means of that device. A technical device shall not be attached to a person, unless with his consent.

4. The warrant shall be issued for a period of maximum three months. It may be extended each time for a period of maximum three months.

5. The surveillance warrant shall be in writing and shall state:

    a. the serious offence and if known, the name or otherwise the most precise description possible of the suspect;
    b. the facts or circumstances which show that the conditions, referred to in subsection (1), have been met;
    c. the name or the most precise description possible of the person referred to in subsection (1);

d. in the application of subsection (2), the facts or circumstances which show that the conditions, referred to in that subsection, have been met, as well as the place to be entered;
e. the manner in which the warrant will be executed, and
f. the term of validity of the warrant.

6. In the case of urgent necessity, the warrant may be issued verbally. In that case the public prosecutor shall put the warrant in writing within three days.

7. As soon as the conditions referred to in subsection (1) are no longer met, the public prosecutor shall determine that the execution of the warrant has ended.

8. The warrant may be amended, supplemented, extended or terminated in writing and stating reasons. In the case of urgent necessity, the decision may be given verbally. In that case the public prosecutor shall put this decision in writing within three days.

9. A warrant as referred to in subsection (1) may also be issued to a person in the public service of a foreign state. Requirements may be set for these persons by Governmental Decree. Subsections (2) to (8) inclusive shall apply mutatis mutandis.

Chapter Two. Infiltration

Section 126h

1. In the case of suspicion of a serious offence as defined in section 67(1), which serious offence in view of its nature or the relation to other serious offences committed by the suspect constitutes a serious breach of law and order, the public prosecutor may, if urgently required in the interest of the investigation, order an investigating officer as referred to in section 141(b) to participate in or render assistance to a group of persons which may be reasonably suspected of planning or committing serious offences.

2. In the execution of the warrant the investigating officer may not incite a person to commit criminal offences other than the criminal offences he already intended to commit.

3. The infiltration warrant shall be in writing and shall state:

a. the serious offence and if known, the name or otherwise the most precise description possible of the suspect;
b. a description of the group of persons;
c. the facts or circumstances which show that the conditions, referred to in subsection (1), have been met;
d. the manner in which the warrant will be executed, including punishable acts, insofar as could be foreseen when the warrant was issued, and
e. the term of validity of the warrant.

4. A warrant as referred to in subsection (1) may also be issued to:

a. a person in the public service of a foreign state, who meets the requirements to be set by Governmental Decree;
b. an investigating officer as referred to in section 141(c) and (d), or section 142, provided that this investigating officer meets the rules to be set by Governmental Decree pertaining to training and cooperation with investigating officers as referred to in section 141(b).

Subsections (2) and (3) shall apply mutatis mutandis.

5. Section 126g(7) and (8) shall apply mutatis mutandis, on the understanding that an infiltration warrant may not be extended verbally.

Chapter Three. Pseudo Purchases or Services

Section 126i

1. In the case of suspicion of a serious offence as defined in section 67(1) the public prosecutor may, in the interest of the investigation, order an investigating officer to:

a. purchase goods from the suspect,
b. purchase data which is stored, processed or transferred through a public telecommunication network by means of a computerised device or system from the suspect, or
c. provide services to the suspect.

2. In the execution of the warrant the investigating officer may not incite a person to commit serious offences other than the serious offences he already intended to commit.

3. The pseudo purchases or services warrant shall be in writing and shall state:

a. the serious offence and if known, the name or otherwise the most precise description possible of the suspect;
b. the facts or circumstances which show that the conditions, referred to in subsection (1), have been met;
c. the nature of the goods, data or services;
d. the manner in which the warrant will be executed, including punishable acts, and
e. the time at which, or the period within which the warrant will be executed.

4. An investigating officer as referred to in subsection (1) shall also mean a person in the public service of a foreign state, who meets the requirements to be set by Governmental Decree.

5. Section 126g(6) to (8) inclusive shall apply mutatis mutandis.

Chapter Four. Systematic Gathering of Information

Section 126j

1. In the case of suspicion of a serious offence the public prosecutor may, in the interest of the investigation, order an investigating officer as referred to in section 141(b), while not disclosing the fact that he is acting as an investigating officer, to systematically gather information on the suspect.

2. The warrant shall be issued for a period of maximum three months. It may be extended for a period of maximum three months each time.

3. The warrant to gather information shall be in writing and shall state:

a. the serious offence and if known the name or otherwise the most precise description possible of the suspect;
b. the facts or circumstances which show that the conditions, referred to in subsection (1), have been met;
c. the manner in which the warrant will be executed, and
d. the term of validity of the warrant.

4. A warrant as referred to in subsection (1) may also be issued to:

a. a person in the public service of a foreign state, who meets the requirements to be set by Governmental Decree;
b. an investigating officer as referred to in section 141(c) and (d), or section 142, provided that this investigating officer meets the rules pertaining to training and cooperation with investigating officers as referred to in section 141(b), to be set by Governmental Decree.

Subsections (2) and (3) shall apply mutatis mutandis.

5. Section 126g(6) to (8) inclusive shall apply mutatis mutandis.

Chapter Five. Powers in an Enclosed Place

Section 126k

1. In the case of suspicion of a serious offence as defined in section 67(1), the public prosecutor may, in the interest of the investigation, order an investigating officer to enter an enclosed place, not being a dwelling, without the consent of the person entitled to use the premises or to use a technical device, in order to:

a. look around that place,
b. to secure traces there, or
c. to install a technical device there, in order to be able to establish the presence or removal of property.

2. A warrant as referred to in subsection (1) shall be in writing and shall state:

a. the serious offence and if known, the name or otherwise the most precise description possible of the suspect;
b. the facts or circumstances which show that the conditions, referred to in subsection (1), have been met;
c. the place to which the warrant relates;
d. the manner in which the warrant will be executed, and
e. the time at which, or the period within which the warrant will be executed.

3. Section 126g(6) to (8) inclusive shall apply mutatis mutandis.

Chapter Six. Recording Confidential Communications by means of a Technical Device

Section 126l

1. In the case of suspicion of a serious offence as defined in section 67(1), which serious offence in view of its nature or the relation to other serious offences committed by the suspect constitutes a serious breach of law and order, the public prosecutor may, if urgently required in the interest of the investigation, order an investigating officer as referred to in section 141(b) and (c) to record confidential communications by means of a technical device.

2. The public prosecutor may, in the interest of the investigation, determine that an enclosed place, not being a dwelling, will be entered without the consent of the person entitled to use the premises for the purpose of executing the warrant, If urgently required in the interest of the investigation and in the case of a serious offence which carries a statutory term of imprisonment of at least eight years, he may determine that a dwelling will be entered without the consent of the person entitled to use the premises for the purpose of executing the warrant. Section 2(1, last sentence) of the General Act on Entry into Dwellings shall not apply.

3. The warrant to record confidential communications shall be in writing and shall state:

a. the serious offence and if known, the name or otherwise the most precise description possible of the suspect;
b. the facts or circumstances which show that the conditions, referred to in subsection (1) and, if subsection (2, second sentence) applies, the conditions referred to in subsection (2), have been met;
c. at least one of the persons who participate in the communications, or, if the warrant relates to communications in an enclosed place or in a means of transport, one of the persons who participate in the communications or the most precise description possible of that place or that means of transport;
d. in the application of subsection (2), the place to be entered;
e. the manner in which the warrant will be executed, and
f. the term of validity of the warrant.

4. The warrant may only be issued following authorisation to be granted by the examining magistrate on application of the public prosecutor. The authorisation shall relate to all elements of the warrant. If a dwelling may be entered for the purpose of executing the warrant, that power shall be explicitly

stated in the warrant.

5. The warrant shall be issued for a period of maximum four weeks. The term of validity may be extended for a period of maximum four weeks each time.

6. Section 126g(6) to (8) inclusive shall apply mutatis mutandis, on the understanding that the public prosecutor shall require authorisation from the examining magistrate for amendment, supplementation or extension. If the public prosecutor determines that a dwelling will be entered for the purpose of executing the warrant, the warrant may not be issued verbally. As soon as the conditions, referred to in subsection (2, second sentence), are no longer met, the public prosecutor shall determine that the execution of the warrant is terminated.

7. In the case of urgent necessity, authorisation from the examining magistrate, referred to in subsections (4) and (6), may be granted verbally, unless subsection (2, second sentence) is applied. In that case the examining magistrate shall put the authorisation in writing within three days.

8. An official report on the recording shall be prepared within three days.

Chapter Seven. Investigation of Communications by means of Computerised Devices or Systems

Section 126la

For the purpose of this Chapter the following terms shall be understood to mean:

a. “provider of a communication service”: the natural person or legal person who/which in the practice of a profession or conduct of a business provides the users of his/its service with the possibility of communicating by means of a computerised device or system, or processes or stores data for such a service or for the users of that service;
b. “user of a communication service”: the natural person or legal person who/which has concluded with the provider of a communication service an agreement relating to the use of that service or who/which actually makes use of such a service.

Section 126m

1. In the case of suspicion of a serious offence as defined in section 67(1), which serious offence in view of its nature or the relation to other serious offences committed by the suspect constitutes a serious breach of law and order, the public prosecutor may, if urgently required by the investigation, order an investigating officer to record by means of a technical device non-public communications which are conducted by use of the services of a provider of a communication service.

2. The warrant shall be in writing and shall state:

a. the serious offence and if known, the name or otherwise the most precise description possible of the suspect;
b. the facts or circumstances which show that the conditions, referred to in subsection (1), have been met;
c. where possible, the number or another indication by means of which the individual user of the communication service is identified as well as, insofar as is known, the name and the address of the user;
d. the term of validity of the warrant;
e. a description of the nature of the technical device or the technical devices by means of which the communications are recorded.

3. If the warrant relates to communications which are conducted through a public telecommunication network or by use of a public telecommunication service within the meaning of the Telecommunications Act, the warrant shall – unless such is impossible or is not permitted in the interest of the criminal proceedings – be executed with the assistance of the provider of the public

telecommunication network or the public telecommunication service and the warrant shall be accompanied by the request for assistance from the public prosecutor to the provider.

4. If the warrant relates to communications other than the communications referred to in subsection (3), the provider shall – unless such is impossible or is not permitted in the interest of the criminal proceedings – be given the opportunity to assist in the execution of the warrant.

5. The warrant, referred to in subsection (1), may only be issued following written authorisation to be granted by the examining magistrate on application of the public prosecutor. Section 126l(5) to (8) inclusive shall apply mutatis mutandis.

6. Insofar as is specifically required in the interest of the investigation, the person, who may be reasonably presumed to have knowledge of the manner of encryption of the communications, may be requested, if subsection (1) is applied, to assist in decrypting the data by either providing this knowledge, or undoing the encryption.

7. The request referred to in subsection (6) shall not be directed to the suspect.

8. Section 96a(3) and section 126l(4), (6) and (7) shall apply mutatis mutandis to the request referred to in subsection (6).

9. Rules pertaining to the manner in which the order referred to in subsection (1) and the requests referred to in subsections (3) and (6) may be given and the manner of compliance with such requests shall be set by Governmental Decree.

Section 126ma

1. If on issuance of a warrant as referred to in section 126m(3), the user of the number, referred to section 126m(2)(c), is known to be located in the territory of another state, that other state shall be informed of the intention to record telecommunications and the permission of that state shall be obtained before the warrant is executed, insofar as is prescribed under a treaty and in application of that treaty.

2. If after the start of the recording of telecommunications on the basis of the warrant it becomes known that the user is located in the territory of another state, that other state shall be informed of the intention to record telecommunications and the permission of that state shall be obtained, insofar as is prescribed under a treaty and in application of that treaty.

3. The public prosecutor may also issue a warrant as referred to in section 126m(3), if the existence of the warrant is necessary in order to be able to request another state to record telecommunications by means of a technical device or to intercept telecommunications and directly transmit them to the Netherlands for the purpose of recording by means of a technical device in the Netherlands.

Section 126n

1. In the case of suspicion of a serious offence as defined in section 67(1), the public prosecutor may, in the interest of the investigation, request the provision of data on a user of a communication service and the communication traffic data pertaining to that user. The request may only relate to data designated by Governmental Decree and may involve data which:

a. was processed at the time of the request, or
b. is processed after the time of the request.

2. The request, referred to in subsection (1), may be directed to any provider of a communication service. Section 96a(3) shall apply mutatis mutandis.

3. If the request relates to data as referred to in subsection (1, second sentence)(b), the request shall be made for a period of maximum three months.

4. The public prosecutor shall have an official record of the request prepared, which shall state:

a. the serious offence and if known, the name or otherwise the most precise description possible of the suspect;
b. the facts or circumstances which show that the conditions, referred to in subsection (1), have been met;
c. if known, the name or otherwise the most precise description possible of the person about whom data is requested;
d. the data requested;
e. if the request relates to data as referred to in subsection (1, second sentence)(b), the period to which the request relates.

5. If the request relates to data referred to in subsection (1, second sentence)(b), the request shall be terminated as soon as the conditions, referred to in subsection (1, first sentence), are no longer met. The public prosecutor shall have an official record made of amendment, supplementation, extension or cancellation of the request.

6. Rules pertaining to the manner in which the public prosecutor requests data may be set by Governmental Decree.

Section 126na

1. In the case of suspicion of a serious offence, the investigating officer may, in the interest of the investigation, request the provision of data pertaining to name, address, postal code, town, number and type of service of a user of a communication service. Section 126n(2) shall apply.

2. If the data, referred to in subsection (1), is not known to the provider and is necessary for the application of section 126m or section 126n, the public prosecutor may, in the interest of the investigation, request the provider to retrieve and provide the requested data in a manner to be determined by Governmental Decree.

3. In the case of a request, as referred to in subsection (1) or (2), section 126n(4)(a)(b)(c) and (d) shall apply mutatis mutandis and section 126bb shall not apply.

4. Rules pertaining to the manner in which the investigating officer or the public prosecutor will request the data may be set by or pursuant to Governmental Decree.

Section 126nb

1. In order to be able to apply section 126m or section 126n, the public prosecutor may, subject to section 3.10(4) of the Telecommunications Act, order that the number by which the user of a communication service can be indentified will be obtained by means of equipment referred to in that section.

2. The warrant shall be issued to a civil servant as referred to in section 3.10(4)(a) of the Telecommunications Act and shall be in writing. In the case of urgent necessity the warrant may be issued verbally. In that case the public prosecutor shall put the warrant in writing within three days.

3. The warrant shall be issued for a period of maximum one week and shall state:

a. the facts or circumstances which show that the conditions for the application of section 126m or section 126n have been met and
b. the name or the most precise description possible of the user of a communication service whose number has to be obtained.

4. The public prosecutor shall have others destroy, in his presence, the official records or other objects, from which information can be derived that was obtained through application of subsection (1), if that information is not used for the purpose of application of section 126m or section 126n.

Chapter Eight. Requesting Data

Section 126nc

1. In the case of suspicion of a serious offence, the investigating officer may, in the interest of the investigation, request the person, who may be reasonably considered to be the appropriate person for that purpose and who processes data other than for personal use, to provide specific stored or recorded identifying data of a person.

2. Identifying data shall mean:

a. name, address, town and postal address;
b. date of birth and sex;
c. administrative characteristics;
d. in the case of a legal person, instead of the details referred to in (a) and (b): name, address, postal address, legal form and registered office.

3. A request as referred to in subsection (1) may not be directed to the suspect. Section 96a(3) shall apply mutatis mutandis. The request may not relate to personal data concerning a person's religion or life principles, race, political persuasion, health, sex life or membership of a trade union.

4. A request as referred to in subsection (1) shall be in writing and shall state:

a. a description of the person to whose identifying data the request relates;
b. the identifying data which is being requested;
c. the period of time within which and the manner in which the data should be provided;
d. the legal ground for the request.

5. In the case of urgent necessity, a request as referred to in subsection (1) may be made verbally. In that case the investigating officer shall later put the request in writing and provide it to the person to whom the request is directed within three days after the request was made.

6. The investigating officer shall prepare an official record of the provision of the identifying data, which shall state:

a. the data referred to in subsection (4);
b. the data provided;
c. the serious offence and if known, the name or otherwise the most precise description possible of the suspect;
d. the facts or circumstances which show that the conditions, referred to in subsection (1), have been met.

7. Rules pertaining to the investigating officer who requests the data and the manner in which the data will be requested and provided may be set by or pursuant to Governmental Decree.

Section 126nd

1. In the case of suspicion of a serious offence as defined in section 67(1), the public prosecutor may, in the interest of the investigation, request the person, who may be reasonably presumed to have access to specific stored or recorded data, to provide this data.

2. A request, as referred to in subsection (1), may not be directed to the suspect. Section 96a(3) shall apply mutatis mutandis. The request may not relate to personal data concerning a person's religion or life principles, race, political persuasion, health, sex life or membership of a trade union.

3. A request as referred to in subsection (1) shall be in writing and shall state:

a. if known, the name or otherwise the most precise description possible of the person or persons about whom data is being requested;
b. the most precise description possible of the data being requested and the period within which and the manner in which said data should be provided;
c. the legal ground on which the request is made.

4. In the case of urgent necessity, the request may be given verbally. In that case the public prosecutor shall later put the request in writing and provide it to the natural or legal person to whom the request is directed within three days after the request was made.

5. The public prosecutor shall prepare an official record of the provision of data, which shall state:

a. the data referred to in subsection (3);
b. the data provided;
c. the serious offence and if known, the name or otherwise the most precise description possible of the suspect;
d. the facts or circumstances which show that the conditions, referred to in subsection (1), have been met.
e. the reason why the data is being requested in the interest of the investigation.

6. In the case of suspicion of a criminal offence other than the criminal offence referred to in subsection (1), the public prosecutor may, in the interest of the investigation, make a request as referred to in that subsection with the prior written authorisation of the examining magistrate. The examining magistrate shall grant the authorisation on application of the public prosecutor. Subsections (2) to (5) inclusive shall apply mutatis mutandis. Section 126l(7) shall apply mutatis mutandis.

7. Rules pertaining to the manner in which the data is to be requested and provided may be set by Governmental Decree.

Section 126ne

1. The public prosecutor may, in the interest of the investigation, determine that a request as referred to in section 126nd(1) made to the person who processes data other than for personal use, may relate to data which is only processed after the time of the request. The period to which the request relates shall be maximum four weeks and may be extended by maximum four weeks each time. The public prosecutor shall state this period in the request. Section 126nd(2) to (5) inclusive and (7) shall apply mutatis mutandis.

2. In a case as referred to in subsection (1), the public prosecutor shall determine that the execution of the request will be terminated as soon as the conditions, referred to in section 126nd(1), are no longer met. An amendment, supplementation, extension or cancellation of the request shall be made in writing. Section 126nd(4) shall apply mutatis mutandis.

3. If urgently required in the interest of the investigation, the public prosecutor may determine in a case as referred to in subsection (1) that the person to whom the request is directed will provide the data immediately after processing, or each time within a specific period after processing. The public prosecutor shall require for that purpose, and for amendment, supplementation or extension of the request, prior written authorisation to be granted by the examining magistrate on his application. Section 126l(7) shall apply mutatis mutandis.

Section 126nf

1. In the case of suspicion of a serious offence as defined in section 67(1), which serious offence in view of its nature or the relation to other serious offences committed by the suspect constitutes a serious breach of law and order, the public prosecutor may, if urgently required in the interest of the investigation, request the person, who may be reasonably presumed to have access to the data referred to in section 126nd(2, third sentence), to provide said data.

2. A request, as referred to in subsection (1), may not be directed to the suspect. Section 96a(3) shall apply mutatis mutandis.

3. A request, as referred to in subsection (1), may only be made following prior written authorisation to be granted by the examining magistrate on application of the public prosecutor. Section 126l(7) shall apply mutatis mutandis.

4. Section 126nd(3) to (5) inclusive and (7) shall apply mutatis mutandis.

Section 126ng

1. A request as referred to in section 126nc(1), 126nd(1) or 126ne(1) and (3), and section 126nf(1) may be directed to the provider of a communication service within the meaning of section 126la, insofar as the request relates to data other than the data which may be requested under application of sections 126n and 126na. The request may not relate to data stored in the computerised device or system of the provider and which is not intended for this provider or does not originate from this provider.

2. In the case of suspicion of a serious offence as defined in section 67(1), which serious offence in view of its nature or the relation to other serious offences committed by the suspect constitutes a serious breach of law and order, the public prosecutor may, if urgently required in the interest of the investigation, request the provision of the data referred to in subsection (1, last sentence) from the provider which may be reasonably presumed to have access to said data, insofar as said data evidently originates from the suspect, is intended for him or relates to him or served for commission of the criminal offence, or the criminal offence was evidently committed in relation to said data.

3. A request, as referred to in subsection (2), may not be directed to the suspect. Section 96a(3) shall apply mutatis mutandis.

4. A request, as referred to in subsection (2), may only be made following prior written authorisation to be granted by the examining magistrate on application of the public prosecutor. Section 126l(7) shall apply mutatis mutandis.

5. Section 126nd(3) to (5) inclusive and (7) shall apply mutatis mutandis.

Section 126nh

1. The public prosecutor may, if required in the interest of the investigation, in or immediately after the application of section 126nd(1), 126ne(1) or (3), or 126nf(1), order the person who may be reasonably presumed to have knowledge of the manner of encryption of the data referred to in these sections to assist in decrypting the data by either undoing the encryption, or providing this knowledge.

2. The order shall not be given to the suspect. Section 96a(3) shall apply mutatis mutandis.

Section 126ni

1. In the case of suspicion of a serious offence as defined in section 67(1), which serious offence in view of its nature or the relation to other serious offences committed by the suspect constitutes a serious breach of law and order, the public prosecutor may, if urgently required in the interest of the investigation, request the person who may be reasonably presumed to have access to specific data which at the time of the request is stored in a computerised device or system and which may be reasonably presumed to be particularly susceptible to loss or change, to store this data and keep it available for a period of maximum ninety days. The order may not be directed to the suspect.

2. If the request is directed to the provider of a communication service within the meaning of section 126la and the request relates or also relates to data as referred to in section 126n(1), the provider shall be obliged to provide, as soon as possible, the data necessary to ascertain the identity of other providers whose services were used in the communications.

3. The request shall be made in writing or verbally. If the request is made verbally, the public prosecutor shall put the request in writing as soon as possible and within three days after the request has been made verbally shall provide a certified copy thereof to the person to whom the request is directed. When the request is made and when put in writing, it shall state:

a. the most precise description possible of the data that has to be kept available;
b. the date of the request;
c. the legal ground on which the request is made;
d. the period during which the data must be kept available, and
e. whether subsection (2) applies.

4. The public prosecutor shall prepare an official record of the request and, if this request was made verbally, of the written record thereof, which shall state:

a. the data, referred to in subsection (3);
b. the serious offence and if known, the name or otherwise the most precise description possible of the suspect; and
c. the facts or circumstances which show that the conditions, referred to in subsection (1), have been met;

5. The request may be extended maximum one time for a period of not more than ninety days. Subsections (2), (3) and (4) shall apply mutatis mutandis.

Part V. Special Investigative Powers for the Investigation into the Planning or Commission of Serious Offences by an Organised Group

Section 126o

1. If facts or circumstances give rise to the reasonable suspicion that serious offences as defined in section 67(1) are being planned or committed by an organised group, which serious offences in view of their nature or the relation to other serious offences that are being planned or committed by an organised group constitute a serious breach of law and order, the public prosecutor may, in the interest of the investigation, order an investigating officer to systematically follow a person or systematically observe his movements or behaviour.

2. The public prosecutor may, in the interest of the investigation, determine that an enclosed place, not being a dwelling, will be entered without the consent of the person entitled to use the premises for the purpose of executing the warrant.

3. The public prosecutor may determine that a technical device will be used for the purpose of executing the warrant, insofar as no confidential information is recorded by means of that device. A technical device shall not be attached to a person, unless with his consent.

4. The surveillance warrant shall be in writing and shall state:

a. a description of the organised group;
b. the facts or circumstances which show that the conditions, referred to in subsection (1), have been met;
c. the name or the most precise description possible of the person referred to in subsection (1);
d. in the application of subsection (2), the place to be entered;
e. the manner in which the warrant will be executed, and
f. the term of validity of the warrant.

5. Section 126g(4) to (6) inclusive and (8) shall apply mutatis mutandis.

6. A warrant as referred to in subsection (1) may also be issued to a person in the public service of a foreign state. Requirements may be set for these persons by Governmental Decree. Subsections (2) to (5) inclusive shall apply mutatis mutandis.

Section 126p

1. In a case as referred to in section 126o(1), the public prosecutor may, if urgently required in the interest of the investigation, order an investigating officer as referred to in section 141(b) to participate in or render assistance to a group of persons.

2. In the execution of the warrant the investigating officer may not incite a person to commit serious offences other than the serious offences he already intended to commit.

3. The infiltration warrant shall be in writing and shall state:

a. a description of the organised group;
b. the facts or circumstances which show that the conditions, referred to in subsection (1), have been met;
c. the manner in which the warrant will be executed, including punishable acts, insofar as could be foreseen when the warrant was issued, and
d. the term of validity of the warrant.

4. A warrant as referred to in subsection (1) may also be issued to:

a. a person in the public service of a foreign state, who meets the requirements to be set by Governmental Decree;
b. an investigating officer as referred to in section 141(c) and (d), or section 142, provided that this investigating officer meets the rules pertaining to training and cooperation with investigating officers as referred to in section 141(b), to be set by Governmental Decree.

Subsections (2) and (3) shall apply mutatis mutandis.

5. Section 126g(7) and (8) shall apply mutatis mutandis, on the understanding that an infiltration warrant may not be extended verbally.

Section 126q

1. In a case as referred to in section 126o(1), the public prosecutor may, in the interest of the investigation, order an investigating officer to:

a. purchase goods from a person in regard of whom facts or circumstances give rise to the reasonable suspicion that he is involved in the planning or commission of serious offences by an organised group,
b. purchase data which is stored, processed or transferred through a public telecommunication network by means of a computerised device or system from such person, or
c. provide services to such person.

2. In the execution of the warrant the investigating officer may not incite a person to commit or plan criminal offences other than the criminal offences he already intended to commit.

3. The pseudo purchases or services warrant shall be in writing and shall state:

a. a description of the organised group;
b. the facts or circumstances which show that the conditions, referred to in subsection (1), have been met;
c. the nature of the goods, data or services;
d. the manner in which the warrant will be executed, including punishable acts, and
e. the time at which, or the period within which the warrant will be executed.

4. An investigating officer as referred to in subsection (1) shall also mean a person in the public service of a foreign state, who meets the requirements to be set by Governmental Decree.

5. Section 126g(6) to (8) inclusive shall apply mutatis mutandis.

Section 126qa

1. In a case as referred to in section 126o(1), the public prosecutor may, in the interest of the investigation, order an investigating officer as referred to in section 141(b), while not disclosing the fact that he is acting as an investigating officer, to systematically gather information on a person in regard of whom facts or circumstances give rise to the reasonable suspicion that he is involved in

the planning or commission of serious offences by an organised group.

2. The warrant shall be issued for a period of maximum three months. The term of validity may be extended for a period of maximum three months each time.

3. The order to gather information shall be in writing and shall state:

a. a description of the organised group;
b. the facts or circumstances which show that the conditions, referred to in subsection (1), have been met;
c. if known, the name or otherwise the most precise description possible of the person referred to in subsection (1);
d. the manner in which the warrant will be executed, and
e. the term of validity of the warrant.

4. A warrant as referred to in subsection (1) may also be issued to:

a. a person in the public service of a foreign state, who meets the requirements to be set by Governmental Decree;
b. an investigating officer as referred to in section 141(c) and (d), or section 142, provided that this investigating officer meets the rules pertaining to training and cooperation with investigating officers as referred to in section 141(b), to be set by Governmental Decree.

Subsections (2) and (3) shall apply mutatis mutandis.

5. Section 126g(6) to (8) inclusive shall apply mutatis mutandis.

Section 126r

1. In a case as referred to in section 126o(1), the public prosecutor may, in the interest of the investigation, order an investigating officer to enter an enclosed place, not being a dwelling, without the consent of the person entitled to use the premises or to use a technical device, in order to:

a. look around that place,
b. to secure traces there, or
c. to install a technical device there, in order to be able to establish the presence or removal of property.

2. A warrant as referred to in subsection (1) shall be issued in writing and shall state:

a. a description of the organised group;
b. the facts or circumstances which show that the conditions, referred to in subsection (1), have been met;
c. the place to which the warrant relates;
d. the manner in which the warrant will be executed, and
e. the time at which, or the period within which the warrant will be executed.

3. Section 126g(6) to (8) inclusive shall apply mutatis mutandis.

Section 126s

1. In a case as referred to in section 126o(1), the public prosecutor may, if urgently required in the interest of the investigation, order an investigating officer as referred to in section 141(b) and (c) to record by means of a technical device confidential communications in which one of the participants is a person in regard of whom facts or circumstances give rise to the reasonable suspicion that he is involved in the planning or commission of serious offences by an organised group.

2. The public prosecutor may, in the interest of the investigation, determine that an enclosed place, not being a dwelling, will be entered without the consent of the person entitled to use the premises

for the purpose of executing the warrant. If urgently required in the interest of the investigation and in the case of the planning or commission by a group of serious offences which carry a statutory term of imprisonment of at least six years, he may determine that a dwelling will be entered without the consent of the person entitled to use the premises for the purpose of executing the warrant. Section 2(1, last sentence) of the General Act on Entry into Dwellings shall not apply.

3. The warrant to record confidential communications shall be in writing and shall state:

a. a description of the organised group;
b. the facts or circumstances which show that the conditions, referred to in subsection (1) and, if subsection (2, second sentence) applies, the conditions referred to in subsection (2) have been met;
c. the person, referred to in subsection (1) and, if known, other participants in the communications,
d. in the application of subsection (2), the place to be entered;
e. the manner in which the warrant will be executed, and
f. the term of validity of the warrant.

4. The warrant may only be issued following written authorisation to be granted by the examining magistrate on application of the public prosecutor. The authorisation shall relate to all elements of the warrant. If a dwelling may be entered for the purpose of executing the warrant, that power shall be explicitly stated in the warrant.

5. The warrant shall be issued for a period of maximum four weeks. The term of validity may be extended for a period of maximum four weeks each time.

6. Section 126g(6) to (8) inclusive shall apply mutatis mutandis, on the understanding that the public prosecutor shall require authorisation from the examining magistrate for amendment, supplementation or extension. If the public prosecutor determines that a dwelling will be entered for the purpose of executing the warrant, the warrant may not be issued verbally. As soon as the conditions, referred to in subsection (2, second sentence), are no longer met, the public prosecutor shall determine that the execution of the warrant is terminated.

7. In the case of urgent necessity, authorisation from the examining magistrate, referred to in subsections (4) and (6), may be granted verbally, unless subsection (2, second sentence) is applied. In that case the examining magistrate shall put the authorisation in writing within three days.

8. An official record of the recording shall be prepared within three days.

Section 126t

1. In a case as referred to in section 126o(1), the public prosecutor may, if urgently required in the interest of the investigation, order an investigating officer to record by means of a technical device non-public communications which are conducted by use of the services of a provider of a communication service within the meaning of section 126la and in which one of the participants is a person in regard of whom facts or circumstances give rise to the reasonable suspicion that he is involved in the planning or commission of serious offences by an organised group.

2. The warrant shall be in writing and shall state:

a. a description of the organised group;
b. the facts and circumstances which show that the conditions, referred to in subsection (1), have been met;
c. where possible, the number by means of which the individual user of the communication service is identified as well as, insofar as is known, the name and the address of the user;
d. the name of the person, referred to in subsection (1), if this person is not the account holder;
e. the term of validity of the warrant;
f. a description of the nature of the technical device or the technical devices by means of which the communications are recorded.

3. If the warrant relates to communications which are conducted through a public telecommunication network or by use of a public telecommunication service within the meaning of the Telecommunications Act, the warrant shall – unless such is impossible or is not permitted in the interest of the criminal proceedings – be executed with the assistance of the provider of the public telecommunication network or the public telecommunication service and the warrant shall be accompanied by a request for assistance from the public prosecutor to the provider.

4. If the warrant relates to communications other than the communications referred to in subsection (3), the provider shall – unless such is impossible or is not permitted in the interest of the criminal proceedings – be given the opportunity to assist in the execution of the warrant.

5. The warrant, referred to in subsection (1), may only be issued following written authorisation to be granted by the examining magistrate on application of the public prosecutor. Section 126s(5) to (8) inclusive shall apply mutatis mutandis.

6. Insofar as is specifically required in the interest of the investigation, the person who may be reasonably presumed to have knowledge of the manner of encryption of the communications may, in or immediately after the application of subsection (1), be requested to assist in decrypting the data by either providing this knowledge, or undoing the encryption.

7. The request referred to in subsection (6) shall not be directed to the suspect.

8. Section 96a(3) and section 126s(4), (6) and (7) shall apply mutatis mutandis to the request referred to in subsection (6).

9. Rules pertaining to the manner in which the warrant referred to in subsection (1) and the requests referred to in subsections (3) and (6) will be given and the manner of compliance with such requests shall be set by Governmental Decree.

Section 126ta

1. If on issuance of a warrant as referred to in section 126t(3), the user of the number, referred to section 126t(2)(c), is known to be located in the territory of another state, that other state shall be informed of the intention to record telecommunications and the permission of that state shall be obtained before the warrant is executed, insofar as is prescribed under a treaty and in application of that treaty.

2. If after the start of the recording of telecommunications on the basis of the warrant it becomes known that the user is located in the territory of another state, that other state shall be informed of the intention to record telecommunications and the permission of that state shall be obtained, insofar as is prescribed under a treaty and in application of that treaty.

3. The public prosecutor may also issue a warrant as referred to in section 126t(3), if the existence of the warrant is necessary in order to be able to request another state to record telecommunications by means of a technical device or to intercept and directly transmit telecommunications to the Netherlands for the purpose of recording by means of a technical device in the Netherlands.

Section 126u

1. In a case as referred to in section 126o(1), the public prosecutor may, in the interest of the investigation, request the provision of data on a user of a telecommunication service within the meaning of section 126la and the communication traffic data pertaining to that user. The request may only relate to data designated by Governmental Decree and may involve data which:

   a. was processed at the time of the request, or
   b. is processed after the time of the request.

2. The request, referred to in subsection (1), may be directed to any provider of a communication service. Section 96a(3) shall apply mutatis mutandis.

3. If the request relates to data as referred to in subsection (1, second sentence)(b), the request shall be made for a period of maximum three months.

4. The public prosecutor shall have an official record prepared of the request, which shall state:

   a. a description of the organised group;
   b. the facts or circumstances which show that the conditions, referred to in subsection (1), have been met;
   c. if known, the name or otherwise the most precise description possible of the person about whom data is requested;
   d. the data requested;
   e. if the request relates to data as referred to in subsection (1, second sentence)(b), the period to which the request relates.

5. If the request relates to data referred to in subsection (1, second sentence)(b), the request shall be terminated as soon as the conditions, referred to in subsection (1, first sentence) are no longer met. The public prosecutor shall prepare an official record of amendment, supplementation, extension or cancellation of the request.

6. Rules pertaining to the manner in which the public prosecutor requests data may be set by Governmental Decree.

Section 126ua

1. In a case as referred to in section 126o(1), the investigating officer may, in the interest of the investigation, request the provision of data pertaining to name, address, postal code, town, number and type of service of a user of a communication service within the meaning of section 126la. Section 126u(2) shall apply.

2. If the data, referred to in subsection (1), is not known to the provider and is necessary for the application of section 126t or section 126u, the public prosecutor may, in the interest of the investigation, request the provider to retrieve and provide the requested data in a manner to be determined by Governmental Decree.

3. In the case of a request, as referred to in subsection (1) or (2), section 126u(4)(a)(b)(c) and (d) shall apply mutatis mutandis and section 126bb shall not apply.

4. Rules pertaining to the manner in which the investigating officer or the public prosecutor will request the data may be set by or pursuant to Governmental Decree.

Section 126ub

1. In order to be able to apply section 126t or section 126u, the public prosecutor may, subject to section 3.10(4) of the Telecommunications Act, order that the number by which a user of a communication service can be indentified will be obtained by means of equipment referred to in that section. Section 126nb(2) to (4) inclusive shall apply mutatis mutandis.

Section 126uc

1. In a case as referred to in section 126o(1), the investigating officer may, in the interest of the investigation, request the person who may be reasonably considered to be the appropriate person for that purpose and who processes data other than for personal use, to provide stored or recorded identifying data of a person.

2. Section 126nc(2) to (5) inclusive and (7) shall apply mutatis mutandis.

3. The investigating officer shall prepare an official record of the provision of the identifying data, which shall state:

   a. the data referred to in section 126nc(4);

b. the data provided;
c. a description of the organised group;
d. the facts or circumstances which show that the conditions, referred to in subsection (1), have been met.

Section 126ud

1. In a case as referred to in section 126o(1), the public prosecutor may, in the interest of the investigation, request the person who may be reasonably presumed to have access to specific stored or recorded data to provide this data.

2. Section 126nd(2) to (4) inclusive and (7) shall apply mutatis mutandis.

3. The public prosecutor shall prepare an official record of the provision of the identifying data, which shall state:

a. the data referred to in section 126nc(3);
b. the data provided;
c. a description of the organised group;
d. the facts or circumstances which show that the conditions, referred to in subsection (1), have been met;
e. the reason why the data is being requested in the interest of the investigation.

Section 126ue

1. In a case as referred to in section 126o(1), the public prosecutor may determine, in the interest of the investigation, that a request as referred to in section 126ud(1) made to the person who processes data other than for personal use, may relate to data which is only processed after the time of the request. The period to which the request relates shall be maximum four weeks and may be extended by maximum four weeks each time. The public prosecutor shall state this period in the request. Sections 126nd(2) to (4) inclusive and (7), and section 126ud(3) shall apply mutatis mutandis.

2. In a case as referred to in subsection (1), the public prosecutor shall determine that the execution of the request will be terminated as soon as the conditions referred to in section 126ud(1) are no longer met. An amendment, supplementation, extension or cancellation of the request shall be made in writing. Section 126nd(4) shall apply mutatis mutandis.

3. If urgently required in the interest of the investigation, the public prosecutor may determine in a case, as referred to in subsection (1), that the person to whom the request is directed shall provide the data immediately after processing, or each time within a specific period after processing. The public prosecutor shall require for that purpose, and for amendment, supplementation or extension of the request, prior written authorisation to be granted by the examining magistrate on his application. Section 126l(7) shall apply mutatis mutandis.

Section 126uf

1. In a case as referred to in section 126o(1), the public prosecutor may, if urgently required in the interest of the investigation, request the provision of the data referred to in section 126nd(2, third sentence) from the person who may be reasonably presumed to have access to said data.

2. Sections 126nf(2) and (3), and 126nd(3),(4) and (7) shall apply mutatis mutandis.

3. The public prosecutor shall prepare an official record of the provision of the identifying data, which shall state:

a. the data referred to in section 126nd(3);
b. the data provided;
c. a description of the organised group;
d. the facts or circumstances which show that the conditions, referred to in subsection (1), have

been met;
e. the reason why the data is being requested in the interest of the investigation.

Section 126ug

1. A request as referred to in section 126uc(1), 126ud(1) or 126ue(1) and (3), and section 126uf(1) may be directed to the provider of a public or non-public telecommunication network, or the provider of a public or non-public telecommunication service, insofar as the request relates to data other than the data which may be requested under sections 126u and 126ua. The request may not relate to data stored in the computerised device or system of the provider and which is not intended for this provider or does not originate from this provider.

2. In a case as referred to in section 126o(1), the public prosecutor may, if urgently required in the interest of the investigation, request the provision of the data referred to in subsection (1, last sentence) from the provider which may be reasonably presumed to have access to said data, insofar as said data evidently originates from the person in regard of whom facts or circumstances give rise to the reasonable suspicion that he is involved in the planning or commission of serious offences by an organised group, is intended for him or relates to him or served for the planning or commission of a serious offence by that organised group, or the serious offence is evidently being planned or committed by that organised group in relation to said data.

3. A request, as referred to in subsection (2), may not be directed to the suspect. Section 96a(3) shall apply mutatis mutandis.

4. A request, as referred to in subsection (2), may only be made following prior written authorisation to be granted by the examining magistrate on application of the public prosecutor. Section 126l(7) shall apply mutatis mutandis.

5. Section 126nd(3) to (5) inclusive and (7) shall apply mutatis mutandis.

Section 126uh

1. The public prosecutor may, if urgently required in the interest of the investigation, in or immediately after the application of section 126ud(1), 126ue(1) or (3), or 126uf(1), order the person who may be reasonably presumed to have knowledge of the manner of encryption of the data referred to in these sections to assist in decrypting the data by either undoing the encryption, or providing this knowledge.

2. The order shall not be given to the suspect. Section 96a(3) shall apply mutatis mutandis.

Section 126ui

1. In a case as referred to in section 126o(1), the public prosecutor may, if urgently required in the interest of the investigation, request the person who may be reasonably presumed to have access to specific data which at the time of the request is stored in a computerised device or system and which may be reasonably presumed to be particularly susceptible to loss or change, to store this data and keep it available for a period of maximum ninety days. The request may not be directed to the suspect.

2. Section 126ni(2) to (5) inclusive shall apply mutatis mutandis, on the understanding that a description of the organised group referred to in section 126o(1) shall also be included in the facts and circumstances referred to in section 126ni(4)(c).

Part VA. Civilian Support in Investigations

Chapter One. Request to gather Information

Section 126v

1. In the case of suspicion of a serious offence, or in a case as referred to in section 126o(1), the

public prosecutor may, in the interest of the investigation, order an investigating officer to conclude with a person who is not an investigating officer an agreement to the effect that this person will provide support in the investigation for the duration of the warrant by systematically gathering information on a suspect or a person in regard of whom facts or circumstances give rise to the reasonable suspicion that he is involved in the planning or commission of serious offences by an organised group.

2. The warrant, referred to in subsection (1), shall be in writing and shall state:

a. in the case of suspicion of a serious offence, the serious offence and if known, the name or otherwise the most precise description possible of the suspect;
b. in a case as referred to in section 126o(1): a description of the organised group;
c. the facts and circumstances which show that the conditions, referred to in subsection (1), have been met;
d. the most precise description possible of the person on whom information is being gathered; and
e. the term of validity of the warrant.

3. The agreement for the systematic gathering of information shall be in writing and shall state:

a. the rights and obligations of the person who provides support in the investigation and the manner in which the agreement will be executed, and
b. the term of validity of the agreement.

4. Section 126g(4) and (6) to (8) inclusive shall apply mutatis mutandis to the warrant.

Chapter Two. Civilian Infiltration

Section 126w

1. In a case as referred to in section 126h(1), the public prosecutor may, if urgently required in the interest of the investigation, conclude with a person who is not an investigating officer an agreement to the effect that this person will provide support in the investigation by participating or rendering assistance to a group of persons which may be reasonably suspected of planning or committing serious offences.

2. Subsection (1) shall be applied only if the public prosecutor is of the opinion that an order, as referred to in section 126h(1), cannot be given.

3. The person who provides support in the investigation under subsection (1) may not, in the execution thereof, incite a person to commit serious offences other than the serious offences he already intended to commit.

4. In the application of subsection (1), the public prosecutor shall put in writing:

a. the serious offence and if known, the name or otherwise the most precise description possible of the suspect;
b. a description of the group of persons;
c. the facts or circumstances which show that the conditions, referred to in subsections (1) and (2), have been met.

5. The infiltration agreement shall be in writing and shall state:

a. the rights and obligations of the person who provides support in the investigation under subsection (1) and the manner in which the agreement will be executed, and
b. the term of validity of the agreement.

6. The person who provides support in the investigation under subsection (1) may not, in the execution thereof, commit punishable acts, unless with the prior written permission of the public prosecutor to commit such acts. In the case of urgent necessity, the permission may be given

verbally. In that case the public prosecutor shall put his permission in writing within three days.

7. As soon as the conditions, referred to in subsection (1), are no longer met, the public prosecutor shall determine that the execution of the agreement is terminated.

8. The agreement may be amended, supplemented, extended or terminated in writing. The public prosecutor shall put the reasons therefor in writing within three days at the latest.

Section 126x

1. In a case as referred to in section 126o(1), the public prosecutor may, if urgently required in the interest of the investigation, conclude with a person who is not an investigating officer an agreement to the effect that this person will provide support in the investigation by participating or rendering assistance to the organised group.

2. Subsection (1) shall be applied only if the public prosecutor is of the opinion that an order as referred to in section 126p(1) cannot be given.

3. The person who provides support in the investigation under subsection (1) may not, in the execution thereof, incite a person to commit serious offences other than the serious offences he already intended to commit.

4. Section 126w(4) to (8) inclusive shall apply mutatis mutandis.

Chapter Three. Civilian Pseudo Purchases or Services

Section 126ij

1. In a case as referred to in section 126i(1), the public prosecutor may, in the interest of the investigation, conclude with a person who is not an investigating officer an agreement to the effect that this person will provide support in the investigation by:

a. purchasing goods from the suspect,
b. purchasing data which is stored, processed or transferred through a public telecommunication network by means of a computerised device or system from the suspect, or
c. providing services to the suspect.

2. Subsection (1) shall be applied only if the public prosecutor is of the opinion that an order, as referred to in section 126i(1), cannot be given.

3. The person who provides support in the investigation under subsection (1) may not, in the execution thereof, incite a person to commit serious offences other than the serious offences he already intended to commit.

4. In the application of subsection (1), the public prosecutor shall put in writing:

a. the serious offence and if known, the name or otherwise the most precise description possible of the suspect;
b. the facts or circumstances which show that the conditions, referred to in subsections (1) and (2), have been met;
c. the nature of the goods, data or services.

5. The pseudo purchases or services agreement shall be in writing and shall state:

a. the rights and obligations of the person who provides support in the investigation under subsection (1) and the manner in which the agreement will be executed, including punishable acts, and
b. the time at which, or the period within which the agreement will be executed.

6. Section 126w(7) and (8) shall apply mutatis mutandis.

Section 126z

1. In a case as referred to in section 126o(1), the public prosecutor may, in the interest of the investigation, conclude with a person who is not an investigating officer an agreement to the effect that this person will provide support in the investigation by purchasing goods from or providing services to a person in regard of whom facts or circumstances give rise to the reasonable suspicion that he is involved in the planning or commission of serious offences by an organised group.

2. Subsection (1) shall be applied only if the public prosecutor is of the opinion that an order as referred to in section 126q(1) cannot be given.

3. The person who provides support to the investigation under subsection (1) may not, in the execution thereof, incite a person to commit serious offences other than the serious offences he already intended to commit.

4. Section 126ij(4) to (6) inclusive shall apply mutatis mutandis.

Part VB. Special Powers for the Investigation of Terrorist Offences

Chapter One. General Provisions

Section 126za

1. Warrants for the exercise of a power as referred to in this Part, and amendment, supplementation, extension or withdrawal thereof, shall be issued in writing, except for the exceptions prescribed by law. A warrant issued verbally, which has been immediately put in writing, shall be considered as equivalent to a warrant issued in writing.

2. A warrant issued in writing shall state the terrorist offence and the facts and circumstances which show that the statutory conditions for exercise of the power have been met. The warrant may state the manner in which it must be executed.

3. In cases where the law stipulates that a warrant may be issued verbally, the warrant, and amendment, supplementation, extension or withdrawal thereof, which has not been put in writing, shall be noted in the official record of the investigating officer who executes the warrant.

4. Further rules pertaining to the information to be included in the official record regarding a warrant issued in writing or verbally may be set by Governmental Decree.

5. Any warrant may be amended, supplemented, extended or withdrawn.

Section 126zb

1. Authorisation from the examining magistrate, as referred to in this Part, shall be in writing or shall be immediately put in writing.

2. The authorisation and the application for that purpose shall state the terrorist crime and the facts and circumstances which show that the statutory conditions for exercise of the power have been met.

3. If authorisation from the examining magistrate is required for a warrant of the public prosecutor, amendment, supplementation or extension of that warrant shall also require authorisation.

Section 126zc

Persons in the public service of a foreign state, who meet the requirements to be set therein for exercise of the powers under section 126zd(1)(a), (b) and (c), and section 126ze, may by Governmental Decree be considered as equivalent to an investigating officer.

Chapter Two. Systematic Surveillance, Pseudo Purchase or Services, Systematic gathering of Information, Powers in an Enclosed Place and Infiltration

Section 126zd

1. In the case of indications of a terrorist offence, the investigating officer shall, in the interest of the investigation, be authorised pursuant to a warrant issued by the public prosecutor for that purpose to:

a. systematically follow a person or systematically observe his movements or behaviour,
b. purchase goods from or render services to a person or purchase data which is stored, processed or transferred through a public telecommunication network by means of a computerised device or system from a person,
c. while not disclosing the fact that he is acting as an investigating officer, systematically gather information on a person,
d. enter an enclosed place, not being a dwelling, without the consent of the person entitled to use the premises or use a technical device in order to look around that place, to secure traces there, or to install a technical device there in order to be able to establish the presence or removal of property.

2. In the execution of the powers referred to in subsection (1)(b), the investigating officer may not incite a person to commit serious offences other than the serious offences he had already intended to commit.

3. The public prosecutor may, in the interest of the investigation, determine that in the exercise of the powers, referred to in subsection (1)(a), an enclosed place, not being a dwelling, may be entered without the consent of the person entitled to use the premises.

4. The public prosecutor may furthermore determine that in the execution of the power referred to in subsection (1)(a), a technical device may be used, insofar as no confidential communications are recorded by means of that device. A technical device shall not be attached to a person, unless with his consent.

5. The warrant authorising the exercise of the powers referred to in subsection (1)(a) or (c), shall be issued for a period of maximum three months. The term of validity may be extended for a period of three months each time.

Section 126ze

1. In the case of indications of a terrorist offence, the public prosecutor may, if urgently required in the interest of the investigation, order an investigating officer to participate or render assistance to a group of persons in regard of which there are indications that terrorist offences are being planned or committed by that group.

2. Section 126h(2) shall apply mutatis mutandis.

3. The warrant shall also state in addition to the data referred to in section 126za:

a. a description of the group of persons;
b. the manner in which the warrant will be executed, including punishable acts, insofar as could be foreseen when the warrant was issued, and;
c. the term of validity of the warrant.

Chapter Three. Recording and Investigating Communications

Section 126zf

1. In the case of indications of a terrorist offence, the public prosecutor may, if urgently required in the interest of the investigation, following authorisation granted by the examining magistrate on his application, order an investigating officer to record confidential communications by means of a

technical device.

2. The public prosecutor may, in the interest of the investigation, determine that an enclosed place, not being a dwelling, will be entered without the consent of the person entitled to use the premises for the purpose of executing the order. If urgently required in the interest of the investigation, he may determine, following explicit authorisation granted by the examining magistrate on his application, that a dwelling will be entered without the consent of the person entitled to use the dwelling for the purpose of executing the warrant. Section 2(1, last sentence) of the General Act on Entry into Dwellings shall not apply.

3. The warrant shall also state in addition to the information referred to in section 126za:

a. at least one of the persons who participate in the communications, or if the warrant relates to communications in an enclosed place or in a means of transport, one of the persons who participate in the communications or the most precise description possible of that place or that means of transport;
b. in the application of subsection (2), the place that may be entered;
c. the term of validity of the warrant.

4. The warrant shall be issued for a period of maximum four weeks. The term of validity may be extended for a period of maximum four weeks each time.

5. An official record of the recording shall be prepared within three days.

Section 126zg

1. In the case of indications of a terrorist offence, the public prosecutor may, if urgently required by the investigation, order an investigating officer to record by means of a technical device non-public communications which are conducted by use of the services of a provider of a communication service within the meaning of section 126la.

2. The warrant shall also state in addition to the information referred to in section 126za:

a. where possible, the number or another indication by means of which the individual user of the communication service is identified as well as, insofar as is known, the name and the address of the user;
b. the term of validity of the warrant; and
c. a description of the nature of the technical device or the technical devices by means of which the communications are recorded.

3. If the warrant relates to communications which are conducted through a public telecommunication network or by use of a public telecommunication service within the meaning of the Telecommunications Act, the warrant shall – unless such is impossible or is not permitted in the interest of the criminal proceedings – be executed with the assistance of the provider of the public telecommunication network or the public telecommunication service and the warrant shall be accompanied by a request for assistance from the public prosecutor to the provider.

4. If the warrant relates to communications other than the communications referred to in subsection (3), the provider shall – unless such is impossible or is not permitted in the interest of the criminal proceedings – be given the opportunity to assist in the execution of the warrant.

5. Section 126m(5) to (9) inclusive shall apply mutatis mutandis.

Section 126zga

1. If on issuance of a warrant as referred to in section 126zg(3), the user of the number, referred to section 126zg(2)(a), is known to be located in the territory of another state, that other state shall be informed of the intention to record telecommunications and the permission of that state shall be obtained before the warrant is executed, insofar as is prescribed under a treaty and in application of that treaty.

2. If after the start of the recording of telecommunications on the basis of the warrant it becomes known that the user is located in the territory of another state, that other state shall be informed of the intention to record telecommunications and the permission of that state shall be obtained, insofar as is prescribed under a treaty and in application of that treaty.

3. The public prosecutor may also issue a warrant as referred to in section 126zg(3), if the existence of the warrant is necessary in order to be able to request another state to record telecommunications by means of a technical device or to intercept telecommunications and directly transmit them to the Netherlands for the purpose of recording by means of a technical device in the Netherlands.

Section 126zh

1. In the case of indications of a terrorist offence, the public prosecutor may, in the interest of the investigation, request the provision of data on a user of a communication service within the meaning of section 126la and the communication traffic data pertaining to that user. The request may only relate to data designated by Governmental Decree and may involve data which:

   a. was processed at the time of the request, or
   b. is processed after the time of the request.

2. Section 126n(2) to (6) inclusive shall apply mutatis mutandis.

Section 126zi

1. In the case of indications of a terrorist offence, the investigating officer may, in the interest of the investigation, request the provision of data pertaining to name, address, postal code, town, number and type of service of a user of a communication service within the meaning of section 126la. Section 126n(2) shall apply.

2. If the data, referred to in subsection (1), is not known to the provider and is necessary for the application of section 126zf or section 126zg, the public prosecutor may, in the interest of the investigation, request the provider to retrieve and provide the requested data in a manner to be determined by Governmental Decree.

3. Section 126na(3) and (4) shall apply mutatis mutandis.

Section 126zj

In order to be able to apply section 126zg or section 126zh, the public prosecutor may, subject to section 3.10(4) of the Telecommunications Act, order that the number by which the user of a communication service can be indentified be obtained by means of equipment referred to in that section. Section 126nb(2) to (4) inclusive shall apply mutatis mutandis.

Section 126zja

1. In the case of indications of a terrorist offence, the public prosecutor may, if urgently required in the interest of the investigation, request the person who may be reasonably presumed to have access to specific data which at the time of the request is stored in a computerised device or system and which may be reasonably presumed to be particularly susceptible to loss or change, to store this data and keep it available for a period of maximum ninety days. The request may not be directed to the suspect.

2. Section 126ni(2) to (5) inclusive shall apply mutatis mutandis.

Chapter Three A. Requesting Data

Section 126zk

1. In the case of indications of a terrorist offence, the investigating officer may, in the interest of the investigation, request the person, who may be reasonably considered to be the appropriate person

for that purpose and who processes data other than for personal use, to provide specific stored data or recorded identifying data of a person.

2. Section 126nc(2) to (7) inclusive shall apply mutatis mutandis.

Section 126zl

1. In the case of indications of a terrorist offence, the public prosecutor may, in the interest of the investigation, request the person, who may be reasonably presumed to have access to specific stored or recorded data, to provide this data.

2. Section 126nd(2) to (5) inclusive and (7) shall apply mutatis mutandis.

Section 126zm

1. In the case of indications of a terrorist offence, the public prosecutor may, in the interest of the investigation, determine that a request as referred to in section 126zl(1) made to the person who processes data other than for personal use, may relate to data which is only processed after the time of the request. The period to which the request relates shall be maximum four weeks and may be extended by maximum four weeks each time. The public prosecutor shall state this period in the request. Section 126nd(2) to (5) inclusive and (7) shall apply mutatis mutandis.

2. In a case as referred to in subsection (1), the public prosecutor shall determine that the execution of the request will be terminated as soon as the conditions, referred to in section 126zl(1), are no longer met. The public prosecutor shall prepare an official record of amendment, supplementation, extension or cancellation of the request.

3. If urgently required in the interest of the investigation, the public prosecutor may determine in a case as referred to in subsection (1) that the person to whom the request is directed shall provide the data immediately after processing, or each time within a specific period after processing. The public prosecutor shall require for that purpose prior written authorisation to be granted by the examining magistrate on his application.

Section 126zn

1. In the case of indications of a terrorist offence, the public prosecutor may, if urgently required in the interest of the investigation, request the person, who may be reasonably presumed to have access to data as referred to in 126nd(2, third sentence), to provide this data.

2. Section 126nd(3) to (5) inclusive and (7) and section 126nf(2) and (3) shall apply mutatis mutandis.

Section 126zo

1. A request as referred to in section 126zk(1), 126zl(1) or 126zm(1) may be directed to the provider of a communication service within the meaning of section 126la, insofar as the request relates to data other than the data which may be requested under application of sections 126zh and 126zi. The request may not relate to data stored in the computerised device or system of the provider and which is not intended for this provider or does not originate from this provider.

2. If urgently required in the interest of the investigation, the public prosecutor may request the provider, which may be reasonably presumed to have access to data, as referred to in subsection (1, last sentence), to provide this data.

3. Section 126nd(3) to (5) inclusive and (7) and section 126nf(2) and (3) shall apply mutatis mutandis.

Section 126zp

1. The public prosecutor may, if required in the interest of the investigation, in or immediately after the application of section 126zl(1), 126zm(1) or (3), or 126zn(1), order the person who may be reasonably presumed to have knowledge of the manner of encryption of the data referred to in

these sections to assist in decrypting the data by either undoing the encryption, or providing this knowledge.

2. Section 126nh(2) shall apply mutatis mutandis.

Chapter Four. Examination of Objects and Search of Means of Transport and Clothing

Section 126zq

1. In the case of indications of a terrorist offence, the investigating officer shall have the power, on the basis of a warrant issued for that purpose by the public prosecutor, to examine objects and to record them and to take samples thereof in the interest of the investigation. He shall also be authorised to open packaging or containers for that purpose.

2. If the examination, the recording or the sampling cannot be carried out at the scene, the investigating officer shall have the power to take the objects with him for a short period for that purpose and shall issue, as far as possible, a written receipt for said objects.

3. The warrant may be issued verbally. It shall be issued for a period of maximum twelve hours, for an area to be specified therein. The term of validity may be extended by maximum twelve hours each time.

4. In the case of security risk areas designated by Governmental Decree, the power referred to in this section may be exercised in accordance with the conditions set by Governmental Decree without a warrant from the public prosecutor being required.

Section 126zr

1. In the case of indications of a terrorist offence, the investigating officer shall have the power, on the basis of a warrant issued for that purpose by the public prosecutor, to search means of transport in the interest of the investigation.

2. The investigating officer shall also be authorised on the basis of said warrant to:

a. search the cargo of means of transport;
b. request the driver of a means of transport to provide inspection of the cargo documents prescribed by law;
c. request the driver of a vehicle or the master of a vessel to stop his means of transport and to take it to a location designated by him.

3. Section 126zq(3) and (4) shall apply mutatis mutandis.

Section 126zs

1. In the case of indications of a terrorist offence, the investigating officer shall have the power, on the basis of a warrant issued for that purpose by the public prosecutor, to search the clothing of persons in the interest of the investigation.

2. The investigating officer shall also be authorised on the basis of said warrant to use detection equipment or other devices.

3. Section 126zq(3) and (4) shall apply mutatis mutandis.

4. Further rules pertaining to the manner of conduct of the search referred to in subsection (1) shall be set by or pursuant to Governmental Decree.

Part VC. Civilian Assistance in the Investigation of Terrorist Offences

Section 126zt

1. In the case of indications of a terrorist offence, the investigating officer shall have the power, on the basis of a warrant issued for that purpose by the public prosecutor, to conclude with a person who is not an investigating officer an agreement to the effect that this person will provide support in the investigation for the duration of the warrant by:

   a. purchasing goods from or providing services to a person or purchasing data which is stored, processed or transferred through a public telecommunication network by means of a computerised device or system from a person;
   b. systematically gathering information on a person.

2. Sections 126za and 126zd(5) shall apply mutatis mutandis, and section 126ij(3), insofar as subsection (1)(a) applies. Subsection (1)(a) shall be applied only if a warrant, as referred to in section 126zd(1)(b), cannot be issued.

3. The agreement shall be in writing and shall state the rights and obligations of the person who provides support in the investigation, the manner in which the agreement should be executed and the term of validity of the agreement. The agreement may be amended, supplemented, extended or terminated in writing.

Section 126zu

1. In the case of indications of a terrorist offence, the public prosecutor may, if urgently required in the interest of the investigation and a warrant as referred to in section 126ze(1) cannot be issued, conclude with a person who is not an investigating officer an agreement to the effect that this person will provide support in the investigation by participating or rendering assistance to a group of persons in regard of which there are indications that a terrorist offence is being planned or committed by that group.

2. Sections 126zt(3) and 126w(3), (4) and (6) shall apply mutatis mutandis.

Part VD. General Rules pertaining to the Powers in Parts IVA to VC Inclusive

Chapter One. Additions to the Case Documents

Section 126aa

1. The public prosecutor shall add to the case documents the official records and other objects from which information can be derived, which have been obtained through the exercise of one of the powers referred to in Parts IVa to Vc inclusive, or through the application of section 126ff, insofar as said records or objects are relevant to the investigation in the case.

2. Insofar as the official records or other objects contain statements made by or to a person who could assert privilege under section 218 if he were to be asked about the content of these statements in the capacity of a witness, these official records and other objects shall be destroyed. Rules pertaining thereto shall be set by Governmental Decree. Insofar as the official records or other objects contain statements other than the statements referred to in the first sentence made by or to a person referred to in that sentence, they shall only be added to the case documents with the prior authorisation of the examining magistrate.

3. Official records and other objects shall be added to the case documents as soon as the interest of the investigation permits.

4. If official records of the exercise of the powers, referred to in Parts IVa to Vc inclusive, or of the application of section 126ff, are not added to the case documents, the latter documents shall make reference to the use of this power.

5. The suspect or his defence counsel may apply in writing to the public prosecutor for the addition of official records or other objects specified by him to the case documents.

Chapter Two. Notification of the Person Concerned

Section 126bb

1. The public prosecutor shall notify the person concerned in writing of the exercise of the powers, referred to in Parts IVa to Vc inclusive, as soon as the interest of the investigation permits. The notice shall not be given if it is not reasonably possible to do so.

2. The following persons shall be deemed to be a person concerned within the meaning of subsection (1):

a. the person against whom one of the powers of Parts IVa, V, Va, Vb or Vc is exercised;
b. the user of telecommunications or the technical devices by means of which telecommunications are conducted, referred to in section 126m(3)(c), section 126t(3)(c), and section 126zg(2)(a);
c. the party entitled to use an enclosed place as referred to in sections 126g(2), 126k, 126l(2), 126o(2), 126r, 126s(2), and 126zd(3).

3. If the person concerned is the suspect, the notice shall not be required to be given if he learns of the exercise of the power under section 126aa(1) or (4).

4. Subsection (1) shall not apply to the exercise of the power referred to in sections 126na, 126ua, 126nc, 126uc, 126zi, 126zk and 126zq to 126zs inclusive.

5. The person to whom a request as referred to in sections 126nc to 126ni inclusive, 126uc to 126ui inclusive and 126zja to 126zp inclusive is directed, shall, in the interest of the investigation, maintain secrecy in regard of all information he has learned of by virtue of the request.

Chapter Three. Retention and Destruction of Official Records and Other Objects and Use of Data for Another Purpose

Section 126cc

1. The public prosecutor shall retain the official records and other objects from which data can be derived, which have been obtained through surveillance by means of a technical device which records signals, the recording of confidential communications, the recording of telecommunications or the requesting of data on a user and the telecommunication traffic data pertaining to that user, insofar as said records or objects have not been added to the case file, and shall keep them available for the investigation until the conclusion of the case.

2. Upon expiry of two months after the conclusion of the case and after the last notice, referred to in section 126bb, has been given, the public prosecutor shall instruct the destruction of the official records and other objects referred to in subsection (1). An official record of the destruction shall be prepared.

3. In the application of the preceding subsection, a preliminary investigation which cannot reasonably be expected to lead to a case shall be considered as equivalent to a case that has been concluded.

4. Rules pertaining to the manner in which official records and other objects, referred to in subsection (1), shall be retained and destroyed shall be set by Governmental Decree.

Section 126dd

1. The public prosecutor may determine that data obtained through surveillances by means of a technical device which records signals, the recording of confidential communications, the recording of telecommunications or the requesting of data on a user and the telecommunication traffic data pertaining to that user may be used for:

a. a criminal investigation other than the one for which the power was exercised;
b. processing with a view to obtaining information on and insight into the involvement of persons in serious offences and acts as referred to in section 10(1)(a) and (b) of the Police Data Act.

2. In derogation of section 126cc(2), if subsection (1)(a) is applied, the data shall not have to be destroyed until the other investigation has been concluded. If subsection (1)(b) is applied, the data shall not have to be destroyed until such time as storage of the data is no longer permitted under the Police Data Act.

Chapter Four. Technical Devices

Section 126ee

Rules pertaining to:

a. the storage, issuance and installation of the technical devices, referred to in sections 126g(3), 126l(1), 126o(3), 126s(1), 126zd(1), and 126zf(1), as well as the technical devices referred to in sections 126m(1), 126t(1), and 126zg(1), insofar as the warrant, referred to in section 126m(3) or (4), or section 126t(3) or (4), and section 126zg(3) or (4), is executed without the assistance of the provider concerned;
b. the technical requirements to be met by the devices with a view to, inter alia, the integrity of the observations recorded;
c. monitoring compliance with the requirements, referred to in (b).
d. the agencies responsible for the technical processing of the recorded signals;
e. the manner in which the processing, referred to in (d), is carried out with a view to the ex post control, or the safeguards attached to processing and the possibilities for a counter-inspection;

shall be set by Governmental Decree.

Chapter Five. Proscription of Controlled Delivery

Section 126ff

1. The investigating officer who is acting in the execution of a warrant as defined in Parts IVa to V inclusive and Vb, shall be obliged to exercise the powers of seizure conferred on him by law, if through the execution of the warrant he comes to know of the location of objects whose presence or possession is prohibited by law due to their harmfulness to public health or their danger to safety. The seizure may be postponed only in the interest of the investigation with a view to carrying it out at a later date.

2. The obligation of seizure, referred to in subsection (1), shall not apply if the public prosecutor orders otherwise when a compelling investigative interest is at stake.

3. A warrant as defined in subsection (2) shall be in writing and shall state:

a. the objects to which it relates,
b. the compelling investigative interest and
c. the time at which or the period during which the obligation of seizure does not apply.

4. Subsections (1),(2) and (3) shall apply mutatis mutandis if the investigating officer or the public prosecutor through the exercise of a power as defined in Part Va or Part Vc comes to know of the location of objects as referred to in the first sentence of subsection (1).

Part VE. Exploratory Investigation

Section 126gg

1. If facts or circumstances give rise to indications that associations of persons are planning or committing serious offences as defined in section 67(1), which in view of their nature or the relation to other serious offences that are being planned or committed by those associations of persons constitute a serious breach of law and order, the public prosecutor may order investigating officers to conduct inquiries into said associations with the aim of preparing for an investigation.

2. If necessary for the conduct of the investigation, the public prosecutor may decide that in the context of the investigation section 9(1) of the Personal Data Protection Act [*Wet Bescherming Persoonsdata*] will not apply to public registers established by law, to be further specified therein.

Section 126hh

1. If inquiries, as referred to in section 126gg, are conducted with the aim of preparing for an investigation into terrorist offences, the public prosecutor may, with prior written authorisation to be granted by the examining magistrate on his application, request in writing, in the interest of the investigation, from the person who may be reasonably presumed to have access to a computerised data file, the provision of this file or parts thereof, in order to have the data contained therein processed. The persons, referred to in section 218, shall not be obliged to comply with the request, insofar as the disclosure would violate their duty of secrecy.

2. The processing may include mutual comparison or the processing of data from the file provided in combination with each other, data from police registers and data from other files. Restrictions imposed by or pursuant to the Police Data Act shall not apply. The public prosecutor shall determine the processing method.

3. Processing shall be carried out in such a way as to protect the personal privacy of persons as much as possible.

4. The public prosecutor shall prepare an official record on the processing, which shall state:

a. a description of the data which has been processed;
b. a description of the manner in which the processing was carried out;
c. the facts and circumstances which show that the conditions, referred to in subsection (1), have been met.

5. Once the processing is concluded, the public prosecutor shall ensure that:

a. only such data which is the result of the processing and which is relevant to the investigation is further processed for that investigation;
b. data which is the result of the processing and which is not relevant to the investigation, and data which was obtained under subsection (1) and is not part of the result of the processing, is destroyed.

6. Data, as referred to in subsection (5)(a), may be processed for the investigation of terrorist offences.

7. In derogation of subsection (5)(b), the public prosecutor may determine that the data referred to in that section shall not be destroyed insofar as and as long as the data is required for the ex-post control of the processing. If the data is not destroyed, it shall be solely processed for the ex-post control of the processing.

Section 126ii

1. If inquiries as referred to in section 126gg are conducted with the aim of preparing for an investigation of terrorist offences, the public prosecutor may, in the interest of the investigation, request the person, who may be reasonably considered to be the appropriate person for that purpose and who processes data other than for personal use, to provide specific stored or recorded identifying data of a person. Section 126nc(2) to (5) inclusive and (7) shall apply mutatis mutandis.

2. If inquiries are conducted as referred to in subsection (1), the public prosecutor may, in the interest of the investigation, request a provider of a public telecommunication network or a public telecommunication service to provide data pertaining to name, address, postal code, town, number and type of service of a user of telecommunications. Sections 126n(2) and (4) and 126na(4) shall apply mutatis mutandis. Section 126bb shall not apply.

3. The public prosecutor shall prepare an official record on the provision of identifying data or data as referred to in subsection (2), which shall state:

a. the data provided;
b. the reason why the data is being requested in the interest of the investigation.

Part VI. Definition of Some of the Terms and Expressions used in this Code

Section 127

"Investigating officers" shall be understood to mean all persons charged with the detection of a criminal offence.

Section 128

[1.] "Being caught red-handed" shall mean being caught during or immediately after the commission of a criminal offence.

[2.] A case of being caught red-handed shall only be deemed to exist shortly after being caught committing the offence.

Section 129

Whenever reference is made to serious offences in general and any serious offence in particular, this shall include complicity, attempt and preparation to commit that serious offence, insofar as the contrary does not follow from any provision.

Section 130

Whenever a period of time is expressed in days, this shall be understood to include days off, insofar as the contrary does not follow from any provision.

Section 131

"Parents of a minor" shall be understood to mean the parents who exercise parental authority over the minor.

Section 131a

1. Whenever in this Code authority is granted to hear, examine or question persons, this shall also include, except for cases to be designated by Governmental Decree, hearing, examining or questioning by way of video conferencing, whereby there is a direct video and audio link between the persons concerned.

2. The presiding judge of the court, the judge, the examining magistrate or civil servant, who is in charge of the hearing, shall decide, taking the interest of the investigation into account, whether video conferencing will be used. Before a decision is taken, the person to be heard or his defence counsel and, as the occasion arises, the public prosecutor, shall be given the opportunity to give their opinion on the use of video conferencing. Further rules pertaining to video conferencing may be set by Governmental Decree.

3. There shall be no separate legal remedy available against the decision to use video conferencing.

4. Rules pertaining to:

a. the requirements that the technology of video conferencing must meet with a view to, inter alia, the integrity of the observations recorded;
b. the verification of compliance with the requirements referred to in (a).

shall be set by or pursuant to Governmental Decree.

Section 132

"Preliminary investigation" shall be understood to mean the investigation which precedes the court hearing.

Section 132a

"Detection" shall be understood to mean the investigation in connection with criminal offences led by the public prosecutor with the aim of taking decisions on the institution of proceedings under criminal law.

Section 133

"Pre-trial detention" shall be understood to mean the deprivation of liberty under any detention order, warrant of arrest or remand detention order.

Section 134

1. "Seizure of any object" shall be understood to mean the taking or holding possession of that object for the purpose of the criminal proceedings.

2. The seizure shall be terminated on account of the fact that either

a. the seized object is returned, or its value is paid out;
b. the Public Prosecution Service gives the order as referred to in section 116(2)(*c*);
c. the authorisation as referred to in section 117 has been granted and the object has not been sold for a profit;
d. the custody under section 118(3) has been terminated due to the lapse of time and the object has not been sold for a profit.

3. "Return of seized objects" shall include the carrying out of the formalities required in connection with termination of the seizure.

Section 135

When answering the question whether, or not, a case has already been concluded, the legal effect attached to section 255 upon the emergence of new suspicions shall not be taken into consideration.

Section 136

1. "Month" shall be understood to mean a period of thirty days and "day" a period of twenty-four hours, except where the General Extension of Time Limits Act [*Algemene Termijnenwet*] applies.

2. "Public holidays" shall be understood to mean the holidays referred to as such in section 3 of the General Extension of Time Limits Act and the days considered as equivalent thereto by or pursuant to that section.

Section 136a

1. The following terms shall be understood to mean:

"Master": any officer in command of a Dutch ship or seagoing fishing boat or any person who deputises for this officer;

"Persons on board": any other person on board a Dutch ship or seagoing fishing boat; any person who temporarily leaves the vessel during the journey outside the Kingdom in Europe shall still be deemed to be a person on board;

" Crew": any person on board a Dutch ship or seagoing fishing boat who is either a ship's officer or seaman;

"Captain": any officer in command of a Dutch civil aircraft or any person who deputises for this officer.

2. The following terms shall be understood to mean:

"Master": the person in command on an installation at sea designated by Us;

" Crew": all persons on board such an installation.

3. That which is stipulated in the preceding subsections shall not apply in cases where any provision evidently has a different meaning.

4. "Commander" shall be understood to mean the commanding officer of a Dutch war ship or a Dutch military aircraft.

Section 136b

1. "Dutch ship" shall be understood to mean that which is defined in section 86 of the Criminal Code.

2. "Installation at sea" shall be understood to mean any installation which is erected, outside the area of jurisdiction of a District Court, on the floor of the territorial sea or on that part of the North Sea whose boundaries coincide with those of the part of the continental shelf which belongs to the Netherlands.

Section 136c

"Threatened witness" shall be understood to mean a witness whose identity will not be disclosed when he is questioned by order of the court under section 226a.

Section 136d

"Protected witness" shall be understood to mean a witness deemed to be such by the court under section 226m.

Section 137

The right to inspect case documents shall include inspection of documents recorded and stored on data carriers.

Section 138

The following terms shall be understood to mean:

"Decisions given in chambers": decisions which are not given at the court session;
"Judicial decisions": both the decisions given in chambers and the judgments;
"Judgments": the decisions given at the court session;
"Final judgments": the decisions pertaining to suspension of prosecution or to declaration of lack of jurisdiction, a bar to the prosecution, inadmissibility or invalidity of the summons and those decisions given on the case at the end of the complete court hearing.

Section 138a

"DNA testing" shall be understood to mean the testing of cellular material which is aimed solely at comparing DNA profiles, establishing externally observable personal characteristics of the unknown suspect or the unknown victim or establishing consanguinity.

Section 138b

“An abbreviated judgment” shall be understood to mean a judgment which does not include the means of evidence or a statement thereof.

Section 138c

“An abbreviated record of the court session” shall be understood to mean a record which exclusively contains the decisions not included in the judgment, and the notes whose inclusion is required by law other than under section 326(1) or (2).

Section 138d

“Terrorist offence” shall be understood to mean that which is defined in section 83 of the Criminal Code.

Book Two. Criminal Procedure in the First Instance

Part I. The Criminal Investigation

Chapter One. General Provisions

Section 139 [Repealed as of 12-04-1967]

Section 140

The Board of Procurators General shall ensure proper detection of the criminal offences tried by the District Courts and the Courts of Appeal. For that purpose, it shall give the necessary instructions to the heads of the Offices of the Public Prosecution Service.

Section 140a

The Board of Procurators General shall agree in advance and in writing to a warrant as referred to in section 126ff, or an agreement as referred to in Chapter Two of Part Va of Book One and as referred to in section 126zu, and an amendment or an extension thereof.

Section 141

The following persons shall be charged with the detection of criminal offences:

a. the public prosecutors;
b. the police officers referred to in section 2(a) of the Police Act 2012, and the police officers referred to in section 2(c) and (d) of that Act, insofar as they have been appointed for the performance of police duties;
c. the military personnel of the Royal Netherlands Marechaussee designated by **Our Minister of Security and Justice** in agreement with Our Minister of Defence;
d. the investigating officers of the special investigation services referred to in section 2 of the Act on Special investigation Services.

Section 142

1. The following persons shall be charged as special investigating officer with the detection of criminal offences:

a. the persons to whom a deed of investigative powers has been granted by **Our Minister of Security and Justice**, or the Board of Procurators General;
b. the adult persons who are in the categories or are part of the units designated by **Our Minister of Security and Justice**;
c. the persons who have been charged under special acts with the detection of the criminal offences referred to in these acts, with the exception of the investigating officers of the special investigation services as referred to in section 2 of the Act on Special investigation Services, or who have been charged under by-laws with supervising compliance therewith, insofar as such

compliance involves said offences and the persons have been sworn into office.

2. The investigative powers shall extend to include the criminal offences indicated in the deed or the appointment; the deed or the appointment may stipulate that investigative powers cover all criminal offences.

3. **Our Minister of Security and Justice** may determine that in respect of categories or units of the special investigating officers referred to in subsection (1)(*c*) to be designated by him, the investigative powers also extend to include other criminal offences; subsection (2) shall apply mutatis mutandis.

4. Rules pertaining to the granting of the deed and the making of the appointment, the territory of application of the investigative powers, the swearing into office and the training of the special investigating officers, the supervision to which they are subjected and the manner in which **Our Minister of Security and Justice** may terminate the investigative powers of individual persons shall be set by Governmental Decree. In addition, rules pertaining to the requirements of competence and reliability, which they must meet, may be set.

5. Notification of a decree as referred to in subsection (1)(*b*), or (3) shall be given by its publication in the Government Gazette [*Staatscourant*].

Section 143 [Repealed as of 01-01-1957]

Section 144 [Repealed as of 01-01-1957]

Section 145 [Repealed as of 01-04-1994]

Section 146

1. The powers of civil servants charged with the detection of criminal offences shall be limited to the territory for which they have been appointed or where they fulfil their duties outside that territory in accordance with the provisions of **the Police Act 2012**.

2. In the performance of their official acts they may request the assistance of the police and the Royal Netherlands Marechaussee.

Section 146a

At the place where they have investigative powers and within the limits of these investigative powers, the following persons shall act as assistant public prosecutor:

a. **the police officers designated by Our Minister of Security and Justice who have been appointed for the performance of police duties, and the special police officers;**
b. **the officers of the Royal Netherlands Marechaussee;**
c. **the non-commissioned officers of the Royal Netherlands Marechaussee designated by Our Minister of Security and Justice in agreement with Our Minister of Defence;**
d. **the investigating officers of the special investigation services referred to in section 2 of the Act on Special investigation Services and Special Investigating Officers [*Wet op de Bijzondere Opsporingsdiensten en Buitengewone Opsporingsambtenaren*] designated by Our Minister of Security and Justice.**

Section 147

1. The Public Prosecution Service may, in the interest of the investigation, request in criminal cases the assistance of persons and bodies working in the field of probation or in a similar field, and give said persons or bodies the necessary assignments in accordance with rules to be set by Governmental Decree.

2. The persons or bodies charged with carrying out the assignments shall establish the identity of the suspect in the manner referred to in section 27a(1, first sentence) and (2), unless the assignments

are carried out in an institution.

Chapter Two. The Public Prosecutors

Section 148

[1.] The public prosecutor shall be charged with the detection of criminal offences which are tried by the District Court in the district in which he is appointed, and with the detection of the criminal offences within the area of jurisdiction of that District Court, which are tried by other District Courts.

[2.] To that end, he shall give orders to the other persons charged with the detection.

[3.] In the event that he carries out the detection personally, he shall report his findings in an official record prepared under oath of office; in addition, the sources of knowledge must also be explicitly stated as much as possible.

Section 148a

1. The public prosecutor at the National Office of the Public Prosecution Service shall be charged with the detection of the criminal offences referred to in section 9(2).

2. Section 148(2) and (3) shall apply.

Section 148b

1. The public prosecutor at the National Office of the Public Prosecution Service for Financial, Economic and Environmental Offences shall be charged with the detection of criminal offences as referred to in section 9(3).

2. Section 148(2) and (3) shall apply.

Section 148c

The public prosecutor shall render the Advocate General, at his request, the necessary assistance in the criminal investigation in cases in appeal before the Court of Appeal.

Section 149

When the public prosecutor has been informed of a criminal offence which he is responsible for prosecuting, he shall institute the necessary criminal investigation.

Section 149a

1. The public prosecutor shall be responsible for the compilation of the case documents during the criminal investigation.

2. The case documents shall include all documents which could reasonably be relevant to the decisions to be taken by the court at the court session, subject to the provisions of section 149b.

3. Rules pertaining to the manner of compilation and organisation of the documents shall be set by Governmental Decree.

Section 149b

1. The public prosecutor may exclude certain documents or parts thereof from the case documents, if he considers such necessary with a view to the interests referred to in section 187d(1). He shall require written authorisation for that purpose, to be granted by the examining magistrate on his application. The application and the decision shall be added to

the case documents.

2. **The public prosecutor shall prepare an official record on the application of subsection (1) and, insofar as the interests referred to in section 187d(1) permit, on the reasons for said exclusion. This official record shall be added to the case documents.**

3. **The public prosecutor shall retain the documents referred to in subsection (1) until the case has been concluded.**

Section 150

1. The public prosecutor may appoint ex officio or on application of the suspect, in the interest of the investigation, an expert witness who is registered as expert witness in the register referred to in section 51k.

2. The authority, referred to in subsection (1), shall also be conferred on the assistant public prosecutor insofar as this concerns the crime scene examination, with the exception of the cases in which the law prescribes otherwise. Further rules pertaining to the nature of the crime scene examination which may be ordered, may be set by or pursuant to Governmental Decree.

Section 150a

1. The public prosecutor shall notify the suspect in writing of the assignment given to the expert witness and of the time and place of the examination, if the interest of the investigation permits. The suspect may request that an additional examination be conducted or instructions be given in regard of the examination to be conducted.

2. Notification of the results of the examination shall also be given to the suspect. The public prosecutor shall notify the suspect of the assignment given and its results as soon as the interest of the investigation permits the notification referred to in subsection (1).

3. In response to these results, the suspect may apply for a counter-examination within two weeks after notification thereof, stating for which reasons he considers the conduct of a counter-examination to be appropriate. He shall also indicate which expert witness should conduct the examination which must be equivalent to the first examination.

4. Notification of the results of an examination conducted on application of the suspect shall not be postponed.

Section 150b

1. If the public prosecutor refuses an application of the suspect for the appointment of an expert witness or the conduct of a counter-examination, supplementary examination or an examination according to specific instructions by a third party, he shall give the suspect reasoned notification thereof.

2. In response to this refusal, the suspect may apply to the examining magistrate for the appointment of an expert witness or expansion of the examination within two weeks after the notification referred to in subsection (1).

3. The examining magistrate shall decide as quickly as possible on that application and shall give the suspect and the public prosecutor notification thereof.

Section 150c

1. If the public prosecutor under section 150a(3), or the examining magistrate under 150b(3), orders a counter-examination, he shall give an expert witness an assignment for that purpose. He shall give the suspect written notification thereof.

2. The expert witness, who conducts the counter-examination, shall be enabled to conduct said

examination; he shall be given for that purpose access to the investigative material and the relevant data from the first examination.

3. Further rules pertaining to the conduct of the examination referred to in subsection (1) may be set by or pursuant to Governmental Decree.

Section 151

1. The public prosecutor or the assistant public prosecutor shall be authorised to enter, together with the persons designated by him, any place in order to inspect any situation on scene or any object.

2. The public prosecutor shall, insofar as the interest of the investigation permits, timely notify the suspect and his defence counsel in writing of the planned inspection. In addition, the assistant public prosecutor shall timely notify the public prosecutor of the planned inspection.

3. The public prosecutor or the assistant public prosecutor shall, insofar as the interest of the investigation permits, let the suspect and his defence counsel attend the entire or part of the inspection; they may request to be permitted to give instructions or provide information or to have certain comments included in the official record.

Section 151a

1. The public prosecutor may instruct, ex officio or on application of the suspect or his defence counsel, a third party to conduct DNA testing aimed at comparing DNA profiles in the interest of the investigation. He may request the suspect or a third party to provide cellular material for DNA testing. Except in the case of application of section 151lb or of a missing person as referred to in the last sentence, cellular material may only be taken with the written consent of the suspect or the third party. Cellular material shall be taken from the suspect only after one or more of the suspect's fingerprints have been taken and processed in accordance with this Code and his identity has been established in the manner referred to in section 27a(1, first sentence) and (2). A request for the provision of cellular material may be made to a group of fifteen third parties or more only with written authorisation granted by the examining magistrate on application of the public prosecutor. In the event that the third party is missing as a result of a serious offence, DNA testing may be conducted on cellular material on objects seized from him or on cellular material obtained in another way.

2. The public prosecutor shall appoint an expert witness attached to one of the laboratories to be designated by Governmental Decree, and give him the assignment to conduct DNA testing. The expert witness shall prepare a reasoned report and submit it to the public prosecutor.

3. The powers, referred to in subsection (1, first sentence) and (2), shall also be conferred on the assistant public prosecutor if the DNA testing is conducted on cellular material of an unknown suspect. The powers shall be limited to the serious offences to be designated by Governmental Decree.

4. If insufficient cellular material is available for second opinion testing as referred to in subsection (6), the public prosecutor shall, if only one suspect is known, give the suspect the opportunity to designate an expert witness, who is attached to one of the designated laboratories, for the testing to be conducted. Subsection (6) shall not apply.

5. In the event that the testing has been conducted on cellular material taken, the public prosecutor shall notify in writing the results of the testing to the person who has been subjected to the testing as soon as possible. If the testing has been conducted on other cellular material, he shall notify the suspect, if he is known, in writing of the results of the testing as soon as the interest of the investigation permits and, except for the case referred to in subsection (4), shall bring the provisions of subsections (6) and (7) to his attention.

6. Within fourteen days after the suspect has been notified in writing of the results of the DNA testing, he may request the public prosecutor to appoint a different expert witness designated by him, who is attached to one of the laboratories to be designated by Governmental Decree, and to give him

the assignment to conduct DNA testing. The public prosecutor shall grant the request if there is sufficient cellular material available for that purpose. The expert witness shall prepare a reasoned report and submit it to the public prosecutor. The first sentence of subsection (5) shall apply mutatis mutandis.

7. In the case of application of subsection (6), a part of the costs of the testing shall be charged to the suspect at an amount to be set by Governmental Decree, if this testing confirms the testing conducted on the instructions of the public prosecutor.

8. DNA profiles shall be processed only for the prevention, detection, prosecution and trying of criminal offences and establishing the identity of a body. Rules pertaining to the processing of DNA profiles and cellular material shall be set by or pursuant to Governmental Decree.

9. The provisions of Chapter Five of the Third Part of Book Two shall apply mutatis mutandis, except insofar as these provisions have been derogated from in subsections (1) to (8) inclusive.

10. In the application of section 232, subsection (6) shall not apply.

11. Further rules pertaining to the manner of implementation of this section shall be set by or pursuant to Governmental Decree. The proposal for a Governmental Decree to be enacted pursuant to the first sentence shall not be made any earlier than four weeks after the draft Governmental Decree has been submitted to both chambers of the States General.

Section 151b

1. The public prosecutor may order in the interest of the investigation for the purpose of DNA testing as referred to in section 151a(1) that cellular material be taken from the suspect of a serious offence as defined in section 67(1), against whom there are serious suspicions, if he refuses to give his written consent. Section 151a(2) and (4) to (10) inclusive shall apply mutatis mutandis.

2. The public prosecutor shall not issue the order until after the suspect has been given the opportunity to be heard. The suspect may have the legal representation of a defence counsel when he is heard.

3. The order shall be executed by taking a cheek swab. If, for special medical reasons or on account of the suspect's resistance, taking a cheek swab is undesirable or does not provide suitable cellular material, a blood or hair root sample shall be taken, if necessary with the assistance of the police. The cellular material shall be taken by a medical doctor or a nurse. In cases to be designated by Governmental Decree, the cellular material may be taken by a person who meets requirements to be set by or pursuant to Governmental Decree.

4. The order or its execution or further execution may be omitted if the public prosecutor is of the opinion that there are compelling reasons to conduct DNA testing on other cellular material, or the suspect gives written consent to the taking of cellular material. In the case of compelling reasons, the DNA testing may be carried out on cellular material on objects seized from the suspect, or on cellular material obtained in another way.

5. Further rules pertaining to the manner of implementation of this section shall be set by or pursuant to Governmental Decree. The proposal for a Governmental Decree to be enacted pursuant to the first sentence shall not be made any earlier than four weeks after the draft Governmental Decree has been submitted to both chambers of the States General.

Section 151c [Repealed as of 01-04-2012]

Section 151d

1. The public prosecutor may, in the interest of the investigation, order DNA testing aimed at establishing externally observable personal characteristics of the unknown suspect or the unknown victim to be conducted. Section 151a(2) shall apply mutatis mutandis.

2. The DNA testing may only be aimed at establishing the sex, race or other externally observable personal characteristics designated by Governmental Decree.

3. The proposal for a Governmental Decree to be enacted pursuant to subsection (2) shall not be made any earlier than four weeks after the draft Governmental Decree has been submitted to both chambers of the States General.

4. The DNA testing may be ordered only in the case of suspicion of a serious offence as defined in section 67(1).

5. Further rules pertaining to the manner of conduct of the DNA testing may be set by Governmental Decree.

Section 151da

1. In derogation of section 21(4) of the Personal Data Protection Act, the public prosecutor may, in the interest of the investigation, order DNA testing aimed at establishing consanguinity to be conducted. In the event that DNA testing is conducted with the help of DNA profiles, which have been processed in accordance with the Personal Data Protection Act and the DNA Testing (on Convicted Offenders) Act [*Wet DNA-Onderzoek bij Veroordeelden*], the order may only be given with written authorisation of the examining magistrate granted on application of the public prosecutor. Section 151a(2) shall apply mutatis mutandis.

2. Cellular material which has been taken under this Code, the Personal Data Protection Act or the DNA Testing (on Convicted Offenders) Act for the establishment and processing of a DNA profile, may be used for establishing consanguinity. Except for the case referred to in the following sentence, cellular material of a third party may only be taken and used to establish consanguinity with his written consent. In the case of a third party who is a minor and is suspected of being the object of a serious offence as defined in section 197a, 242, 243, 244, 245, 246, 247, 248, 248a, 248b, 249, 256, 273f, 278, 287, 289, 290 or 291 of the Criminal Code, cellular material may, in the interest of the investigation, be taken from the third party and used to establish consanguinity by order of the public prosecutor with written authorisation granted by the examining magistrate.

3. The DNA testing may only be conducted in the case of suspicion of a serious offence which carries a statutory term of imprisonment of at least eight years and any of the serious offences defined in sections 109, 110, 141(2)(1°), 181(2°), 182, 247, 248a, 248b, 249, 281(1)(1°), 290, 300(2) and (3), and 301(2) of the Criminal Code. If DNA testing as referred to in section 151a(1) results in the establishment of consanguinity, the public prosecutor may use these results in the criminal investigation.

4. Further rules pertaining to the manner of conduct of the DNA testing may be set by Governmental Decree.

Section 151e

1. In the case of a serious offence in which there are indications that a victim may have been infected with a serious disease as designated by Governmental Decree, the public prosecutor may request the suspect to provide cellular material for testing aimed at establishing whether he is a carrier of such a disease. The public prosecutor may also make this request to a person other than the suspect, if such indications show that infection as a result of a serious offence was transmitted by cellular material of that other person to a victim. The suspect and the third party to whom the public prosecutor has made such request may only consent in writing to the request to cooperate with the taking of cellular material.

2. If the person to whom the request is made refuses to cooperate, the public prosecutor may, in the interest of the investigation, order that cellular material be taken from him for the purpose of testing as referred to in subsection (1). The order may only be given with written authorisation granted by the examining magistrate on application of the public prosecutor.

3. The testing, referred to in subsection (1) or (2), shall be conducted by a quantity of blood being

taken by a medical doctor or nurse, unless it is likely that taking blood is undesirable for special medical reasons. In that case other cellular material, which is suitable for testing, shall be taken.

4. A medical doctor or a nurse shall take as much cellular material as is necessary for the testing referred to in subsection (1) or (2). If necessary, the order, referred to in subsection (2), shall be carried out with the assistance of the police.

5. The public prosecutor may instruct that testing, as referred to in subsection (1), be carried out on cellular material found in connection with a serious offence as referred to in subsection (1). The public prosecutor may, if he is of the opinion that there are compelling reasons to do so and there is a known suspect, instruct testing to be carried out on material other than the material taken under subsection (1) or (2) or referred to in the preceding sentence. These instructions may not be given in the case of a known person who is not suspected of a serious offence referred to in subsection (1).

6. Further rules pertaining to the implementation of this section shall be given by or pursuant to Governmental Decree.

Section 151f

1. The testing, as referred to in section 151e(1), (2) and (5), shall be assigned by the public prosecutor to an expert witness who is attached to a laboratory designated under subsection (5). The expert witness shall prepare a reasoned report of his investigation and submit it to the public prosecutor as soon as possible.

2. The public prosecutor shall notify the person whose cellular material has been tested and the victim as soon as possible of the results of the testing referred to in section 151e(1). He shall also notify the results of the testing, referred to in section 151e(5), to the victim, and to the suspect whose identity is known. He shall only give both notifications to the person concerned who has requested such. He shall also inform the suspect of the possibility of a second opinion.

3. Within fourteen days after the suspect has been notified of the results, he may apply to the public prosecutor to appoint a different expert witness designated by him, who is attached to one of the laboratories to be designated by Governmental Decree, and to give him the assignment to conduct this testing. The expert witness shall prepare a reasoned report and submit it to the public prosecutor. The public prosecutor shall notify the results to the suspect and the victim who has requested such.

4. In the case of application of subsection (3), a part of the costs of the second opinion testing shall be charged to the suspect at an amount to be set by Governmental Decree if this testing confirms the testing conducted on the instructions of the public prosecutor.

5. Further rules pertaining to the implementation of this section shall be given by or pursuant to Governmental Decree.

Section 151g

1. The victim of a serious offence, as referred to in section 151e(1), may apply to the public prosecutor to order the testing referred to in section 151e(1), section 151h(1) and section 151i(1).

2. The public prosecutor shall notify his reasoned decision on the application within twelve hours after he has received the application.

3. If the public prosecutor refuses to grant the application, the victim may submit the application to the examining magistrate.

Section 151h

1. If the results of the testing, as referred to in section 151e(1), are negative, the public prosecutor may, in the interest of the investigation, request the suspect to again provide cellular material after

a period of three to six months after the first test. If the suspect refuses to cooperate, the order to cooperate may be given only with written authorisation of the examining magistrate granted on application of the public prosecutor.

2. If the suspect refuses to cooperate with this testing, the public prosecutor may order his arrest. Section 55(2) and section 151e(3) and (4) shall apply mutatis mutandis. As soon as the sample has been taken, but not later than six hours after his arrest, the suspect shall be released.

3. Section 151f(2) to (4) inclusive shall apply mutatis mutandis.

4. Further rules pertaining to the implementation of this section shall be set by or pursuant to Governmental Decree.

Section 151i

1. If the results of the testing referred to in section 151e(1) or (5) or section 151h(1) are positive and it later appears that the victim is infected with the same disease, the public prosecutor may appoint an expert witness who is attached to a laboratory designated under subsection (3) and give him the assignment to examine the preserved cellular material in order to establish whether the infection was actually transmitted, and to prepare a reasoned report and submit it to him.

2. Section 151f(2) to (4) inclusive shall apply mutatis mutandis.

3. Further rules pertaining to the implementation of this section shall be set by or pursuant to Governmental Decree.

Chapter Three. Reporting by Investigating Officers

Section 152

1. The civil servants who are charged with the detection of criminal offences shall prepare as soon as possible an official record of the criminal offence detected by them or of their detection activities or findings.

2. The preparation of an official record may be omitted under the authority of the Public Prosecution Service.

Section 153

[1.] They shall prepare the official record under oath of office or, insofar as they have not taken the oath of office, shall attest it before an assistant public prosecutor who shall place a statement of such attestation on the official record within two times twenty-four hours.

[2.] They shall personally prepare, date and sign it; in addition, the sources of knowledge must also be stated as much as possible. An official record which has been electronically **prepared or converted** shall be considered as equivalent to a signed official record, provided that it meets the requirements set by or pursuant to Governmental Decree.

Section 154 Repealed

Section 155 Repealed

Section 156

1. Civil servants, charged with the detection of criminal offences, who are not assistant public prosecutor, shall promptly forward the official records prepared by them and the reports or communications in respect of criminal offences received by them, together with the seized objects, to the assistant public prosecutor under whose direct command or supervision they fall or the public prosecutor, if prescribed by a guideline of the Public Prosecution Service or if ordered by the public prosecutor.

2. **The assistant public prosecutors shall promptly forward the official records, communications and seized objects received or prepared by them to the public prosecutor.**

3. **The forwarding of said records, communications and objects may be omitted with the permission of the public prosecutor.**

Section 157 Repealed

Section 158 [Repealed as of 01-02-2000]

Section 159

After having acted in accordance with the preceding three sections, the assistant public prosecutors and the other investigating officers shall await the further orders of the public prosecutor; if such orders cannot be awaited in the interest of the investigation, then they shall continue the investigation in the meantime and gather information which can provide more clarity in the case. They shall document this investigation and the information gathered in an official record, thereby acting in accordance with **section 156**.

Chapter Four. Reports and Complaints

Section 160

[1.] Any person who has knowledge of any of the serious offences defined in sections 92-110 of the Criminal Code, in Part VII of Book Two of that Code, insofar as said offence has caused danger to life, or in sections 287 to 294 inclusive and 296 of that Code, or of kidnapping or rape, shall be obliged to promptly report said knowledge to an investigating officer.

[2.] The provisions of subsection (1) shall not apply to any person who by filing the report would put himself at risk of prosecution or to any person in respect of whom he could assert privilege when called to testify in the prosecution of said person.

[3.] Any person, who has knowledge of the detention of a person in a place which is not intended by law for that purpose, shall be likewise obliged to promptly report said knowledge to an investigating officer.

Section 161

Any person who has knowledge of a criminal offence committed may file a report or complaint of said offence.

Section 162

1. Public administrative bodies and civil servants who, in the performance of their office, learn of a serious offence which they are not responsible for detecting, shall be obliged to promptly report said offence and hand over the documents pertaining to the case to the public prosecutor or one of his assistant public prosecutors,

   a. if the serious offence is a serious offence involving abuse of office as referred to in Part XXVIII of Book Two of the Criminal Code, or
   b. if the serious offence was committed by a civil servant who, in the commission of said offence, violated a specific duty of his office or used the power, opportunity or means afforded him by his office, or
   c. if as a result of the serious offence a regulation, which they are responsible for implementing or ensuring compliance therewith, is violated or is unlawfully applied.

2. If required, they shall provide the public prosecutor or the assistant public prosecutor designated by him with all information pertaining to criminal offences, which they are not responsible for detecting and which they have learned of in the performance of their office.

3. The provisions of subsections (1) and (2) shall not apply to the civil servant who by filing the report would put himself at risk of prosecution or to any person in regard of whom he could assert privilege when called to testify in the prosecution of said person.

4. Legal persons or bodies of legal persons, whose duties and powers are defined by or pursuant to the law, shall be subject to similar obligations, insofar as designated for that purpose by Governmental Decree.

5. Rules in the interest of an effective implementation of this section may be set by or pursuant to Governmental Decree.

6. The reporting of serious offences, referred to in subsection (1)*c*, may be further limited in consultation with the public prosecutor and subject to the rules as referred to in the preceding subsection.

7. The proposal for a Governmental Decree, as referred to in subsection (4) or (5), shall not be made until the draft Governmental Decree has been published in the *Netherlands Government Gazette* and two months have expired since the day of its publication.

Section 163

[1.] Any criminal offence shall be reported verbally or in writing to the competent civil servant, either by the person filing the report in person or by another person who has been given a special written power of attorney for that purpose.

[2.] The verbal report shall be recorded in writing by the civil servant who receives it and after it has been read out shall be signed by him together with the person filing the report or his authorised representative. If said person or his representative is unable to sign, the reason for the inability shall be stated.

[3.] The written report shall be signed by the person filing the report or his authorised representative. A report filed electronically shall be considered as equivalent to a signed report, provided that said report complies with the requirements to be set by or pursuant to Governmental Decree. In cases where a report may be filed electronically, limitations may be made by Governmental Decree.

4. The person filing the report shall receive, at his request, a copy of the report filed or a copy of the official record of the report filed.

5. The written power of attorney, or, if the original thereof has been executed before a civil-law notary, an authentic copy thereof, shall be attached to the record.

6. The investigating officers shall be obliged to accept receipt of the reports filed as referred to in sections 160 and 161, and the civil servants referred to in section 162 shall be obliged to accept receipt of the reports filed as referred to in that section.

7. **Section 156** shall apply.

Section 164

[1.] In the case of serious offences only subject to criminal prosecution on complaint, this complaint shall be filed verbally or in writing with the competent civil servant, either by the person entitled to file the complaint in person, or by an authorised representative who has been given a special written power of attorney for that purpose. The complaint shall consist of a report and request for prosecution.

2. Section 163(2) and (3) – with the exception of the second and third sentences – and (5) shall apply mutatis mutandis.

Section 165

[1.] Any public prosecutor and any assistant public prosecutor shall be authorised and obliged to accept receipt of a complaint.

[2.] **Section 156** shall apply.

Section 165a

If the complaint under section 65(1) of the Criminal Code is filed by the legal representative of a minor who is twelve years or older or of a person placed under guardianship, the Public Prosecution Service shall not institute prosecution until this represented person, if he resides in the Netherlands, has been given the opportunity to present his views on the desirability of prosecution, at any rate after he has been properly called for that purpose, unless this is impossible or undesirable in connection with the mental condition of the minor or the person placed under guardianship.

Section 166

[1.] The civil servants shall withdraw the complaint in the manner and form as is laid down in the provisions pertaining to filing a complaint in sections 163, 164 and 165.

[2.] **Section 156** shall apply.

Section 166a

[1.] If the person entitled to file the complaint is the head or a member of the government of a friendly nation within the meaning of section 87*a* of the Criminal Code, or a person who files it on his behalf under section 65 of that Code, the complaint may be filed in the form of an application for criminal prosecution made by that state through diplomatic channels.

[2.] Where the diplomatic channels have been used in accordance with the preceding subsection, the complaint may be withdrawn through the same channels within - in derogation of section 67 of the Criminal Code - thirty days after it has been filed.

[3.] The filing and the withdrawal, in accordance with the preceding subsections of this section, shall not require the personal consent of the person entitled to file the complaint in order to be valid.

[4.] The day on which the application for criminal prosecution or the withdrawal of that application is notified to the Dutch government shall be deemed to be the date of receipt or withdrawal of the complaint.

Chapter Five. Decisions on Prosecution

Section 167

[1.] If the Public Prosecution Service considers on the basis of the results of the criminal investigation instituted that prosecution is required by the issuance of a punishment order or otherwise, it shall proceed to do so as soon as possible.

[2.] A decision not to prosecute may be taken on grounds of public interest. The Public Prosecution Service may, subject to specific conditions to be set, postpone the decision on prosecution for a period of time to be set in said decision.

Section 167a

In regard of a serious offence defined in section 245, 247, 248a, 248d or 248e of the Criminal Code, which was committed against a minor who is twelve years or older, the Public Prosecution Service shall, where possible, give the minor the opportunity to present his views on the offence committed.

Part II. The Examining Magistrate charged with handling Criminal Cases

Section 168 [Repealed as of 01-07-1992]

Section 169 [Repealed as of 01-07-1992]

Section 170

1. **In each District Court the examining magistrates shall be charged with handling criminal cases.**

2. **The examining magistrate shall be specifically charged with exercising supervisory powers in regard of the criminal investigation, ex officio in cases prescribed by law and in addition, on application of the public prosecutor or the suspect or his defence counsel.**

Section 171

[1.] The examining magistrate shall be assisted by a clerk in the performance of his activities.

[2.] In the case of absence or nonappearance of said clerk, the examining magistrate may, in urgent cases, designate a person to act as clerk for specific acts to be designated. This substitute clerk shall take an oath to perform properly his duties before the examining magistrate.

Section 172

[1.] The examining magistrate shall instruct the clerk to prepare an accurate official record of that which was stated, conducted and occurred or observed by him in the course of the investigation; in addition, the sources of knowledge must also be explicitly stated as much as possible.

[2.] If desirable for a correct understanding of a statement or for any other reason, or if desired by the suspect, witness or expert witness or the defence counsel, he shall also include in the official record the question which led to the statement given.

[3.] If a defendant, witness or expert witness or the defence counsel wishes to have any statement recorded verbatim, this shall be done as much as possible, insofar as the statement does not exceed reasonable limits.

Section 173

No questions shall be posed which are aimed at obtaining a statement which cannot be said to have been freely given.

Section 174

[1.] Any witness, expert witness or suspect shall sign his statement, after it has been read out to him or he has read it, and he has stated that he stands by it.

[2.] In the absence of a signature, the refusal or the cause of the inability shall be stated.

Section 175

1. Text may not be placed in the blank spaces between the lines of the official record.

2. The deletions or references shall be signed or certified by the examining magistrate and the clerk, and by the person to whose statement the deletion or reference relates. In the absence of a signature or certification, the refusal or the cause of the inability shall be stated.

3. Any matter entered in the official record which is in violation of this section shall be null and void.

4. The examining magistrate and the clerk shall sign the official record.

Section 176

The examining magistrate may, ex officio or on application of the public prosecutor or the suspect, appoint one or more expert witness in the manner prescribed in sections 227 to 232 inclusive. The application of the suspect for appointment of an expert witness shall be deemed to be **an application under section 182**.

Section 177

1. The examining magistrate may, as far as possible through the public prosecutor, in the interest of the investigation, assign the conduct of inquiries and give orders to the civil servants referred to in section 141 (b),(c) and (d) and to the persons referred to in section 142(1).

2. The examining magistrate shall have the same authority as conferred on the Public Prosecution Service in section 147. Section 147(2) shall apply mutatis mutandis.

Section 177a

The public prosecutor shall be responsible for ensuring that the examining magistrate, to whom he has submitted an application, timely receives all relevant documents and shall provide the examining magistrate with the information which he requires for a proper performance of his duties.

Section 177b

1. The victim of a serious offence, as referred to in section 151e(1), may apply in writing to the examining magistrate for testing as referred to in section 151e(1) or (5), section 151h(1), or section 151i(1), after this application has been refused by the public prosecutor.

2. The examining magistrate shall give the public prosecutor, the victim and the person in respect of whom testing is requested the opportunity to be heard.

3. The victim may have legal representation or be represented by a lawyer, provided this lawyer declares that he has been given specific authorisation for that purpose.

4. The examining magistrate shall decide as soon as possible; he shall refuse the victim's application or grant it and shall order the testing referred to in section 151e(1) or (5), section 151h(1), or section 151i(1).

5. Section 151f shall apply mutatis mutandis after the order has been given.

Section 178

If, in the absence of the public prosecutor, any criminal offence is committed during the investigation, the examining magistrate shall prepare an official record thereof and forward said record to the competent Public Prosecution Service. He may also, in the cases and on the grounds stated in sections 67 and 67*a*, issue ex officio a detention order against the suspect. The provisions of Chapter Two of Part Four of Book One shall apply.

Section 178a

1. The examining magistrate, authorised to conduct any investigation, may also conduct or have others conduct a specific investigative act in the area of jurisdiction of another District Court. In that case he shall timely notify his counterpart thereof.

2. In the case of urgent necessity, the examining magistrate may transfer a specific investigative act to the examining magistrate at the District Court in whose area of jurisdiction said act must be conducted.

3. The examining magistrate at the **Rotterdam District Court** shall have exclusive jurisdiction to issue orders and to conduct or to have others conduct investigative acts as defined in sections 226m to 226s inclusive, also within the area of jurisdiction of another District Court.

4. The provisions of Chapters Two to Five inclusive and Eight of Part Three of this Book shall apply mutatis mutandis to an investigative act referred to in subsections (2) and (3).

Section 179

If during or after **the investigative acts conducted by the examining magistrate,** it appears that he lacked authorisation to conduct such acts, the investigation conducted shall nevertheless be valid.

Section 180

1. The examining magistrate shall see to it that the criminal investigation is not unduly delayed.

2. **The examining magistrate may, on application of the suspect or his defence counsel, and if he conducts ex officio investigative acts under sections 181 to 183 inclusive, also assess the progress in the criminal investigation. The examining magistrate may instruct the case documents to be submitted to him for that purpose. If he considers such necessary, the examining magistrate shall hear the public prosecutor and the suspect or his defence counsel.**

3. **The examining magistrate may set the public prosecutor a time limit for conclusion of the criminal investigation. The examining magistrate may also present the case to the District Court, with a view to the application of section 36.**

Part III. Investigation by the Examining Magistrate

Chapter One. Reason for conducting Investigative Acts

Section 181

1. **The public prosecutor may, with a view to the detection of a criminal offence, apply to the examining magistrate for the conduct of investigative acts and shall provide a description of the offence to which the investigation should relate and of the investigative acts he wishes to be conducted. The application shall indicate the suspect, if known.**

2. **The examining magistrate shall give his decision in a reasoned decision.**

3. **The examining magistrate shall, insofar as the interest of the investigation permits, send the application of the public prosecutor and his decision thereon to the suspect, if known.**

Section 182

1. **Any person who is questioned as a suspect of a criminal offence, or who is already being prosecuted for a criminal offence, may apply to the examining magistrate for the conduct of investigative acts with respect to said offence.**

2. **The application shall be made in writing and addressed to the examining magistrate in whose area of jurisdiction the prosecution is being conducted or the questioning has taken place.**

3. **The application shall contain a statement of the offence and of the investigative acts that should be conducted by the examining magistrate, and shall be reasoned. The examining magistrate shall promptly send the public prosecutor a copy of the application. The public prosecutor may present his views on the application in writing.**

4. **The examining magistrate may hear the suspect on the application. The suspect shall have the right to have a defence counsel present during questioning. The examining magistrate shall notify the public prosecutor of the time and place of the questioning. The public prosecutor may be present during the questioning and make such comments as he sees fit.**

5. **The examining magistrate shall decide as soon as possible on the application. The decision**

shall be reasoned and shall be notified in writing to the suspect and the public prosecutor. In the event that the application is granted, the decision shall state the offence to which investigation relates and the examining magistrate shall conduct the requested investigative acts as soon as possible.

6. **If the examining magistrate refuses to conduct the investigative acts requested by the suspect, the suspect may file a notice of objection to the District Court within fourteen days.**

7. **If the suspect has been remanded in pre-trial detention, the examining magistrate may, if he considers such necessary, conduct ex officio investigative acts in regard of the offence for which pre-trial detention has been ordered. He shall promptly notify his decision to conduct investigative acts to the public prosecutor and to the suspect, stating the investigative acts concerned and the offence to which said acts relate.**

Section 183

1. **In the context of an investigation instituted under sections 181 or 182(7), the suspect may inform the examining magistrate in writing of the investigative acts he would like to have conducted. The examining magistrate shall send a copy of the application to the public prosecutor.**

2. **The examining magistrate shall decide in a reasoned written decision which he shall send to the suspect and also, in copy, to the public prosecutor.**

3. **If the examining magistrate refuses to conduct the investigative acts requested by the suspect, the suspect may file a notice of objection to the District Court within fourteen days.**

Section 184

1. **If the examining magistrate notifies his decision to conduct investigative acts in a case under sections 181 to 183 inclusive, the public prosecutor shall send him a copy of the case documents as soon as possible. The public prosecutor shall inform the examining magistrate who is conducting investigative acts, either voluntarily or at his request, about the progress of the criminal investigation.**

2. **The examining magistrate shall provide the public prosecutor on his application, or ex officio, with written information on the investigative acts conducted or to be conducted by him. On his application, or ex officio, the examining magistrate shall also provide written information to the suspect, unless the interest of the investigation does not permit such provision.**

Chapter Two. The conduct of Investigative Acts by the Examining Magistrate

Section 185

1. **If the examining magistrate considers such necessary in order to ensure that the investigation proceeds smoothly and successfully, he shall call the public prosecutor and the suspect to appear before him in order to discuss the current stage of the investigation.**

2. **For the purpose of ensuring that the investigation proceeds smoothly and successfully the examining magistrate may, on the occasion of or following on from the preparatory meeting referred to in subsection (1), set the public prosecutor and the suspect a time limit for the submission of an application for the conduct of investigative acts, or for the substantiation of said application.**

Section 186

1. The public prosecutor may be present at the questionings conducted by the examining magistrate.

2. The examining magistrate shall give the public prosecutor the opportunity to be present at the questionings, provided that this does not delay the investigation.

3. The public prosecutor may submit the questions that he would like to have posed.

Section 186a

1. The defence counsel may be present at the questionings conducted by the examining magistrate, unless the interest of the investigation does not permit his presence.

2. The examining magistrate may, if he considers such desirable in the interest of the investigation, also give the suspect the opportunity to be present at the questioning of a witness or expert witness.

3. Section 186(2) and (3) shall apply mutatis mutandis in regard of the defence counsel and the suspect.

Section 187

1. If there is a justifiable reason to assume that the witness or the expert witness will not be able to appear at the court session or that testifying at the court session would endanger the health or the wellbeing of the witness or the expert witness, and the prevention of this danger outweighs the interest in being able to question the witness or the expert witness at the court session, the examining magistrate shall invite the public prosecutor and the suspect to attend the questioning, unless the interest of the investigation does not permit postponement of the questioning.

2. The examining magistrate may order the suspect to leave the interview location in order to question a witness or an expert witness without the suspect being present. He may determine that the suspect and his defence counsel may not be present while the witness is being questioned insofar as is strictly necessary with a view to the interests stated in section 187d(1). In the latter case the public prosecutor may not be present at the questioning either.

3. If the witness or expert witness is questioned without the public prosecutor, the suspect and his defence counsel being present, they shall be informed of the statement made by the witness or expert witness as soon as possible, insofar as such is compatible with the protection of the interests referred to in section 187d(1).

Section 187a

The examining magistrate shall promptly order the assignment of a defence counsel to the suspect who does not have one, if that defence counsel would have the right to be present at any questioning under section 186a(1) or 187.

Section 187b

1. The examining magistrate may, ex officio or on application of the public prosecutor or the suspect, prevent an answer being given to any question posed by the public prosecutor, the suspect or his defence counsel.

2. The fact that the examining magistrate has prevented a certain question being answered shall be noted in the official record of the questioning.

Section 187c

The examining magistrate may grant special permission to be present at the questioning of a witness or an expert witness.

Section 187d

1. The examining magistrate may, either ex officio or on application of the public prosecutor or the

suspect or his defence counsel or the witness, prevent the public prosecutor, the suspect and his defence counsel from learning of the answers to questions concerning certain information, if there are justified reasons to assume that disclosure of this information:

a. will cause serious inconvenience to the witness or seriously hinder him in the performance of his office or profession,
b. will prejudice a compelling investigative interest, or
c. will prejudice the interest of state security.

2. The examining magistrate shall note the reasons for application of the provisions of subsection (1) in his official record.

3. The examining magistrate shall take the measures that are reasonably necessary to prevent disclosure of information as referred to in subsection (1). To that end, he may omit to mention information in the case documents.

4. In the event that the examining magistrate prevents the public prosecutor, the suspect or his defence counsel from learning of an answer, he shall state in the official record that the question posed has been answered.

5. A decision taken under subsection (1) shall not be open to appeal or appeal in cassation.

Section 188

The examining magistrate shall take the necessary measures to prevent the suspects, witnesses and expert witnesses, who have appeared for questioning, speaking to each other before or during their questioning.

Section 189

1. The suspects, witnesses and expert witnesses shall each be questioned separately.

2. However, the examining magistrate may, either ex officio or on application of the public prosecutor or of the suspect, confront them with each other's statements or question them in each other's presence.

Section 190

1. The examining magistrate shall establish the identity of the suspects, witnesses and expert witnesses in the manner referred to in 27a(1, first sentence). The examining magistrate shall also be authorised to establish the identity of the suspects in the manner referred to in section 27a (2), and of the witnesses in the manner referred to in section 27a(1, second sentence), if there is any doubt about their identity. Section 29a(2) shall apply mutatis mutandis in regard of the witnesses.

2. If the suspect is known, the examining magistrate shall ask the witnesses and expert witnesses whether they are related by consanguinity or affinity to the suspect, and if so, to which degree of consanguinity or affinity.

3. The examining magistrate may, either ex officio or on application of the public prosecutor or the suspect or his defence counsel or the witness, determine that a question concerning the information as referred to in subsections (1) or (2) will not be posed, if there are justified reasons to assume that in giving his statement the witness will experience inconvenience or will be seriously hindered in the performance of his occupation or profession. The examining magistrate shall take the measures which are reasonably necessary to prevent disclosure of this information.

4. The examining magistrate shall note the reasons for application of the provisions of subsection (3) in his official record.

5. In the case of the questioning of a threatened witness, subsections (1) and (2) shall not apply.

6. In the case of the questioning of a protected witness whose identity is concealed, subsections (1) and (2) shall not apply.

Section 191

[1.] If a suspect, witness or expert witness does not understand the Dutch language, the examining magistrate shall be authorised to appoint an interpreter, who must have reached the age of eighteen years.

[2.] If a suspect or witness is deaf or mute or has very defective hearing or speech, the examining magistrate shall determine that the questions will be posed or the answers will be given in writing.

[3.] If the suspect or witness referred to in the preceding subsection is illiterate or has great trouble reading or writing, then the examining magistrate may appoint a suitably qualified person as interpreter.

4. If necessary, the interpreter shall be called to appear by order of the examining magistrate and shall take an oath to perform his duties in good conscience before the examining magistrate.

Section 192

1. The examining magistrate may, ex officio or on application of the public prosecutor or the suspect, exercise the authority defined in section 150.

2. The examining magistrate may determine that the suspect, the witnesses and expert witnesses shall be questioned at the scene.

3. An official record pertaining to the entry into a dwelling without the consent of the occupant shall be prepared within two times twenty-four hours.

Section 193

1. The examining magistrate shall timely notify the planned inspection to the public prosecutor and, insofar as the interest of the investigation permits, the suspect.

2. The public prosecutor may be present at each inspection. The examining magistrate shall, insofar as the interest of the investigation permits, let the suspect attend the entire or part of the inspection; he may request to be permitted to give instructions or provide information or to have certain comments included in the official record.

Section 194 [Repealed as of 01-02-2000]

Section 195

1. The examining magistrate may, ex officio or on application of the public prosecutor, order that the body or clothing of the suspect, against whom there are serious suspicions, be searched in the interest of the investigation.

2. The examining magistrate may order, ex officio or on application of the public prosecutor, that the suspect, against whom there are serious suspicions, undergo a body cavity search in the interest of the investigation. A body cavity search shall mean: external examination of the orifices and cavities of the lower body, X-ray, echography and internal manual examination of orifices and cavities of the body. The body cavity search shall be conducted by a medical doctor. The search shall not be conducted if this would be undesirable for special medical reasons.

3. In the case of urgent necessity, the examining magistrate may also issue the order referred to in subsection (1) in regard of a person who is believed to be carrying traces of the criminal offence on his body or clothing.

4. The searches referred to in subsections (1) to (3) inclusive shall be conducted at a private location

and, insofar as is possible, by persons of the same sex as the person being searched.

5. The order shall not be given until the person concerned has been heard thereon.

Section 195a

1. The examining magistrate may instruct, ex officio or on application of the public prosecutor or the suspect or his defence counsel, a third party to conduct DNA testing aimed at comparing DNA profiles in the interest of the investigation. He may request the suspect or a third party to provide cellular material for DNA testing. Except in the case of application of section 195d or of a missing person as referred to in the last sentence, cellular material may only be taken with the written consent of the suspect or the third party. Cellular material shall be taken from the suspect only after one or more of the suspect's fingerprints have been taken and processed in accordance with this Code and his identity has been established in the manner referred to in section 27a(1, first sentence) and (2). In the event that the third party is missing as a result of a serious offence, DNA testing may be conducted on cellular material on objects seized from him or on cellular material obtained in another way.

2. The examining magistrate shall appoint an expert witness attached to one of the laboratories to be designated by Governmental Decree, and give him the assignment to conduct DNA testing. The expert witness shall prepare a reasoned report and submit it to the examining magistrate.

3. If insufficient cellular material is available for second opinion testing as referred to in section 195b(1), the examining magistrate shall, if only one suspect is known, give the suspect the opportunity to designate an expert witness attached to one of the designated laboratories, who shall conduct the testing. Subsection 195b(1) shall not apply.

4. In the event that the testing has been conducted on cellular material taken, the examining magistrate shall notify in writing the results of the testing to the person who has been subjected to the testing as soon as possible. If the testing has been conducted on other cellular material, he shall notify the suspect, if he is known, in writing of the results of the testing as soon as the interest of the investigation permits. Except for the case referred to in subsection (3), he shall bring the provisions of section 195b to the suspect's attention.

5. DNA profiles shall be processed only for the prevention, detection, prosecution and trying of criminal offences and establishing the identity of a body. Rules pertaining to the processing of DNA profiles and cellular material shall be set by or pursuant to Governmental Decree.

6. Further rules pertaining to the manner of implementation of this section shall be set by or pursuant to Governmental Decree.

Section 195b

1. Within fourteen days after the suspect has been notified in writing of the results of the DNA testing, he may request the examining magistrate to appoint a different expert witness designated by him, who is attached to one of the laboratories to be designated by Governmental Decree, and to give him the assignment to conduct DNA testing. The examining magistrate shall grant the request if there is sufficient cellular material available for that purpose. The expert witness shall prepare a reasoned report and submit it to the examining magistrate. Section 195a(4, first sentence), (5) and (6) shall apply mutatis mutandis.

2. In the case of application of subsection (1), a part of the costs of the testing shall be charged to the suspect at an amount to be set by Governmental Decree, if this testing confirms the testing conducted on the instructions of the examining magistrate.

3. In the application of section 228(4), subsection (1) shall not apply.

Section 195c

The provisions of Chapter Five of the Third Part of Book Two shall apply mutatis mutandis to the

testing by expert witnesses as referred to in sections 195a and 195b, except insofar as these provisions have been derogated from in sections 195a and 195b.

Section 195d

1. The examining magistrate may, ex officio or on application of the public prosecutor, order in the interest of the investigation for the purpose of DNA testing as referred to in section 195a(1) that cellular material be taken from the suspect of a serious offence as defined in section 67(1), against whom there are serious suspicions, if he refuses to give his written consent. Sections 195a(2) to (5) inclusive,195b and 195c shall apply mutatis mutandis.

2. The examining magistrate shall not issue the order until after the suspect has been given the opportunity to be heard. The suspect may have the legal representation of a defence counsel when he is heard.

3. The order shall be executed by taking a cheek swab. If, for special medical reasons or on account of the suspect's resistance, taking a cheek swab is undesirable or does not provide suitable cellular material, a blood or hair root sample shall be taken, if necessary with the assistance of the police. The cellular material shall be taken by a medical doctor or a nurse. In cases to be designated by Governmental Decree, the cellular material may be taken by a person who meets requirements to be set by or pursuant to Governmental Decree.

4. The order or its execution or further execution may be omitted if the examining magistrate is of the opinion that there are compelling reasons to conduct DNA testing on other cellular material, or the suspect gives written consent to the taking of cellular material. In the case of compelling reasons, the DNA testing may be carried out on cellular material on objects seized from the suspect, or on cellular material obtained in another way.

5. Further rules pertaining to the manner of implementation of this section shall be set by or pursuant to Governmental Decree. The proposal for a Governmental Decree to be enacted pursuant to the first sentence shall not be made any earlier than four weeks after the draft Governmental Decree has been submitted to both chambers of the States General.

Section 195e [Repealed as of 01-04-2012]

Section 195f

1. The examining magistrate may, in the interest of the investigation, order that DNA testing aimed at establishing externally observable personal characteristics of the unknown suspect or the unknown victim be conducted. Section 195a(2) shall apply mutatis mutandis.

2. The DNA testing may only be aimed at establishing the sex, race or other externally observable personal characteristics designated by Governmental Decree.

3. The proposal for a Governmental Decree to be enacted pursuant to subsection (2) shall not be made any earlier than four weeks after the draft Governmental Decree has been submitted to both chambers of the States General.

4. The DNA testing may be ordered only in the case of suspicion of a serious offence as defined in section 67(1).

5. Further rules pertaining to the manner of conduct of the DNA testing may be set by Governmental Decree.

Section 195g

1. In derogation of section 21(4) of the Personal Data Protection Act, the examining magistrate may, in the interest of the investigation, order that DNA testing aimed at establishing consanguinity be conducted. Section 195a(2) shall apply mutatis mutandis.

2. Cellular material which has been taken under this Code, the Personal Data Protection Act or the DNA Testing (on Convicted Offenders) Act for the establishment and processing of a DNA profile, may be used for establishing consanguinity. Except for the case referred to in the following sentence, cellular material of a third party may only be taken and used to establish consanguinity with his written consent. In the case of a third party who is a minor and is suspected of being the object of a serious offence as defined in section 197a, 242, 243, 244, 245, 246, 247, 248, 248a, 248b, 249, 256, 273f, 278, 287, 289, 290 or 291 of the Criminal Code, cellular material may, in the interest of the investigation, be taken from the third party and used to establish consanguinity by order of the examining magistrate.

3. The DNA testing may only be conducted in the case of suspicion of a serious offence which carries a statutory term of imprisonment of at least eight years and any of the serious offences defined in sections 109, 110, 141(2)(1°), 181(2°), 182, 247, 248a, 248b, 249, 281(1)(1°), 290, 300(2) and (3), and 301(2) of the Criminal Code. If DNA testing, as referred to in section 151a(1), results in the establishment of consanguinity, the examining magistrate may use these results in the investigative acts he conducts under sections 181 to 183 inclusive.

4. Further rules pertaining to the manner of conduct of the DNA testing may be set by Governmental Decree**.**

Section 196

If it is necessary to carry out an assessment of the mental faculties of the suspect who has been remanded in pre-trial detention and this cannot satisfactorily take place in another manner, the examining magistrate shall order, either ex officio, or on application of the public prosecutor or the suspect, that the suspect be transferred for observation to a psychiatric hospital, as referred to in section 509f, or an institution intended for clinical observation, to be designated in the order.

Section 197

1. The order, referred to in section 196, shall be reasoned and shall not be given until the opinion of one or more expert witnesses has been obtained and the suspect has been heard on this matter or properly called for that purpose. The examining magistrate shall invite the public prosecutor to be present when the suspect is heard.

2. The order instructing the transfer, and that in which an application of the suspect for that purpose is rejected, shall be promptly served on him.

3. Within three days after the service of said orders, the suspect may file an appeal against those orders with the District Court which shall decide as soon as possible.

4. Before taking a decision, the District Court may, also in the case of an appeal of the public prosecutor, instruct the examining magistrate to institute a further investigation and for that purpose, instruct the submission of related documents to it.

Section 198

1. The stay in the institution shall be deemed to be pre-trial detention and may not exceed seven weeks, and shall end as soon as the suspect must be released.

2. The examining magistrate may, either ex officio, or on application of the public prosecutor or the suspect, order termination of the stay in the institution at all times.

3. **Our Minister of Security and Justice** shall designate the institutions to which suspects may be transferred pursuant to an order referred to in section 197.

Section 199

If the examining magistrate finds that procedural requirements have not been complied with during the criminal investigation, he shall order, either ex officio or on application of the

public prosecutor or the suspect, that said non-compliance be remedied where possible and shall give instructions as to which of the acts should be conducted again for that purpose.

Chapter Three. The Questioning of the Suspect

Section 200

The examining magistrate shall, if he considers such necessary, have the suspect brought before him. He may order that the suspect who is not in custody be summoned to appear before him.

Section 201 [Repealed as of 01-02-2000]

Section 202

1. If the suspect is unable to appear before him, the questioning may be held at the place where he is staying.

2. The examining magistrate may, together with the persons designated by him, enter any place for that purpose.

Section 203

If the suspect is staying in Aruba, Curaçao or St. Martin or in the public bodies Bonaire, St. Eustatius and Saba, the examining magistrate may assign the questioning to the competent judicial officer at that place.

Section 204

The official record of the questioning of the suspect, which questioning took place by order of the examining magistrate, shall be sent closed and sealed to him.

Section 205

If the suspect is not in custody and fails to comply with the summons to appear, the examining magistrate may have him summoned with an attached order to forcibly bring him or may issue such order later.

Section 206

[1.] If urgently required in the interest of the investigation, the examining magistrate may order that the suspect who has been brought forcibly in accordance with the preceding section shall be taken into police custody at a place to be designated by him for maximum twenty-four hours.

[2.] The order shall state the reasons which have led to the suspect being taken into police custody.

Section 207 Repealed

Section 208 Repealed

Section 209

During the questioning of the suspect he shall be verbally informed of the statements of witnesses and expert witnesses who were not questioned in his presence, insofar as is, in the opinion of the examining magistrate, permitted in the interest of investigation. If certain statements are not going to be disclosed to the suspect, the examining magistrate shall verbally inform him thereof.

Chapter Four. The Questioning of the Witness

Section 210

1. The examining magistrate shall question the witness whose questioning is considered desirable by him, is ordered by the court or applied for by the public prosecutor. He may order that he be summoned to appear before him.

2. The public prosecutor may, in a reasoned decision, refuse to execute an order of the examining magistrate to issue a summons as referred to in subsection (1) if the public prosecutor has promised the witness that he will not be questioned in any other way than as a threatened witness or a protected witness whose identity is concealed. After having promptly notified the examining magistrate and the suspect of the refusal, the public prosecutor shall, if he has not already done so, submit the application referred to in section 226a(1) or section 226m(1).

3. Subsection (2) shall not apply if the witness is summoned as a threatened witness or a protected witness whose identity is concealed.

Section 211

Sections 203 and 204 shall apply mutatis mutandis in regard of the questioning of witnesses who are staying in Aruba, Curaçao or St. Martin or in the public bodies Bonaire, St. Eustatius and Saba.

Section 212

1. If the witness is unable to appear before him, the questioning may take place at the place where he is staying.

2. The examining magistrate may, together with the persons designated by him, enter any place for that purpose.

Section 213

[1.] Any person, who is summoned to appear as a witness, shall be obliged to appear before the examining magistrate.

[2.] If the witness fails to comply with the summons to appear, the examining magistrate may have him summoned again with an attached order to forcibly bring him or may issue such order later.

Section 214

[1.] If urgently required in the interest of the investigation, the examining magistrate may order that the witness who has been brought forcibly in accordance with the preceding section shall be taken into police custody at a place to be designated by him for maximum twenty-four hours.

[2.] The order shall state the reasons which have led to the witness being taken into police custody.

Section 215

The witness shall declare that he will state the truth and nothing but the truth. The expert witness shall declare that he will state truthfully and in good conscience.

Section 216

1. The examining magistrate shall put the witness or expert witness under oath if:

a. he finds that there is a justifiable reason to assume that the witness or the expert witness will not be able to appear at the court session or that testifying at the court session would endanger his health or wellbeing, and the prevention of this danger outweighs the interest in being able to question him at the court session,
b. the submission of statements under oath is necessary in order to obtain the extradition of the suspect;

c. an agreement under section 226h(3) or section 226k(1) has been found to be lawful.

2. Without prejudice to the administering of an oath to a witness under subsection (1) and sections 226c(2) and 226n(2), the examining magistrate may put a witness under oath if he considers such necessary in connection with the credibility of the statement to be made by him.

3. If, apart for the cases referred to in subsection (1)(a) and (b), the examining magistrate considers such necessary, he may put the expert witness under oath during his questioning.

Section 216a

1. The examining magistrate shall put the witness under oath to tell the truth and nothing but the truth.

2. If the examining magistrate considers that a witness does not sufficiently understand the nature of the oath by reason of mental disease or defect, or if the witness has not yet reached the age of sixteen years, he shall not be put under oath but shall be admonished to tell the truth and nothing but the truth.

3. The examining magistrate shall put the expert witness under oath to state truthfully and in good conscience.

4. The reason for administering the oath or for the admonishment shall be stated in the official record.

Section 217

The following persons may assert privilege when called to testify or answer certain questions:

1°. the relatives by consanguinity or affinity in the direct line of the suspects or co-suspects;
2°. the relatives by consanguinity or affinity in the collateral line up to and including the third degree of the suspects or co-suspects;
3°. the spouse or former spouse or civil registered partner or former civil registered partner of the suspects or co-suspects.

Section 218

Those persons who have a duty of secrecy by reason of their position, profession or office may also assert privilege when called to testify or answer certain questions, but only in regard of information entrusted to them in their aforementioned capacity.

Section 219

The witness may assert privilege and refuse to answer a question posed to him, if by answering such question he would expose himself or one of his relatives by consanguinity or affinity in the direct line or in the collateral line in the second or third degree, his spouse or former spouse or civil registered partner or former civil registered partner to the risk of criminal prosecution.

Section 219a

The witness who by reason of his office or profession is involved in the questioning of a threatened witness or a questioning in which section 187d has been applied, or a questioning prior thereto, may assert privilege and refuse to answer a question posed to him, insofar as such is necessary for the protection of the interests referred to in section 187d(1) or section 226a(1).

Section 219b

The witness who by reason of his office or profession is involved in the questioning of a protected witness, may assert privilege and refuse to answer a question posed to him in that connection.

Section 220

[1.] The witness shall make his statement and shall not be permitted to use a written draft.

[2.] However, the examining magistrate may, for special reasons, permit the witness when making his statement, to avail himself of such documents or written notes as he shall allow.

Section 221

[1.] If the witness, when being questioned, refuses, without any legal grounds, to answer the questions or to make the statement or swear the solemn oath or affirmation requested of him, the examining magistrate shall, either ex officio or on application of the public prosecutor or the suspect, order if such is urgently necessary in the interest of the investigation that the witness be detained for failure to comply with a judicial order until the District Court has decided thereon.

[2.] The examining magistrate shall submit a report to the District Court within twenty-four hours after said detention has commenced, unless the witness may have been released earlier. The District Court shall order within two times twenty-four hours thereafter, after the questioning of the witness, that he will be held in detention for failure to comply with a judicial order or will be released.

Section 222

[1.] The order of the District Court that the witness be held in detention for failure to comply with a judicial order shall be valid for a maximum period of twelve days.

2. However, the District Court may, on the basis of the report of the examining magistrate or on application of the public prosecutor, extend that order by twelve days each time, after it has again heard the witness.

Section 223

1. The examining magistrate shall order the release of the witness from detention for failure to comply with a judicial order, as soon as he has complied with his obligation or his testimony is no longer necessary.

2. The District Court may at all times, either ex officio or on the basis of the report of the examining magistrate or on application of the public prosecutor or the witness, order his release from detention for failure to comply with a judicial order. The witness shall be heard, at any rate shall be called to be heard.

3. In the event that his application to be released from detention for failure to comply with a judicial order is rejected, the witness may file an appeal within three days after service of the decision given by in chambers, and after rejection in appeal, appeal in cassation may filed within the same time limit. Sections 447-455 shall apply mutatis mutandis.

4. The public prosecutor shall order in any case release from detention for failure to comply with a judicial order as soon as **the examining magistrate has concluded the investigation**.

Section 224

All decisions given in chambers in which detention for failure to comply with a judicial order is ordered or extended, or in which an application of the witness for release is rejected, shall be served on the witness within twenty-four hours.

Section 225

[1.] During the detention for failure to comply with a judicial order, the witness may confer with a lawyer practising in the Kingdom.

[2.] This defence counsel shall have free access to the witness, may confer with him in private and exchange letters with him, which letters may not be inspected or read by others, under the required supervision and subject to the internal rules and regulations, and such access may not cause any

delay in the investigation.

[3.] The examining magistrate shall permit the lawyer, at his request, to inspect the official records pertaining to the questioning of the witness.

[4.] He may permit the lawyer, at his request, to also inspect the other case documents, insofar as the interest of the investigation permits.

Section 226

[1.] Unless they have been authorised by Royal Decree to give testimony, the King, the King's consort, the King's heir apparent or his spouse and the Regent shall be not be questioned as witnesses.

[2.] Regulations pertaining to procedures to be observed during the questioning shall be established in the Decree.

Chapter Four A. Threatened Witnesses

Section 226a

1. The examining magistrate shall order, either ex officio or on application of the public prosecutor or of the suspect or of the witness, that the witness's identity be concealed while he is being questioned, if:

a. the witness or another person, with a view to the statement to be made by the witness, feels threatened to such an extent that it may be reasonably assumed that his life or health or the safety or stability of his family life or socio-economic existence is in jeopardy, and
b. the witness has indicated that he does not wish to make a statement on account of this threat.

2. The public prosecutor, the suspect, and the witness shall be given the opportunity to be heard on this matter. A lawyer shall be assigned to the witness who does not yet have legal representation. The board of the Legal Aid Council shall arrange the assignment of said lawyer by order of the examining magistrate.

3. The examining magistrate shall not proceed with the questioning of the witness as long as his decision is open to appeal and, if an appeal has been filed, until it has been withdrawn or a decision given thereon, unless postponement of the questioning is not in the interest of the investigation. In that case the examining magistrate shall not release the official record of questioning of the witness until a judgment has been rendered in the appeal proceedings.

Section 226b

1. The decision given by the examining magistrate under section 226*a*(1) shall be reasoned, dated and signed and shall be promptly notified in writing to the public prosecutor and served on the suspect and the witness, stating the time limit within which and the manner in which the legal remedy available against the decision must be exercised.

2. Appeal against the decision may be filed with the court determining questions of fact, before which the case is being prosecuted, by the public prosecutor within fourteen days after the date of the decision and the suspect and the witness within fourteen days after service of the decision.

3. The court shall decide as soon as possible. If an appeal against an order given under section 226*a*(1) is deemed well-founded, and the examining magistrate has already questioned the witness in accordance with sections 226*c*-226*f*, the examining magistrate shall ensure that the official record of the questioning of the witness is destroyed. The examining magistrate shall prepare an official record thereof. Section 226*f* shall apply mutatis mutandis.

4. The decision given in chambers shall not be open to appeal.

5. If it has been irrevocably decided in appeal that the witness is a threatened witness, the members

of the court, under penalty of nullity, shall not participate in the court hearing. Section 21(3) shall not apply.

Section 226c

1. Before questioning a threatened witness, the examining magistrate shall establish his identity and state that he has done so in the official record.

2. The witness shall be put under oath or admonished to tell the truth in accordance with the provisions of section 216.

3. The examining magistrate shall question the threatened witness in such a way as to ensure that his identity remains concealed.

Section 226d

1. If required in the interest of concealing the identity of the threatened witness, the examining magistrate may determine that the suspect or his defence counsel or both of them may not attend the questioning of the threatened witness. In the latter case the public prosecutor may not attend the questioning either.

2. The examining magistrate shall notify the public prosecutor, the suspect or his defence counsel, if he has not attended the questioning of the witness, as soon as possible of the substance of the witness's statement and give him the opportunity to submit the questions he would like to be put to the witness, either by telecommunication, or if this would be contrary to the interest of concealing the identity of the witness, in writing. Questions may be submitted before the start of the questioning, unless the interest of the investigation does not permit any delay in the questioning.

3. If the examining magistrate prevents the public prosecutor, the suspect or his defence counsel from learning of an answer given by the threatened witness, the examining magistrate shall have entered in the official record that the question was answered.

Section 226e

During the questioning the examining magistrate shall investigate the credibility of the threatened witness and enter a statement to that effect in the official record.

Section 226f

1. The examining magistrate shall take the measures which are reasonably necessary to ensure that the identity of a threatened witness and any witness in respect of whom an application as referred to in section 226*a*(1) has been submitted, is concealed until an irrevocable judgment in the matter has been given, where possible in consultation with the public prosecutor.

2. To that end, the examining magistrate shall be authorised to omit information regarding the identity of the witness from the case documents or to have case documents anonimysed.

3. The examining magistrate and the clerk shall sign or certify the anonymisation.

Chapter Four B. Promises to a Witness who is also a Suspect

Section 226g

1. The public prosecutor shall notify the examining magistrate of the agreement he intends to make with a suspect who is prepared to give a witness statement in the criminal case against another suspect in exchange for the prosecutor's promise to demand a reduced sentence in his own criminal case under application of section 44a of the Criminal Code. The agreement shall exclusively relate to a witness statement to be given in the context of a **criminal investigation** into serious offences, as defined in section 67(1) of the Code of Criminal Procedure, which are committed by an organised group and in view of their nature or the relation to other serious

offences committed by the suspect constitute a serious breach of law and order or into serious offences which carry a statutory term of imprisonment of at least eight years. The agreement shall exclusively relate to a sentence reduction as referred to in section 44a(2).

2. The intended agreement shall be put in writing and shall contain the most precise description possible of:

a. the serious offences about which and where possible, the suspect against whom, the witness, referred to in subsection (1), is prepared to give a witness statement;
b. the criminal offences for which the witness in the case in which he is a suspect will be prosecuted and to which that promise relates;
c. the conditions which are set for the witness who is also a suspect and with which said witness is prepared to comply;
d. the substance of the promise of the public prosecutor.

3. On application of the public prosecutor, the examining magistrate shall review the lawfulness of the agreement referred to in subsection
(2). The public prosecutor shall provide the examining magistrate with the information he requires for his review.

4. An official record shall be prepared of agreements which cannot be deemed to be an agreement within the meaning of subsection (1), and which could be relevant to the investigation in the case. The public prosecutor shall add this official record to the case documents as soon as possible.

Section 226h

1. The witness who consults with the public prosecutor about making an agreement under the terms of section 226g, may have the legal representation of a lawyer. A lawyer shall be assigned to the witness who does not yet have legal representation. The board of the Legal Aid Council shall arrange the assignment of said lawyer by order of the examining magistrate.

2. The examining magistrate shall hear the witness, referred to in section 226g(1), on the intended agreement.

3. The examining magistrate shall review the lawfulness of the agreement and shall take into account the urgent necessity and the importance of obtaining the statement to be given by the witness. He shall also give an opinion on the credibility of the witness. His opinion shall be given in the form of a decision. If he judges the agreement to be lawful, said agreement shall be concluded.

4. The public prosecutor shall not add the official records and other objects from which data can be derived, which were obtained by making an agreement as referred to in section 226g, to the case documents until the examining magistrate has judged the agreement to be lawful.

Section 226i

1. The decision of the examining magistrate under section 226h(3) shall be reasoned, dated and signed and shall be promptly notified to the public prosecutor and the witness.

2. The public prosecutor may file an appeal against the decision of the examining magistrate in which the intended agreement is judged unlawful with the District Court within fourteen days after the date of the decision. The District Court shall decide as soon as possible.

3. The decision given by the District Court in chambers shall not be open to appeal in cassation.

Section 226j

1. After the agreement has been judged lawful, the witness referred to in section 226g(1) shall be heard by the examining magistrate.

2. This witness may not be heard under application of sections 226a to 226f inclusive.

3. As soon as the interest of the investigation permits, the examining magistrate shall notify the conclusion of the agreement and its substance to the suspect against whom the statement has been made, on the understanding that no notification of the measures referred to in section 226l shall be required to be given.

4. The examining magistrate may, in the interest of the investigation, ex officio or on application of the public prosecutor or the witness, order that the identity of the witness be concealed from the suspect for a certain period. The order shall be revoked by **the examining magistrate before the conclusion of the investigation**.

Chapter Four C. Promises to Convicted Witnesses

Section 226k

1. Sections 226g to 226j inclusive shall apply mutatis mutandis if the public prosecutor intends to make an agreement with a convicted offender who is prepared to give a witness statement, in exchange for the public prosecutor's promise that on submission of his application for remission of sentence, the public prosecutor will recommend a reduction in the sentence imposed up to maximum one half. The conditions for a recommendation shall be the same ones as referred to in section 44a of the Criminal Code for requesting and applying a sentence reduction.

2. When putting the intended agreement into writing, the requirement referred to in section 226g(2)(b) shall not apply.

Chapter Four D. Measures for the Protection of Witnesses

Section 226l

1. **Our Minister of Security and Justice** may take specific practical measures for the protection of witnesses, referred to in sections 226a, 226g, 226k and 226m, in a manner to be determined by Governmental Decree.

2. Subsection (1) shall apply mutatis mutandis to a person who assisted the authorities charged with the detection and prosecution of criminal offences, insofar as is urgently necessary as a result of that assistance and the related government action.

Chapter Four E. Protected Witnesses

Section 226m

1. The examining magistrate shall order, either ex officio or on application of the public prosecutor or the suspect or the witness, that a witness shall be heard as a protected witness if, as may be reasonably assumed, this is required in the interest of state security.

2. The public prosecutor, the suspect and the witness shall be given the opportunity to be heard on this matter.

3. The examining magistrate shall give the reasons for application of subsection (1) in his official record.

4. Appeal or appeal in cassation against a decision under subsection (1) shall not be permitted.

Section 226n

1. The examining magistrate shall order, either ex officio or on application of the public prosecutor or the suspect or the witness, that on the occasion of the questioning of the protected witness his identity shall be concealed, if an important interest of the witness or another person or state security requires such. In that case he shall establish the identity of the protected witness prior to his questioning and shall state that he has done so in the official record.

2. The witness shall be put under oath or admonished to tell the truth in accordance with section 216.

3. If the examining magistrate gives the order described in subsection (1), he shall hear the protected witness in such a way as to ensure that his identity remains concealed.

Section 226o

The examining magistrate may grant special permission to be present at the questioning of a protected witness.

Section 226p

1. If an interest as referred to in section 226n(1) requires such, the examining magistrate may determine that the suspect and his defence counsel may not be present while the protected witness is being questioned. In the latter case the public prosecutor may not be present at the questioning either.

2. The examining magistrate shall ensure that the official record of the questioning of the protected witness does not contain a statement which is contrary to an interest as referred to in section 226n(1).

3. The examining magistrate shall provide the official record to the public prosecutor, the suspect and his defence counsel with the consent of the witness. The witness may withhold his consent only if required in the interest of state security. In the event that the witness withholds his consent, the examining magistrate shall be responsible for ensuring that the official record of questioning and all other data pertaining to the questioning are promptly destroyed. The examining magistrate shall prepare an official record thereof.

4. The examining magistrate shall give the public prosecutor, the suspect or his defence counsel, if he has not attended the questioning of the witness, the opportunity to submit the questions he would like to be put to the witness, either by telecommunication, or if this would be contrary to an interest referred to in subsection (1), in writing. Questions may be submitted before the start of the questioning, unless the interest of the investigation does not permit any delay in the questioning.

5. Section 226d(3) shall apply mutatis mutandis.

Section 226q

During the questioning the examining magistrate shall investigate the credibility of the statement of the protected witness and enter a statement to that effect in the official record.

Section 226r

1. If the examining magistrate gives the order described in section 226n(1), he shall, either ex officio or on application of the public prosecutor, take the measures which are reasonably necessary to ensure that the identity of the protected witness and any witness in respect of whom an application as referred to in section 226n(1) has been submitted, is concealed.

2. Section 226f(2) and (3) shall apply mutatis mutandis.

Section 226s

1. The examining magistrate shall add the official record of questioning to the case documents, if the protected witness consents thereto.

2. Section 226p(3), except for the first sentence, shall apply mutatis mutandis.

Chapter Five. Expert Witnesses

Section 227

1. The examining magistrate may, ex officio or on application of the public prosecutor or the suspect, appoint one or more expert witnesses in the interest of the investigation.

2. The suspect may recommend one or more persons as expert witness in his application for appointment of an expert witness. Unless contrary to the interest of the investigation, the examining magistrate shall choose one or more expert witnesses from the persons recommended by the suspect. Section 51k(2) shall apply mutatis mutandis.

Section 228

1. The examining magistrate shall notify his decision for appointment of an expert witness and the assignment given to the expert witness to the public prosecutor and the suspect.

2. In the interest of the investigation the examining magistrate may, ex officio or on application of the public prosecutor, postpone the notification referred to in subsection (1), until such is permitted in the interest of the investigation.

3. On application of the public prosecutor or the suspect, the examining magistrate may order additional investigation. The examining magistrate shall notify the expert witness, the public prosecutor and the suspect thereof.

4. The suspect, who has been notified of the assignment given to the expert witness, may, on his part, designate an expert witness who may be present during the examination of the expert witness, may give the necessary instructions and make any comments as he sees fit. He shall notify his designated expert witness to the examining magistrate and the public prosecutor within one week after the date of the notification given under subsection (1).

Section 229

1. The expert witness may turn to the examining magistrate for clarification of his assignment prior to issuing his report. The examining magistrate shall notify his answer thereon to the public prosecutor and the suspect. The examining magistrate may also order a meeting with the expert witness. He shall give the public prosecutor and the suspect the opportunity to be present at the meeting.

2. The notification to the suspect referred to in subsection (1) may be postponed in the interest of the investigation; the examining magistrate may decide for the same reason not to permit the public prosecutor and the suspect to be present at the meeting with the expert witness.

Section 230

1. After the expert witness has sent his report to the examining magistrate, the examining magistrate shall have a copy thereof sent to the public prosecutor and the suspect. Section 228(2) shall apply mutatis mutandis.

2. The suspect, who has been notified of the results of the examination, may designate an expert witness who may examine the report sent.

Section 231

1. In the event that the report of the expert witness gives reason to do so, the examining magistrate may, ex officio or on application of the public prosecutor or the suspect, assign the same expert witness to carry out further investigation or assign an investigation to one or more other expert witnesses. Sections 229 and 230 shall apply mutatis mutandis.

2. The examining magistrate shall provide the new expert witness appointed under subsection (1) with a copy of the report.

Section 232

The examining magistrate may hear the expert witness ex officio or on application of the public prosecutor or the suspect. The examining magistrate may order that he be summoned. Sections 211 to 213 inclusive shall apply mutatis mutandis to the expert witness and his questioning.

Section 233 [Repealed as of 01-01-2010]

Section 234 [Repealed as of 01-01-2010]

Section 235 [Repealed as of 01-01-2010]

Section 236

The examining magistrate may impose secrecy on the expert witnesses.

Chapter Six. Conclusion of the Investigation

Section 237

If the examining magistrate has concluded the investigative acts, or if there is no ground for continuation of the investigation, he shall conclude the investigation. He shall send the documents relating thereto to the public prosecutor and also, in copy, to the suspect.

Section 238

1. If the public prosecutor notifies the examining magistrate in writing that he has decided to discontinue the prosecution, the examining magistrate shall conclude the investigation.

2. The public prosecutor who intends to issue a summons against the suspect while the examining magistrate is still conducting investigative acts, shall inform the examining magistrate thereof as soon as possible. The examining magistrate may, if necessary, after having heard the public prosecutor and the suspect or his defence counsel, conclude the investigation. If he continues his investigation, an official record stating that the investigation under this Part has not yet been concluded shall be included in the case file on his instructions.

Section 239 [Repealed as of 01-02-2000]

Section 240 Repealed

Chapter Seven. Acts of the Examining Magistrate after Closure or Conclusion of the Preliminary Investigation Repealed

Section 241 Repealed

Section 241a Repealed

Chapter Seven. Rights of the Defence Counsel

Section 241b

Any right conferred on the suspect under this Part shall also vest in his defence counsel.

Chapter Eight. No Appeal in Cassation for the Public Prosecution Service

Section 241c

In derogation of section 446(2), the Public Prosecution Service shall not have any right of appeal in cassation against a decision given by the District Court in chambers which was rendered in an appeal filed against a decision of the examining magistrate rejecting an application made under this Part.

Part IV. Decisions on Continuation of Prosecution

Section 242

[1.] If as a result of the preliminary investigation instituted the Public Prosecution Service considers that continued prosecution is required by issuing a punishment order or otherwise, it shall proceed to do so as soon as possible.

[2.] As long as the court hearing has not yet started, a decision to discontinue prosecution may be taken, also on grounds of public interest.

Section 243

1. If the public prosecutor decides to discontinue prosecution, he shall promptly notify the suspect thereof in writing.

2. If in regard of the offence an administrative fine has been imposed on the suspect, or a notification as referred to in section 5:50(2)(a) of the General Administrative Law Act [*Algemene Wet Bestuursrecht*] has been sent to the suspect, said fine or notification shall have the same legal effect as notice of a decision to discontinue prosecution.

3. The notice of a decision to discontinue prosecution shall be served on the suspect.

4. In the case of prosecution of a serious offence, the public prosecutor shall promptly notify the directly interested party in writing of the decision to discontinue prosecution.

5. If an order under section 12 or 13 has been applied for or granted, the public prosecutor shall not notify a decision to discontinue prosecution until said order has been granted by the Court of Appeal within whose area of jurisdiction the prosecution has been instituted. To that end, the public prosecutor shall instruct that the case documents, accompanied by a report stating the grounds for the notification of a decision to discontinue prosecution, be sent to the Court of Appeal.

Section 244 Repealed

Section 245 Repealed

Section 245a Repealed

Section 246

1. The case shall end through notice of discontinuance of prosecution.

2. However, in the case of lack of jurisdiction of the District Court, the hearing may be continued before another court. The same shall also be possible if the case is joined with a criminal case which is being heard before another District Court.

Section 247

If the case is not further prosecuted on the ground of:

a. lack of jurisdiction of the District Court to try the offence,
b. joinder with a criminal case which is being heard by another District Court,
c. a bar to the prosecution,
d. non-punishability of the offence or of the suspect,
e. insufficient indication of guilt,

the ground in question shall be stated in the notification.

Section 248 Repealed

Section 249 [Repealed as of 01-01-1994]

Section 250 Repealed

Section 250a Repealed

Section 251 [Repealed as of 01-01-1994]

Section 252 Repealed

Section 253 Repealed

Section 254 Repealed

Section 255

1. After the decision of the Public Prosecution Service or the court to stop the prosecution, after the decision declaring the case closed has been notified to the suspect, or after notice of discontinuance of prosecution has been served on him, without prejudice in the latter case to section 12i or section 246, no further criminal proceedings may be instituted against the suspect in respect of the same offence, unless new suspicions have emerged.

2. Only statements made by witnesses or the suspect and papers, documents and official records which have subsequently come to light and have not been examined may constitute new suspicions.

3. In such a case, the suspect may be summoned to appear before the District Court only after a **criminal investigation into these new** suspicions has been instituted.

4. A criminal investigation as referred to in subsection (3) shall not be instituted until authorisation has been granted by the examining magistrate on application of the public prosecutor charged with the detection of the criminal offence.

Section 255a

1. If a punishment order which has been issued against the suspect has been fully executed, without prejudice to the provisions of section 12i, no further criminal proceedings may be instituted against him in respect of the same offence.

2. Subsection (1) shall apply mutatis mutandis if the public prosecutor withdraws a punishment order.

3. If the suspect is summoned for an offence stated in a punishment order, the punishment order may no longer be enforced. The enforcement, which has already commenced, shall be suspended or postponed.

Final Provisions pertaining to the Preliminary Investigation

Section 256

[1.] If the District Court finds that procedural requirements have not been complied with during the preliminary investigation or finds that procedural requirements have not been complied with in regard of a service prescribed by law or that said service is null and void, section 199 shall apply mutatis mutandis.

[2.] If the court hearing has commenced, then non-compliance with procedural requirements during the preliminary investigation may no longer lead to nullity.

Section 257 Repealed

Part IVa. Prosecution by means of the Issuance of a Punishment Order

Chapter One. The Punishment Order

Section 257a

1. The public prosecutor may, if he establishes that a minor offence or a serious offence which carries a statutory term of imprisonment not exceeding six years, has been committed, issue a punishment order.

2. The following punishments and measures may be imposed:

a. community service up to a maximum of one hundred and eighty hours;
b. a fine;
c. withdrawal from circulation;
d. the obligation to pay the state a sum of money for the victim;
e. disqualification from driving motor vehicles for maximum six months.

3. In addition, the punishment order may contain instructions which the suspect must comply with. They may contain:

a. relinquishment of ownership to objects that have been seized and are liable to confiscation or withdrawal from circulation;
b. surrender of objects liable to confiscation or payment of their assessed value to the State;
c. payment in full to the State of a sum of money or transfer of objects seized for the purpose of special confiscation, in whole or in part, of unlawfully obtained gains which are liable to special confiscation pursuant to section 36e of the Criminal Code;
d. payment of a sum of money, to be set, to the Criminal Injuries Compensation Fund [*Schadefonds Geweldsmisdrijven*] or to an organisation that aims to represent and advocate the interests of victims of criminal offences, whereby the amount may not exceed the maximum fine prescribed by law for the criminal offence;
e. other instructions pertaining to the behaviour of the suspect, with which said suspect must comply within a probation period of maximum one year to be set in the punishment order.

4. A punishment order shall be imposed and instructions as referred to in subsection (3)(e) shall be given subject to the condition that the suspect provides, for the purpose of establishing his identity, an identity document as referred to in section 1 of the Compulsory Identification Act for inspection and cooperates with fingerprinting.

5. In the execution of the community service order and supervision of compliance with the instructions referred to in subsection (3)(e), the identity of the suspect shall be established.

6. The punishment order shall be in writing and shall state:

a. the name and the known address of the suspect;
b. a statement of the offence as referred to in section 261(1) and (2), or a brief description of the conduct for which this punishment order was issued, and the time at which and the place where this conduct took place;
c. the criminal offence that this conduct constitutes;
d. the punishments, measures and instructions imposed;
e. the day on which it was issued;
f. the manner in which an objection may be filed;
g. the manner of execution.

Chapter Two. Imposition by Investigating Officers and Bodies or Persons charged with Public Duties

Section 257b

1. Investigating officers to be designated for that purpose by Governmental Decree in cases pertaining to minor offences designated in that Governmental Decree may be granted the power, until further notice, to issue a punishment order in which a fine is imposed.

2. In addition, investigating officers to be designated for that purpose by Governmental Decree in cases pertaining to serious offences, designated in that Governmental Decree, which offences carry a statutory term of imprisonment not exceeding six years and which are of a non-complex nature and have been committed by persons who have reached the age of eighteen years, may be granted the power, until further notice, to issue a punishment order in which a fine of maximum € 350 is imposed.

3. The civil servants invested with the power, referred to in subsections (1) and (2), shall exercise said power in accordance with the guidelines to be set by the Board of Procurators General. Rules pertaining to the designation of investigating officers, the supervision of the manner in which they exercise the power granted to them and the withdrawal of the designation of an investigating officer shall be set by or pursuant to Governmental Decree.

Section 257ba

1. Bodies or persons charged with public duties to be designated for that purpose by Governmental Decree may be granted the power to issue a punishment order within the limits set in that Governmental Decree.

2. The bodies and persons invested with the power, referred to in subsection (1), shall exercise said power under the supervision of and in accordance with the guidelines to be set by the Board of Procurators General. Rules pertaining to the supervision of the manner in which they exercise the power granted to them and the withdrawal of a power granted by the Board of Procurators General shall be set by Governmental Decree.

3. The Board of Procurators General shall set guidelines as referred to in subsection (2) after consultations with the bodies and persons charged with public duties whose exercise of the power to issue a punishment order is affected by said guideline, or with organs which represent these bodies.

Chapter Three. Imposition Safeguards

Section 257c

1. A punishment order in which community service, disqualification from driving motor vehicles, or instructions pertaining to the behaviour of the suspect is/are imposed, shall be issued only if the suspect has been heard by the public prosecutor and has moreover stated that he is prepared to comply with the punishment or the instructions. The suspect shall be informed of the possibility of applying for assignment of a defence counsel not later than the start of the hearing.

2. A punishment order in which payment obligations on account of a fine and compensation measure, which amount individually or jointly to more than € 2000, shall be issued only if, prior thereto, the suspect, having the legal representation of a defence counsel, has been heard by the public prosecutor who issues the punishment order.

3. A written report on the hearing of the suspect in accordance with subsections (1) or (2) shall be prepared. If the punishment order derogates from the views explicitly substantiated by the suspect, the reasons which led to derogation shall be added to this report, insofar as these reasons have not been given verbally.

4. In the event that a punishment order is to be issued against the suspect, the investigating officer shall, where possible, issue notice of the punishment order to the suspect. In the case of suspicion of a minor offence committed with a motor vehicle, said notice may also be left in or on the motor vehicle. The model form for the notice shall be set by Ministerial Regulation.

5. Further conditions pertaining to the imposition and enforcement of punishments, measures and instructions in a punishment order may be set by Governmental Decree.

Chapter Four. Delivery and Sending of the Punishment Order

Section 257d

1. A copy of the punishment order shall be delivered, as far as possible, to the suspect in person. The refusal of the suspect to accept receipt of the copy shall be considered as equivalent to delivery of the copy in person.

2. If the copy is not delivered in person, the copy shall be sent to the address of the suspect entered in the Municipal Personal Records Database or, if he is not registered as a resident in said database, to the place of residence or abode of the suspect. If, when the suspect is being questioned for the first time in the criminal case, he gives the civil servant questioning him another address in the Netherlands to which notifications about the criminal case may be sent, a copy shall also be sent to that address.

3. If the suspect is a legal person, a partnership or an unincorporated company, a special purpose fund or a shipping company, the copy may be delivered to a director of the legal person, a general partner, a director of the special purpose fund, the accountant or a member of the shipping company respectively, or to a person who is authorised to accept receipt of the copy. In these cases the copy shall be deemed to have been delivered in person to the suspect. If the copy is not delivered in this manner, it shall be sent to a known address of the suspect. Such address shall be deemed to be the registered office of the legal person, the place of business of the legal person, the partnership or unincorporated company, the special purpose fund or the shipping company, and the address of each of the directors, general partners or the accountant and each of the members of the shipping company stated in the Municipal Personal Records Database. If a director, general manager or the accountant or a member of the shipping company in his first questioning in the criminal case concerned gives the civil servant questioning him another address in the Netherlands to which notifications about the criminal case may be sent, a copy shall also be sent to that address.

4. A copy of a punishment order shall be sent by letter. Punishment orders in which payment obligations on account of a fine and compensation measure, which amount individually or jointly to more than € 2000, shall be sent by registered letter. A record shall be kept of each delivery or sending in the manner set by Governmental Decree.

5. If a statement has been submitted to the public prosecutor in accordance with section 51g(2), a copy of the punishment order shall be sent to the injured party. In addition, a copy shall be sent to the directly interested party who is known to the public prosecutor.

Chapter Five. Filing an Objection

Section 257e

1. The suspect may file an objection against the punishment order within fourteen days after the copy has been delivered to him in person, or a circumstance has otherwise occurred from which it follows that he knew about the punishment order. Without prejudice to the preceding sentence, an objection may be filed against a punishment order, in which a fine of not more than € 340 has been imposed on account of a minor offence committed not more than four months before the copy of said punishment order was sent, not later than six weeks after sending. An objection may not be filed if the suspect has waived his right to do so by voluntarily complying with the punishment order. Nor may an objection be filed if the suspect, having the legal representation of a defence counsel, has waived his right to do so in writing.

2. The objection shall be filed at the office of the Public Prosecution Service stated in the punishment order. If the objection is filed at a different office of the Public Prosecution Service, then it shall be forwarded to a public prosecutor who can bring the objection before a competent court.

3. The objection may be filed by the suspect, a lawyer who declares that the suspect has given him specific authorisation for that purpose, and an authorised representative who has been given a special written power of attorney for that purpose at the office of the Public Prosecution Service. In that case notice to appear on a specific date at the court session for the hearing of the objection may be served forthwith on the suspect. The suspect and a lawyer, who declares that the suspect

has given him specific authorisation for that purpose, may file a written objection by means of a signed letter addressed to the public prosecutor. The day and hour of receipt shall be promptly noted on the letter. It shall be added to the case documents.

4. The name of the suspect, and an accurate description or copy of the punishment order to which objection is made, shall be stated in the letter of objection. The suspect may give an address in the Netherlands to which notification about the criminal case may be sent. Written objections to the punishment order may be stated in the letter of objection.

5. The Public Prosecution Service shall make a record of the filing of an objection. If the objection is filed in person, the record shall be jointly signed by the person who is filing it. If this person is unable to sign, the cause of the inability shall be stated. The special power of attorney, referred to in subsection (3), shall be attached to the record. The record shall be added to the case documents.

6. Each objection filed shall be entered straight away in a register intended for that purpose, which may be inspected by interested parties. If the objection is filed in person, a copy of the record shall be promptly issued on request.

7. The person who has filed the objection may withdraw it up to the start of the hearing of the objection at the court session at the latest. This withdrawal shall also imply a waiver of the right to again exercise a legal remedy. Subsections (2) to (6) inclusive shall apply mutatis mutandis to the withdrawal.

8. The punishment order may be withdrawn in writing or amended by a public prosecutor who is authorised to bring an objection to said punishment order before the District Court or the single judge division of the Sub-District Court Sector. An amendment, which results in the definition of the offence no longer constituting the same offence within the meaning of section 68 of the Criminal Code, shall not be permitted. A copy of the decision given in chambers, in which the punishment order is withdrawn or amended, shall be delivered to the suspect or sent to him subject to application mutatis mutandis of section 257d(2) and (3). If when filing the objection the suspect has given another address, a copy shall be sent to that address and no copy shall be sent to the address stated in the first questioning. An objection may be filed against an amended punishment order subject to application mutatis mutandis of subsections (2) to (6) inclusive. An objection already filed shall be deemed to be aimed at the amended punishment order, unless the amended punishment order is voluntarily complied with.

Chapter Six. The Hearing of the Objection

Section 257f

1. The public prosecutor shall bring the objection and the case documents, unless he withdraws the punishment order, to the cognisance of the District Court. He shall notify the suspect to appear at the court session; at least ten days must have expired between the day on which the notice has been served on the suspect and the day of the court session. Section 265(2) shall apply mutatis mutandis. If an address in the Netherlands has been given in the letter of objection which differs from the address where the suspect is registered as resident in the Municipal Personal Records Database, a copy of the notice shall be sent to the address given, unless the notice has since been delivered in person to the suspect.

2. In the absence of service in accordance with subsection (1), the court shall order that the suspect be notified to appear on a new date before the court, unless the suspect has appeared. In the latter case, if the suspect applies for a postponement in the interest of his defence, the hearing shall be adjourned for a definite period.

3. The case shall be heard in accordance with Part Six, Seven or Eight of Book Two and the description of the conduct in the notice shall be regarded as the indictment. Said description shall be equivalent to the brief description of the conduct in the punishment order or shall be a statement of the same offence which meets the requirements of section 261(1) and (2). In derogation to that extent from section 349(1), the notice may be declared null and void.

4. If the objection is not filed on time or by the authorised person or does not meet the requirements of section 257e(4), it shall be declared inadmissible. If the court declares a bar to the prosecution, or acquits the suspect, dismisses the charges against him or convicts him, it shall annul the punishment order.

Chapter Seven. The Enforcement

Section 257g

1. The punishment order may only be enforced fourteen days after delivery in person or sending of the copy of the punishment order, unless the right to file an objection is waived.

2. The filing of an objection against the punishment order shall suspend or postpone enforcement unless, in the opinion of the Public Prosecution Service, it is established that the objection was filed after the time limit set therefor had expired. During the hearing of the objection the court may determine, on application of the suspect, that enforcement of the punishment order should be suspended or postponed. The suspension or postponement of enforcement shall end if the objection is declared inadmissible.

Chapter Eight. Publication

Section 257h

1. Categories of punishment orders in regard of serious offences may be set by Governmental Decree, which shall be published in the manner to be determined in said decree.

2. The public prosecutor shall provide, on request, a copy of a punishment order to any person other than the suspect or his defence counsel, unless the public prosecutor considers that provision of said copy should be refused, in whole or part, for the protection of the interests of the person against whom the punishment order has been issued or of the third parties whose names are mentioned in the punishment order. In the latter case the public prosecutor may provide an anonymised copy of the punishment order.

3. If a copy or an anonymised copy is not provided within fourteen days, the applicant may file a written complaint with the public prosecutor, who shall promptly bring the written complaint and the case documents to the cognisance of the District Court. In derogation of section 23(4), the participants in the criminal proceedings shall not have the right to inspect the case documents other than to the extent permitted by the District Court.

Part V. Bringing the Case before the Court Session

Section 258

1. The case shall be brought before the court by means of a summons served on behalf of the public prosecutor on the suspect; the start of the criminal proceedings is thus initiated.

2. The presiding judge of the District Court shall determine, on application and recommendation of the public prosecutor, the date and time of the court session. In the determination of the date and time of the court session or later, he may order that the suspect appear in person; to that end he may also order that he be forcibly brought to court. The presiding judge may also order that a witness who, based on facts and circumstances, is not thought likely to comply with the summons to appear at the court session, be forcibly brought to court. In addition, the presiding judge of the District Court may order the public prosecutor to conduct further investigations or have others conduct further investigations, **and to add data carriers and documents to the case documents or to submit convicting pieces of evidence.**

3. [Repealed.]

4. [Repealed.]

5. [Repealed.]

6. The persons as referred to in section 51e(1, first sentence),(3), (5) or (6), may request the leave of the presiding judge to have their lawyer, or an authorised representative who has been given a special power of attorney for that purpose, exercise the right vested in them to make a verbal statement at the court session. If more than three surviving relatives referred to in 51e(4)(b) have notified their wish to exercise their right to make a verbal statement at the court session, and they fail to agree among themselves which of them will address the court, the presiding judge shall decide which three persons may exercise the right to make a verbal statement.

Section 259

Criminal offences which are brought before the same court session and which are related or which have been committed by the same person, shall be joined and brought to the cognisance of the District Court, if such is in the interest of the investigation.

Section 260

1. The prosecutor may give written notice to witnesses, victims or their surviving relatives, expert witnesses and interpreters to appear at the court session.

2. If the persons as referred to in section 51e(1, first sentence), or a surviving relative as referred to in section 51e(3) and (4), and those persons who have given notice that they wish to exercise their right to make a verbal statement under section 51e(6) and (7), request in writing to be called in order to exercise the right to make a verbal statement, the public prosecutor shall comply with this request.

3. The summons of the suspect shall state the name, the profession and the place of residence or abode, or if unknown, a description of the witnesses and expert witnesses who have been called by the public prosecutor. The calling of the victim or a surviving relative for the purpose of exercising the right to make a verbal statement at the court session, of the injured party, insofar as this has not been done under section 51g(2), and of an interpreter shall also be stated.

4. The suspect shall be informed in said summons that he has the right to have written notice given to witnesses and expert witnesses to appear at the court session or to bring them with him to the court session; he shall also be reminded of the provisions of sections 262(1), 263(2) and (3) and 278(2).

Section 261

[1.] The summons shall contain a statement of the offence which is indicted, stating at approximately which time and at which place it was allegedly committed; in addition, it shall state the statutory provisions under which the offence is punishable.

[2.] It shall also state the circumstances under which the offence was allegedly committed.

[3.] When the suspect is in pre-trial detention under a warrant of arrest or a remand detention order, whose term of validity may no longer be extended under section 66(3), the description given in that order may suffice as the statement of the offence.

Section 262

1. The suspect may file a notice of objection against the summons to the District Court within eight days after the **service**.

2. As long as the time limit set in subsection (1) has not expired, the District Court may only proceed with the start of the court hearing with the consent of the suspect. By giving his consent the suspect also waives the right to file a notice of objection. In the other case the District Court shall postpone the start of the court hearing for a definite or indefinite period. Except for the case in which prosecution against the suspect is stopped in regard of the

entire indictment, the suspect, with reference to the contents of the summons, shall be summoned and the witnesses, expert witnesses and interpreters shall be summoned or called to appear again on the day set for the court session, as soon as an irrevocable decision has been given on the entire notice of objection. Sections 263 and 265 shall apply mutatis mutandis.

3. **Before taking a decision the District Court may instruct the examining magistrate to institute an investigation and have the related documents submitted to it for that purpose. This investigation shall be conducted in accordance with the provisions of Chapters Two to Five inclusive and Seven of Part Three of this Book.**

4. **If the offence does not fall within the competency of the District Court, it shall decline jurisdiction.**

5. **If there is a bar to the prosecution, the offence to which the notice of further prosecution related is not punishable or the suspect is not criminally liable, or insufficient indication of guilt is present, then it shall stop the prosecution against the suspect in regard of the entire indictment or for a part of the indictment to be indicated in more detail in a decision given by the District Court in chambers.**

6. **In all other cases the District Court shall declare either the objection of the suspect inadmissible or the notice of objection ill-founded, if necessary indicating the amendments which must be made to the indictment.**

7. **If the decisions declaring lack of jurisdiction or stopping the prosecution, which have been given in chambers, have become irrevocable in regard of the entire indictment, a summons already issued shall be cancelled. If the decisions declaring lack of jurisdiction or stopping the prosecution, which have been given in chambers, have become irrevocable in regard of a part of the indictment, the indictment must be amended to conform to that decision given in chambers.**

Section 262a

1. **In the case of a declaration of lack of jurisdiction or stopping of the prosecution, the Public Prosecution Service may file an appeal with the Court of Appeal and thereafter file an appeal in cassation within fourteen days after the decision given by the District Court in chambers.**

2. **The suspect may file an appeal in cassation against the decision given by the Court of Appeal in chambers within fourteen days after the service of said decision.**

3. **The Court of Appeal and the Supreme Court shall render a decision as soon as possible.**

Section 263

1. The suspect may have witnesses and expert witnesses called to appear at the court session. The suspect who is not fluent or sufficiently fluent in the Dutch language, may apply to the public prosecutor for the assistance of an interpreter at the court session.

2. If at least fourteen days have expired between the day on which the summons was served on the suspect and the day of the court session, he shall make said application to the public prosecutor at least ten days before the court session. If the summons is served later than on the fourteenth day before the court session, the time limit shall expire on the fourth day after the day of service, nevertheless not later than on the third day before the day of the court session.

3. The application shall be made in person at the office of the public prosecutor or in writing. A written application shall be addressed to the public prosecutor. In the case of a written application other than by registered letter, the suspect shall make sure that the public prosecutor has received this application on time. He shall state the names, the occupation and the place of residence or abode, or, if unknown, he shall describe them as accurately as possible. In the case of a written

application, the day of receipt of the letter, which shall be recorded on it straight away, shall be deemed to be the day of application.

4. The presiding judge of the District Court may order the public prosecutor to have witnesses and expert witnesses called to appear at the court session. The order shall be given in writing, stating the names, the occupation and the place of residence or abode, or, if unknown, the most precise description possible of the witness or expert witness.

5. The public prosecutor shall promptly call the witnesses or expert witnesses requested in accordance with the preceding subsections. The District Court and the suspect shall be promptly informed in writing thereof.

Section 264

1. The public prosecutor may refuse in a reasoned decision to call a witness or expert witness requested by the suspect or the presiding judge of the District Court, if he:

a. does not consider it likely that the witness or the expert witness will appear at the court session within a reasonable period of time;
b. is of the opinion that the health and wellbeing of the witness or expert witness will be endangered by giving a statement at the court session, and the prevention of this danger outweighs the interest in being able to question the witness or expert witness at the court session;
c. is of the opinion that, in all reasonableness, the suspect will not be prejudiced in his defence as a result of this refusal.

2. The public prosecutor may refuse in a reasoned decision to call a witness or expert witness requested by the suspect or the presiding judge of the District Court or may refuse to execute an order given by the District Court to call the witness:

a. if the witness is a threatened witness or a protected witness whose identity has been concealed, or
b. if the public prosecutor has promised the witness that he will not be questioned in any other way than as a threatened witness or a protected witness whose identity has been concealed.

3. The refusal shall be promptly notified to the District Court and the suspect.

Section 265

1. A period of at least ten days must have expired between the day on which the summons in served on the suspect and the day of the court session. In the event that the examining magistrate has issued orders for the maintenance of public order in accordance with Part Seven of Book Four, a period of at least four days must have expired.

2. If the summons is served in the manner provided for in section 587(2), the suspect may have included in the record of delivery a statement in which he consents to a reduction of this time limit; he must sign the statement; if he is unable to sign, the cause of the inability shall be stated in the record.

3. If the one or the other is omitted, the District Court shall adjourn the hearing, unless the suspect has appeared. In the latter case and if the suspect applies for a postponement in the interest of his defence, then the District Court shall adjourn the hearing for a definite period, unless it considers in a reasoned decision that, in all reasonableness, continuation of the hearing cannot prejudice the suspect in his defence.

Section 266

[1.] The public prosecutor may withdraw the summons as long as the court hearing has not yet started. He shall notify the suspect and the injured party thereof in writing.

[2.] The public prosecutor shall be responsible for ensuring that the called witnesses and expert witnesses are timely informed in writing of the withdrawal.

[3.] If prosecution is discontinued on or after withdrawal of the summons, then the public prosecutor shall promptly notify the suspect of discontinuance of his prosecution in regard of the offence to which the summons related. Sections 246, 247 and 255 shall apply.

Section 267

1. If the summons is withdrawn, without the suspect having been served with notice of discontinuance of the prosecution, the District Court, on application of the suspect, shall set the public prosecutor a time limit within which either the summons, or notice of discontinuance of the prosecution must be issued. **Section 255(4)** shall apply.

2. On application of the public prosecutor, the District Court may extend the time limit for a definite period each time.

Part VI. Trial of the Case by the District Court

Chapter One. Court hearing

Section 268

1. Criminal cases shall be tried and decided by a three-bench division, save for the exceptions mentioned in the law.

2. The judge who conducted any investigation in the case as examining magistrate shall not, under penalty of nullity, sit in the case at the court hearing, except for application of section 316(2).

3. The judges and the clerk to the court shall exclusively sit at the bench of the District Court.

Section 269

1. The court hearing shall take place in public. Once the case has been called out, the District Court may order that the entire hearing or part of the hearing be held behind closed doors. This order may be given in the interest of public decency, public order, state security, and if required in the best interests of minors, or in the interest of respect for the personal life of the defendant, other participants in the criminal proceedings or persons otherwise involved in the case. Such order may also be given if the District Court considers that a hearing in public would seriously prejudice the interest of the proper administration of justice.

2. An order, as referred to in subsection (1), shall be given by the District Court ex officio or on application of the Public Prosecution Service or of the defendant or other participants in the criminal proceedings. The District Court shall not give the order until it has heard the Public Prosecution Service, the defendant and other participants in the criminal proceedings on this matter, if required behind closed doors. Section 22(4) shall apply mutatis mutandis.

3. The decision to give the order, referred to in subsection (1), shall be stated, giving reasons, in the court record.

4. The presiding judge may grant persons special permission to attend the closed hearing.

5. Unless in special cases at the discretion of the presiding judge, persons who have not yet reached the age of twelve years shall not be permitted to attend the public court session. The presiding judge shall have the power to refuse to grant persons, who have not yet reached the age of eighteen years, permission to attend the public court session, with the exception of victims of the offence as charged in the indictment as referred to in section 51e(1), who are twelve to eighteen years old and would like to attend the court session.

Section 270

The presiding judge shall start the hearing by having the case against the defendant called out.

Section 271

1. The presiding judge shall be responsible for ensuring that questions which are aimed at obtaining a statement, which cannot be said to have been freely given, shall not be posed.

2. Neither the presiding judge, nor any of the judges at the court session shall openly show any bias concerning the guilt or innocence of the defendant.

Section 272

1. The presiding judge shall be in charge of the court hearing and shall give the necessary orders for that purpose.

2. The presiding judge may order on grounds of overriding reasons, ex officio or on application of the public prosecutor or the defendant, that questions, which the defendant or his defence counsel or the public prosecutor wishes to pose, shall be posed through him.

3. The presiding judge may assign a member of the full-bench division designated by him to take his place and preside over the hearing. This member shall exercise the duties and powers which are conferred on the presiding judge.

Section 273

1. The presiding judge shall start the hearing against the defendant by establishing the identity of the defendant in the manner referred to in section 27a(1, first sentence). The presiding judge shall also be authorised to establish the identity of the defendant in the manner referred to in section 27a(2), if there is any doubt about his identity.

2. The presiding judge shall advise the defendant to listen carefully to what is being said and shall inform him that he is not obliged to answer any questions.

3. If the defendant disturbs the decorum and good order of the court session and has been warned by the presiding judge to no avail, the presiding judge may order his removal from the courtroom and, if necessary, order that he be held in detention for the entire or part of the court session. The case shall continue to be tried as a defended case. Section 124(4) shall apply.

Section 274

1. If the defendant is deaf or mute or has very defective hearing or speech, the questions shall be posed or the answers shall be given in writing. The presiding judge shall verbally state the results of this questioning.

2. If the defendant referred to in subsection (1) is illiterate or has great trouble reading or writing, then the services of a suitably qualified person as interpreter shall be requested. Sections 275 and 276 shall apply mutatis mutandis.

Section 275

1. If a defendant is not or is not sufficiently fluent in the Dutch language, the hearing shall not be continued without the assistance of an interpreter.

2. In cases where the assistance of an interpreter is requested, that which has been said or read out and has not been interpreted for the defendant shall not be taken into account to his detriment.

Section 276

1. If it appears at the court session that the assistance of an interpreter is required, the District Court shall order that an interpreter be called; if the interpreter fails to appear, the District Court may

issue an order to forcibly bring him.

2. Only those persons who are not already participating in the hearing in another capacity shall be admitted as interpreter.

3. Before the interpreter starts his duties, he shall take an oath to perform his duties in good conscience. Section 216a(2) concerning the replacement of the oath by an admonishment shall apply mutatis mutandis. If the interpreter is a sworn interpreter within the meaning of the Sworn Interpreters and Translators Act [*Wet Bedside Token en Vertices*], the interpreter shall not be put under oath.

4. The defendant may, in a reasoned application, object to the interpreter and request his replacement. The District Court shall promptly render a decision on said application.

Section 277

1. The hearing shall be continued without any breaks.

2. However, the District Court may order breaks in the hearing on account of its extensiveness or duration or for a rest period.

Section 277a [Repealed as of 15-05-1998]

Section 278

1. The District Court shall determine the validity of the delivery of the summons to the defendant who has failed to appear. If it appears that said summons was not validly issued, it shall declare the summons null and void.

2. In the event that the District Court wishes the defendant to be present at the hearing of the case at the court session, it shall order the defendant to appear in person; it may also order that he be brought forcibly for that purpose.

3. If the defendant has indicated that he wishes to conduct his defence in person and has applied for a postponement of the hearing of his case, the District Court shall decide on the application for postponement. The District Court shall grant the application for postponement or reject it, whereafter in the latter case the hearing shall be continued subject to section 280(1).

4. In the application of subsection (2) or the granting of the application referred to in subsection (3), the District Court shall order that the hearing be adjourned and that the defendant be summoned to appear come the date of resumption of the hearing.

Section 279

1. The defendant, who has not appeared, may have himself defended at the court session by a lawyer who declares that he has been explicitly authorised for that purpose. The District Court shall consent thereto, without prejudice to the provisions of section 278(2).

2. The trial of the case against the defendant who has authorised his lawyer to defend him shall be deemed to be proceedings in a defended case.

Section 280

1. In the event that the defendant does not appear at the court session and the District Court sees no reason to

a. declare the summons null and void under section 278(1) or
b. issue an order to forcibly bring the defendant, referred to in section 278(2), to court *it shall order* that the defendant be tried in absentia and the trial of the case be continued in his absence, unless it has consented to a defence under the terms of section 279.

2. The District Court shall declare the trial in absentia cancelled, if the defendant appears at the court session after all or after resumption thereof appears in person or has himself defended after all in accordance with the provisions of section 279(1).

3. In the application of subsection (2), the hearing shall be started again, on the understanding that the District Court may determine that specific investigative acts will not be conducted again.

Section 280a [Repealed as of 01-02-1998]

Section 281

1. If required in the interest of the hearing, the District Court shall order the adjournment of the hearing for a definite or indefinite period.

2. The adjournment for a definite period may be extended, if necessary, each time to a later date to be set.

3. The reasons for adjournment shall be stated in the court record.

4. In the event of an adjournment, a record, which meets the requirements of section 326, shall be prepared.

5. On resumption of the hearing sections 319 to 322 inclusive shall apply.

Section 282

1. If the defendant is in pre-trial detention, the following subsections of this section shall apply.

2. If the District Court adjourns the court hearing for a definite period, it shall, as a rule, set the period of adjournment at maximum one month. However, in the case of urgent reasons, it may set a longer period but, in any case, not longer than three months.

3. If the District Court adjourns the court hearing for an indefinite period, it shall set, in accordance mutatis mutandis with subsection (2), a deadline for resumption of the hearing.

4. When the defendant is in pre-trial detention under a warrant of arrest or a remand detention order, whose term of validity can no longer be extended under section 66(3), the public prosecutor may apply for an adjournment of the hearing at the court session, provided that he notifies the defendant of his intention to submit such application in the summons.

Section 282a

1. The District Court may, after having heard the public prosecutor, refer the case to the single-judge division. In that case the hearing of the case shall continue on that same day, subject to notification of the time, or shall be adjourned for a definite or indefinite period and brought before the single-judge division on the basis of the existing indictment by notification of the defendant to appear, on behalf of the public prosecutor, come the later date set for the court session. Sections 260(2), 263, 265(2) and (3) and 370 shall apply.

2. The case shall be continued in the normal manner, on the understanding that the deliberations referred to in sections 348 and 350 shall also be conducted on the basis of the court hearing of the three-judge division, as took place according to the record of that court session. Section 322(4) shall apply mutatis mutandis.

3. If the judge of the single-judge division was part of the three-judge division at the time of the referral, the hearing shall be resumed as though there has been no change in the composition of the District Court. In the other case the single-judge division shall order that the court hearing be started again, unless the public prosecutor and the defendant agree to resumption of the hearing from the stage at which it was when the referral was made.

Section 283

1. In cases where it can be found without the case being heard that the summons is null and void, the District Court lacks jurisdiction or there is a bar to the prosecution, the defendant may present and explain and clarify this defence immediately after the questioning referred to in section 273.

2. The public prosecutor may respond thereto.

3. The suspect may again address the court and, if the public prosecutor again responds, may address the court one more time.

4. The District Court shall deliberate and render a judgment on the defence statement submitted.

5. If the defence statement is found to be untimely or ill-founded, then the hearing in the case shall be continued immediately.

6. The District Court may also, ex officio, pronounce the summons null and void, its lack of jurisdiction or a bar to the prosecution without having heard the case, after it has heard the public prosecutor and the defendant.

Section 284

1. The public prosecutor shall present the case by reading out the indictment.

2. If the public prosecutor is of the opinion, either as a result of a defence statement referred to in either section 283(1) or after having been heard by the District Court pursuant to section 283(6), that the indictment should be amended, sections 313 and 314 shall apply.

Section 285

1. If criminal offences, which should have been joined, are presented separately at the same court session, the District Court shall order their joinder.

2. If criminal offences, which are related to one other or which have been committed by the same person, are presented at different court sessions, but the trial of said cases is resumed or started at the same court session, the District Court shall also order their joinder, if such is in the interest of the investigation.

3. The District Court shall order the severance of cases which have been joined, if it finds that those cases are not related or that joinder is not in the interest of the investigation.

Section 286

1. The presiding judge shall question the defendant.

2. If there is more than one defendant, then the presiding judge shall determine the order in which the defendants will be questioned.

3. The presiding judge may determine that the defendant will be questioned without one or more co-defendants or witnesses being present.

4. During the further course of the hearing questions may be posed to the defendant by the presiding judge, the judges, the public prosecutor, the defence counsel and the co-defendant.

5. Section 293 shall apply mutatis mutandis.

6. When the defendant is being questioned, the court shall determine, as much as possible, whether his statement is based on his own knowledge.

Section 287

1. The presiding judge shall establish which persons, whether called for that purpose or not, have appeared as a witness at the court session.

2. The witnesses, who have appeared, shall be questioned, unless questioning is not carried out with the consent of the public prosecutor and of the defendant or on the grounds referred to in section 288(1)(b) and (c).

3. The District Court shall order in regard of witnesses who have not appeared that:

a. they be called to appear, if the public prosecutor omitted to call them or refused to call them under the terms of section 264(1), and the defendant requests that they be called or the District Court considers it desirable that they be called;
b. they be called again, if the witness has failed to comply with the previous notice to appear and the District Court may also order that he be brought forcibly to court.

4. Sections 274 to 276(3) inclusive shall apply mutatis mutandis to the questioning of the witnesses.

Section 288

1. The District Court may decline, stating reasons, to call the witnesses who have not appeared as referred to in section 287(3), if it considers that:

a. it is not likely that the witness will appear at the court session within a reasonable period of time;
b. the health and wellbeing of the witness or expert witness will be endangered by giving a statement at the court session, and the prevention of this danger outweighs the interest in being able to question the witness or expert witness at the court session;
c. it may be reasonably assumed that the Public Prosecution Service will not be prejudiced in its prosecution and the defendant will not be prejudiced in his defence as a result of this decision.

2. If the public prosecutor has refused under section 264(2)(b) to have a witness requested by the defendant called or to execute an order issued by the District Court to call a witness and no decision has been given under section 226a(1) or 226n(1) in regard of that witness, the District Court shall place the documents in the hands of the examining magistrate in order to have the witness questioned. In the case of a witness requested by the defendant, the preceding sentence shall not apply, if in a reasoned decision the District Court considers that it may be reasonably assumed the defendant will not be prejudiced in his defence as a result of the fact that the requested witness has not been questioned. The public prosecutor shall promptly submit the application referred to in section 226a(1) or section 226m(1) after the documents have been placed in the hands of the examining magistrate. Section 316 shall apply mutatis mutandis.

3. The District Court may also decline to have witnesses called or witnesses, who have not appeared, called again if the public prosecutor and the defendant explicitly consent or have consented thereto.

4. Section 226 shall apply mutatis mutandis.

Section 288a

1. The presiding judge shall determine the order in which he will question the witnesses, the expert witnesses and the victim or the surviving relative present at the court session. If he sees reason to do so, he shall take measures to have the various participants in the proceedings taken to separate rooms.

2. The presiding judge shall be responsible for ensuring that the victim, his representative under section 51e(6) or (7) or the surviving relatives is/are treated appropriately.

Section 289

1. The presiding judge shall order that the witnesses, with the exception of the witness to be questioned first, make their way to the room intended for them.

2. He may, after having heard the public prosecutor and the defendant, permit the witness to leave the courtroom for a specified maximum period of time before he gives his statement.

3. If required, he shall take measures to prevent the witnesses, before they have given their statement at the court session,

a. speaking to each other or
b. learning of statements made by other witnesses and the defendant at the court session.

4. The presiding judge shall determine, subject to section 292(4), the order in which the witnesses will be questioned.

Section 290

1. Prior to the questioning the presiding judge shall establish the identity of the witness in the manner referred to in section 27a(1, first sentence). The presiding judge may also establish the identity of the witness in the manner referred to in 27a(1, second sentence), if there is any doubt about his identity. Section 29a(2) shall apply mutatis mutandis in regard of the witness.

2. The presiding judge shall ask the witness to state his occupation and whether he is related by consanguinity or affinity to the defendant, and if so, to which degree of consanguinity or affinity.

3. The presiding judge may determine that a question concerning the information, as referred to in subsection (1) or (2), will not be posed if there are justified reasons to assume that in giving his statement the witness will experience inconvenience or will be seriously hindered in the performance of his occupation or profession. The District Court shall take the measures which are reasonably necessary to prevent disclosure of this information.

4. The presiding judge shall then put the witness under oath to state the truth and nothing but the truth. Section 216a(2) relating to an admonishment as a substitute for an oath shall apply mutatis mutandis.

5. Sections 217 to 220 inclusive shall apply mutatis mutandis.

Section 291

In his statement the witness must explicitly state, as much as possible, what he has observed and experienced and the sources of his knowledge.

Section 292

1. The presiding judge shall question the witness.

2. He shall then give the judges and the public prosecutor the opportunity to pose questions to the witness.

3. He shall give the defendant the opportunity to question the witness and to put forward in rebuttal of the statement of that witness anything that could aid his defence.

4. However, if the witness has not yet been questioned during the preliminary investigation and has been called on application of the defendant or has appeared at the court session, he shall first be questioned by the defendant and then by the presiding judge. Subsection (2) shall apply.

5. The presiding judge shall give the public prosecutor the opportunity to comment on the questioning referred to in subsection (4).

Section 293

1. The District Court may, ex officio or on application of the public prosecutor or the defendant, prevent an answer being given to any question posed by the defendant or his defence counsel or by the public prosecutor.

2. The public prosecutor and the defendant may make comments in regard of any question before said question is answered.

Section 294

1. If the witness, when being questioned, refuses, without any legal grounds, to answer the questions posed or to take the solemn oath or affirmation which he has been requested to take, the District Court shall order, if such is urgently necessary for the purpose of the investigation, that the witness be detained for failure to comply with a judicial order.

2. Before the order is given, the witness and his lawyer shall be heard on the reason for his refusal.

3. The detention order for failure to comply with a judicial order shall be valid for a maximum period of thirty days; the District Court shall also set in its order the date on which the witness will be again brought before it. There shall be no legal remedy against the order.

4. The District Court shall order the release of the witness from detention for failure to comply with a judicial order, as soon as he has complied with his obligation or the court hearing is closed. However, it may order release from detention for failure to comply with a judicial order at any stage of the hearing, also on application of the witness. Section 223(3) shall apply.

5. Sections 224 and 225 shall apply.

Section 295

1. If a witness is suspected of having committed the serious offence of perjury at the court session, the District Court may order an investigation in regard of this matter.

2. In such case the clerk to the court shall promptly prepare an official record which shall be signed by the presiding judge, the judges and the clerk to the court. The official record shall contain the statement of the witness.

3. The statement made by the witness shall be read out to him and then he shall be asked whether he is standing by his statement and if so, whether he is prepared to sign it. In the absence of a signature, the official record shall state the refusal or the reason for the inability to sign.

4. **The District Court may also order the public prosecutor to make the application, as referred to in section 181, in order to have the examining magistrate conduct specific investigative acts.**

5. The District Court shall place the official record in the hands of the public prosecutor.

Section 296

1. Once he has given his statement, the witness shall remain in the courtroom, unless the District Court, with the consent of the public prosecutor and the defendant, permits him to leave, if necessary with the order to again be present at a time to be set.

2. In derogation of the provisions of subsection (1), the consent of the defendant shall not be required if the assumption, as referred to in section 290(3), applies in regard of the defendant.

Section 297

1. The District Court may, ex officio or on application of the public prosecutor or of the defendant, confront the witnesses with each other's statements.

2. In derogation of section 296(1), the presiding judge may order that, after testimony has been given, one or more witnesses will leave the courtroom and that one or more of them will again be brought into the courtroom in order to be questioned again either separately or in each other's presence.

3. The presiding judge may order that , in the same manner as referred to in subsection (2), one or more of the defendants will leave the courtroom in order for a witness to be questioned without them being present.

4. In that case the defendant shall be immediately informed of the matters discussed in his absence, whereupon the hearing may be continued.

Section 298 [Repealed as of 01-07-2003]

Section 299

Without prejudice to section 51m, all provisions of this Part pertaining to witnesses and their statements shall also apply to expert witnesses and their statements.

Section 300

1. The presiding judge may, ex officio or on application of the public prosecutor or of the defendant, determine that the questions in regard of the mental faculties of the defendant will be posed and handled without him being present, and in addition, that the public prosecutor or the defence counsel will address the court on the matter of the defendant's mental faculties without him being present.

2. After the defendant has returned to the courtroom, he shall be informed of the matters discussed in his absence.

Section 301

1. Official records, reports of expert witnesses or other documents shall be read out by order of the presiding judge, when requested by one of the judges or the public prosecutor.

2. The aforementioned documents shall also be read out on application of the defendant, unless the District Court orders otherwise, ex officio or on application of the public prosecutor.

3. Instead of reading out the documents, the presiding judge may give a verbal summary of the contents of said documents, unless the public prosecutor or the suspect objects thereto on reasonable grounds.

4. Documents, which have not been read out or whose contents have not been given in a verbal summary in accordance with subsection (3), shall not be taken into account to the detriment of the defendant.

Section 302

1. The presiding judge shall give the victim, who has given notice that he wishes to exercise his right to make a verbal statement at the court session, the opportunity to do so. After the victim has made his statement, the presiding judge and the judges may pose further questions about his statement to him. Further questions from the public prosecutor and the defendant shall be posed through the presiding judge.

2. If more than one of the surviving relatives of the victim have given notice that they wish to make a verbal statement at the court session and they fail to agree among themselves which of them will address the court, the District Court shall decide which of them it will hear.

Section 303

1. The District Court shall hear the victim, his representative under section 51e(6) or (7), or the

surviving relative who has been called and has appeared under section 260(2).

2. Section 258(6) shall apply mutatis mutandis after the start of the court session.

3. The District Court may order that the victim, his representative under section 51e(6) or (7), or his surviving relative, if said person has not complied with the notice to appear at the court session, be called to appear at the court session on a date to be set later. If said person fails to appear at the court session a second time, the District Court may decline to hear the victim or the surviving relative.

Section 304 [Repealed as of 01-02-1998]

Section 305 [Repealed as of 01-02-1998]

Section 306 [Repealed as of 01-02-1998]

Section 307 [Repealed as of 01-02-1998]

Section 308 [Repealed as of 01-02-1998]

Section 309

1. The public prosecutor shall submit a list of objects seized under section 94 but not yet returned. He shall also inform the court of the proceeds of the objects for which authorisation was granted under section 117(2).

2. The presiding judge shall show, if necessary, the objects which serve as convincing items of evidence to the defendant and the witnesses and shall question them about said objects.

Section 310

The District Court shall have the same power as is conferred on the Public Prosecution Service under section 147. It shall exercise said power either ex officio or on application of the public prosecutor or of the defendant. Section 147(2) shall apply mutatis mutandis.

Section 311

1. After the defendant has been questioned and the witnesses and expert witnesses present have been questioned, the public prosecutor shall address the court; after the public prosecutor has read out his request for a specific sentence, he shall submit it to the District Court. This request shall describe the punishment and measure, if their imposition is requested; in that case it shall also state which criminal offence was allegedly committed. The public prosecutor shall indicate, insofar as such was not previously apparent to the defendant, whether he intends to submit an application as referred to in section 36e of the Criminal Code, as well as whether a criminal financial investigation, as referred to in section 126, has been instituted for that purpose. This statement of the public prosecutor shall be entered in the court record.

2. The defendant may respond thereto.

3. The public prosecutor may then address the court again.

4. The defendant shall be permitted to make the last statement, under penalty of nullity.

5. The presiding judge may determine that new questions will be posed to the defendant, witnesses and expert witnesses and documents will be read out. In that case the public prosecutor and the defendant may address the court under the terms of the preceding provisions.

Section 312

If the hearing has brought to light circumstances which are not stated in the indictment and which

constitute, under the law, a ground for increasing the severity of the punishment, the public prosecutor may verbally charge said circumstances.

Section 313

[1.] If, apart from the case set forth in the preceding section, the public prosecutor considers that the indictment should be amended, he shall submit the substantive amendments, which he considers necessary, in writing to the District Court together with an application for permission to make said amendments.

[2.] If the District Court grants the application, it shall have the substantive amendments made entered in the court record. Amendments, which result in the indictment no longer constituting the same offence within the meaning of section 68 of the Criminal Code, shall in no event be permitted.

Section 314

1. If the indictment has been amended in accordance with section 313, the clerk to the court shall provide a certified copy of the amended indictment to the defendant at the court session, unless the District Court considers that the clerk to the court may suffice with the issuance of a certified copy of the amendments. If the defendant is being tried in absentia, then the hearing shall be immediately continued on the basis of the amended indictment, if it may be reasonably assumed that non-notification of the amendment will not have prejudiced the defendant in his defence. In the other case, the amended indictment shall be served on him as soon as possible.

2. The District Court shall adjourn the hearing if necessary for a definite period; however with the consent of the defendant or the defence counsel who has been permitted to conduct the defence under section 279(1), the hearing may be continued immediately or after a short adjournment.

Section 314a

[1.] If the statement of the offence in the indictment is confined to a description, as referred to in section 257a(4) or section 261(3), that statement shall be amended to conform, after all, to the requirements set in section 261(1) and (2).

[2.] Sections 313, with the exception of the last sentence, and 314 shall apply mutatis mutandis.

Section 315

1. If the District Court finds that the questioning at the court session of witnesses, who have not yet been questioned, or the submission of documents or convincing items of evidence, which are not yet available at the court session, is necessary, it shall order that, if necessary with an attached order to forcibly bring them, these witnesses be summoned or called in writing to appear at the court session at a date and time to be set by it or that these documents or convincing items of evidence be submitted.

2. Section 288(2) shall apply mutatis mutandis to the order to call the witnesses as referred to in subsection (1), and the attached order to forcibly bring them.

3. If the District Court considers it necessary to question an expert witness, who has not yet been questioned at the court session, about his report, it shall order that he be called in accordance with the provisions of subsection (1). If the District Court wishes to assign a new investigation to an expert witness, it shall appoint, after having heard the public prosecutor and the defendant, an expert witness and assign him to issue a written report. The District Court may place the case, subject, or not, to the application of section 316(2), in the hands of the examining magistrate.

Section 316

1. If any investigation by the examining magistrate appears to be necessary, the District Court shall adjourn the court hearing, indicating the subject of the investigation, and if necessary, the manner

in which said investigation is to be instituted and shall place the documents in the hands of the examining magistrate.

2. **In the event that the investigation will exclusively involve questioning witnesses or assigning, appointing and questioning expert witnesses, the District Court may refer the case to the examining magistrate or, if the public prosecutor and the defendant consent thereto, appoint the presiding judge or one of the judges who are judging the case as examining magistrate.** This judge may sit in the case at the continuation of the court hearing, unless it has been determined that when the witnesses or expert witnesses are being questioned, the defendant or his defence counsel may not be present.

3. The investigation shall be conducted in accordance with the provisions of **Chapter Two to Five inclusive and Chapter Seven** of Part Three of this Book.

Section 317

1. If it is necessary to carry out an assessment of the mental faculties of the defendant who has been remanded in pre-trial detention and this assessment cannot be satisfactorily conducted in another way, the District Court shall order in a reasoned decision that the defendant be transferred for observation to a psychiatric hospital, as referred to in section 509f, or an institution intended for clinical observation, to be designated in the order.

2. The order shall not be given until the opinion of one or more expert witnesses has been obtained and the public prosecutor, the defendant and his defence counsel have been given the opportunity to be heard on this matter.

3. Section 198 shall apply mutatis mutandis.

Section 318

[1.] If the District Court considers it necessary to conduct an inspection or question witnesses or defendants at a location other than in the courtroom, it may for that purpose, while adjourning the case, order that the court session be temporarily relocated.

[2.] The District Court may, together with the persons designated by it, enter any place for that purpose. Section 146(2) shall apply to it.

[3.] The District Court may, as a result of the condition of the location where the temporary court session is to be held, give the necessary rules pertaining to the procedure for the handling of the case at that court session.

Section 319

1. In all cases in which there is a break in the hearing or the hearing is adjourned for a definite period, the presiding judge shall give the defendant, his defence counsel, the victim, his representative under section 51e(6) or (7) or the surviving relative, and the interpreters, witnesses and expert witnesses, insofar as they have not yet been questioned at the court session, notice of the date and time at which they must be present on resumption of the court hearing. The presiding judge shall give the injured party present notice of the date and time at which the hearing is to be resumed at the court session. The notice shall be considered as equivalent to a summons.

2. The defendant, the defence counsel, the victim, his representative under section 51e(6) or (7), or the surviving relative, witnesses, expert witnesses and interpreters who are not present at the court session when the notice referred to in subsection (1) is given, shall, in the event of an adjournment, be called again to appear at the court session at a later date. The injured party, who is not present when said notice is given, shall also be called if the District Court considers that there are grounds to do so.

3. The District Court may, ex officio or on application of the public prosecutor or of the defendant, designate witnesses and expert witnesses who have already been questioned at the court session,

and interpreters whose presence is required at the continued hearing. The District Court shall grant the application of the public prosecutor, after having heard the defendant, and shall grant the application of the defendant, after having heard the public prosecutor, unless it is of the opinion that, in all reasonableness, by rejecting the application of the public prosecutor or of the defendant, neither the Public Prosecution Service has been prejudiced in the prosecution, nor the defendant in his defence.

Section 320

1. In all cases in which the hearing has been adjourned for an indefinite period, as soon as the reason for the adjournment no longer exists, the defendant, the victim, his representative under section 51e(6) or (7), or the surviving relative, the witnesses, expert witnesses and interpreters, insofar as they have not been heard or questioned at the court session, shall again be called to appear. The injured party, who appeared at the court session, shall also be called to appear if the District Court considers there are grounds to do so.

2. Section 319(3) shall apply.

3. Section 265 shall apply mutatis mutandis to the summoning of the defendant.

Section 321 [Repealed as of 01-01-2005]

Section 322

1. Without prejudice to the provisions of section 280(2) and (3), in all cases in which an adjournment of the hearing is ordered, the hearing of the case shall be resumed at the court session at a later date from the stage at which it was at the time of the adjournment.

2. In the application of subsection (1), the District Court may order that the hearing be started again at the court session.

3. The District Court shall order that the hearing be started again at the court session in the event that the composition of the District Court has changed on resumption of the hearing. The public prosecutor and the defendant shall consent to the resumption of the hearing from the stage at which it was at the time of the adjournment.

4. In the event that the court hearing is started again, the decisions of the District Court in regard of the validity of the delivery of the summons under section 278(1), decisions on defence statements of the defendant under section 283(1), decisions on applications for amendment of the indictment as well as decisions in regard of questioning witnesses or expert witnesses and calling them to appear at the court session under section 287 or section 288 shall also remain in force.

Section 323 [Repealed as of 01-02-1998]

Section 324

[1.] Notwithstanding the adjournment, the District Court may at all times temporarily reopen the court hearing for specific urgent measures.

[2.] Sections 320 and 322 shall apply.

Section 325

Before closing the hearing the presiding judge shall ask the defendant, who has been assisted by an interpreter at the court session, whether he wishes to be present when the judgment, which will not be rendered right away, is pronounced. If the defendant states that he does not wish to be present, the interpreter shall not be called to be present on pronouncement of judgment. If the defendant states that he does wish to be present, the presiding judge shall give the interpreter notice of the date and the time of the pronouncement of judgment; the notice shall be considered as equivalent to a summons.

Section 326

[1.] The clerk to the court shall keep the court record, in which record shall be successively entered the procedures observed and all matters pertaining to the case which took place at the court session.

[2.] It shall also contain the statements, in substance, of witnesses, expert witnesses and defendants. If the public prosecutor or the defendant requests to have any statement recorded verbatim, this shall be done as much as possible, insofar as the statement does not exceed reasonable limits, by order of the presiding judge and shall be read out. If the public prosecutor or the defendant considers that the statement has not been adequately entered, then the District Court shall decide.

[3.] The presiding judge may order that any specific circumstance, declaration or statement shall be entered in the record.

4. A similar entry shall be made when desired by one of the judges, or on application of the public prosecutor, the defendant or the injured party.

Section 327

The presiding judge or one of the judges who judged the case and the clerk to the court shall confirm the court record and sign it as soon as possible after the close of the court hearing and in any case within the period of time referred to in section 365(1). Insofar as the clerk to the court is unable to perform various duties, this shall be done without his assistance and his absence shall be stated at the bottom of the court record.

Section 327a

1. Except for the case described in subsection (2), an abridged court record may be prepared.

2. If the judgment has been rendered in absentia and the summons was not served in person and no circumstance has occurred from which it follows that the date of the court session or of the court session at a later date was known to the defendant, while witnesses or expert witnesses were questioned or an injured party joined in the proceedings at the court session, then, in derogation of subsection (1), a court record, which meets the requirements of section 326, shall be prepared.

3. If a regular legal remedy is exercised against the judgment or an application of the public prosecutor or the defendant as described in section 365c is granted, the abridged court record shall be supplemented in such a way that it complies with the requirements set in section 326. Said record shall be supplemented within the time limits set in section 365*a*(3).

4. Section 365(3) to (5) inclusive shall apply mutatis mutandis.

Section 328

The public prosecutor or the defendant may make an application to the District Court for any judicial decision to be taken pursuant to the provisions of this Part, unless the contrary follows from any provision.

Section 329

Before deciding on any application or objection of the defendant, the District Court shall hear the public prosecutor. Before deciding on any application or any objection of the public prosecutor, the District Court shall give the defendant, if he is present, or his defence counsel, the opportunity to present his views.

Section 330

A refusal or omission to decide on an application or an objection of the public prosecutor or an application or objection of the defendant, which serves to exercise a power or right conferred by law, shall be null and void.

Section 331

1. Any power conferred on the defendant under this Part shall also vest in the defence counsel who is legally representing the defendant present at the court session or who has been permitted to conduct the defence of the defendant who is not present under section 279(1).

2. In all cases in which under this Part the consent or the questioning of the defendant or his defence counsel is requested, said request shall only apply to the defendant or his defence counsel present at the court session.

Chapter Two. Examination of the Claim of the Injured Party at the Court Session

Section 332

The District Court may order that the injured party, who has not appeared in person or by means of a representative at the court session, shall be called to appear at the court session at a later date to be set by the District Court.

Section 333

If the District Court is of the opinion that the claim of the injured party is evidently inadmissible, it may declare the claim of the injured party inadmissible without any further hearing of the case being required.

Section 334

1. At the court session the injured party may submit documents as evidence of the damage or loss incurred as a result of the criminal offence, but may not present witnesses or expert witnesses.

2. The injured party or the person who is assisting him may pose questions to the witnesses and expert witnesses, but only in regard of his claim for compensation.

3. The injured party may explain and clarify or instruct a third party to explain and clarify his claim after the public prosecutor has addressed the court in accordance with section 311. He may again address the court each time the public prosecutor has addressed the court, or has been given the opportunity to address the court.

Section 335

Except for application of section 333, the District Court shall pronounce judgment on the claim of the injured party at the same time as the final judgment in the criminal case.

Chapter Two A [Repealed as of 01-01-2011]

Section 336 [Repealed as of 01-01-2011]

Section 337 [Repealed as of 01-01-2011]

Chapter Three. Evidence

Section 338

1. The court may find that there is evidence the defendant committed the offence as charged in the indictment only when the court through the hearing has become convinced thereof from legal means of evidence.

Section 339

[1.]The following shall be exclusively admissible as legal means of evidence:

1°. the court's own observations;

2°. the statements of the defendant;

3°. the statements of a witness;

4°. the statements of an expert witness;

5°. written materials.

[2.]Facts or circumstances which are common knowledge shall not require evidence.

Section 340

"The court's own observations" shall be understood to mean the court's personal observations made during the court hearing.

Section 341

[1.]"Statement of the defendant" shall be understood to mean his statement about facts or circumstances, he knows from his own knowledge, given at the court session.

[2.]Such statement, given elsewhere than at the court session, may be used as evidence that the defendant committed the offence as charged in the indictment, if such is substantiated by any legal means of evidence.

[3.]His statements may only apply to him.

[4.]The court may not find that there is evidence that the defendant committed the offence as charged in the indictment exclusively on the basis of the statements of the defendant.

Section 342

1. The "statement of a witness" shall be understood to mean the information he gives in court on facts or circumstances he personally observed or experienced.

2. The court may not find there is evidence that the defendant committed the offence as charged in the indictment exclusively on the basis of the statement of one witness.

Section 343

The "statement of an expert witness" shall be understood to mean the information he gives in court on the insights he has gained from his own expertise and knowledge about the subject on which his opinion is sought, whether or not on the basis of an expert witness report prepared by him at the request of the court.

Section 344

1. "Written materials" shall mean:

1°. decisions drawn up in the form prescribed by law by tribunals, courts or persons charged with the administration of justice, as well as punishment orders drawn up in the form prescribed by law;
2°. official records and other documents drawn up in the form prescribed by law by competent bodies and persons, and containing their statement of facts or circumstances which they have observed or experienced;
3°. documents prepared by public bodies or civil servants concerning issues related to their competence, as well as documents drawn up by a person in the public service of a foreign state or of an organisation under international law;
4°. reports of expert witnesses prepared in answer to the assignment given to them to provide

information or to conduct an investigation, based on the insights they have gained from their own expertise and knowledge about the subject on which their opinion is sought;

5°. all other written materials; however, said materials may only be used in conjunction with the content of other means of evidence.

2. The court may find that there is evidence the defendant committed the offence as charged in the indictment on the basis of the official record of an investigating officer.

Section 344a

1. The court may not find that there is evidence the defendant committed the offence as charged in the indictment exclusively or to a decisive extent on the basis of written materials containing statements of persons whose identity is concealed.

2. An official record of questioning conducted before the examining magistrate, which contains the statement of a person who is deemed to be a threatened witness, or the statement of a person who is deemed to be a protected witness and whose identity is concealed, may be used as evidence that the defendant committed the offence as charged in the indictment only if at least the following conditions have been met:

a. the witness is a threatened witness or a protected witness and has been questioned as such by the examining magistrate, and
b. the offence as charged in the indictment, to the extent proven, involves a serious offence as defined in section 67(1), and in view of its nature, the fact that it was committed by an organised group or the relation to other serious offences committed by the defendant constitutes a serious breach of law and order.

3. Apart from the case described in subsection (2), a written material containing the statement of a person whose identity is concealed may only be used as evidence that the defendant committed the offence as charged in the indictment, if at least the following conditions have been met:

a. the judicial finding of fact is supported to a significant extent by other evidence, and
b**.** the application to question or to have others question the person, referred to in the opening sentence has not been made by or on behalf of the defendant at some point in the proceedings.

4. The court may not find that there is evidence the defendant committed the offence as charged in the indictment exclusively on the basis of statements of witnesses with whom an agreement has been made under section 226h(3), or 226k.

Chapter Four. Deliberations and Pronouncement of Judgment

Section 345

[1.] At the end of the hearing the presiding judge shall declare it closed and either the judgment shall be given straight away, or the presiding judge shall state the date, as determined by the District Court, on which the judgment is to be pronounced.

[2.] The judgment may be verbally postponed to a later date and time to be set. The date of pronouncement of judgment may not be moved up, unless it is pronounced in the presence of the defendant.

[3.] The judgment may in no event be pronounced later than on the fourteenth day after the closure of the hearing and pronouncement of the abridged judgment shall suffice.

[4.] If the judgment is not pronounced within the aforementioned period, then the case shall be re-tried on the basis of the existing indictment by the same court.

Section 346

[1.] If during the deliberations it appears that the hearing was not complete, the District Court may order at the court session that the hearing be resumed at a court session to be set by it.

2. The District Court shall also designate in its order the witnesses, expert witnesses, interpreters and injured party whose questioning or presence, or the documents or convincing items of evidence whose examination or inspection, it considers necessary.

3. In this case action shall be taken as though the hearing has been adjourned for an indefinite period, on the understanding that the obligatory notice to appear at the court session shall only relate to the defendant, and the witnesses, expert witnesses, interpreters and injured party designated in the order.

Section 347

[1.] In the case referred to in subsection (1) of the preceding section, the District Court may also instruct the examining magistrate to conduct an investigation in accordance with the provisions of section 316.

[2.] In this case action shall be taken as though the hearing has been adjourned for an indefinite period.

Section 348

The District Court shall investigate, on the basis of the indictment and the hearing at the court session, the validity of the summons, its jurisdiction to try the offence as charged in the indictment and the right of the public prosecutor to institute criminal proceedings and whether there are reasons to suspend the prosecution.

Section 349

1. If the hearing, referred to in the preceding section, gives reason to do so, the District Court shall declare the summons null and void, its lack of jurisdiction, a bar to the prosecution or the suspension of the prosecution.

2. If an offence, which under section 382 must be prosecuted before the single-judge division of the Sub-District Court Sector, has been brought before another division of the District Court, the offence may, on application of the defendant or ex officio, be referred to the single-judge division of the Sub-District Court Sector. Such a referral may not be made, if the principal charge is an offence which is not prosecuted before the single-judge division of the Sub-District Court Sector under section 382.

3. In the event that the public prosecutor refuses, under section 264(2)(b), to execute an order issued by the court to summon or call a witness, while that witness is not a threatened or protected witness whose identity must not be disclosed by virtue of an irrevocable judicial decision, the District Court shall declare that there is a bar to the prosecution.

Section 350

If the investigation, referred to in section 348, does not result in application of section 349(1), the District Court shall, on the basis of the indictment and the hearing at the court session, deliberate on the question whether it has been proven that the defendant committed the criminal offence, and, if so, which criminal offence the judicial finding of fact constitutes under the law; if it is found that the offence is proven and punishable, then the District Court shall deliberate on the criminal liability of the defendant and on the imposition of the punishment or measure, prescribed by law.

Section 351

If the District Court finds that the offence as charged in the indictment has been proven, that it is punishable and the defendant is criminally liable therefor, it shall impose the punishment or measure, prescribed for the offence.

Section 352

[1.] If the District Court finds that it has not been proven that the defendant committed the offence for which he has been indicted, then it shall acquit him.

[2.] If the District Court finds that the offence has been proven, but that said offence is not a criminal offence or the defendant is not criminally liable therefor, it shall dismiss the charges against him in respect of said offence. In the case, referred to in section 39 of the Criminal Code, it may also impose a measure as prescribed in section 37, 37a, 37b or 77s of the Criminal Code, if the applicable statutory conditions have been fulfilled.

Section 353

1. In the case of application of section 9*a* of the Criminal Code, of imposition of a punishment or measure, of acquittal or dismissal of the charges, the District Court shall, subject to application of section 94, give a decision on seized objects whose return has not been ordered. This decision shall be without prejudice to any person's right in regard of the object.

2. The District Court shall order, without prejudice to section 351,

a. the return of the object to the person from whom it was seized;
b. the return of the object to the person who may be reasonably regarded as the person entitled thereto; or
c. if there is no person who may be reasonably regarded as the person entitled thereto, the custody of the object for the benefit of the person entitled thereto.

3. Section 119 shall apply mutatis mutandis to an order as referred to in subsection (2).

4. The District Court may order the return of seized objects against provision of security. Section 118*a* shall apply mutatis mutandis.

Section 354

1. In the cases, referred to in section 353(1), the District Court shall also give a decision on the data disabled under application of section 125o, if the measures concerned have not yet been revoked.

2. The District Court may order that the data be destroyed in the case of data in relation to which a criminal offence was committed or which was used in the commission of a criminal offence, insofar as destruction is necessary for the prevention of new criminal offences. In all other cases it shall order that the data be again placed at the disposal of the administrator of the computerised device or system.

Section 354a

1. If a punishment order has been previously issued in regard of the same offence, but no letter of objection has been filed, the court shall annul the punishment order if it acquits the defendant, dismisses the charges against the defendant or convicts the defendant. If the court declares a ban to the prosecution, it may annul the punishment order.

2. If the punishment order has already been wholly or partially executed, then the District Court shall take said execution into account in the imposition of the punishment or measure.

Section 355

[1.] If a judgment has been rendered in absentia, then after said judgment has become enforceable, the decision of the District Court in regard of the convincing items of evidence may be enforced, after, if the judgment has not yet become final, the clerk to the court has prepared an accurate description of those items and filed it at the court registry.

[2.] The District Court may exclude such objects from being returned or destroyed in accordance with

the preceding subsection, as it deems necessary.

Section 356

[1.] If the District Court assumes forgery or falsity of an authentic document, it shall declare the entire document forged or falsified or indicate where the forgery or falsification lies in the judgment.

[2.] As soon as the judgment has become final, the clerk to the court shall place an annotation, signed by him, on the document, to the effect that said document has been declared wholly or partially forged or falsified and stating the judgment in which said declaration of forgery or falsification was made. The provisions of the preceding sentence shall not apply to deeds entered in a Register of the Civil Registry [*Burgerlijke Stand*].

[3.] First authenticated copies, copies or extracts of the document shall only be issued with the annotation placed on said document.

Section 357

[1.] The judgment shall contain, as much as possible, surname and forenames, age, place of birth, occupation and place of residence or abode of the defendant.

[2.] It shall also contain the names of the judges who rendered it and the date of pronouncement of judgment.

Section 358

[1.] In the cases referred to in section 349(1), the judgment shall contain the decisions referred to in said subsection.

[2.] In the other cases the judgment shall contain the decision of the District Court on the points referred to in section 350.

[3.] If, contrary to the defence statement expressly presented by the defendant in this respect, section 349(1) is not applied or it is assumed that the judicial finding of fact constitutes a specific criminal offence or that a specific ground for reduction of sentence or for excuse or exculpation is not present, then the reasons therefor shall be explicitly given in the judgment.

[4.] The judgment shall also state, in the case of imposition of a punishment or measure, the statutory provisions on which said punishment or measure is based.

[5.] All the forgoing under penalty of nullity.

Section 359

1. The judgment shall contain the indictment and the request for sentencing of the public prosecutor.

2. The decisions, referred to in sections 349(1) and 358(2) and (3), shall be reasoned. If the decision derogates from the positions expressly substantiated by the defendant or the public prosecutor, the judgment shall indicate, in particular, the reasons for derogation.

3. The decision that the defendant committed the offence must be based on the content of the means of evidence, incorporating the facts and circumstances on which this decision is based, which are included in the judgment. Insofar as the defendant has admitted the charges which have been found proven, a statement of the means of evidence may suffice, unless he has later stated otherwise or he or his defence counsel has argued for an acquittal.

4. In the application of section 9a or section 44a of the Criminal Code, the judgment shall state the special reasons which led to the decision.

5. The judgment shall state, in particular, the reasons which determined the punishment or led to the

measure.

6. In the imposition of a punishment or measure which entails deprivation of liberty, the judgment shall state, in particular, the reasons which led to the choice of this type of punishment or to this type of measure. The judgment shall also indicate, as much as possible, the circumstances taken into account in the determination of the length of the punishment.

7. If the measure of an entrustment order with compulsory treatment has been imposed in regard of a serious offence against or endangering the physical integrity of one or more persons, the judgment shall indicate said imposition, stating reasons.

8. All the forgoing under penalty of nullity.

Section 359a

1. The District Court may, if it appears that procedural requirements were not complied with during the preliminary investigation which can no longer be remedied and the law does not provide for the legal consequences thereof, determine that:

a. the length of the sentence shall be reduced in proportion to the gravity of the non-compliance with procedural requirements, if the harm or prejudice caused can be compensated in this manner;
b. the results obtained from the investigation, in which there was a failure to comply with procedural requirements, may not be used as evidence of the offence as charged in the indictment;
c. there is a bar to the prosecution, if as a result of the procedural error or omission there cannot be said to be a trial of the case which meets the principles of due process.

2. In the application of subsection(1), the District Court shall take into account the interest served by the violated rule, the gravity of the procedural error or omission and the harm or prejudice caused as a result of said error or omission.

3. The judgment shall contain the decisions referred to in subsection (1). Said decisions shall be reasoned.

Section 360

1. The judgment shall state, in particular, the use as evidence of the official record of questioning conducted before the examining magistrate or the District Court, containing the statement

- of the witness, referred to in section 216a(2), or
- of the threatened or protected witness, or
- of the witness questioned in the manner prescribed in sections 190(3), and 290(3),

or of written documents as referred to in section 344a(3).

2. If the means of evidence are accepted partly on the basis of the statement of a witness, with whom the public prosecutor made an agreement under section 226h(3), or 226k, the judgment shall state, in particular, the reason therefor.

3. If, after suspension of the prosecution on account of an issue in dispute in civil proceedings, the judgment derogates from the decision of the civil court, the judgment shall also state, in particular, the reason therefor.

4. All the forgoing under penalty of nullity.

Section 361

1. If judgment has to be pronounced on the claim of the injured party at the same time as the criminal case, the District Court shall also deliberate on the admissibility of the claim of the injured party, on

whether his claim is well-founded and on the award of the costs incurred by that party, the defendant and, in the case referred to in section 51g(4), his parents or his guardian. The deliberations on the award of the costs shall also take place if section 333 has been applied.

2. The claim of the injured party shall be admissible only if:

a. any punishment or measure is imposed on the defendant, or in the case of application of section 9a of the Criminal Code, and
b. damage or loss was directly inflicted on him by the offence found proven or by a criminal offence which, as is stated in the summons, the defendant admitted and was brought to the cognisance of District Court, and which the District Court took into account in the imposition of the punishment.

3. If the District Court considers that the hearing of the claim of the injured party imposes a disproportionate burden on the criminal proceedings, the District Court may, on application of the defendant or the public prosecutor or ex officio, determine that the claim is inadmissible, in whole or in part, and that the injured party may only file his claim, or the part of the claim which is inadmissible, with the civil court.

4. The judgment shall also include, unless, subject to application of section 333, the District Court has pronounced the claim of the injured party inadmissible without further hearing of the claim, the decision of the District Court on the claim of the injured party. This decision shall be reasoned.

5. If the District Court finds the claim of the injured party, referred to in section 51g(4), to be well-founded, then it shall grant the claim against the parents or the guardian and order the parents or the guardian to compensate the damage or loss.

6. The judgment shall also contain the decision of the District Court on the award of the costs incurred by the injured party, the defendant and, in the case referred to in section 51g(4), his parents or his guardian.

Section 361a

If the public prosecutor has also submitted an application for enforcement, in part or in whole, of a punishment imposed subject to application of section 14a of the Criminal Code or an application as referred to in section 15i(2) of the Criminal Code, then the District Court shall also deliberate on its jurisdiction to hear the application, on the right of the public prosecutor to institute criminal proceedings and on whether the application is well-founded. In that case the judgment of the District Court shall also include the decision of the District Court on the application, unless the lack of jurisdiction of the District Court to hear the application or a bar to the prosecution is pronounced.

Section 362

1. The judgment shall be pronounced at a public court session of the District Court. The public prosecutor and the clerk to the court shall be present at said court session.

[2.] The judgment shall be pronounced, where possible, by the presiding judge or by one of the judges who judged the case.

3. The judgment shall be interpreted for the defendant who had the assistance of an interpreter during the court hearing and is present at the pronouncement of judgment.

Section 363

[1.] The defendant, who is remanded in pre-trial detention in regard of the offence being tried at the court session, shall be present at the pronouncement of judgment, unless he is unable to be present or has given verbal or written notice that he does not wish to be present.

[2.] If such a defendant is unable to be present at the pronouncement of judgment, the clerk to the court shall read out the judgment to him as soon as possible at the place where is he being held in

pre-trial detention and the information to be given by the presiding judge, as referred to in the following section, shall be obligatory. All of the forgoing shall be annotated by the clerk to the court on the judgment.

[3.] If the defendant is being held in the district of a District Court other than the one at which the criminal proceedings took place, the reading out of the judgment, referred to in the preceding subsection, may be done by the clerk to the District Court in whose district the defendant is being held.

Section 364

1. If the defendant is present on pronouncement of judgment, the presiding judge shall verbally inform him that a legal remedy may be exercised against the judgment and of the time limit within which that legal remedy may be exercised.

2. The defendant, who is not present at the court session, may, after having learned of the judgment, authorise his defence counsel to waive his right to exercise a legal remedy.

Section 365

[1.] The judgment shall be signed by the judges who judged the case and by the clerk to the court who was present at the deliberations within two times twenty-four hours after pronouncement of judgment.

[2.] If one of them is unable to sign, this inability shall be stated at the bottom of the judgment.

[3.] As soon as the judgment has been signed and in any case, after expiration of the time limit referred to in subsection (1), the defendant or his defence counsel may inspect it and the court record. The presiding judge shall provide, on request, a copy of the judgment and the court record to the defendant and his defence counsel.

4. The presiding judge shall provide, on request, a copy of the judgment and the court record to any person other than the defendant or his defence counsel, unless the presiding judge considers that provision of said copy should be refused, in whole or part, for the protection of the interests of the person against whom the judgment has been rendered or of the third parties whose names are mentioned in the judgment or in the court record. In the latter case, the presiding judge may provide an anonymised copy or an extract of the judgment and the court record.

5. The judgment shall include the documents annexed to the judgment. A copy or extract of other documents, which are part of the criminal case file, shall not be provided.

Section 365a

1. As long as a regular legal remedy has not been exercised, an abridged judgment may be rendered.

2. An abridged judgment, against which a regular legal remedy has been exercised, shall be supplemented with the means of evidence referred to in section 359(3), or, insofar as section 359(3, second sentence) is applied, a statement of the means of evidence, unless the legal remedy has been exercised more than three months after the judgment or there is a judgment as referred to in section 410a(1).

3. Said judgment shall be supplemented within four months after the legal remedy has been exercised, or if the defendant is then remanded in pre-trial detention in regard of the offence tried at the court hearing, within three months after the legal remedy has been exercised.

Section 365b

1. The supplement, referred to in section 365*a*(2), shall be signed by one of the judges who rendered the abridged judgment or in their absence, by the presiding judge of the court.

2. Section 365(3) to (5) inclusive shall apply mutatis mutandis.

Section 365c

1. An application of the public prosecutor or of the defendant or his defence counsel, requesting supplementation of an abridged judgment, shall be granted, if the application is submitted within three months after the pronouncement of judgment.

2. Such an application of the injured party shall be granted, unless no reasonable interest is served thereby.

3. Section 365*b* shall apply mutatis mutandis.

Section 366

1. The public prosecutor shall serve the notification of the judgment, which contains the decision of the District Court under section 349, 351 or 352(2) and was pronounced while the defendant was not present, on him as soon as possible.

2. This notification shall not be given

a. to the defendant on whom the summons or on whom notice to appear at the court session at a later date, after adjournment of the hearing for an indefinite period, was served in person,
b. to the defendant who was present at the court session or the court session at a later date,
c. if a circumstance has otherwise occurred from which it follows that the date of the court session or of the court session at a later date was known to the defendant beforehand.

3. The notification shall state the name of the judge who rendered the judgment, the date of the judgment, the designation of the criminal offence, stating the place and time on which it was allegedly committed, and insofar as is stated in the judgment, surnames and forenames, date and place of birth, and the place of residence or abode of the defendant.

Section 366a

1. In the event that section 14a, 38v, or 77x of the Criminal Code has been applied, notification may be issued in person to the defendant on behalf of the Public Prosecution Service immediately after the pronouncement of judgment at the court session. The notification shall include the punishment or measure to which the defendant has been sentenced and all decisions which relate to the general and special conditions or the measure involving deprivation of liberty in section 14c, 38v or 77z of the Criminal Code. The notification shall also include the date of commencement of the probation period or the measure, if the defendant waives his right to exercise a legal remedy or if the court orders that the measure be immediately enforced.

2. If notification of the judgment is not required pursuant to section 366(2), and if section 14a, 38v or 77x of the Criminal Code has been applied, the notification, referred to in subsection (1), shall be sent by post to the defendant who was not present at the court session at which judgment was pronounced. Said notification shall also be sent if it was not issued in person as referred to in subsection (1).

3. In all other cases the notification, referred to in subsection (1), shall be served on the defendant in person. This notification shall also contain the information referred to in section 366(1) and (3).

4. In the event that section 22c or 77m of the Criminal Code has been applied, subsections (1) to (3) inclusive shall apply mutatis mutandis.

Part VII. Special Provisions pertaining to the Proceedings before the Single-judge Division

Section 367

Parts V and VI of Book II and Part IIIb of Book IV shall apply mutatis mutandis to the proceedings

before the single-judge division, referred to in section 51 of the Judicial Organisation Act [*Wet op de Rechterlijke Organisatie*], insofar as it is not specified otherwise in this Part, and on the understanding that the single-judge division shall have the powers conferred on the presiding judge of the three-judge division.

Section 368

The proceedings shall be brought before the single-judge division if, according to the initial assessment of the Public Prosecution Service, the case is of a non-complex nature, in particular, also in respect of the evidence and the application of the law, while the term of imprisonment to be requested may not exceed one year.

Section 369

1. The single-judge division may not impose a term of imprisonment exceeding one year.

2. If the single-judge division finds that the case should be tried by a three-judge division of the District Court, it shall refer the case to said division. Such referral shall be made in any case if, in the opinion of the single-judge division, the application of section 37a(1) or section 38m of the Criminal Code should be taken into consideration.

Section 370

1. The period of summons shall be at least three days.

2. In the event that the period of summons is less than eight days, the notice of objection, referred to in section 262(1), must be submitted before the date of the court session stated in the summons.

Section 370a

1. An abridged summons may be delivered to the suspect who has been arrested for a criminal offence which will be brought before the single-judge division.

2. The abridged summons shall contain:

a. a summons to appear before the single-judge division in respect of an offence, which is briefly described, on a specific date and time;
b. information on the rights and powers which must be brought to the attention of the suspect pursuant to section 260(3);
c. the notification that the abridged summons will be supplemented and information on the legal consequences of appearing, or not, at the court session.

3. The abridged summons shall be supplemented before the court session with an indictment which meets the requirements of section 261(1); this supplement shall be sent at least three days before the court session to the address given by the suspect.

Section 371

In the event that the suspect is summoned to appear before the single-judge division, the single-judge division may act as the court in chambers in regard of:

a. the decision to postpone the court hearing, referred to in **section 262(2)**;
b. the hearing of the application of the public prosecutor, referred to in section 68(3);
c. the hearing of the notice of objection to the summons.

Section 372

When the defendant, on his first appearance at the court session, applies for a postponement in the interest of his defence, the single-judge division shall adjourn the hearing for a definite period, if it finds this application to be well-founded.

Section 373

The public prosecutor may verbally call or instruct others to verbally call witnesses, expert witnesses and interpreters to appear before the court session of the single-judge division. In the latter case, said persons shall be called by civil servants or officials designated by **Our Minister of Security and Justice** for that purpose.

Section 374

1. Unless the defendant who has appeared at the court session or his defence counsel who is also present wishes to have certain indicated documents read out or mentioned in summary form, the single-judge division may, instead of reading out the official records, the reports of expert witnesses or other documents referred to in section 301, order that the submission of said documents be entered in the court record; said documents may also be taken into account to the detriment of the defendant.

2. The single-judge division, which has decided that the defendant will be tried in absentia, may decline to separately mention the documents referred to in subsection (1) or may decline to give the order referred to in subsection (1).

Section 375

1. If the suspect has been arrested in accordance with section 53 and has been brought before the public prosecutor, he may be summoned to appear before the single-judge division and be brought before the court on that same day. Section 279 and the time limit referred to in section 370 shall not apply in this case.

2. After the arrest of the suspect pursuant to section 53 by an investigating officer, that civil servant may verbally invite witnesses to appear before the public prosecutor or the assistant public prosecutor, before whom the suspect is to be brought.

3. If the suspect is summoned in the manner referred to in subsection (1), the summons may, in derogation of section 261(1), consist of a brief designation of the offence as charged in the indictment.

Section 376

1. If the summons, in accordance with section 375(3), consisted of a brief designation of the offence as charged in the indictment, the public prosecutor, after having presented the case by reading out the indictment, shall submit a written detailed statement of the offence.

2. The detailed statement shall meet the requirements of section 261(1); it shall be deemed to be a summons in regard of the basis for further prosecution.

Section 377

1. In the application of section 369(2), the case shall be brought before the three-judge division on the basis of the existing indictment by notification of the defendant to appear, on behalf of the public prosecutor, come the later date set for the court session. Sections 260(2), 263 and 265 shall apply.

2. The case shall be continued in the normal manner, on the understanding that the deliberations, referred to in sections 348 and 350, shall be partly conducted on the basis of the hearing of the single-judge division, as said hearing took place according to the record of that court session. Section 322(4) shall apply mutatis mutandis.

3. The District Court shall order that the hearing be started again, unless the public prosecutor and the defendant consent to resumption of the hearing from the stage at which it was at the time of the referral.

Section 378

[1.] After the closure of the court hearing, the single-judge division shall render a verbal judgment either immediately or on that same day at an hour to be determined by it on closure of the hearing.

[2.] The judgment shall be entered in the court record in the manner to be designated by **Our Minister of Security and Justice**

a. if determined by the single-judge division, ex officio or on application of the public prosecutor or of the defendant or his defence counsel, in the judgment;
b. if the public prosecutor, the defendant or his defence counsel, or the injured party submits an application to that end not later than three months after the judgment;
c. if a regular legal remedy has been exercised against the judgment, unless the legal remedy is exercised more than three months after the judgment or in the case of a judgment as referred to in section 410a(1);
d. if the judgment has been rendered in absentia and the summons was not served in person and no circumstance has occurred from which it follows that the date of the court session or the court session at a later date was known to the defendant, while witnesses or expert witnesses were questioned or an injured party joined in the proceedings at the court session, unless in the case of a judgment as referred to in section 410a(1).

[3.] As soon as the court record has been signed, the defendant and his defence counsel may inspect it. The single-judge division shall provide, on request, a copy of the court record to the defendant and his defence counsel.

4. Section 365(4) and (5) shall apply mutatis mutandis.

Section 378a

[1.] Except for the provisions of section 378(2), and if written judgment has been rendered, a court record shall not be prepared and the judgment shall be annotated on a document to be annexed to the duplicate copy of the summons within two times twenty-four hours. The annotation shall be certified by the single-judge division.

[2.] The information which the annotation, referred to in the preceding subsection, must contain, shall be determined by **Our Minister of Security and Justice**, without prejudice to the provisions of section 381(3). The annotation shall state in any case:

1°. the name of the judge of the single-judge division, the date of pronouncement of judgment and whether the judgment was pronounced in absentia or in a defended case;
2°. if a conviction has been pronounced, the criminal offence which the judicial finding of fact constitutes;
3°. the imposed punishment or measure, as well as the statutory provisions on which said punishment or measure is based.

3. If the designation of the offence in the summons has been amended or supplemented by means of a detailed statement of the offence under section 376(1), the annotation shall be made after the amendment or supplement has been incorporated in the duplicate copy and has been certified by the single-judge division.

[4.] As soon as the annotation has been certified, the defendant and his defence counsel may inspect it. The single-judge division shall provide, on request, a copy of the annotation to the defendant and his defence counsel.

[5.] If section 378(2),(b) or (c) is applied, then the annotation referred to in the preceding subsections of this section shall be cancelled. In that case the clerk to the court shall delete the annotation.

Section 379

1. The single-judge division may render a written judgment. It shall be obliged to do so on application

of the public prosecutor or of the defendant or his defence counsel or of the injured party, unless it considers that no reasonable interest is served thereby.

2. In that case the judgment may in no event be rendered later than on the fourteenth day after the closure of the hearing.

3. Section 345, last subsection, shall apply mutatis mutandis.

Section 380

If the judge of the single-judge division, or his substitute, who has judged the case, is unable to pronounce the written judgment, it shall be pronounced, in the first case by a substitute and, in the second case by the judge of the single-judge division or another substitute.

Section 381

[1.] Both the public prosecutor and the defendant may, after having been informed of the legal remedy which may be exercised against the judgment, waive the right to exercise that legal remedy at the court session. The right of the defendant to exercise such remedy shall be brought to his attention.

[2.] Waiver of the right to exercise legal remedies shall be stated in the court record.

[3.] If the court record has not been prepared, the statement of the waiver of the right to exercise legal remedies shall be included in the annotation referred to in section 378*a*(1).

Part VIII. B Special Provisions pertaining to the Proceedings before the Single-Judge Division of the Sub-District Court Sector

Section 382

Proceedings in regard of:

a. serious offences, referred to in section 314 of the Criminal Code, insofar as the defendant had reached the age of eighteen years when the prosecution was started against him;
b. minor offences, with the exception of:
   1°. minor offences, referred to in sections 447c, 447d, 465–467 and 468(1°) of the Criminal Code;
   2°. minor offences concerning taxes, unless said offences involve a violation of rules pertaining to parking as referred to in section 225 of the Municipalities Act [*Gemeentewet*];
   3°. minor offences, referred to in sections 10(1) and 11(1) of the Opium Act;
   4°. minor offences, referred to in section 19 of the Termination of Pregnancy Act [*Wet Afbreking Zwangerschap*];
   5°. minor offences, for which, by law, a court other than the single-judge division of the Sub-District Court Sector has been charged with the trial thereof;
   6°. minor offences, committed by persons who had not yet reached the age of eighteen years when the prosecution was started against them, if the offence is related to a serious offence or a minor offence as referred to under (1°) to (5°) inclusive.

shall be brought before the single-judge division of the Sub-District Court Sector.

Section 383

The case shall be brought before the single-judge division of the Sub-District Court Sector on behalf of the Public Prosecution Service:
either by an appearance notice;
or by summons.

Section 384

[1.] A case may be brought before the court by an appearance notice in regard of all criminal offences,

except for those offences which have been expressly excluded. The excluded offences shall, after having consulted the Public Prosecution Service, be designated by Governmental Decree.

[2.] The Public Prosecution Service attached to the District Court may give investigating officers the necessary general or special instructions on whether to bring, or not bring, cases, which are to be tried by the single-judge division of the Sub-District Court Sector, before said court by an appearance notice.

Section 385

1. The case may be brought before the court by an appearance notice only if the suspect has been caught red-handed by an investigating officer. The case is brought before the court by issuance of a dated and signed appearance notice by the investigating officer to the suspect.

2. On issuance a short verbal explanation of the contents and the purpose of the appearance notice shall be given, where possible, to the suspect.

3. If the suspect refuses to accept receipt of the appearance notice, then the time of refusal of the suspect shall be deemed to be the time of issuance.

4. The investigating officer shall note the contents of and the issuance of the appearance notice or the offering of and the refusal to accept the appearance notice in his official record.

5. In the case of the arrest of the suspect in accordance with section 53, an appearance notice may be promptly served on him in order to appear on that same day before the single-judge division of the Sub-District Court Sector. The suspect shall first be brought before the competent Public Prosecution Service and then before the single-judge division of the Sub-District Court Sector. Sections 386(2) and (3), and 398(2°) shall not apply in this case.

Section 386

1. The appearance notice shall meet the requirements set for the summons in section 261(1), on the understanding that a brief designation of the offence may suffice.

2. The appearance notice shall state that the brief designation of the offence will be supplemented or amended at the start of the court hearing. The written supplement or amendment may be inspected at the District Court Registry ten days before the start of the court session.

3. The supplement or amendment, referred to in subsection (2), shall be sent by post to the address given by the defendant.

Section 387

The public prosecutor may inform the suspect verbally or in writing of the withdrawal of the appearance notice before the start of the court session.

Section 388

1. The requirements to be met by the form, which is used to give the suspect notice to appear at the court session, shall be established by **Our Minister of Security and Justice**.

2. **Our Minister of Security and Justice** may give further rules pertaining to the implementation of sections 384–387.

Section 389 [Repealed as of 01-02-1940]

Section 390

[1.] In cases, which are brought before the court on the same day by an appearance notice, the civil servant, who detected the offence, may invite witnesses to appear at the court session of the

single-judge division of the Sub-District Court Sector. The invitation shall be issued to the witness in person or to one of his housemates at his place of residence or abode in the manner prescribed in section 587(2).

[2.] A duplicate copy of the invitation shall be added to the case documents.

[3.] If the Public Prosecution Service withdraws the appearance notice issued to the suspect or considers that the case should be brought before the court at a later date, it shall promptly inform the witnesses invited pursuant to this section, in the manner to be determined by the Public Prosecution Service, that their invitation is withdrawn. The form to be used for the invitations, referred to in this section, shall be established by **Our Minister of Security and Justice**. He may issue further rules for implementation of this section.

Section 391

The Public Prosecution Service shall be authorised in cases which are brought before the single-judge division of the Sub-District Court Sector to verbally call witnesses, expert witnesses and interpreters or to instruct a **police officer, appointed for the performance of police duties, or another civil servant or official, insofar as this civil servant or official has been designated for that purpose by Our Minister of Security and Justice**, to call them to appear at the court session of the single-judge division of the Sub-District Court Sector.

Section 392

[1.] If the case has been brought before the court by issuance of an appearance notice, section 280(1), relating to trial in absentia, shall apply.

2. Sections 366 and 408 in regard of a summons to appear at the court session, which has been served on the suspect in person, shall apply mutatis mutandis to an appearance notice issued to the suspect in person.

Section 393

1. If the case has been brought before the court by issuance of an appearance notice which contains a brief designation of the offence as charged in the indictment, the Public Prosecution Service shall submit the written detailed statement of the offence as charged in the indictment to the single-judge division of the Sub-District Court Sector and to the defendant on his request at the start of the court hearing.

2. The detailed statement shall be deemed to be a summons as regards the basis for further prosecution.

Section 394

When the defendant, on his first appearance at the court session, applies for a postponement in the interest of his defence, the single-judge division of the Sub-District Court Sector shall adjourn the hearing for a definite period, if it finds this application to be well-founded.

Section 395

1. After the closure of the court hearing, the single-judge division of the Sub-District Court Sector shall render a verbal judgment either immediately or on that same day at an hour to be determined by it on closure of the hearing. Sections 357 and 359(3) and (5) shall not apply.

2. The judgment shall be entered in the court record in the manner to be designated by **Our Minister of Security and Justice**

a. if determined by the single-judge division of the Sub-District Court Sector, ex officio or on application of the public prosecutor or of the defendant or his defence counsel, in the judgment;
b. if the public prosecutor, the defendant or his defence counsel, or the injured party submits an

application to that end not later than three months after the judgment;

c. if a regular legal remedy has been exercised against the judgment, unless the legal remedy is exercised more than three months after the judgment or in the case of a judgment as referred to in section 410a(1);
d. if the judgment has been rendered in absentia and the summons was not served in person and no circumstance has occurred from which it follows that the date of the court session or the court session at a later date was known to the defendant, while witnesses or expert witnesses were questioned or an injured party joined in the proceedings at the court session, unless in the case of a judgment as referred to in section 410a(1).

3. As soon as the court record has been signed, the defendant and his defence counsel may inspect it. The single-judge division of the Sub-District Court Sector shall provide, on request, a copy of the court record to the defendant and his defence counsel.

4. Section 365(4) and (5) shall apply mutatis mutandis.

Section 395a

[1.] Except for the provisions of section 395(2), and if written judgment has been rendered, a court record shall not be prepared and the judgment shall be annotated on a document to be annexed to the duplicate copy of the summons within two times twenty-four hours. The annotation shall be certified by the single-judge division of the Sub-District Court Sector.

[2.] The information, which the annotation, referred to in the preceding subsection, must contain, shall be determined by **Our Minister of Security and Justice**, without prejudice to the provisions of section 397a(3). The annotation shall state in any case:

1°. the name of the judge of the single-judge division of the Sub-District Court Sector, the date of pronouncement of judgment and whether the judgment was pronounced in absentia or in a defended case;
2°. if a conviction has been pronounced, the criminal offence which the judicial finding of fact constitutes;
3°. the imposed punishment or measure.

3. As soon as the annotation has been certified, the defendant and his defence counsel may inspect it. The single-judge division of the Sub-District Court Sector shall provide, on request, a copy of the annotation to the defendant and his defence counsel.

4. If section 395(2),(b) or (c) is applied, then the annotation referred to in the preceding subsections of this section shall be cancelled. In that case the clerk to the court shall delete the annotation.

Section 396

1. The single-judge division of the Sub-District Court Sector may render a written judgment. It shall be obliged to do so on application of the public prosecutor or of the defendant or his defence counsel or of the injured party, unless it considers that no reasonable interest is served thereby.

2. In that case the judgment may in no event be rendered later than on the fourteenth day after the closure of the hearing.

3. Section 345, last subsection, shall apply mutatis mutandis.

Section 397

If the single-judge division of the Sub-District Court Sector, which judged the case, is unable to pronounce the written judgment, it shall be pronounced by another single-judge division of the Sub-District Court Sector of the same District Court.

Section 397a

[1.] Both the public prosecutor and the defendant may, after having been informed of the legal remedy which may be exercised against the judgment, waive the right to exercise that legal remedy at the court session. The right of the defendant to exercise such remedy shall be brought to his attention.

[2.] Waiver of the right to exercise legal remedies shall be stated in the court record.

[3.] If the court record has not been prepared, the statement of the waiver of the right to exercise legal remedies shall be included in the annotation referred to in section 395*a*(1).

Section 398

Parts Five and Six of this Book shall apply mutatis mutandis to the proceedings before the single-judge division of the Sub-District Court Sector, except for the following exceptions:

1°. In the event that the examining magistrate has issued orders for the maintenance of public order in accordance with Part Seven of Book Four, the period of summons shall be at least two days. If necessary, this time limit shall be extended by as many days as is required in order to ensure that it includes at least one day which is not a Saturday, Sunday or public holiday.
2°. The defendant may, unless he is being prosecuted in regard of a serious offence or the single-judge division of the Sub-District Court Sector orders that he appear in person, have himself represented at the court session by a lawyer, provided this lawyer declares at this court session that he has been given specific authorisation for that purpose, or by an authorised representative who has been given a special written power of attorney for that purpose.
3°. The provisions relating to the presentation of the case by the Public Prosecution Service, the pre-trial detention and the notice of objection to the summons shall not apply.
4°. In the case of section 295, the documents shall be sent to **the public prosecutor in the district of the District Court which has jurisdiction to try the serious offence**.
5°. Unless the defendant who has appeared at the court session or his defence counsel who is also present wishes to have certain indicated documents read out or mentioned in summary form, the single-judge division of the Sub-District Court Sector may, instead of reading out the official records, the reports of expert witnesses or other documents referred to in section 301, order that it be entered in the court record that said documents have been submitted; said documents may also be taken into account to the detriment of the defendant.
6°. [Repealed]
7°. [Repealed]
8°. [Repealed]
9°. [Repealed]
10°. The civil servant of the Public Prosecution Service shall not be required to be present at the pronouncement of judgment.
11°. [Repealed.]
12°. [Repealed.]
13°. [Repealed.]
14°. The notification referred to in section 366 shall not be required to be given unless:
   a. section 14a of the Criminal Code has been applied to the defendant, or,
   b. a custodial sentence, not including a default custodial sentence, has been imposed, or,
   c. an additional punishment has been imposed, whereby the disqualification from exercising certain rights or the disqualification from exercising certain competencies was pronounced.

Book Three. Legal Remedies

A. Regular Legal Remedies

Part I [Repealed as of 01-03-2007]

Section 399 [Repealed as of 01-03-2007]

Section 400 [Repealed as of 01-03-2007]

Section 401 [Repealed as of 01-03-2007]

Section 402 [Repealed as of 01-03-2007]

Section 403 [Repealed as of 01-03-2007]

Part II. Appeal against Judgments

Section 404

1. Appeal may be filed against judgments concerning serious offences, rendered by the District Court as final judgment or in the course of the hearing, by the public prosecutor with the court which rendered the judgment, and by the defendant who was not acquitted of the entire indictment.

2. Appeal may be filed against judgments concerning minor offences, rendered by the District Court as final judgment or in the course of the hearing, by the public prosecutor with the court which rendered the judgment, and by the defendant who was not acquitted of the entire indictment, unless in this regard in the final judgment:

a. under application of section 9a of the Criminal Code, a punishment or measure was not imposed, or
b. no other punishment or measure was imposed than a fine up to a maximum – or, where two or more fines were imposed in the judgment, fines up to a joint maximum – of € 50.

3. In derogation of subsection (2), the defendant may file an appeal against a judgment rendered in absentia as referred to in subsection (2)(a) and (b), if the summons or notice to appear at the court session of the court of first instance or the notice to appear at the court session at a later date was not given to or served on the defendant in person and no other circumstance has occurred from which it follows that the date of the court session or of the court session at a later date was known to the defendant beforehand. The preceding sentence shall not apply in the event that the summons or appearance notice was lawfully served on the defendant in accordance with section 588a within six weeks after the defendant filed an objection to the judgment in absentia under the terms of section 257e.

4. The judgments, referred to in subsection (2)(a) and (b), which are not open to appeal, shall not be open to appeal in cassation either, unless in the case of a violation of a bye-law of a province, a municipality, a water control authority, or a public body established under application of the Joint Regulations Act [*Wet Gemeenschappelijke Regelingen*].

5. If at the court of first instance criminal offences have been tried jointly by the District Court, then the defendant may only file an appeal in regard of those joint cases in which he was not acquitted of the entire indictment.

Section 405 [Repealed as of 01-01-1936]

Section 406

1. Appeal against judgments, which are not final judgments, shall only be permitted simultaneously with the appeal against the final judgment.

2. Subsection (1) shall not apply in the event that the appeal is filed against the remand detention order or the warrant of arrest and against rejection of the request for revocation of the remand detention order or the warrant of arrest.

Section 407

[1.] The appeal may only be filed against the judgment in its entirety.

[2.] However, if at the court of first instance criminal offences have been tried jointly by the District Court, then the appeal may be confined to the judgment, insofar as said relates to one or more of the joined cases.

Section 408

1. The appeal must be filed within fourteen days after the final judgment if:

a. the summons or notice to appear at the court session or the notice to appear at the court session at a later date was given to or served on the defendant in person;
b. the defendant appeared at the court session or the court session at a later date;
c. a circumstance has otherwise occurred from which it follows that the date of the court session or of the court session at a later date was known to the defendant beforehand;
d. the summons or appearance notice was lawfully served on the defendant in accordance with section 588a within six weeks after the defendant filed an objection to the judgment in absentia under the terms of section 257e and at the court of first instance no unconditional punishment or measure was imposed which entails deprivation of liberty for more than six months.

2. In cases other than those mentioned in subsection (1), the appeal must be filed within fourteen days after a circumstance has occurred from which it follows that the final judgment is known to the defendant.

3. Subsection (2) shall not apply in the case of provision of a copy of the judgment as referred to in section 45b of the Surrender Act [*Overleveringswet*].

4. If the court hearing has been adjourned for an indefinite period and the notice to appear at the court session at a later date has not been given or served in person, then the time limit referred to in subsection (2) shall apply, unless

a. the defendant has appeared at the court session at a later date or
b. a circumstance has otherwise occurred from which it follows that the date of the court session at a later date was known to the defendant beforehand.

If one of these two exceptions occurs, the time limit referred to in the opening lines of subsection (1) shall apply.

Section 408a

If appeal has been filed by the defendant in person or by an authorised representative pursuant to section 450(1) and (2), a summons of the defendant to appear before the court on a specific date in order to stand trial for one or more of the offences as charged against him in the indictment at the court of first instance may be served right away.

Section 409

1. After appeal has been filed, the clerk to the District Court shall send the documents pertaining to the proceedings to the clerk to the Court of Appeal as soon as possible.

2. If appeal has only been filed by the public prosecutor, said documents shall not be sent, or if they are sent erroneously, no further action shall be taken until the appeal has been served on the defendant.

3. If the public prosecutor has not served the appeal on the defendant in person, then subsection (2) shall apply mutatis mutandis, as long as the time limit for the defendant to file an appeal has not expired or, if the defendant has since filed an appeal, as long as the time limit for filing a written document as referred to in section 410 has not expired.

4. If the public prosecutor has filed an appeal against a judgment in which the defendant was acquitted of the entire indictment, while the judgment was rendered after the summons or notice to appear at the court session of the court of first instance or the notice to appear at the court session at a later date was not given to or served on the defendant in person and no other circumstance has occurred from which it follows that the date of the court session or of the court session at a later date was known to the defendant beforehand, said documents shall not be sent, or if they are sent erroneously, no further action shall be taken until the appeal has been served on the

defendant in person.

Section 410

1. The public prosecutor shall submit a written document setting out the grounds for appeal to the registry of the court which rendered the judgment. The defendant may also submit a written document setting out the grounds for appeal to said registry within fourteen days after the appeal has been filed.

2. The written document shall be promptly added to the case documents.

3. The defendant may, without prejudice to section 414, indicate in the written document which witnesses and expert witnesses he wishes to have called to the court session. This written document shall be deemed to be an application within the meaning of section 263(2). Section 264 shall apply mutatis mutandis. If the trial at the court of first instance was conducted in a defended case, the advocate general may also refuse to call said witnesses, if the witness or expert witness was questioned at the court session of the court of first instance or by the examining magistrate and questioning said witnesses at the court session cannot be considered necessary.

4. In the event that the defendant does not submit a written document as referred to in subsection (1), he shall submit a written document stating the reasons for filing appeal to the registry of the court which rendered the judgment within fourteen days after appeal has been filed against a judgment of the District Court as referred to in section 410a(1). This obligation shall not apply in the case described in section 410a(2).

Section 410a

1. In the event that appeal is permitted and has been filed against a judgment exclusively concerning one or more minor offences or serious offences which carry a statutory term of imprisonment not exceeding four years, and no other punishment or measure was imposed than a fine up to maximum – or, where two or more fines were imposed in the judgment, fines up to a joint maximum – of € 500, the appeal filed shall be brought before and heard by the court only if required, in the opinion of the presiding judge, in the interest of a proper administration of justice.

2. An appeal filed against a judgment rendered in absentia by the District Court, not being the single-judge division of the Sub-District Court Sector, must be heard, in any case, in the interest of a proper administration of justice if the summons or notice to appear at the court session of the court of first instance or the notice to appear at the court session at a later date was not given to or served on the defendant in person and no other circumstance has occurred from which it follows that the date of the court session or of the court session at a later date was known to the defendant beforehand. The preceding sentence shall not apply in the event that the summons or appearance notice was lawfully served on the defendant in accordance with section 588a within six weeks after the defendant filed an objection to the judgment in absentia under the terms of section 257e.

3. If the presiding judge finds on the basis of the written document submitted or the documents pertaining to the proceedings, including the abridged judgment or the annotation of the judgment, that an appeal hearing is required in the interest of a proper administration of justice, he shall order that the case be brought in appeal before the court under the terms of section 412.

4. In the other case, the presiding judge shall decline to hear the appeal in a reasoned decision given in chambers. This decision given in chambers shall be deemed to be a decision on the legal remedy as referred to in section 557(1).

5. If, pursuant to section 408a, the defendant in the case has been summoned to appear at the court session on a specific date, the appearance notice shall be deemed to have been withdrawn by the decision given in chambers referred to in subsection (4).

6. A decision given in chambers as referred to in subsections (3) and (4) shall be served on the defendant.

7. In the case referred to in subsection (4), the judgment to which the decision given in chambers by the presiding judge relates shall not be open to appeal in cassation.

Section 411

1. Except for the exceptions mentioned in the law, criminal cases shall be tried and decided on by a three-judge division at the Court of Appeal.

2. A case may be tried in appeal by a single-judge division, if:

a. according to the initial assessment of the Public Prosecution Service, the case is of a non-complex nature and a punishment or measure has been imposed on the defendant in regard of the charge of which he was found guilty at the court of first instance, and futhermore
b. the case was tried by the single-judge division of the Sub-District Court Sector or of the District Court as court of first instance, and in addition a term of imprisonment not exceeding six months was imposed.

3. If, in the opinion of the single-judge division, the case is not suitable to be tried and decided on by the single-judge division, it shall refer said case to the three-judge division.

4. The case shall be brought before the court by referral on the basis of the existing indictment by notification of the date set for the court session at a later date, on behalf of the Public Prosecution Service, to the defendant. Sections 412(3) and 413 shall apply mutatis mutandis to this notice. Section 377(2), (3) and (4) shall also apply mutatis mutandis to the trial before the three-judge division.

Section 411a

1. If appeal has been filed against the judgment rendered at the court of first instance, but the appeal hearing has not yet started, the examining magistrate attached to the District Court which rendered judgment as court of first instance or the examining magistrate attached to the Court of Appeal may, on application of the Public Prosecution Service or of the defendant or his defence counsel, conduct a further investigation.

2. The investigation by the examining magistrate attached to the District Court or the Court of Appeal shall be conducted in accordance with Chapters Two to Five inclusive and Seven of Part Three of Book Two.

Section 412

1. Where possible, within eight days after the documents have been transferred to the court registry, the presiding judge shall determine, at the proposal of the advocate general, the date of the court session, except in the event of application of section 408a. **Section 258(2,** second to fourth sentence inclusive**)** shall apply mutatis mutandis.

2. The case shall be brought in appeal before the court by an appearance notice or summons served, on behalf of the advocate general, on the defendant, in order to stand trial for one or more of the offences as charged in indictment at the court of first instance.

[3.] Section 260 shall apply to that summons, except that the provisions of section 414 shall be brought to the attention of the defendant, instead of those of section 262(1), in said summons.

[4.] Several cases may be joined and brought before the court on the grounds referred to in section 259.

Section 413

1. A period of at least ten days must have expired between the date on which a summons is served on the defendant and that of the court session. Section 265(2) and (3) shall apply mutatis mutandis.

2. If the injured party joined in the proceedings at the court of first instance, then the advocate general shall have him notified in writing of the date on which the case is to be tried at the court session.

3. If the victim or the surviving relative exercised his right to make a verbal statement under section 51e at the court of first instance, the advocate general shall notify him in writing of the date and time on which the case is to be tried at the court session.

Section 414

1. The advocate general and the defendant may have witnesses and expert witnesses, who were questioned at the court session of the court of first instance, summoned or called in writing as new witnesses and expert witnesses. They may also submit new documents or convincing items of evidence.

2. Sections 263(2) to (5) inclusive and 264 shall apply mutatis mutandis. If the defendant has filed an appeal, the advocate general may refuse in a reasoned decision to have a witness or expert witness called, who has not been requested by the defendant by means of a written document, if questioning at the court session is not considered necessary.

3. The victim or the surviving relative, who did not exercise his right to make a verbal statement under section 51e at the court of first instance, may give the advocate general or the Court of Appeal written notice of his intention to do so. Section 260(2) shall apply mutatis mutandis.

Section 415

1. Except for the following sections of this Part, sections 268 to 314 inclusive, 315 to 353 inclusive and 356 to 366a inclusive shall apply mutatis mutandis to the proceedings before the Court of Appeal, on the understanding that, in derogation of section 365a(2), supplementation shall also be made if the appeal in cassation has been filed more than three months after the date of the pronouncement of judgment or in the case of an appeal as referred to in section 410a(1).

2. The Court of Appeal shall focus the court hearing on the objections which have been submitted by the defendant and the Public Prosecution Service to the judgment rendered at the court of first instance, and on that which is otherwise necessary.

Section 416

1. In the event that the public prosecutor has filed an appeal, the advocate general, on presentation of the case, shall explain and clarify the objections to the judgment. As the occasion arises, the advocate general shall also mention the reasons why the public prosecutor has not submitted a written document setting out the grounds for appeal. After presentation of the case by the advocate general, the defendant, who filed an appeal, shall be given the opportunity to state his objections to the judgment.

2. If the defendant has not submitted a written document setting out the grounds for appeal or stated verbal objections to the judgment, the appeal filed by the defendant may be declared inadmissible without hearing the case itself.

3. If a written document setting out the grounds for appeal, as referred to in section 410(1), has not been submitted by the Public Prosecution Service, the appeal filed by the public prosecutor may be declared inadmissible without hearing the case itself.

Section 417

[1.] Official records, reports of expert witnesses or other documents, which were read out at the court of first instance, may also be regarded as having been read out at the appeal hearing.

[2.] If the defendant requests to have specific documents read out again, this request shall be granted, insofar as the Court of Appeal finds that reasonable limits will not be exceeded as a result thereof.

Section 418

1. The calling of witnesses, who have not appeared, may be refused in the cases referred to in section 288.

2. In the event that at the court of first instance the trial was conducted in a defended case, the calling of witnesses may also be refused if the witness or expert witness was questioned at the court session of the court of first instance or by the examining magistrate and the Court of Appeal does not consider questioning at the court session necessary.

3. If the defendant has filed an appeal, the calling of a witness or expert witness, who was not requested by the defendant by means of a written document, may be refused if questioning at the court session cannot be considered necessary.

Section 419

In the case of section 295, the advocate general shall send the official records, together with the other case documents, to **the public prosecutor in the district of the District Court which rendered the judgement as court of first instance,** and that District Court shall have exclusive jurisdiction to try the serious offence.

Section 420

1. In the cases of sections 295, 316 and 347 the investigation shall be conducted by an examining magistrate attached to the District Court which rendered judgment as court of first instance or an examining magistrate attached to the Court of Appeal before which the case has been brought.

2. The investigation conducted by the examining magistrate attached to the District Court or to the Court of Appeal, referred to in subsection (1), shall be conducted in accordance with **Chapters Two to Five inclusive and Seven** of Part Three of Book Two. Part Two of Book Two shall apply mutatis mutandis to the investigation by the examining magistrate attached to the Court of Appeal.

3. If the investigation is conducted by an examining magistrate attached to the Court of Appeal, all provisions pertaining to the District Court, the examining magistrate attached to the District Court, the public prosecutor and the clerk to the District Court shall apply to the Court of Appeal, the examining magistrate attached to the Court of Appeal, the advocate general and the clerk to the Court of Appeal.

4. After completion of the investigation, the examining magistrate attached to the District Court or to the Court of Appeal shall send the documents to the Court of Appeal.

Section 421

1. The injured party, who has not joined in the proceedings at the court of first instance in accordance with section 51b(1) or (2), shall not have the right to do so in the appeal proceedings.

2. If joinder has taken place at the court of first instance, then it shall continue in appeal by operation of law, insofar as the claimed compensation has been awarded.

3. Insofar as the claimed compensation has not been awarded, the injured party may, within the limits of his first claim, join in the appeal proceedings. Section 51b to 51f inclusive shall apply mutatis mutandis, on the understanding that in regard of the statement of claim required pursuant to section 51b, a reference to the first statement of claim, if this claim has not been amended, shall suffice.

4. If appeal has not been filed, the injured party may file an appeal against the part of the judgment in which his claim is rejected with the Court of Appeal. Chapter Two of Part Six of Book II shall not apply. The provisions of the Code of Civil Procedure in regard of the proceedings in appeal and appeal in cassation shall apply mutatis mutandis. No court fees for the proceedings shall be due.

5. If an appeal has not been filed and a defence statement has been submitted against the claim under the terms of section 51g(4) by the parents or the guardian of the convicted offender, said persons may file an appeal against the claim awarded with the Court of Appeal. Chapter Two of Part Six of Book II shall not apply. The provisions of the Code of Civil Procedure in regard of the proceedings in appeal shall apply mutatis mutandis. No court fees for the proceedings shall be due.

Section 422

1. After closure of the appeal hearing, the Court of Appeal shall determine on the basis of the court hearing whether the delivery of the summons or appearance notice in the appeal proceedings is valid and whether the appeal has been filed in accordance with the requirements set in this Code.

2. If the delivery of the summons or appearance notice in the appeal proceedings is valid and the appeal has been filed in accordance with the requirements set in this Code, the deliberations in appeal, referred to in sections 348 and 350, shall take place on the basis of the appeal hearing. In addition, the deliberations shall also take place on the basis of the hearing at the court of first instance, as took place according to the record of that court session, unless section 378a or section 395a was applied at the court of first instance.

Section 422a

1. If the Court of Appeal is of the opinion that the summons at the court of first instance should have been declared null and void on a ground other than a defect in the indictment, the Court of Appeal shall deal with the matter, unless the advocate general or the defendant requests at the court session that the case be remitted to the same District Court. The case shall also be remitted without any expressly apparent desire of the defendant if the defendant is not present at the court session and the summons to appear at the appeal court session or the notice to appear at the court session at a later date was not given to or served on the defendant in person and no other circumstance has occurred from which it follows that the date of the court session or of the court session at a later date was known to the defendant beforehand.

2. Subsection (1) shall apply mutatis mutandis, if the notice to appear at the court session at a later date of the court of first instance should have been declared null and void.

Section 423

1. The Court of Appeal may either wholly or partially uphold and either wholly or partially quash the judgment. The Court of Appeal shall wholly uphold the judgment either by wholly or partially adopting or by supplementing or amending grounds. In the event that the judgment is wholly or partially quashed, the Court of Appeal shall do what the District Court ought to have done, except for remittance under subsection (2).

2. If the District Court did not decide on the principal case and as a result of the quashing of the judgment, it must be heard, the Court of Appeal shall deal with the case itself, unless the advocate general or the defendant requests at the court session that the case be remitted to the same District Court. The case shall also be remitted without any expressly apparent desire of the defendant if the defendant is not present at the court session and the summons to appear at the appeal court session or the notice to appear at the court session at a later date was not given to or served on the defendant in person and no other circumstance has occurred from which it follows that the date of the court session or of the court session at a later date was known to the defendant beforehand. In the case of remittance, the District Court shall try the case in accordance with the judgment of the Court of Appeal.

3. In the event that the judgment is quashed, the Court of Appeal may, nevertheless, adopt specific parts thereof in its judgment.

[4.] If in the case of concurrence of several offences, one principal punishment has been pronounced and the appeal has been filed only in regard of one or more of these offences, in the event the punishment is quashed, the punishment for the other offence or the other offences shall be

determined in the judgment.

Section 423a [Repealed as of 01-03-2007]

Section 424 [Repealed as of 01-03-2007]

Section 425

1. The person who is a member of a single-judge division, as referred to in section 411(2), shall have the powers which are conferred on the presiding judge of the three-judge division.

2. After closure of the court hearing, the single-judge division shall render a verbal judgment either right away or on that same day at an hour to be determined by it on closure of the hearing.

3. The judgment shall be entered in the court record in the manner to be determined by **Our Minister of Security and Justice**:

a. if determined by the single-judge division ex officio, on application of the advocate general or of the defendant or his defence counsel, in the judgment;
b. if the Public Prosecution Service, the defendant or his defence counsel, or the injured party submit an application or make a request to that end not later three months after the judgment;
c. if a regular legal remedy is exercised against the judgment;
d. if the judgment was rendered in absentia and the summons was not served in person and no circumstance has occurred from which it follows that the date of the court session was known to the defendant, while witnesses or expert witnesses were questioned or the injured party joined in the proceedings at the court session.

4. As soon as the court record has been signed, the defendant and his defence counsel may inspect it. The single-judge division shall provide, on request, a copy of the court record to the defendant and his defence counsel.

5. Sections 365(4) and (5), 381(1) and (2), and 397a(1) to (3) inclusive shall apply mutatis mutandis.

Section 426

1. Except for section 425(3), and if a written judgment is rendered, a court record shall not be prepared and the judgment shall be annotated on a document to be annexed to the duplicate copy of the summons within two times twenty-four hours. The annotation shall be certified by the single-judge division.

[2.] The information, which the annotation referred to in subsection one must contain, shall be determined by **Our Minister of Security and Justice**. The annotation shall state in any case:

1°. the name of the judge of the single-judge division, the date of pronouncement of judgment and whether the judgment was rendered in absentia or in a defended case;
2°. if the facts were found proven, and the criminal offence constituted by the facts found proven;
3°. the imposed punishment or measure, as well as the statutory provisions on which said punishment or measure is based.

3. As soon as the annotation has been certified, the defendant and his defence counsel may inspect it. The single-judge division shall provide, on request, a copy of the annotation to the defendant and his defence counsel.

4. If section 425(3),(b) or (c) is applied, then the annotation referred to in subsection (1) shall be cancelled. In that case the clerk to the court shall delete the annotation.

5. The single-judge division may render a written judgment. It shall be obliged to do so on application of the advocate general or of the defendant or his defence counsel or of the injured party, unless it considers that no reasonable interest is served thereby. In that case the judgment may in no event be rendered later that on the fourteenth day after the closure of the hearing. The judgment shall be

pronounced, as far as possible, by the judge who judged the case.

Part III. Appeal in Cassation against Judgments

Section 427

1. Appeal in cassation may be filed against judgments concerning serious offences pronounced by the Courts of Appeal by the Public Prosecution Service attached to the court which rendered the judgment, and by the defendant.

2. Appeal may be filed against judgments concerning minor offences, pronounced by the Courts of Appeal by the Public Prosecution Service attached to the court which rendered the judgment, and by the defendant, unless in this regard in the final judgment:

a. under application of section 9a of the Criminal Code, a punishment or measure was not imposed, or
b. no other punishment or measure was imposed than a fine up to a maximum – or, where two or more fines were imposed in the judgment, fines up to a joint maximum – of EUR 250.

3. Appeal in cassation may nevertheless be filed against the judgments, referred to in subsection (2)(a) and (b), in the case of a violation of a bye-law of a province, a municipality, a water control authority, or a public body established under application of the Joint Regulations Act.

4. Appeal shall suspend the legal effects of appeal in cassation; if a judgment is rendered on one or more of the questions, referred to in sections 351 and section 352, by the lower court, the appeal in cassation filed shall be cancelled.

Section 428

Appeal in cassation against judgments or appeal judgments, which are not final judgments, shall only be permitted simultaneously with the appeal in cassation against the final judgment.

Section 429

The appeal in cassation may also be filed against a part of the judgment or appeal judgment.

Section 430 [Repealed as of 01-01-2003]

Section 431

Non-compliance with procedural requirements prescribed under penalty of nullity, shall be a ground for quashing the judgment or appeal judgment, when said non-compliance was committed in the judgment or appeal judgment itself as well as in the course of the proceedings.

Section 432

1. The appeal in cassation must be filed within fourteen days after the final judgment if:

a. the summons or notice to appear at the court session or the notice to appear at the court session at a later date was served on or given to the defendant in person;
b. the defendant appeared at the court session or court session at a later date;
c. a circumstance has otherwise occurred from which it follows that the date of the court session or of the court session at a later date was known to the defendant beforehand;
d. the summons or appearance notice was lawfully served on the defendant in accordance with section 588a within six weeks after the defendant filed an appeal and in appeal no unconditional punishment or measure which entails deprivation of liberty for more than six months was imposed.

2. In cases other than those mentioned in subsection (1), appeal in cassation must be filed within fourteen days after a circumstance has occurred from which it follows that the judgment or appeal

judgment is known to the defendant.

3. If the court hearing has been adjourned for an indefinite period and the notice to appear at the court session at a later date has not been given or served in person, then the time limit referred to in subsection (2) shall apply, unless

a. the defendant has appeared at the court session at a later date or
b. a circumstance has otherwise occurred from which it follows that the date of the court session at a later date was known to the defendant beforehand.

If one of these two exceptions occurs, the time limit referred to in the opening lines of subsection (1) shall apply.

Section 433

1. If appeal in cassation has only been filed by the Public Prosecution Service, notice of the appeal shall be served on the defendant in person, unless a circumstance has occurred from which it follows that the appeal was known to the defendant.

2. The defendant may still file an appeal in cassation within fourteen days after notice of the appeal has been served on him in person by the Public Prosecution Service or any other circumstance has occurred from which it follows that the appeal was known to him.

3. If the injured party has joined in the proceedings, he shall be notified of any appeal in cassation filed within fourteen days after the filing of the appeal in cassation, on behalf of the Public Prosecution Service, at the court which rendered the judgment or appeal judgment.

Section 434

1. The clerk to the court, which rendered the judgment or appeal judgment against which appeal in cassation has been filed, shall send the documents pertaining to the proceedings to the clerk to the Supreme Court as soon as possible.

2. If appeal in cassation has been filed by the Public Prosecution Service against a judgment, against which the defendant may still file an appeal, the documents, referred to in subsection (1), shall not be sent or if they are sent erroneously, shall be deemed not to have been sent any earlier than after the time limit for appeal has expired.

3. If appeal in cassation has only been filed by the Public Prosecution Service, the documents shall not be sent or, if they are sent erroneously, no further action shall be taken until the notice referred to in section 433(1) has been given or any other circumstance has occurred from which it follows that the appeal is known to the defendant.

Section 435

1. After receipt of the documents pertaining to the proceedings by the clerk to the Supreme Court, the procurator general shall give the defendant or, if the Public Prosecution Service has filed an appeal in cassation, the Public Prosecution Service and the defendant, notice of receipt of the documents pertaining to the proceedings at the Supreme Court, stating that the Supreme Court will hear the case after expiration of the time limit referred to section 437 (1) and (2), respectively. Reference to section 437 shall be made in the notice.

2. Notice of receipt of the documents, referred to in subsection (1), shall also be given to the injured party if he has joined in the proceedings. Reference to section 437(3) shall be made in the notice.

3. In derogation of section 586 (1, second sentence), notice to the Public Prosecution Service shall be given by letter sent by ordinary or registered post.

Section 436

1. After the notice, referred to in section 435(1), has been given, the presiding judge shall set a date for the hearing of the case in accordance with the time limits referred to in section 437(1) or (2).

2. Notice of the date set for the hearing of the case shall be given to the defendant or, if a defence counsel has notified the Supreme Court that he will be acting on behalf of the defendant, to the defence counsel.

Section 437

1. If the Public Prosecution Service has filed an appeal in cassation, it shall be obliged, under penalty of a bar to the prosecution, to submit to the Supreme Court a written document setting out its grounds for appeal in cassation within one month after the notice referred to in section 435(1) has been sent to the Public Prosecution Service.

2. The defendant, who filed an appeal in cassation or on behalf of whom said appeal has been filed, shall be obliged, under penalty of inadmissibility, to instruct his defence counsel to submit to the Supreme Court a written document setting out his grounds for appeal in cassation within two months after the notice referred to in section 435(1) has been served.

3. The injured party may, within one month after the notice referred to in section 435(2) has been sent, instruct a lawyer to submit a written document setting out his grounds for appeal in cassation in regard of a point of law which exclusively concerns his claim to the Supreme Court. During that period he may inspect the case documents.

Section 438

1. All cases shall be dealt with at a public court session for criminal cases of the single-judge division of the Supreme Court.

2. The single-judge division shall refer a case to the three-judge division:

    a. when the defence counsel of the defendant has indicated that he wishes to explain and clarify the grounds for appeal in cassation in person or wishes to rebut the appeal in cassation filed by the Public Prosecution Service in person, and submission of a written explanation and clarification does not suffice;
    b. when the lawyer of the injured party has indicated that he wishes to explain and clarify the grounds for appeal in cassation of the injured party in person, and submission of a written explanation and clarification does not suffice;
    c. when it sets the date for pronouncement of judgment, except for the case described in section 440(3);
    d. when it considers referral advisable.

3. The three-judge division shall again refer a case to the single-judge division, if required at any stage in the proceedings.

Section 439

1. On the date, or later date on which the case comes up in court, the procurator general shall present his advisory opinion, which he shall submit in writing to the Supreme Court. The date for the pronouncement of judgment shall then be set.

2. In the event that a written document setting out the grounds for appeal in cassation has not been submitted within the time limit on behalf of the defendant, the procurator general may decline to give an advisory opinion.

3. A copy of the advisory opinion shall be sent to the defence counsel who submitted a written document setting out the grounds for appeal in cassation on behalf of the defendant.

4. The same shall apply for the lawyer who has submitted a written document setting out the grounds for appeal in cassation on behalf of an injured party.

5. Within two weeks after the copy of the advisory opinion has been sent, the defence counsel of the defendant or the lawyer of the injured party may have his written comments thereon sent to the Supreme Court.

Section 440

1. The Supreme Court shall declare the appeal in cassation inadmissible, shall dismiss the appeal or fully or partially quash the judgment or appeal judgment, either on the grounds adduced or on other grounds.

2. If the disputed judgment is quashed, the Supreme Court shall deal with the case itself if this can be done without having to re-examine the facts.

After quashing the disputed judgment, the Supreme Court may,– in order for said judgment to be re-tried and dealt with or further tried and dealt with – remit it to the court which rendered it, or refer it:

a. when the quashed judgment was rendered by a District Court, to the Court of Appeal in the jurisdiction;
b. when the quashed judgment was rendered by a Court of Appeal, to another Court of Appeal.

3. The single-judge division may render the decision that the appeal in cassation is declared inadmissible when a written document setting out the grounds for appeal in cassation has not been submitted within the time limit.

Section 441

Where the sections of the law, on which the imposition of a punishment or measure is based, are not stated in the judgment or appeal judgment, the Supreme Court may suffice by only quashing the judgment or appeal judgment in this regard and doing what the court ought to have done.

Section 442

1. The judgment shall be signed by the presiding judge and the justices who judged the case and the clerk to the court who was present during the deliberations.

2. If one or more of the persons who judged the case are unable to do so or the clerk to the court who was present during the deliberations is unable to do so, this inability shall be stated at the bottom of the judgment.

Section 443

The judgment shall be pronounced at a public court session of the single-judge division of the Supreme Court in the presence of the clerk to the court and the procurator general.

Section 444

1. The procurator general shall send a copy of the judgment of the Supreme Court, certified by the clerk to the court, to the Public Prosecution Service attached to the court that rendered the judgment as soon as possible.

2. The procurator general shall also notify the judgment to the defendant and to the injured party if he has joined in the proceedings.

3. The procurator general shall provide, on request, a copy of the judgment of the Supreme Court to the defendant and the injured party referred to in subsection (2).

4. Section 365(4) and (5) shall apply mutatis mutandis.

Part IV. Appeal and Appeal in Cassation against Decisions given in Chambers. Notices of

Objection

Section 445

Decisions given in chambers shall not be open to appeal or appeal in cassation and a notice of objection shall not be permitted, other than in the cases specified in this Code.

Section 446

[1.] Insofar as the right of appeal of the Public Prosecution Service is not regulated in special provisions, it may appeal against all decisions given in chambers by the District Court or the examining magistrate, in which an application made pursuant to this Code was not granted, to the Court of Appeal or the District Court within fourteen days. However, if the principal case is not open to appeal, then only appeal in cassation shall be permitted within the same time limit.

[2.] The Public Prosecution Service may file an appeal in cassation against all such decisions given in chambers by the court of highest instance within fourteen days.

[3.] The Supreme Court, the Court of Appeal or the District Court shall decide as soon as possible.

Section 447

1. The party, who has filed an appeal, may submit, together with his statement, a written document setting out his grounds for appeal in cassation at the registry of the court, by or at which the decision in chambers was given.

2. If an appeal in cassation is filed, the clerk to the court which gave the decision in chambers shall send the documents as soon as possible to the clerk to the Supreme Court .

3. After the clerk to the Supreme Court has received the documents pertaining to the proceedings, the procurator general shall notify the party who has filed an appeal in cassation that the documents pertaining to the proceedings have been received at the Supreme Court. Reference to subsection (4) or (5) shall be made in the notice. Section 435(3) shall apply mutatis mutandis.

4. The Public Prosecution Service shall be obliged, under penalty of a bar to the prosecution, to submit a written document setting out the grounds for appeal in cassation within one month after the notice was sent.

5. The defendant or other interested party shall be obliged, under penalty of inadmissibility, to have his defence counsel or a lawyer submit a written document setting out his grounds for appeal in cassation to the Supreme Court within one month after the notice has been served.

6. Section 439(3) and (5) shall apply mutatis mutandis.

7. The written document shall be promptly added to the case documents.

Section 448

[1.] The District Court, the Court of Appeal or the Supreme Court shall dismiss the appeal or the notice of objection, or order that which ought to be done or ought to have been done in accordance with the provisions of the law.

[2.] If the appeal or notice of objection against an act of or a decision given in chambers by the examining magistrate is deemed to be well-founded, another examining magistrate may be appointed in the judicial decision for the institution or continuation of that investigation.

Section 448a [Repealed as of 01-01-1994]

Part V. Exercise of Regular Legal Remedies

Section 449

1. Insofar as it is not provided otherwise by law, appeal or appeal in cassation shall be filed by a statement made by the person who exercises the legal remedy at the registry of the court by or at which the decision was given.

2. In cases where the defendant has been arrested for the purpose of enforcement of a judgment or appeal judgment which has not become irrevocable, he may also file the appeal or appeal in cassation by registered letter addressed to the same court registry. In this case the date of receipt of the letter at the court registry shall be deemed to be the date of appeal.

[3.] Notices of objection shall be submitted at the registry of the court by or at which the decision was given or the act was conducted.

Section 450

1. The legal remedies, referred to in section 449, may also be exercised through:

a. a lawyer, provided this lawyer declares that he has been given specific authorisation for that purpose by the person who exercises the legal remedy;
b. an authorised representative who has been given a special written power of attorney for that purpose by the person who exercises the legal remedy.

2. If the person authorised in accordance with subsection (1) files an appeal against the final judgment, the authorisation shall also imply that the authorised person accepts receipt of the notice summoning the defendant to appear at the appeal hearing.

3. A special written power of attorney given to a staff member of the court registry for the purpose of exercising the legal remedy on behalf of the defendant shall be acted on only if the defendant moreover gives his consent to this staff member of the registry of the court, at which the legal remedy is exercised, to promptly accept receipt, on his behalf, of the notice summoning him to appear at the court session. The defendant shall provide an address for receipt of a copy of the summons.

4. The issuance of the appearance notice to the authorised representative shall be deemed to be an issuance in person to the defendant. A copy of the summons shall be sent by ordinary letter post to the address given by or on behalf of the defendant for that purpose.

5. If the authorised representative, referred to in subsection (1), refuses to accept receipt of the appearance notice, this notice shall nevertheless be deemed to have been issued at the time of delivery to said representative. The refusal shall be noted in the record of issuance.

Section 451

[1.] The clerk shall prepare a record of each statement or submission, as referred to in the two preceding sections, which he shall sign together with the person who makes the statement or submits the notice of objection. If he is unable to sign, the cause of the inability shall be stated on the record. The clerk to the court shall request the person, who makes said statement, to provide an address in the Netherlands to which the summons or appearance notice may be sent.

[2.] The written power of attorney referred to in subsection (1) of the preceding section, or, if the original thereof has been executed before a civil-law notary, an authentic copy thereof, shall be attached to the record.

[3.] If an appeal or appeal in cassation has been filed by registered letter, the clerk to the court shall promptly write the date and time of receipt on the letter.

[4.] The record or the registered letter shall be added to the case documents.

[5.] A record of each legal remedy exercised shall be promptly entered in the appropriate register kept

at the court registry for that purpose, which register may be inspected by interested parties.

Section 451a

1. If the person, who wishes to exercise a legal remedy, is detained in a detention centre, prison or custodial institution for the treatment of persons detained under an entrustment order, as referred to in section 90quinquies(2) in conjunction with section 37d(1)(b) of the Criminal Code, or in a institution in which a punishment or measure involving deprivation of liberty is being enforced, as referred to in section 77h of the Criminal Code, then he may also exercise the legal remedies referred to in section 449 by means of a written statement which he shall have sent to the head of the institution.

2. The head of the institution shall have this statement promptly entered in an appropriate register and shall then send it to the registry of the court by or at which the decision was given, stating the date on which the statement was entered in the register. The date of entry of the statement in the register shall be deemed to be the date on which the legal remedy was exercised.

3. **Our Minister of Security and Justice** shall determine the format of the register and may give further rules pertaining to the keeping of the register. Interested parties may inspect the register.

4. The statement shall be added to the case documents after its receipt at the court registry. The exercise of the legal remedy shall be promptly entered in the register kept at the court registry, referred to in section 451(5).

Section 451b

1. The witness shall file the appeal, as referred to in section 226b(2), by means of a written statement which he shall have sent to the public prosecutor. The public prosecutor shall promptly write the date and hour of receipt on the received statement.

2. The public prosecutor shall promptly notify the appeal in writing to the registry of the court, at which the decision in chambers was given. The notification shall be added to the case documents after receipt at the court registry. The filing of the appeal shall be promptly entered in the register kept at the court registry, referred to in section 451(5).

3. The date of receipt of the written statement by the public prosecutor shall be deemed to be the date of the appeal.

Section 452

1. Section 450 shall apply mutatis mutandis to the submission of written documents, except for the provisions of subsection (2).

2. Written documents, written explanations and clarifications and written comments, referred to in section 439(5), may only be submitted in appeal in cassation by a lawyer who declares that he has been given specific authorisation for that purpose by the person on whose behalf he is acting.

3. The clerk to the court shall promptly write the date and hour of receipt on documents received as referred to in subsections (1) and (2).

4. The receipt shall be promptly entered in the register kept at the court registry.

Part VI. Withdrawal and Waiver of Regular Legal Remedies

Section 453

[1.] The person, who has exercised a legal remedy, may withdraw it up to the start of the hearing of the appeal or notice of objection at the latest. This withdrawal shall also imply waiver of the right to again exercise the legal remedy.

2. In the event that the public prosecutor has filed an appeal against a judgment rendered by the District Court as final judgment or in the course of the court hearing, the advocate general shall also be authorised to withdraw the appeal. The advocate general shall promptly notify the public prosecutor of his exercise of this power.

3. The right to exercise a specific legal remedy against a certain decision or act may also be waived.

Section 454

1. Withdrawal and waiver may be done by making a statement at the registry of the court by or at which the decision was given or the act conducted.

2. In the case of section 453(2), the statement shall be made at the registry of the Court of Appeal. The clerk to the Court of Appeal shall notify said statement to the clerk to the court, referred to in subsection (1).

3. Sections 450 and 451 shall apply mutatis mutandis.

4. Withdrawal and waiver may also be done by a person who is detained in one of the institutions referred to in section 451a(1), by means of a written statement which he has sent to the head of the institution; section 451a(2), (3) and (4) shall apply mutatis mutandis.

5. Section 451b shall apply mutatis mutandis to the withdrawal and waiver of the appeal filed by a witness under the terms of the provisions of section 226b(2).

Section 455

1. The withdrawal of appeal by the Public Prosecution Service shall be promptly notified in writing to the defendant.

2. If the injured party has been notified in accordance with section 413 or 433, notice of any withdrawal of the appeal shall be given to him on behalf of the Public Prosecution Service attached to the court which rendered the judgment or appeal judgment.

B. Extraordinary Legal Remedies

Part VII. Appeal in Cassation "in the Interest of the Law"

Section 456

[1.] If the procurator general attached to the Supreme Court considers appeal in cassation "in the interest of the law" to be necessary in regard of any judicial decision or act, against which a regular legal remedy can no longer be exercised, he shall have the documents pertaining to the proceedings sent to him through the Public Prosecution Service and, on the date of the hearing of the case, set by the presiding judge on his request, his proposal and application shall be heard at the court session; in addition, he shall submit his application.

2. Section 443 shall apply in this regard.

[3.] The Supreme Court shall dismiss the appeal or shall quash the judgment, and in the interest of the law, shall rule on the point of law, as the court ought to have done.

[4.] In the event that a judgment is quashed, the procurator general shall send a copy, as referred to in section 444, to the Public Prosecution Service attached to the court whose judgment has been quashed.

Part VIII. Review of Appeal Judgments and Judgments

Section 457

1. On application of the procurator general or of the former suspect in regard of whom a judgment or appeal judgment has become irrevocable, the Supreme Court may, for the benefit of the former suspect, review a judgment or appeal judgment of conviction rendered by the court in the Netherlands:

    a. on the grounds of the fact that the judicial findings of facts pronounced in various appeal judgments or judgments, which have become irrevocable or were rendered in absentia, are not consistent with each other;
    b. on the grounds of a ruling of the European Court for Human Rights in which it was determined that the European Convention for the Protection of Human Rights and Fundamental Freedoms or a Protocol to the Convention has been violated in the proceedings which led to a conviction or a conviction for the same offence, if review is necessary with a view to legal redress as referred to in article 41 of that Convention;
    c. if there is a fact which was not known to the court during the trial and which in itself or in connection with the previously submitted evidence does not appear to be consistent with the judgment to such an extent that this gives rise to the strong suspicion that if this fact had been known at the hearing of the case it would have resulted in, either an acquittal of the former suspect, or dismissal of the charges, or a bar to the prosecution, or the application of a less severe penal provision.

2. Where reference is made in this provision to a conviction, this shall include the dismissal of charges with the imposition of a measure involving deprivation of liberty as referred to in sections 37 and 37a of the Criminal Code.

Section 458

1. After the decease of the former suspect, the application for review may also be filed by:

    a. the procurator general;
    b. the surviving spouse or registered civil partner, or in the event of the absence or inability or unwillingness of the aforementioned persons;
    c. any relative by consanguinity in the direct line or in the event of the absence or inability or unwillingness of the aforementioned person;
    d. the relatives by consanguinity in the collateral line up to and including the second degree.

2. Any power conferred on the former suspect under this Part shall also be conferred on the persons, referred to in subsection (1)(b), (c) and (d), who have applied for review. If the application has been filed by the procurator general, the Supreme Court shall appoint a special representative.

3. The sections of this Part shall apply mutatis mutandis, on the understanding that after the judgment is quashed, no punishment or measure may be imposed.

4. If the former suspect becomes deceased during the hearing of the case, the proceedings shall be continued and the court before which the case is or should be brought shall appoint a special representative. The sections of this Part shall apply mutatis mutandis.

5. If the former suspect has not yet reached the age of sixteen years or has been placed under guardianship for reasons other than prodigality, or is suffering from mental disease or defect to such an extent as to be incapable of deciding for himself whether it is in his interest to file an application for review, his legal representative in civil matters may instruct his defence counsel to file the application. The sections of this Part shall apply mutatis mutandis.

Section 459

In the case of an application for review or an application as referred to in section 461, the board of the Legal Aid Council may arrange the assignment of a defence counsel to the former suspect as well as the persons referred to in section 458 under application mutatis mutandis of sections 42(3) and 43.

Section 460

1. The procurator general shall submit the application for review to the Supreme Court by means of a written application.

2. The former suspect may only have his application for review submitted through his defence counsel to the Supreme Court. The application signed by the defence counsel shall be in writing and shall state the grounds on which said application is based and shall be accompanied by the documents evidencing these grounds, as well as a copy of the judgment for which review is requested.

Section 461

1. In preparation of an application for review, a former suspect, who has been convicted of an offence which carries the statutory term of imprisonment of at least twelve years and which offence has deeply rocked the legal order, may instruct his defence counsel to apply to the procurator general to institute a further investigation into whether there is a ground for review as referred to in section 457(1)(c).

2. The application shall be submitted in writing and shall be signed by the defence counsel. The application shall contain a statement of the investigative acts which have to be conducted and shall be accompanied by a copy of the judgment for which the former suspect wishes to request review, and shall be reasoned. The application may also serve to establish an investigative team as referred to in section 463.

3. If the application does not meet the conditions referred to in subsections (1) and (2), the procurator general shall declare it inadmissible. If the application is admissible, the procurator general may only reject it if:

   a. there are insufficient indications that there is a possible ground for review, or
   b. the requested investigation is not necessary.

4. The procurator general shall decide as soon as possible. The decision shall be reasoned and shall be notified in writing to the person who submitted the application. If the application is granted, the decision shall state the investigative acts to be conducted.

5. Section 457(2) shall apply mutatis mutandis.

Section 462

1. In the case of an application as referred to in section 461, the procurator general may, ex officio or on application of the former suspect, seek the advice of a committee charged with advising on the desirability of a further investigation as referred to in section 461(1).

2. Unless the procurator general finds that the application, as referred to in section 461, is inadmissible or evidently ill-founded, or can be granted, the procurator general shall seek, in any case, the advice of the committee, if the former suspect has been sentenced to a term of imprisonment of at least six years.

3. The advice of the committee shall be issued in writing and shall be available for inspection by the general public. If the decision of the procurator general on the application referred in section 461(1), deviates from the advice of the committee, the reason for that deviation shall be stated in the decision.

4. Further rules pertaining to the composition, format, powers and working procedure of the committee referred to in subsection (1) shall be set by Governmental Decree. The Governmental Decree shall contain, in any case, provisions on the number of members and the term of office of these members, the staffing of the secretariat and the financial resources to be placed at the disposal of the committee. The Minister of Security and Justice shall appoint the members on the recommendation of the procurator general.

Section 463

1. If the application, referred to in section 461 is granted, the procurator general shall institute the further investigation. If, in his opinion, any investigation by the examining magistrate is also necessary, he may assign that investigation to the examining magistrate charged with the handling of criminal cases in a District Court which has not yet tried the case. Section 469(3) shall apply mutatis mutandis.

2. If required in his opinion, in the interest of the further investigation, the procurator general may have the assistance of an investigative team in the conduct of said investigation.

3. The team, referred to in subsection (2), shall be composed of investigative officers who have not been previously involved in the criminal case. The team may be supplemented with members of the Public Prosecution Service or experts, who have not previously been involved in the criminal case. The Board of Procurators General shall provide the procurator general, at his request, with the necessary assistance in setting up the investigative team and the conduct of the investigation. The members of the investigative team shall be appointed by the procurator general.

4. The procurator general shall be in charge of and responsible for the activities of the investigative team. Section 111(3) of the Judicial Organisation Act shall apply mutatis mutandis.

5. If during the further investigation witnesses or expert witnesses are questioned, the procurator general, or the person whom he has charged with the questioning, shall invite the defence counsel of the former suspect to be present at the questioning, insofar as such is compatible with the protection of the interests referred to in section 187d(1). The former suspect may be given the opportunity to be present at the questioning. The former suspect and his defence counsel may submit the questions which they wish to have posed. Sections 187(2) and (3), 187b and 187d shall apply mutatis mutandis.

6. After the investigative acts have been completed, the documents pertaining thereto shall be added to the case documents and a copy of those documents shall be sent to the applicant.

Section 464

1. Sections 28 to 31 inclusive, 94(1) and (3), 96 to 102a inclusive, 104 to 116(1) inclusive, 124 to 125o inclusive, 126n to 126nd inclusive, 126nf to 126ni inclusive, 126aa to 126dd inclusive, 141, 142, 148, 150 to 151d inclusive and 152 to 157 inclusive shall apply mutatis mutandis to the investigation referred to in section 463(2), on the understanding that where reference is made to the suspect in the aforementioned sections, this shall also mean the former suspect, insofar as the contrary does not follow from any provision.

2. Further rules pertaining to the organisation of the investigation may be set by or pursuant to Governmental Decree.

Section 465

1. The Supreme Court shall declare the application for review inadmissible if said application does not relate to an irrevocable judgment of conviction or of dismissal of the charges, as referred to in section 457(2), of the court in the Netherlands, or does not meet the conditions set in section 460.

2. The Supreme Court may declare the application for review in regard of the case referred to in section 457(1)(b) inadmissible, if said application is not submitted within three months after a circumstance has occurred from which it follows that the judgment of the European Court for Human Rights is known to the former suspect.

3. If the application for review is evidently ill-founded, the Supreme Court shall dismiss it.

4. In the other cases the following provisions from this Part shall apply.

5. Before giving a decision, the Supreme Court may assign a further investigation, as referred to in sections 461 and 463, or instruct that advice be sought from the committee referred to in section 462.

Section 466

1. The Supreme Court shall order the further public hearing on a date to be set for that purpose by the presiding judge.

2. If a copy of the results of the investigation is sent under the terms of section 463(6), the day of the court hearing shall be set on a date no earlier than six weeks after that sending, and the former suspect or his defence counsel may further explain and clarify in writing the application for review up to the last day before the case comes up in court at the latest.

3. At least ten days before the date set for the court hearing, the procurator general shall give the former suspect notice of that date.

Section 467

1. The application for review shall be dealt with at a public court session for criminal cases of the single-judge division of the Supreme Court.

2. The single-judge division shall refer a case to the three-judge division:

    a. when the defence counsel of the former suspect has indicated that he wishes to explain and clarify the application for review in person;
    b. when it sets the date for the pronouncement of judgment;
    c. when it considers referral to be desirable.

3. The three-judge division shall again refer a case to the single-judge division, if required at any stage in the proceedings.

Section 468

1. The procurator general shall present his advisory opinion, which he shall submit to the Supreme Court, at the court session of the single-judge division, or at the court session of the three-judge division when the defence counsel has explained and clarified his application for review in person at such session.

2. Prior to presenting his advisory opinion, the procurator general may institute, ex officio, a further investigation as referred to in sections 461 and 463 and seek the advice of the committee as referred to in section 462. Sections 461, 462(1),(3) and (4), 463 and 464 shall apply mutatis mutandis.

3. After the procurator general has presented his advisory opinion, the date for the pronouncement of judgment shall be set.

4. A copy of the advisory opinion shall be sent to the defence counsel.

5. Within two weeks after sending of the copy of the advisory opinion, the defence counsel may send his written comments thereon to the Supreme Court.

Section 469

1. If the Supreme Court considers such necessary, it shall instruct the procurator general to conduct a further investigation as referred to in sections 461 and 463, or to seek the advice of the committee referred to in section 462. Sections 463(2) to (6) inclusive and 464 shall apply mutatis mutandis. After the investigation has been completed, the procurator general shall have the documents sent to the Supreme Court.

2. The Supreme Court may also assign a further investigation to an examining magistrate to be appointed from its midst for that purpose, but it may also assign said investigation, if the judgment to be reviewed is not a judgment rendered by the Supreme Court as court of first instance, to an examining magistrate charged with the handling of criminal cases in a District Court which has not

yet tried the case.

3. The investigation, referred to in subsection (2), shall be conducted in accordance with Chapters Two to Five inclusive and Eight of Part Three of Book Two. The witnesses shall be put under oath or admonished in accordance with section 216(2). If the investigation is conducted by an examining magistrate attached to the Supreme Court, all provisions pertaining to the District Court, the examining magistrate attached to the District Court, the public prosecutor and the clerk to the Distinct Court shall apply to the Supreme Court, the examining magistrate attached to the Supreme Court, the procurator general and the clerk to the Supreme Court, except that during the search of places and during an inspection the examining magistrate attached to the Supreme Court and the procurator general may have themselves replaced by the examining magistrate and the public prosecutor attached to the District Court within whose area of jurisdiction the search or inspection must be conducted. Section 172 shall apply mutatis mutandis.

4. After completion of the investigation, the examining magistrate attached to the Supreme Court or the District Court shall send the documents to the Supreme Court.

5. A copy of the documents of the investigation shall be sent to the defence counsel.

6. If the procurator general again presents an advisory opinion, section 468(1) and (3) to (5) inclusive shall apply mutatis mutandis.

Section 470

If the Supreme Court finds the application for review to be ill-founded, it shall dismiss it.

Section 471

1. If the Supreme Court finds the application for review in regard of the case in section 457(1)(a) to be well-founded, it shall quash the appeal judgments or judgments and refer the cases to a Court of Appeal which has not yet tried them, in order to re-hear said cases simultaneously and render judgment on them in one and the same judgment, however the punishment may not exceed the punishments imposed in the quashed appeal judgments or judgments. If the case has already been tried by all Courts of Appeal, then one of them shall be nevertheless designated.

2. If one of the irrevocable judgments has been rendered by the Supreme Court as court of first instance, the case shall be referred to the court session of the Supreme Court, which shall be composed as referred to in section 477.

3. The former suspect, who has been deprived of his liberty under the quashed judgment, shall be free by operation of law and shall be immediately released, except for the provisions of section 473.

Section 472

1. If the Supreme Court finds the application for review in regard of the case, referred to in section 457(1)(b), to be well-founded, it shall deal with the case itself by way of review or shall order the postponement or suspension of enforcement of the irrevocable judgment and it shall refer the case under the terms of section 471, in order – in accordance with the judgment of the Supreme Court – to either uphold the irrevocable judgment or to quash it and render judgement.

2. If the Supreme Court finds the application for review concerning the case, referred to in section 457(1)(c), to be well-founded, it shall order the postponement or suspension of enforcement of the irrevocable judgment and it shall refer the case under the terms of section 471, in order to either uphold the irrevocable judgment or while quashing it:

    a. to declare a bar to the prosecution,
    b. to acquit the suspect or
    c. to dismiss the charges against the suspect as he is not criminally liable, or
    d. to convict the suspect again and apply a less severe penal provision or impose a lower

sentence.

3. Section 471(3) shall apply mutatis mutandis.

Section 473

1. In the case of referral, the Supreme Court may issue a warrant of arrest against the former suspect. This warrant shall be valid for an indefinite period, but may be suspended or revoked by the Court of Appeal. This remand detention may in no event exceed the length of the non-completed custodial sentence which the former suspect must serve pursuant to the judgment. Sections 62, 67, 67a, 69, 73 and 77 to 86 inclusive shall apply mutatis mutandis.

2. If a measure involving deprivation of liberty has been imposed on the former suspect, the warrant of arrest, referred to in subsection (1), may be enforced in an institution which is intended for enforcement of the measure imposed pursuant to the Custodial Institutions (Framework) Act or the Treatment of Persons detained under an Entrustment Order (Framework) Act [*Beginselenwet Verpleging Ter Beschikking Gestelden*]. The legal position under the Custodial Institutions (Framework) Act or the Treatment of Persons detained under an Entrustment Order (Framework) Act shall apply in full to the former suspect.

3. If the former suspect, against whom a warrant of arrest as referred to in subsection (1) has been issued, does not have a defence counsel, said counsel shall be assigned to him ex officio by the board of the Legal Aid Council by order of the presiding judge of the Court of Appeal.

4. Pending the decision on the application for review, the Supreme Court may suspend the enforcement of the irrevocable judgment at all times.

Section 474

Decisions as referred to in sections 465 and 470 to 472 inclusive shall be given in a reasoned judgment. The judgment shall be pronounced in public in the presence of the clerk to the court and the procurator general.

Section 475

The decisions of the Supreme Court, referred to in sections 465, 470 to 473 inclusive, shall be notified as soon as possible in writing, on behalf of the procurator general, to the interested party and sent, in copy, to the civil servant charged with the enforcement of the irrevocable judgment, for which an application for review has been made, or of the quashed appeal judgment or judgment.

Section 476

1. The proceedings in the referred case or cases shall be conducted at the Court of Appeal, under application mutatis mutandis of sections 412(1), (2) and (3), 413, 414, 415, 417, 418(1) and (2), 419, 420 and 421, on the understanding that section 312 shall not apply.

2. The justice, who has conducted any investigation in the case, shall not sit in the case at the court hearing, under penalty of nullity.

3. In the cases referred to in sections 316 and 347, the investigation shall be conducted by an examining magistrate attached to the District Court or the Court of Appeal, who has been designated by the Court of Appeal and has not yet conducted any investigation in the case.

4. The investigation and the deliberations, referred to in sections 348 and 350, shall be conducted both on the basis of the review hearing at the court session and the hearing at previous court sessions, as took place according to the court record.

5. The Court of Appeal shall again pronounce judgment in regard of the judgments quashed in the referral; in regard of the judgment not quashed in the referral, the Court of Appeal shall uphold said judgment and wholly or partially adopt, supplement or amend its grounds or pronounce judgment

again and wholly or partially quash the judgment, subject to section 472(1) or (2).

Section 477

1. If the Supreme Court pronounces judgment pursuant to referral under the terms of section 471(1) or section 472(1) or (2), ten justices shall sit in the case. In the event of a tie in the votes, a judgment shall be rendered in favour of the former suspect.

2. The proceedings in the referred case or cases shall be conducted at the Supreme Court under the terms of section 476(1) and (3) to (5) inclusive, on the understanding that in the case referred to in subsection (3) of that section, an examining magistrate designated by the Supreme Court from its midst for that purpose may also be charged with the investigation. The decisions of the Supreme Court shall not be open to appeal or objection.

Section 478

1. The Supreme Court or the Court of Appeal may in no event impose a punishment or measure which is more severe than that imposed in the quashed appeal judgment or judgment or apply a more severe penal provision.

2. If in the event of concurrence of several offences one principal punishment has been pronounced and the review has only been applied for in regard of one or more of those offences, if the judgment is quashed, the punishment for the other offence or offences shall be determined in the review judgment.

3. It shall be stipulated in the judgment that the punishment previously served for the offence pursuant to the quashed judgment and the time spent in pre-trial detention pursuant to section 473 shall be deducted.

Section 479

1. If the punishment or measure imposed in the irrevocable judgment has already been remitted by way of clemency, no punishment may be imposed.

2. If the punishment has been commuted or remitted, then a punishment, which exceeds the commuted or remitted punishment, shall not be imposed.

Section 480

1. If after the irrevocable judgment has been quashed, no punishment or measure or the measure, referred to in section 37 of the Criminal Code, has been imposed, on application of the former suspect or his heirs, compensation shall be awarded in regard of the punishment or measure involving deprivation of liberty served. The compensation shall be awarded, insofar as, in the opinion of the court, there are grounds of fairness under the terms of sections 89 to 93 inclusive.

2. Those sections shall apply mutatis mutandis in regard of the time spent in police custody and pre-trial detention.

Section 481

1. If an application for review or an application for further investigation, as referred to in section 461, has been submitted, the Public Prosecution Service shall, where possible, ask the victim or his surviving relatives whether he/they wishes/wish to be kept informed about the progress and outcome of the review proceedings.

2. On application of the victim or his surviving relatives, the Public Prosecution Service shall give notice, in any case, of the decision of the Supreme Court on the application for review and of the final judgment in the review case against the former suspect. In appropriate cases and in any case if the offence for which the former suspect was convicted involves a serious offence which carries a statutory term of imprisonment of at least eight years, or any of the serious offences referred to in

sections 240b, 247, 248a, 248b, 249, 250, 273f(1), 285, 285b, 300(2) and (3), 301(2) and (3), 306 to 308 inclusive and 318 of the Criminal Code and section 6 of the Road Traffic Act 1994, the Public Prosecution Service shall, if requested, also notify the release of the former suspect.

Section 482

1. If the former suspect was ordered in the quashed appeal judgment or judgment to compensate the injured party for the damage or loss caused by the criminal offence, it may be stipulated in the review judgment that the compensation already paid shall be reimbursed to the former suspect. These costs shall be paid out of the Treasury.

2. Subsection (1) shall apply mutatis mutandis to the legal costs paid by the former suspect to the injured party.

Book Four. Some Special Proceedings

Part I. Criminal Proceedings in regard of Criminal Offences which are tried by the Supreme Court as Court of First Instance

Section 483

[1.] Sections 4-19 of the Act of 22 April 1855 (*Bulletin of Acts and Decrees no. 33*), regulating the responsibility of the heads of the Ministerial Departments, shall remain in force.

[2.] Said sections shall apply mutatis mutandis to all serious offences involving abuse of office and minor offences involving abuse of office, committed by the persons enumerated in section 76 of the Judicial Organisation Act. For the purpose of this Code, serious offences involving abuse of office and minor offences involving abuse of office shall be understood to mean criminal offences committed under one of the aggravating circumstances defined in section 44 of the Criminal Code.

[3.] The procurator general at the Supreme Court shall be obliged to immediately execute the received order to prosecute.

Section 484

1. The criminal proceedings in regard of criminal offences which are tried by the Supreme Court as court of first instance shall be conducted under application mutatis mutandis of the rules concerning the criminal proceedings at the court of first instance in regard of offences which are tried by the District Court, except for the following exceptions:

1°. The Supreme Court shall appoint an examining magistrate from its midst if such application is made by the procurator general.
2°. [Repealed.]
3°. The provisions pertaining to the obligations of the public prosecutor to the procurator general at the Court of Appeal and his supervision of the prosecution of criminal offences shall not apply.
4°. In the event of a search of places or an inspection, the examining magistrate attached to the Supreme Court may have himself replaced by the examining magistrate attached to the District Court, the procurator general attached to the Supreme Court may have himself replaced by **the public prosecutor attached to the District Court in whose district** the search or the inspection must take place.
5°. In the case of prosecution as referred to in section 483, sections 237, 238, 241c to 255 inclusive, 262, 313 and 314 shall not apply, and the summons shall include a statement of the offence expressed in the order to prosecute.
6°. The decisions of the Supreme Court shall not be open to appeal or objection.

2. A declaration of lack of jurisdiction shall not be pronounced if the offence constitutes a serious offence or minor offence, which is tried by another court, and the defendant has not requested the referral to that court.

Section 485

The prosecution of the co-defendants of the person being tried before the Supreme Court, shall take place before the same court.

Part II. Criminal Proceedings in Cases concerning Juveniles

Chapter One. General Provisions

Section 486

No person may be prosecuted for an offence committed before he reached the age of twelve years.

Section 487

1. Sections 52 to 55b inclusive, 56, 61(1) and (3), 95 to 102 inclusive, 118, 119, 552a and 552d to 552g inclusive shall exclusively apply in cases where facts or circumstances give rise to the reasonable suspicion that a person younger than twelve years committed a criminal offence. Sections 116 to 117a inclusive shall apply mutatis mutandis.

2. The legal representative in civil matters of the minor, referred to in subsection (1), shall give a statement as referred to in section 116(2) and file a complaint as referred to in section 552a on his behalf.

Chapter Two. Criminal Proceedings in Matters concerning Persons who have not yet reached the Age of Eighteen Years

Section 488

1. The provisions of this Code shall apply insofar as the provisions of this Chapter do not derogate therefrom.

2. The provisions of this Chapter shall apply to persons who, at the time of the commission of the offence, had not yet reached the age of eighteen years, insofar as the provisions of this Chapter do not derogate therefrom.

3. The provisions of this Chapter, which pertain to the parents or the guardian, shall cease to apply when the suspect is no longer a minor.

Section 488a

Section 94a shall apply mutatis mutandis to persons who, at the time of the commission of the offence, had not yet reached the age of eighteen years, on the understanding that seizure for the purpose of preserving the right of recovery may be applied in regard of juveniles in the case of suspicion of or suspicion of or conviction for a serious offence for which a fine of the fourth category may be imposed.

Section 488b [Repealed as of 01-07-1965]

Section 489

1. A defence counsel shall be assigned ex officio to the suspect who does not have one when

   a. the public prosecutor wishes to impose community service in a punishment order as referred to in section 77f(2) of the Criminal Code and said service amounts to more than twenty hours;
   b. the public prosecutor wishes to issue a punishment order and the amount involved exceeds the amount of € 115 or
   c. prosecution, other than by means of a punishment order, has been instituted against him for an offence which is tried by the District Court, not being the single-judge division of the Sub-District Court Sector, as court of first instance.

2. A defence counsel shall be assigned ex officio to the convicted offender who does have not one, if

the convicted offender, in view of the nature of the questioning to be conducted pursuant to sections 77u or 77ee(1) in conjunction with section 14i(3) of the Criminal Code, requires his assistance.

3. The assignment shall be arranged by or by order of the presiding judge of the District Court, or, when appeal has been filed against the final judgment rendered at the court of first instance, by the presiding judge of the Court of Appeal.

4. The Public Prosecution Service shall promptly notify the presiding judge of the District Court or the presiding judge of the Court of Appeal in writing of the obligation to arrange the assignment of defence counsel pursuant to subsection (1) or of the questioning as referred to in subsection (2).

5. Sections 42(1) and (2), 43(1) and 44 shall not apply.

Section 490

If the suspect has been deprived of his liberty by law and has not been placed in a correctional institution for young offenders, section 50 shall apply mutatis mutandis in regard of his parents or his guardian.

Section 490a [Repealed as of 01-09-1995]

Section 491

1. In derogation of section 59(5), the Child Protection Board shall be promptly notified of the police custody order.

2. If a report is issued in response to the notification referred to in the preceding subsection, the public prosecutor shall take said report into account before applying for remand in custody.

Section 492

The juvenile court judge shall act as examining magistrate in the application of the pre-trial detention.

Section 493

1. If the court orders the pre-trial detention of the suspect, it shall consider whether the enforcement of this order may be suspended, either immediately, or after a specific period of time. In doing so, the court may charge a foundation, as referred to in section 1 of the Youth Care Act [*Wet op de Jeugdzorg*], to provide assistance and support to the suspect. On the proposal of Our Ministers of Justice and of Public Health, Welfare and Sport, rules pertaining to the nature and the scope of the assistance and support may be set by Governmental Decree.

2. The order for pre-trial detention and its suspension shall include such provisions as are considered necessary for its proper enforcement.

3. Any place suitable for such purpose may be designated as a facility for police custody or pre-trial detention. The pre-trial detention order may stipulate that the suspect stay during the night in an institution, as referred to in the Correctional Institutions for Young Offenders (Framework) Act, or in another place, as referred to in the first sentence, and during the day will be given the opportunity to leave the institution or that location.

4. The duration of a remand detention order or a warrant of arrest may not exceed a period thirty days if the suspect has not been heard by the District Court.

5. In cases where leave may be granted under the provisions laid down by or pursuant to the Correctional Institutions for Young Offenders (Framework) Act, the provisions of subsections (1) and (2) pertaining to suspension shall not apply.

6. Suspension of the pre-trial detention shall always be subject to the general condition referred to in

section 80. The court may, after having obtained the advice of the Child Protection Board, also attach special conditions to the suspension. The court shall attach special conditions to the suspension insofar as the juvenile agrees to said conditions. The special conditions which may be attached to the suspension and the requirements which the agreement of the juvenile must meet shall be set by Governmental Decree. On the proposal of Our Ministers of Justice and Public Health, Welfare and Sport, rules pertaining to the nature and scope of the assistance and support may be set by Governmental Decree.

Section 494

1. The public prosecutor shall obtain information on the personality and circumstances of the suspect from the Child Protection Board, unless he

a. immediately and unconditionally declines to prosecute or
b. prosecutes the case before the single-judge division of the Sub-District Court Sector.

2. If the suspect is in pre-trial detention or has been admitted to an institution pursuant to section 196, the public prosecutor shall promptly notify the Child Protection Board thereof.

3. The Child Protection Board may also voluntarily advise the public prosecutor.

4. The examining magistrate may also obtain the information, referred to in subsection (1), from the Child Protection Board.

Section 495

1. The case shall be brought before the juvenile court judge at the District Court as the court of first instance.

2. The case shall nevertheless be tried by the three-judge division if, in the initial assessment of the public prosecutor

a. placement in an institution for juveniles or a more severe principal punishment than a custodial sentence of six months should be imposed in the case;
b. it is preferable for the case to be tried by the three-judge division on account of its complexity;
c. the case, if it involves one or more suspects who have reached the age of eighteen years, cannot be severed.

3. In cases which are brought before a three-judge division of the District Court, the juvenile court judge shall sit in the case at the court session.

Section 495a

1. The suspect shall be obliged to appear in person. He shall be notified by summons that if he does not comply with this obligation, the court may order that he be brought forcibly.

2. If the person suspected of having committed a serious offence fails to appear at the court session, the court shall, unless nullity and voidness of the summons, a bar to the prosecution or lack of jurisdiction of the court is immediately apparent, adjourn the hearing to a specific date and shall also order that the suspect be brought forcibly to court. However, the court may decline to issue an order to forcibly bring the suspect to court if the suspect has no known place of residence or abode or on the grounds of special reasons.

3. The suspect who fails to comply with the order to appear before the court shall be tried in absentia, unless the court orders that he be brought forcibly to court at a later date. The hearing shall then be continued.

4. Subsections (1), (2) and (3) shall not apply if at the time of the court session the suspect has since reached the age of eighteen years.

Section 495b

1. The case shall be tried behind closed doors. The presiding judge of the District Court may grant persons special permission to attend the court session behind closed doors. The victim or the surviving relatives of the victim shall be granted permission to attend, unless the presiding judge decides otherwise for special reasons.

2. The presiding judge of the District Court shall order that the case be heard in public if, in his opinion, the interest in holding a hearing in public must outweigh the interest in protecting the private life of the defendant, his co-defendant, his parents or his guardian.

Section 496

1. The parents or the guardian shall be obliged to appear at the court session. They shall be given notice to appear for that purpose. They shall be informed in the notice that if they do not comply with this obligation, the court may order that they be brought forcibly.

2. If the parents or the guardian appear at the court session, they shall be given the opportunity, after the defendant, a co-defendant, a witness or an expert witness has made his statement, to submit in rebuttal anything which could aid the defence. In the case referred to in section 51g(4), the parents or the guardian may pose questions to a witness or expert witness, but only in regard of the claim for compensation; they shall be given the opportunity to present a defence statement against that claim.

3. The court may, nevertheless, order ex officio or on application of the Public Prosecution Service or of the defendant or his defence counsel that the defendant, a witness or expert witness be questioned without the parents or the guardian being present, unless the case is tried in public. In that case the court shall inform the parents or the guardian in substance of various matters, unless there are compelling reasons not to do so.

Section 496a

1. If the parents or the guardian of a minor suspected of a serious offence fail/fails to appear at the court session, the court shall adjourn the case for a definite period and also order that they be given notice to appear at the court session. Prior to taking this decision, the court shall give the defendant, the public prosecutor and the victim, who is present at the court session, the opportunity to express their views on the desirability of an adjournment.

2. The court may attach to the notice ordering the parents and the guardian to appear at the court session, an order to forcibly bring them to court, if it considers the presence of one or both parents or the guardian during the trial of the case to be necessary. The court may also issue this order in the case of the trial of a minor suspected of having committed a minor offence.

3. The court may decline to adjourn the hearing or to issue an order to forcibly bring the parents and the guardian if:

a. it immediately gives one of the decisions referred to in section 349(1),
b. the parents or the guardian do/does not have a known place of residence or abode in the Netherlands, or
c. the presence of one or both parents is not considered to be in the best interests of the minor.

Section 496b [Repealed as of 01-09-1995]

Section 496c [Repealed as of 01-09-1995]

Section 496d [Repealed as of 01-09-1995]

Section 496e [Repealed as of 01-09-1995]

Section 496f [Repealed as of 01-09-1995]

Section 497

1. The court may, ex officio or on application of the Public Prosecution Service or of the defendant or his defence counsel, determine that questions concerning the personality or circumstances of the defendant will be posed and handled without him being present and that the Public Prosecution Service or the defence counsel will address the court on these matters without the defendant being present.

2. Section 300(2) shall apply mutatis mutandis.

Section 498

If the court considers that it is still necessary to institute an investigation into the personality and circumstances of the minor defendant, it may obtain further information from the Child Protection Board.

Section 498a [Repealed as of 01-09-1995]

Section 499

1. Part Five and Part Six of Book Two shall apply mutatis mutandis to the proceedings before the juvenile court judge, insofar as the provisions of this Part do not provide otherwise and on the understanding that the juvenile court judge also has the powers which are conferred on the presiding judge of a three-judge division.

2. Sections 370 and 376 to 381 inclusive shall apply mutatis mutandis, on the understanding that the juvenile court judge shall also refer the case to the three-judge division, if, in its opinion, application of section 77*s* of the Criminal Code should be considered.

Section 500

1. Sections 495b, 496(1, second sentence), (5) and (6), 497 and 498 shall apply mutatis mutandis to the proceedings before the single-judge division of the Sub-District Court Sector.

2. If the case has been brought before the court by an appearance notice, the offence as charged in the indictment shall be stated in the notice to appear at the court session sent to the parents or the guardian. In the case referred to in the opening lines of section 390, that section shall apply mutatis mutandis in regard of the procedure for notification of the parents or the guardian to appear at the court session and if necessary, for withdrawal of this notice.

Section 500a [Repealed as of 01-09-1995]

Section 500b [Repealed as of 01-09-1995]

Section 500c [Repealed as of 01-09-1995]

Section 500d [Repealed as of 01-09-1995]

Section 500e [Repealed as of 01-09-1995]

Section 500f [Repealed as of 01-09-1995]

Section 500g [Repealed as of 01-05-1996]

Section 500h [Repealed as of 01-05-1996]

Section 500i [Repealed as of 01-05-1996]

Section 500j [Repealed as of 01-05-1996]

Section 500k [Repealed as of 01-05-1996]

Section 500l [Repealed as of 01-05-1996]

Section 501

In the case of appeal proceedings before the Court of Appeal or the District Court, sections 495a to 498 inclusive shall apply mutatis mutandis.

Section 502

1. Both the Public Prosecution Service and the convicted offender may file an appeal against a decision, as referred to in section 77t of the Criminal Code, with **the Arnhem-Leeuwarden Court of Appeal**. Sections 509q and 509v to 509x inclusive shall apply mutatis mutandis.

2. Both the Public Prosecution Service and the convicted offender may file an appeal against a decision as referred to in sections 77tb and 77wd of the Criminal Code with the Court of Appeal in the jurisdiction of the court where the decision was given within fourteen days after the date of the decision.

3. Sections 509v(3), 509w and 509x shall apply mutatis mutandis to the appeal referred to in subsection (2).

Section 503

1. If the defendant, who has not yet reached the age of sixteen years, has a defence counsel, all powers conferred on him in this Code or in the Criminal Code, shall also be conferred on his defence counsel.

2. In the case referred to in subsection (1), the defendant or his legal representative may submit a notice of objection to the exercise, withdrawal or waiver of any legal remedy by the defence counsel to the presiding judge of the court determining questions of fact, before which the case is being prosecuted or was last prosecuted, within three days after the time limit for the exercise thereof has expired. The presiding judge shall give a decision as soon as possible. The defendant, his legal representative and the defence counsel shall be heard, or at any rate shall be called to be heard in the manner to be determined by the presiding judge. If the notice of objection is found to be well-founded, the time limit for the exercise or withdrawal of the legal remedy shall be extended by three days.

Section 503a [Repealed as of 01-09-1995]

Section 504

1. Insofar as is not provided otherwise, all summonses, appearance notices, notifications, notices or other written communications to the minor defendant shall also be brought to the notice of his parents or his guardian, as well as his defence counsel.

2. Subsection (1) shall not apply in regard of the defence counsel in cases tried by the single-judge division of the Sub-District Court Sector.

Section 505

All summonses, appearance notices, notifications, notices or other written communications to the parents or the guardian shall be given only if said parents or guardian have/has a known place of abode in the Netherlands. Cohabitating parents shall receive only one of the aforementioned documents.

Section 506 [Repealed as of 01-09-1995]

Section 507 [Repealed as of 01-09-1995]

Section 508 [Repealed as of 01-09-1995]

Section 509 [Repealed as of 01-09-1995]

Part IIA. Trial of Defendants who are believed to be suffering from Mental Disease or Defect

Section 509a

[1.] At every stage of the case involving a defendant who has reached the age of eighteen years, the District Court or the Court of Appeal shall, if it is believed that the defendant suffers from mental disease or defect and due to said defect is unable to properly look after his own interests, issue a declaratory decision to that effect.

[2.] The decision shall be given, either ex officio, or on the proposal of the examining magistrate, on application of the Public Prosecution Service or on an application to that effect of the defendant, his defence counsel, his spouse or civil registered partner, his trustee or one or his relatives by consanguinity or affinity up to and including the third degree.

[3.] Insofar as the defendant is not present when the decision is given, notice of the substance of the decision shall be promptly served on him on behalf of the Public Prosecution Service.

Section 509b

[1.] The court may, before deciding, instruct the Public Prosecution Service to institute a further investigation and to report to the court thereon.

[2.] The decision of the court, referred to in section 509*a*(1), shall not be subject to any legal remedy, but may be revoked by the court at all times; sections 509*a* and 509d shall apply mutatis mutandis in regard of the revocation decision and all matters undertaken by or pursuant to the first-mentioned decision up to the revocation shall nevertheless remain in full force.

Section 509c

The presiding judge of the court shall instruct the board of the Legal Aid Council to assign a defence counsel to the defendant as soon as possible after the decision referred to in section 509a has been given.

Section 509d

[1.] From the moment of the decision, referred to in section 509*a*(1), and, except for revocation, until the case has been concluded by a final appeal judgment or judgment, sections 14*a*, 490, 493, 495a to 497 inclusive, 504 and 505 shall apply mutatis mutandis, on the understanding that the provisions relating to the parents or the guardian shall apply mutatis mutandis only if the defendant has a trustee, and in this case in such a way that they exclusively relate to said parents or guardian.

[2.] If the defendant does not appear in person, as referred to in section 495a(2), the District Court or the Court of Appeal may, either ex officio or on application of the Public Prosecution Service or of the defence counsel, decline to apply the provisions of that subsection, if the District Court or the Court of Appeal is of the opinion that the appearance of the defendant in person is neither necessary nor desirable and the defence counsel has appeared and does not object thereto. In such case the defendant shall be tried in absentia and the hearing of the case shall continue; the defence counsel shall continue to be charged with the defence.

[3.] The powers, conferred on the defendant under this Code, shall also still be conferred on the defence counsel after the decision referred to in section 509*a*(1).

Section 509e Repealed

Part IIB. Judicial Procedures in regard of Placement under an Entrustment Order and Placement in a Psychiatric Hospital

Chapter One. Introductory Provisions

Section 509f

For the purpose of this Part the following terms shall be understood to have the following meaning:
"Probation officer": the person who is charged by an institution, designated in accordance with section 38, 38b, 38g or 38i of the Criminal Code, to maintain contact with the person detained under an entrustment order;
"Psychiatric hospital": a hospital, an institution or a ward thereof as referred to in section 90 sexies of the Criminal Code;
"Psychiatrist": a medical doctor as referred to in section 90 septies of the Criminal Code.

Section 509g

1. If the court is considering the application of section 37, 37*b* or 38*c* of the Criminal Code, it may order in a reasoned decision that the person concerned be transferred for observation to a psychiatric hospital or an institution intended for clinical observation, to be specified in the order, which hospital or institution has been designated by **Our Minister of Security and Justice** in accordance with section 198(3).

2. The order shall not be given until the opinion of one or more expert witnesses has been obtained and the Public Prosecution Service, the person concerned and his defence counsel have been heard.

3. If the order has been given with a view to a decision in regard of application of section 38*c* of the Criminal Code, the term of the placement under an entrustment order shall, if the person detained under an entrustment order has no known place of abode or is not residing in the Netherlands, be suspended until his place of abode is known whereupon the order can be enforced.

4. If the provisions of section 37 of the Criminal Code are applied, the stay in the psychiatric hospital or the institution intended for clinical observation shall be deemed to be a placement in a psychiatric hospital as referred to in section 37(1) of that Code. If the provisions of section 37*b* or 38*c* of the Criminal Code are applied, the stay in the psychiatric hospital or the institution intended for clinical observation shall be deemed to be compulsory treatment. Its duration may not exceed seven weeks. The court may, at all times, order the end of the stay at an earlier date.

Section 509h

1. A person detained under an entrustment order may be arrested by order of the public prosecutor or an assistant public prosecutor attached to the District Court in whose district said person has his actual place of abode, if an order, as referred to in section 509*g*, is issued in his regard or if his probationary leave has ended, resumption of his compulsory treatment has been ordered or compulsory treatment has been ordered after all under application of section 38*c* of the Criminal Code.

2. After his arrest, the person detained under an entrustment order shall be promptly transferred to an institution designated by **Our Minister of Security and Justice**.

Section 509i

1. If there are serious reasons to suspect that a person detained under an entrustment order, who has been granted probationary leave or whose compulsory treatment has been conditionally terminated or on whom conditions, referred to in section 38(1) or section 38la(3) of the Criminal Code, have been imposed, has behaved in such a way that the probationary leave will be terminated, or resumption of the treatment will be ordered, or he will be ordered to have treatment after all, the public prosecutor, who is authorised to make the application referred to in section 38c, 38k or 38la(6) of the Criminal Code, or the public prosecutor attached to the District Court in whose

district said person has his actual place of abode, may order his arrest. The last-mentioned civil servant shall promptly notify the first-mentioned public prosecutor thereof.

2. In the case of the arrest of a person detained under an entrustment order to whom probationary leave was granted, the arrest shall be promptly notified to **Our Minister of Security and Justice**. He shall then decide on the release, or the termination of the probationary leave as soon as possible.

3. In the other cases, if the public prosecutor still considers the arrest carried out to be necessary, he shall promptly submit, in addition to the application under the terms of section 38k, the application under the terms of section 38la(6), or the application under the terms of section 38c of the Criminal Code, an application for temporary resumption of the treatment or an application for temporary treatment to the examining magistrate. Sections 40, 509h(2) and 509k(2) shall apply mutatis mutandis.

4. The examining magistrate shall decide within three times twenty-four hours after arrest. The person detained under an entrustment order shall be heard by the examining magistrate.

5. An order of the examining magistrate, as referred to in subsection (3), shall be immediately enforceable.

6. The decision of the examining magistrate shall be promptly notified in writing to the person detained under an entrustment order.

Section 509i bis

If the court orders the application of the measure of an entrustment order without attaching a compulsory treatment order thereto, the Public Prosecution Service shall serve the judgment, as soon as it has become final, including all decisions pertaining to that order, on the person detained under an entrustment order. The service shall be made to him in person.

Chapter Two. Application of Sections 38b, 38c, 38i, 38k or 38la(6) of the Criminal Code

Section 509j

1. When the Public Prosecution Service is of the opinion that one of the provisions of sections 38b, 38c, 38i or 38k of the Criminal Code should be applied, it shall submit a reasoned application to that effect. If the person detained under an entrustment order has made an application as referred to in sections 38b or 38i of the Criminal Code, then the clerk to the court shall notify that application to the Public Prosecution Service, which shall give an opinion thereon as soon as possible.

2. The Public Prosecution Service shall apply section 38la(6) of the Criminal Code and shall submit a reasoned application for that purpose.

3. The application shall be exclusively brought to the cognisance of the District Court which, as court of first instance, tried the serious offence in regard of which detention under an entrustment order was ordered.

4. If the District Court finds that it lacks jurisdiction, then it shall refer the case to the District Court which ought to try it. In that case the application shall be deemed to have been submitted by the public prosecutor of the latter District Court.

5. Immediately after submission of the application or the opinion, the presiding judge shall set a date for the hearing of the case unless, after a summary examination of the documents, the District Court declines to hear the application of the Public Prosecution Service or of the person detained under an entrustment order.

6. If an order for temporary treatment or an order for temporary resumption of the treatment is issued, the hearing shall take place as soon as possible, in any case within one month after submission of

the application of the Public Prosecution Service.

7. The Public Prosecution Service shall then call the person detained under an entrustment order and the probation officer to appear at the hearing as soon as possible, subject to service of the application or opinion on the person detained under an entrustment order. Notice to the probation officer may be omitted if the application is based on section 38la(6) of the Criminal Code.

8. If application of section 38la is requested by the Public Prosecution Service, section 509q shall apply mutatis mutandis.

Section 509jbis

1. If a person detained under an entrustment order, on whom conditions have been imposed as referred to in section 38(1), 38g(2) or section 38h(1) of the Criminal Code, has failed to comply with a condition set or if otherwise required in the interest of the safety of others or the general safety of persons or property, the Public Prosecution Service may, under section 38b or section 38i of the Criminal Code, submit a reasoned application to the District Court requesting a temporary admission for the duration of maximum seven weeks in an institution designated by the District Court. This temporary admission may take place without the person detained under an entrustment order being required to make a declaration of willingness as referred to in section 38(3) of the Criminal Code.

2. The District Court may, on a reasoned application of the Public Prosecution Service, extend the period, as referred to in subsection (1), for the duration of maximum seven weeks if such extension is required in the interest of the safety of others or the general safety of persons or property.

3. The District Court shall give a decision on an application, as referred to in subsection (1) or (2), as soon as possible, but in any case within three days after submission of the application. This decision shall be immediately enforceable.

4. Section 509j(2) to (4) inclusive and (6) shall apply mutatis mutandis to an application as referred to in subsection (1) or (2).

Section 509k

1. If the application of the Public Prosecution Service requests the application of section 38c, section 38k, or section 38la(6) of the Criminal Code, then the board of the Legal Aid Council shall assign a defence counsel, by order of the presiding judge, to a person detained under an entrustment order if he does not have a defence counsel.

2. The defence counsel may be present at the hearing and may inspect all documents pertaining thereto.

3. Sections 38, 39, 41(2), 45-49 and 50(1) shall apply mutatis mutandis.

Section 509l

1. Both the Public Prosecution Service and the person detained under an entrustment order may have witnesses and expert witnesses summoned or called in writing. The presiding judge may also order the summoning or calling of witnesses and expert witnesses on behalf of the Public Prosecution Service. Other persons may, by his order, be invited to appear at the hearing by the clerk to the court.

2. The person detained under an entrustment order and the probation officer may inspect the documents at the court registry before the start of the hearing. The provisions laid down by or pursuant to **section 32** shall apply.

3. If the presiding judge fears that the mental health of the person detained under an entrustment order could be seriously endangered, he may determine that said person shall not be permitted to inspect medical and psychological reports in person, but that said reports shall be exclusively

inspected by an authorised person, who is a probation officer, a medical doctor or a lawyer or has been given special leave by the presiding judge.

Section 509m

1. The hearing shall be held subject to application mutatis mutandis of sections 269 to 272 inclusive, 273(1) and (3), 274 to 277 inclusive, 278(2), 281, 284(1), 286 to 297 inclusive, 299 to 301 inclusive, 309 to 311 inclusive, 315, 318 to 322 inclusive, 324, 326, 328 to 331 inclusive, 345(1) and (3) and 346.

2. Pending the hearing, the Public Prosecution Service may amend its application or opinion and the person detained under an entrustment order his application.

3. If the application of the Public Prosecution Service relates to the application of section 38c, 38k or 38la of the Criminal Code and said application is submitted within four months before the date on which the detention under an entrustment order will expire through lapse of time, the Public Prosecution Service may also submit an application for extension of the detention under an entrustment order. In that case Chapter Three of this Part shall apply mutatis mutandis.

Section 509n

1. If a compulsory treatment order is imposed after all on the person detained under an entrustment order, the conditional termination of the compulsory treatment is lifted and resumption of the treatment ordered, or the compulsory treatment under section 38la(6) of the Criminal Code is resumed, the decision shall state the special reasons therefor.

2. The decision on the application of the Public Prosecution Service or of the person detained under an entrustment order for application of section 38b or section 38i of the Criminal Code shall not be subject to any regular legal remedy.

3. The decision shall be promptly served on the person detained under an entrustment order and notified to the institution in writing.

4. If the decision contains an amendment to the special conditions referred to in section 38 or 38g, the decision shall be served on the person detained under an entrustment order in person.

Chapter Three. Extension of the Detention under an Entrustment Order

Section 509o

1. The Public Prosecution Service may submit an application for extension of the detention under an entrustment order no earlier than two months and no later than one month before the date on which the detention under an entrustment order shall expire through lapse of time. Further rules pertaining to the procedure for the extension of the detention under an entrustment order may be set by Governmental Decree.

2. If the person detained under an entrustment order receives compulsory treatment, the following shall be submitted together with the application:

1°. a recently prepared, reasoned and signed opinion from the head of the institution;
2°. a copy of the records on the physical and mental condition of the person detained under an entrustment order.

3. If the person detained under an entrustment order does not receive compulsory treatment, a recently prepared, reasoned, dated and signed opinion from the probation service and from a psychiatrist , who has personally examined the person detained under an entrustment order, shall be submitted together with the application.

4. If the Public Prosecution Service applies for an extension which would cause the total duration of the detention under an entrustment order to exceed a period of six years or a multiple of six years,

it shall submit, together with the application, a recently prepared, reasoned, dated and signed opinion from two behavioural experts of different disciplines - one being a psychiatrist – jointly, or such opinions from each of them separately. These behavioural experts may not be attached to the institution in which the person detained under an entrustment order is being treated at the time of issuance of the opinion and of the examination that they conduct for the purpose of said opinion. The forgoing shall not apply if the person detained under an entrustment order refuses to cooperate with the examination which must be conducted for the purpose of the opinion. Where possible, the behavioural experts shall prepare, either jointly or each of them separately, a report on the reason for the refusal. The Public Prosecution Service shall submit, where possible, another opinion or report advising on the desirability or necessity of an extension of the detention under an entrustment order with which the person in question is willing to cooperate.

5. The person detained under an entrustment order may, in the case, referred to in subsection (4), by order of **Our Minister of Security and Justice**, be transferred for observation to a psychiatric hospital or an institution intended for clinical observation, which hospital or institution has been designated by **Our Minister of Security and Justice** in accordance with section 198(3), for a period of maximum seven weeks. The stay in the institution shall be deemed to be compulsory treatment. The transfer order shall not be given until the person detained under an entrustment order and his defence counsel have been heard on this matter, or at any rate have been given the opportunity to be heard on this matter. Section 273(1) shall apply mutatis mutandis.

6. The Public Prosecution Service shall send a written copy of the application to the person detained under an entrustment order as soon as possible; in the case of an application as referred to in subsection (3), the Public Prosecution Service shall also send a copy thereof to the probation officer.

7. If the application, referred to in subsection (1), is submitted within two months after the decision in appeal, in which either the decision of the District Court to extend the detention under an entrustment order by one year was confirmed, or, the decision of the District Court was quashed and the detention under an entrustment order was extended by one year, an opinion, as referred to in subsection (2)(1), shall not be required to be submitted together with the application.

Section 509oa

1. An application, as referred to in section 509o(1), which was submitted later than one month before the date on which the detention under an entrustment order expires by lapse of time, but within a reasonable period of time, it shall nevertheless be admissible, if there are special circumstances which, in spite of the interest of the person detained under an entrustment order, require extension of the detention under an entrustment order for the general safety of persons or property.

2. In the case referred to in subsection (1), the public prosecutor must, if the omission becomes apparent after the date on which the detention under an entrustment order has expired by lapse of time, promptly submit, in addition to the application for extension of the detention under an entrustment order, an application for temporary continuation of the detention under an entrustment order to the examining magistrate. Sections 40 and 509k(2) shall apply mutatis mutandis. Pending the decision on the application for temporary continuation of the detention under an entrustment order, the person detained under an entrustment order shall not be released.

3. The examining magistrate shall give a decision within three times twenty-four hours after submission of the application for temporary continuation of the detention under an entrustment order. Where possible, the person detained under an entrustment order shall be heard by the examining magistrate.

4. An order of the examining magistrate for temporary continuation of the detention under an entrustment order shall be immediately enforceable.

5. The decision of the examining magistrate shall be promptly notified in writing to the person detained under an entrustment order.

Section 509p

The District Court which, as court of first instance, tried the serious offence in regard of which the detention under an entrustment order was ordered, shall have exclusive jurisdiction to hear the application. Section 509*j*(3) shall apply.

Section 509q

1. The detention under an entrustment order shall remain in force until a final decision has been given on the application. If the application is granted after the date on which the detention under an entrustment order would have expired by lapse of time if an application for extension had not been submitted, the new period of time shall nevertheless take effect on that day.

2. If an application for extension of the compulsory treatment is brought before the court at the same time as the application for extension of the conditional termination of the compulsory treatment, subsection (1) shall apply mutatis mutandis.

Section 509r

1. The board of the Legal Aid Council shall, by order of the presiding judge, assign a defence counsel to the person detained under an entrustment order who is receiving compulsory treatment, if he does not have one.

2. Section 509*k*(2) and (3) shall apply.

Section 509s

1. The District Court shall promptly set a date for the hearing of the case. The person detained under an entrustment order and the probation officer shall be timely notified thereof.

2. Sections 509l and 509m shall apply mutatis mutandis to the conduct of the hearing.

3. Before giving a decision, the District Court shall hear the person detained under an entrustment order.

4. If the person detained under an entrustment order is not able to appear at the hearing, one of the members of the District Court, accompanied by the clerk to the court, shall hear him at his place of abode.

5. If the person detained under an entrustment order is staying in the district of another District Court, the District Court may transfer the hearing, referred to in the preceding subsection, to the District Court in that district.

Section 509t

1. The District Court shall decide on the application for extension as soon as possible, but not later than two months after the date on which the application was submitted.

2. If the District Court decides to extend the detention under an entrustment order by one year, it may also, either ex officio or on application of the public prosecutor or of the person detained under an entrustment order or his defence counsel, conditionally terminate the compulsory treatment.

3. If, after submission of the application as referred to in section 509o(1), a circumstance has occurred, from which it follows that the District Court, in view of the time limit set in subsection (1) within which it must decide on the application for extension, is unable to comply with the duty to hear the person detained under an entrustment order, prescribed pursuant to section 509*s*(3), subsection (1) shall not apply. In that case, the District Court shall decide on the application within two months after the impediment to compliance with the aforementioned duty no longer exists.

4. The decision shall state the special reasons for extending the detention under an entrustment order or rejecting the application.

5. If, in the case of extension of the detention under an entrustment order for the period of one year, the District Court is considering conditional termination or termination of the treatment and, for the purpose of forming its final opinion, feels that it is necessary to obtain more detailed information about the manner in which and the conditions under which the reintegration of the person detained under an entrustment order into society could be realised, it may extend the treatment and at the same time postpone its decision for maximum three months.

Section 509u

1. The decisions, referred to in section 509*t*, shall be promptly served on the person detained under an entrustment order and information on the legal remedy which may be exercised against the decision and on the time limit for exercise of said legal remedy shall be provided.

2. If the person detained under an entrustment order receives compulsory treatment, the decision shall also be promptly notified to the head of the institution.

Section 509u bis

After the decision for conditional termination of the compulsory treatment has become final, notification shall be sent as soon as possible to the person detained under an entrustment order. This notification shall contain the conditions set and the date of commencement of the conditional termination of the compulsory treatment and shall be served in person.

Chapter Four. Appeal

Section 509v

1. Appeal may be filed against the decision of the District Court, referred to in section 38h of the Criminal Code, and those, referred to in sections 509n(1), and 509t(1) and (2), by the Public Prosecution Service within fourteen days after the date thereof and by the person detained under an entrustment order within fourteen days after service thereof with **the Arnhem-Leeuwarden Court of Appeal**.

2. If the application for extension of the detention under an entrustment order has been granted, but section 509*t*(5) has been applied, appeal against the extension decision may only be filed simultaneously with the decision on the conditional termination of the compulsory treatment.

3. Sections 409(1), 410, 449(1), 450-454, 455(1), and 509*r* shall apply mutatis mutandis.

Section 509w

1. Section 509*s*(2), (3) and (4) shall apply mutatis mutandis to the hearing conducted by the Court of Appeal.

2. However, if the Court of Appeal, after having examined the documents pertaining to the proceedings, finds that the appeal is manifestly inadmissible or ill-founded, it may, after having heard the advocate general, the person detained under an entrustment order and his defence counsel, decide on the appeal without any further hearing being required.

3. Pending the decision, the presiding judge may conditionally terminate the compulsory treatment when the District Court has rejected the application for extension.

Section 509x

1. The Court of Appeal shall decide as soon as possible. It shall uphold the decision of the District Court or shall quash it and do what the District Court ought to have done.

2. The decision shall state the special reasons for applying section 38*c* of the Criminal Code or extending the detention under an entrustment order or rejecting an application for that purpose. It shall not be subject to any regular legal remedy.

PART IIC. Special Proceedings pertaining to Detention in an Institution for Persistent Offenders

Section 509y

For the purpose of this Part the following words or terms shall be understood to have the following meaning:
“Convicted offender”: the person who is being held in detention in an institution for persistent offenders;
“Measure”: detention in an institution for persistent offenders;
“Probation officer”: the person who has been charged with maintaining contact with the convicted offender pursuant to section 38p(4) of the Criminal Code.

Section 509z

1. Where the Public Prosecution Service is of the opinion that one of the provisions of sections 38q or 38r of the Criminal Code should be applied, it shall submit a reasoned application for that purpose. When the person, on whom the measure has been conditionally imposed, submits an application as referred to in section 38q of the Criminal Code, the clerk to the court shall notify the application to the Public Prosecution Service, which shall give an opinion thereon as soon as possible.

2. The District Court, which imposed the measure as court of first instance, shall have exclusive jurisdiction to hear the application of the Public Prosecution Service or of the convicted offender.

3. If the District Court finds that it lacks jurisdiction, then it shall refer the case to the District Court which ought to try it. In that case the application shall be deemed to have been submitted by the public prosecutor attached to the latter District Court.

4. Immediately after submission of the application or the opinion, the presiding judge shall set a date for the hearing of the case unless, after a summary examination of the documents, the court declines to hear the application of the Public Prosecution Service or of the convicted offender.

5. The Public Prosecution Service shall then timely call the convicted offender and the probation officer to appear at the hearing and the application or opinion shall be served on the convicted offender.

Section 509aa

1. Where the District Court has applied section 38s(1) of the Criminal Code, the presiding judge shall set a date for the hearing of the case immediately after receipt of the information referred to in said subsection. The Public Prosecution Service shall then timely summon the convicted offender to appear at the hearing as soon as possible.

2. When the District Court rejects an application of the convicted offender or of the Public Prosecution Service for an interim review as referred to in section 38s(1) of the Criminal Code, which was made after imposition of the measure, it shall take this decision without any further hearing of said application.

Section 509bb

1. If the application of the Public Prosecution Service pertains to the application of section 38r of the Criminal Code, the board of the Legal Aid Council shall, by order of the presiding judge, assign a lawyer to the convicted offender who does not have one.

2. The lawyer may be present at the hearing and may inspect all documents pertaining to the case.

3. Sections 38, 39, 41(2), 45 to 49 inclusive and 50(1) shall apply mutatis mutandis.

Section 509cc

1. Both the Public Prosecution Service and the convicted offender and his lawyer may have

witnesses and expert witnesses summoned or called in writing to appear at the hearing. The presiding judge may also order the summoning or calling of witnesses and expert witnesses on behalf of the Public Prosecution Service. Other persons may, by his order, be invited to appear at the hearing by the clerk to the court.

2. The convicted offender and the probation officer may inspect the documents before the start of the hearing. The provisions laid down by or pursuant to **section 32** shall apply.

Section 509dd

1. The court in chambers shall hear the case at a public court session.

2. The hearing shall be conducted subject to application mutatis mutandis of sections 269 to 272 inclusive, 273(1) and (3), 274 to 281 inclusive, 284(1), 286 to 297 inclusive, 299 to 301 inclusive, 309 to 311 inclusive, 315, 318 to 322 inclusive, 324, 328 to 331 inclusive, 345(1) and (3), 346.

3. Pending the hearing, the Public Prosecution Service may amend its application or opinion and the convicted offender his application.

Section 509ee

1. If section 38r of the Criminal Code is applied, the decision shall state the special reasons for said application.

2. The decision, on an application of the Public Prosecution Service or of the convicted offender, for application of section 38q of the Criminal Code, shall not be subject to any regular legal remedy.

3. The decision shall be promptly served on the convicted offender. On service of the decision pertaining to application of sections 38r and 38s, information on the legal remedy which may be exercised against the decision and the time limit for exercise of said legal remedy shall be provided.

4. If the decision contains an amendment to the special conditions referred to in section 38p(4), the decision shall be served on the convicted offender in person.

5. The decision, referred to in section 38q(2°), shall be notified in writing to the institution or expert witness.

6. If the District Court terminates the measure in accordance with section 38s(3), the measure shall remain in force until the decision has become irrevocable.

Section 509ff

1. Appeal may be filed against the decision of the District Court in regard of the application of sections 38r and 38s by the Public Prosecution Service within fourteen days after the date thereof and by the convicted person within fourteen days after service thereof with the Arnhem-Leeuwarden Court of Appeal.

2. Sections 409(1), 410, 449(1), 450 to 454 inclusive, 455(1) and 509z(4) and (5) and 509aa to 509dd inclusive shall apply mutatis mutandis.

Section 509gg

1. The Court of Appeal shall decide as soon as possible. It shall uphold the decision of the District Court or shall quash it and do what the District Court ought to have done. Section 509ee(1) shall apply mutatis mutandis.

2. The decision of the Court of Appeal shall not be subject to any regular legal remedy.

Part IID. Criminal Behaviour Order to stop Serious Nuisance, Annoyance or Harassment

Section 509hh

1. The public prosecutor may issue a criminal behaviour order against the suspect against whom there are serious suspicions in the case of suspicion of a criminal offence:

a. as a result of which, in view of the nature of the criminal offence or the relation to other criminal offences, or the way in which the criminal offence was committed, public order has been seriously disrupted and there is a serious fear of recidivism, or
b. in connection with which it is feared that the suspect will engage in behaviour which will cause serious harassment, alarm or distress to a specific person or persons, or
c. in connection with which it is feared that the behaviour of the suspect will repeatedly endanger property.

2. The criminal behaviour order may entail that the suspect is ordered to:

a. stay away from a specific area,
b. refrain from contact with a specific person or persons,
c. report at specific times to the investigating officer designated for that purpose,
d. have assistance and support in attending groups or courses which may influence the commission of criminal offences by the suspect.

3. The criminal behaviour order shall be notified to the suspect in writing, stating the date of commencement and the period during which the criminal behaviour order is in force and the reasons for its issuance.

4. The criminal behaviour order shall be in force for maximum 90 days or, in the case of a shorter period, until the judgment rendered in regard of the criminal offence has become irrevocable. If an irrevocable judgment is not obtained on time, then the criminal behaviour order may be extended, three times maximum, by a period of maximum 90 days. Extension is not possible if the suspect is not prosecuted. The court, before which the suspect has been summoned to appear, may revoke the criminal behaviour order. The court may revoke the criminal behaviour order if it is of the opinion that the conditions set for issuance of the criminal behaviour order in subsection (1) are not or no longer being met.

5. The suspect may appeal against the criminal behaviour order and its extension to the District Court, which shall decide as soon as possible. The suspect may have the legal representation of a defence counsel.

6. The public prosecutor shall amend or withdraw the criminal behaviour order if new facts or circumstances give reason to do so.

Part III. Prosecution and Trial of Judicial Officers

Section 510

[1.] If a judicial officer would have to be prosecuted and tried before his District Court or his Court of Appeal or before a court within the area of jurisdiction of his District Court or his Court of Appeal, the Supreme Court shall, on application of the Public Prosecution Service charged with the prosecution according to the regular rules, designate a court of equal ranking other than the otherwise competent court, before which the case will be prosecuted and tried.

[2.] Nevertheless, the urgent prosecutorial measures, which precede the proceedings, may also be taken at or by the otherwise competent court.

[3.] The designation shall also apply to the co-suspects of the judicial officer.

[4.] The case documents and, insofar as is necessary, the convincing items of evidence, shall also accompany the application.

Section 511

[1.] The decision given in chambers by the Supreme Court shall be served on the suspect, on behalf of the procurator general.

[2.] The procurator general shall also notify the decision given in chambers to the applicant and send a copy thereof to the Public Prosecution Service attached to the designated court.

Part IIIA [Repealed as of 09-05-2008]

Section 511a [Repealed as of 09-05-2008]

Part IIIb. Criminal Proceedings pertaining to Special Confiscation of Unlawfully Obtained Gains

Section 511b

1. An application of the Public Prosecution Service, as referred to in section 36e of the Criminal Code, shall be brought before the District Court as soon as possible but not later than two years after the judgment was pronounced by the court of first instance. If the criminal financial investigation has been closed and reopened in accordance with the provisions of section 126f(2), the period of two years shall be extended by the period of time which has elapsed between this closure and reopening.

2. The public prosecutor shall have the application and supporting documents sent to the District Court. **Section 258(2)** shall apply mutatis mutandis.

3. The application shall be served on the person to whom it pertains, and he shall be informed of his right to inspect the documents. If a criminal financial investigation has been instituted, the application shall be served on the person against whom it is directed at the same time as the closure of the criminal financial investigation.

4. The application shall also contain notice to appear at the court session on the date and hour stated therein. Sections 260, 263 and 265 to 267 inclusive shall apply mutatis mutandis.

Section 511c

The public prosecutor may, as long as the court hearing has not been closed, enter into a written out-of-court settlement with the suspect or convicted offender for payment of a sum of money to the State or transfer of objects for deprivation, in whole or in part, of unlawfully obtained gains liable to special confiscation under section 36e of the Criminal Code.

Section 511d

1. The provisions of Chapter One of Part VI of Book Two shall apply mutatis mutandis to the hearing of an application of the public prosecutor. The court hearing of the application may be preceded by written preparations in the manner as to be determined by the District Court. Further rules pertaining to the written preparations may be set by or pursuant to Governmental Decree.

2. If a criminal financial investigation or a further criminal financial investigation is found to be necessary, the District Court shall adjourn the court hearing and shall place the documents in the hands of the public prosecutor, indicating the subject of the investigation, and if necessary, the manner in which said investigation is to be instituted.

3. The investigation shall be deemed to be a criminal financial investigation instituted by judicial authorisation and shall be conducted in accordance with the provisions of Chapter Nine of Part Four of Book One, with the exception of section 126f(4) and (5).

Section 511e

1. The provisions of Chapter Four of Part VI of Book Two shall apply mutatis mutandis to the deliberations and the pronouncement of judgment, on the understanding that

a. the District Court shall, on the basis of the application and the court hearing, deliberate on the question whether the measure referred to in section 36e of the Criminal Code should be imposed and if so, at which amount the unlawfully obtained gains can be estimated; and
b. the judgment may not be pronounced, in any case, later than six weeks after the date on which the hearing was closed.

2. If during the deliberations the court hearing is found to have been incomplete, the District Court may have the public prosecutor conduct an investigation in accordance with the provisions of section 511d(2) and (3). In this case action shall be taken as though the hearing has been adjourned for an indefinite period.

Section 511f

The court may only derive the estimate of the monetary gains, as referred to in section 36*e* of the Criminal Code, from legal means of evidence.

Section 511g

1. An appeal may be filed against the judgment of the District Court.

2. Part II of Book Three shall apply mutatis mutandis, on the understanding that:

a. the case shall be brought before the court by notice to appear served on the suspect or the convicted offender by the advocate general;
b. the hearing of the application, against which an appeal has been filed, may be preceded by written preparations in the manner as to be determined by the Court of Appeal;
c. sections 511d(2) and (3), and 511e(2) shall apply mutatis mutandis. In these cases the financial investigation shall be conducted by **the public prosecutor in the district of the District Court** which pronounced judgment as court of first instance. After conclusion of the investigation ordered, the public prosecutor shall notify the contents of the documents to the advocate general;
d. section 511e(1)(b) shall apply mutatis mutandis.

Section 511h

An appeal in cassation may be filed against the judgment rendered in appeal. Part III of Book Three shall apply mutatis mutandis.

Section 511i

A judgment on the application of the Public Prosecution Service, as referred to in section 36*e* of the Criminal Code, shall lapse by operation of law, on account of the fact that the judgment, in which the defendant was not convicted under section 36*e*(1) or (3) of the Criminal Code, becomes final.

Part IV. Recusal and Excusal of Judges

Section 512

On application of the defendant or the Public Prosecution Service, any of the judges, who hear a case, may be recused on the grounds of facts or circumstances which might prejudice judicial impartiality.

Section 513

1. The application shall be made as soon as the facts or the circumstances become known to the applicant.

2. The application shall be made in writing and shall be reasoned. It may also be made verbally

during the court session.

3. All facts or circumstances must be submitted at the same time.

4. A subsequent application for recusal of the same judge shall not be heard, unless facts or circumstances are submitted which only became known to the applicant after the previous application.

5. If the application is made at the court session, then the court session shall be adjourned.

Section 514

A judge, whose recusal has been requested, may defer to this request.

Section 515

1. The application for recusal shall be heard as soon as possible by a three-judge division, of which the judge, whose recusal has been requested, shall not be a member.

2. The applicant and the judge, whose recusal has been requested, shall be given the opportunity to be heard. The court may, ex officio or on application of the applicant or the judge whose recusal is being requested, determine that they shall not be heard in each other's presence.

3. The court shall decide as soon as possible. The decision shall be reasoned and shall be promptly notified to the defendant, the Public Prosecution Service and the judge whose recusal was requested.

4. In the event of abuse, the court may determine that a subsequent application shall not be heard and this shall be stated in the decision.

5. The decision shall not be open to any legal remedy.

Section 516 [Repealed as of 01-01-2002]

Section 517

1. On the basis of facts or circumstances as referred to in section 512, any of the judges, who are trying a case, may request to be excused.

2. The request shall be made in writing and shall be reasoned. It may also be made verbally during the court session.

3. If the request is made at the court session, then the court session shall be adjourned.

Section 518

1. The request to be excused shall be heard as soon as possible by a three-judge division, of which the judge, who has requested to be excused, shall not be a member.

2. The court shall decide as soon as possible. The decision shall be reasoned and shall be promptly notified to the defendant, the Public Prosecution Service and the judge who requested to be excused.

3. The decision shall not be open to any legal remedy.

Section 519 [Repealed as of 01-01-2002]

Section 520 [Repealed as of 01-01-1994]

Section 521 [Repealed as of 01-01-1994]

Section 522 [Repealed as of 01-01-1994]

Section 523 [Repealed as of 01-01-1994]

Section 524 [Repealed as of 01-01-1994]

Part V. Jurisdictional conflicts

Section 525

[1.] A jurisdictional conflict shall exist:

1°. when two or more courts have taken on the same case at the same time;
2°. when two or more courts declare their lack of jurisdiction to try the same case and their decisions are contrary to each other.

[2.] For the purpose of this Part “courts” shall mean the persons or courts which are charged with jurisdiction under special acts, on the understanding that only conflicts involving other courts shall be adjudicated in accordance with the provisions of this Part.

Section 526

[1.] In the event of the existence of a jurisdictional conflict, a reasoned, written application for settlement of the area of jurisdiction may be submitted by any civil servant who instituted the prosecution and by the defendant to the competent court.

[2.] The clerk to the court shall promptly notify the application in writing to the courts between which there is a jurisdictional conflict, and, insofar as said courts have not submitted the application, to the civil servants who instituted the prosecution and to the defendant.

[3.] The notification, referred to in the preceding subsection, shall suspend the prosecution. Nevertheless, urgent measures may be taken at or by the courts between which there is a jurisdictional conflict. Any of the courts between which there is a jurisdictional conflict shall be authorised to take all measures which may be taken in regard of the pre-trial detention.

[4.] The court competent to hear the jurisdictional conflict may order continuation of **the investigation conducted by the examining magistrate pursuant to sections 181 to 183 inclusive**.

[5.] The suspension of the prosecution shall end as soon as the decision given in chambers on the jurisdictional conflict has become irrevocable.

Section 527

1. The decision in chambers shall be given as soon as possible.

2. The decision given in chambers shall also determine whether and to what extent the acts and decisions of the court, from which the case is being withdrawn, will be upheld.

3. The decision given in chambers shall be served on the defendant as soon as possible. The clerk to the court shall promptly notify it in writing to the courts between which there is a jurisdictional conflict.

4. An appeal in cassation may be submitted against the decision given in chambers with the District Courts and Courts of Appeal by the Public Prosecution Service within fourteen days thereafter and by the defendant within fourteen days after the service. The provisions of the preceding subsection shall apply to the decision given in chambers in appeal in cassation.

Part VI. Prosecution and Trial of Legal Persons

Section 528

1. If criminal prosecution is instituted against a legal person, a special purpose fund or a shipping company, this legal person or this special purpose fund shall be represented during the prosecution by the director or, if there are more directors, by one of them and the shipping company by the accountant or one of the members of the shipping company. A person authorised by the representative may appear on his behalf.

2. If the criminal prosecution is instituted against a partnership or unincorporated company, said partnership or company shall be represented during the prosecution by the liable partner or, if there are more liable partners, by one of them. A person authorised by the representative may appear on his behalf.

3. The court may order that a specific director or partner appear in person; in that case it may order that he be brought forcibly to court.

Section 529

1. Judicial notices to a legal person shall be given at:

a. the registered office of the legal person, or
b. the place of business of the legal person, or
c. the place of residence of one of the directors.

2. A judicial notice shall be served by its delivery to one of the directors, or to a person authorised by the legal person to accept receipt of the document on its behalf. The delivery shall be deemed in these cases to be service in person. Said notice may be delivered to these persons at a location other than the ones referred to in subsection (1).

3. The delivery of a judicial notice, as referred to in the preceding subsection, may also be made at one of the locations, described in subsection (1), to any person who is in the employment of the legal person and who declares that he is prepared to deliver the notice.

Section 530

1. Judicial notices to a partnership or unincorporated company shall be given at:

a. the place of business of the partnership or company, or
b. the place of residence of one of the liable partners.

2. A judicial notice shall be served by its delivery to one of the liable partners or to a person authorised by one or more of them to accept receipt of the document on their behalf. The delivery shall be deemed in these cases to be service in person. Said notice may be delivered to these persons at a location other than the ones referred to in subsection (1).

3. The delivery of a judicial notice, as referred to in the preceding subsection, may also be given at one of the locations, described in subsection (1), to any person who is in the employment of the partnership or company or of a liable partner and who declares that he is prepared to deliver the notice.

4. The preceding subsections shall apply mutatis mutandis in the case of prosecution of a special purpose fund or shipping company; in this case the directors or the accountant and the members of the shipping company shall take the place of the liable partners.

Section 531

If delivery could not be made in accordance with section 529(2) or (3), or section 530(2) or (3), then the letter shall be sent back to the authority which issued it and then presented to the clerk to the District Court where or in whose area of jurisdiction the case will be brought before the court or was last brought before the court. In that case the Public Prosecution Service shall promptly send a copy of

the letter to the address stated in the letter, which shall be noted in the record of delivery.

Section 532

Sections 585-587, 588(2) and (4), 588a, 589(1), (3) and (4) and 590(1) and (3) shall apply mutatis mutandis to judicial notices given to a legal person, partnership or unincorporated company, a special purpose fund or shipping company.

Section 533 [Repealed as of 01-09-1976]

Section 534 [Repealed as of 01-09-1976]

Section 535 [Repealed as of 01-09-1976]

Section 536 [Repealed as of 01-09-1976]

Section 537 [Repealed as of 01-09-1976]

Section 538 [Repealed as of 01-09-1976]

Section 539 [Repealed as of 01-09-1976]

Part VIA. Criminal Proceedings outside the Area of Jurisdiction of a District Court

Chapter One. General

Section 539a

1. The powers, conferred by any statutory provision in connection with the detection of criminal offences or in connection with the investigation thereof, other than at a court session, may, insofar as it is not provided otherwise in this Part, be exercised outside the area of jurisdiction of a District Court.

2. The provisions of Chapters One and Two of this Part shall only apply in regard of the detection and the investigation outside the area of jurisdiction of a District Court. Insofar as said provisions relate to an arrested person or a seized object, they shall continue to apply, also within the area of jurisdiction of a District Court, until the arrested person or the seized object has been handed over to the public prosecutor or one of his assistant public prosecutors.

3. The powers, conferred in the provisions of this Part, may be exercised only insofar as is permitted under international law and interregional law.

Section 539b

1. Persons other than investigating officers shall only exercise the powers, conferred in section 539*a* or in Chapter Two of this Part, on the instructions of the public prosecutor, unless such instructions cannot be awaited.

2. Any person, who has exercised a power as referred to in subsection (1), shall promptly notify the public prosecutor in the quickest possible manner of:

1°. the criminal offence which has come to his knowledge;
2°. any measure he has taken under a power as referred to in subsection (1).

3. He shall state in this notification, where possible, the personal details of the suspect and his nationality, as well as his own personal details and other relevant facts. In addition, he shall try to obtain as soon as possible instructions from the public prosecutor concerning the manner in which action should be taken in the matter concerned. He shall observe the instructions of the public prosecutor.

4. The provisions of the two preceding subsections shall also apply to the person to whom an arrested suspect or a seized object is handed over.

5. The provisions of the preceding subsections shall not apply to members of the judiciary in regard of those acts which they are competent as such to conduct.

Section 539c

1. In the event of a criminal offence, the commander may, with due observance of the provisions of this Part, gather information and evidence which may shed light on the case, unless the public prosecutor decides otherwise.

2. The same power shall be conferred on the master and the captain of an aircraft on board the vessel or aircraft of which they are in command. The term “vessel” shall include an installation at sea designated by Us.

Section 539d

Our Minister of Security and Justice may, in agreement with the Minister of Defence, charge all or certain commanders with the detection of specific criminal offences designated by him outside the area of jurisdiction of a District Court.

Section 539e

1. The commander may charge an officer under his command with the performance of an action which he is competent as such to conduct on the basis of one of the provisions of this Part or is competent as investigating officer to conduct after designation pursuant to section 539*d*.

2. The master may charge a ship’s officer under his command with the performance of an action which he is competent to conduct on the basis of one of the provisions of this Part. The captain of an aircraft may charge a member of the crew under his command with the performance of an action which he is competent to conduct on the basis of one of the provisions of this Part.

Section 539f

1. If the commander, the master or the captain of an aircraft exercises one of the powers conferred on him under sections 539*a* or 539*c* or in Chapter Two of this Part, he shall personally prepare an official record of his actions and findings as soon as possible.

2. In the event of application of section 539*e*, the officer, the ship’s officer or the member of the crew of an aircraft shall take action in accordance with subsection (1).

3. Where the master or a ship’s officer or the captain of an aircraft or a member of the crew questions the suspect or witnesses, two persons on board the vessel or the aircraft shall also be present, where possible, and shall co-sign the official record.

4. The official record shall be dated and signed by the person preparing the report. He shall explicitly state, as much as possible, the sources of his knowledge. The official record of the officer, the ship’s officer or the member of the crew of an aircraft shall be co-signed by the commander or the master and the captain of the aircraft respectively.

5. The commander, the master or the captain of the aircraft shall send the official record to the public prosecutor as soon as possible, unless he decides otherwise.

Chapter Two. Application of Any Special Coercive Measures

Section 539g

The power, described in section 52, shall also be conferred on the commander, the master and the captain of an aircraft.

Section 539h

1. The suspect may only be arrested:

1°. if he is caught red-handed in the commission of a serious offence, by any person;
2°. if he is caught red-handed in the commission of a minor offence, by an investigating officer, a commander, a master and a captain of an aircraft;
3°. If he is not caught red-handed, in the case of a serious offence or the criminal offence described in section 435(4°) of the Criminal Code, by an investigating officer, a commander, a master and a captain of an aircraft.

2. The public prosecutor may order the arrest of the suspect in the cases referred to in the preceding subsection.

Section 539i

An arrested suspect shall be promptly handed over:

1. by any person to the public prosecutor, if he is at the scene;
2. by the commander, the master and the captain of an aircraft, to an investigating officer, if he is at the scene;
3. by a person on board a vessel who is not an investigating officer, to the master and by a person on board an aircraft who is not an investigating officer, to the captain of the aircraft;
4. by other persons, to an investigating officer or to a commander.

Section 539j

1. The public prosecutor may determine that the arrested suspect shall be questioned. He may order for that purpose that the suspect be handed over to a specific person or be taken to a specific location.

2. Unless the public prosecutor determines otherwise, the investigating officer shall be authorised to question the arrested suspect. In the absence of an investigating officer, the same authority shall be conferred on the commander, the master and the captain of the aircraft.

3. The person, who is authorised to question the suspect, shall also be authorised to take him to a location for questioning.

4. Section 29 shall apply mutatis mutandis in the event of questioning by the master or a ship's officer or by the captain of an aircraft or a member of the crew.

Section 539k

1. The arrested suspect shall be immediately released after he has been questioned. He may not be detained for questioning for more than six hours, on the understanding that the time between midnight and nine o'clock in the morning shall not be included.

2. Nevertheless, the suspect may be detained for more than six hours:

a. when a pre-trial detention order has been issued against him and its enforcement, also outside the area of jurisdiction of a District Court, has been ordered;
b. when he is suspected of a serious offence, which carries a statutory term of imprisonment of at least four years and for which a pre-trial detention order may be issued against him.

3. A decision to detain the suspect for more than six hours in the case referred to in the preceding subsection under (*b*) shall be taken by the public prosecutor. If action on the part of the public prosecutor cannot be awaited, then the investigating officer, the commander, the master or the captain of the aircraft, who has detained the suspect, may take such a decision.

Section 539l

1. As soon as the public prosecutor has taken a decision as referred to in section 539*k*(3), he shall submit an application for remand in custody to the examining magistrate.

2. As soon as the public prosecutor learns that an investigating officer, a commander, a master or a captain of an aircraft has taken a decision as referred to in section 539*k*(3), he shall submit an application for remand in custody to the examining magistrate or he shall order the immediate release of the suspect.

3. If the decision referred to in section 539*k*(3) relates to a suspect who has been arrested on board of an aircraft, then the following provisions shall apply:

a. in the case referred to in subsection (1), the public prosecutor shall submit an application for remand in custody to the examining magistrate or shall order the captain of the aircraft, if he authorised to deliver the suspect to the authorities of the state in which the aircraft will land, to exercise this power;
b. in the case referred to in subsection (2), he shall take one of the measures referred to under (*a*) or shall order the immediate release of the suspect.

4. During the questionings, referred to in sections 63(3) and 65(2), the suspect may have the legal representation of a defence counsel.

5. If the application for remand in custody is rejected, the public prosecutor shall order the immediate release of the suspect. He shall also order that release as soon as there is no legal cause for deprivation of liberty or the ground for deprivation of liberty no longer exists.

6. As long as the person who is detaining the suspect has not received any communication from the public prosecutor, he shall be obliged to release the suspect voluntarily, as soon as he believes that the ground for deprivation of liberty no longer exists; he shall release the suspect, in any case, if he has not been informed within eighteen days after the arrest that a pre-trial detention order has been granted and its enforcement, also outside the area of jurisdiction of a District Court, has been ordered.

Section 539m

1. The suspect, to whom section 539k(2) is applied,

shall, in the case referred to in that subsection under (a), be handed over to the public prosecutor as soon as possible;

may, in the case referred to in that subsection under (b), be handed over to the public prosecutor, when he was on his way to the Kingdom in Europe or when it is not practicable to detain him elsewhere, until a pre-trial detention order has been issued against him and its enforcement, also outside the area of jurisdiction of a District Court, has been ordered.

2. The intention to hand over the suspect shall be promptly notified to the public prosecutor.

Section 539n

1. The person, who is detaining an arrested suspect, shall see to it that the necessary measures are taken in order to prevent the purpose of the deprivation of liberty being thwarted. The suspect may not be subjected to restrictions other than those which are strictly necessary for said purpose.

2. The suspect shall be given the opportunity to speak with a defence counsel.

3. Further rules pertaining to the treatment of the arrested suspect shall be set by Governmental Decree.

Section 539o

1. The public prosecutor may issue an order, as referred to section 56(1) or (2), in regard of an

arrested suspect against whom there are serious suspicions.

2. If an investigating officer is not on the scene, the power, referred to in section 56(4), shall also be conferred on the commander, the master and the captain of the aircraft.

Section 539p

1. Investigating officers shall be authorised at all times to seize objects liable to seizure and may request their surrender for that purpose. The public prosecutor may order the seizure of objects liable to seizure.

2. In the case of being caught red-handed, the powers, referred to in the first sentence of the preceding subsection, shall be conferred on the commander, on the master and on the captain of the aircraft, insofar as an investigating officer is not on the scene.

3. Section 539*i* shall apply mutatis mutandis to the surrender of the seized object.

Section 539q

The public prosecutor may have a seized object returned before it is placed in the custody of the custodian. The order to return a seized object shall be directed to the person who has the object in his possession. This person shall be obliged to immediately comply with said order.

Section 539r

1. The investigating officers may request, at all times, to inspect the documents which they reasonably consider necessary for the performance of their duties.

2. Those persons, who have a duty of secrecy by reason of their position, profession or office, may refuse inspection of documents or parts thereof, to which their duty of secrecy extends.

Section 539s

1. The investigating officers shall have access to all places, insofar as is reasonably necessary for the performance of their duties. The commander and the master may enter all places for the purpose of arresting the suspect or for the purpose of seizure, insofar as is reasonably necessary for the performance of their duties.

2. In derogation of section 2(1) of the General Act on Entry into Dwellings (*Bulletin of Acts and Decrees* 1994, 572), the investigating officers, referred to in subsection (1), shall be authorised to enter without a warrant.

Section 539t

The captain of an aircraft may, under the terms of article 9(1) of the Convention on Offences and Certain Other Acts Committed on Board Aircraft (*Treaty Series* [*Tractatenblad*] 1964, 115), deliver any person on board the aircraft, whom he may reasonably believe to have committed on board a serious offence which carries a statutory term of imprisonment of at least four years, to the competent authorities of a foreign state.

Chapter Three. Obligations of the Master

Section 539u

1. The master shall, promptly and in quickest possible manner, notify the public prosecutor of any serious offence, committed on board, which endangers the safety of the vessel or of the persons on board or causes the death of a person or grievous bodily harm.

2. For the purpose of application of the preceding subsection, the term “vessel” shall include an installation designated in accordance with section 136*a*(2); the term “a serious offence committed

on board", shall include a serious offence committed on such an installation.

3. Section 539*b*(3), shall apply mutatis mutandis.

Section 539v

1. The master of a Dutch ship shall ensure that there is a register of criminal offences on board, which is numbered page by page.

2. He shall ensure that the following is promptly entered in the register:

1°. any serious offence, as referred to in the preceding section, which has come to his knowledge;
2°. any criminal offence in regard of which he has exercised a power as referred to in section 539*b*(1);
3°. any criminal offence, committed on board of his ship or by a person on board, for which entry in the register has been requested by a person on board or is considered advisable by him.

3. In the application of the preceding subsection, the place where and the time at which the offence was committed, the personal details and nationality of the suspect and of the witnesses, as well as the measures taken by the master or by the ship's officer on his instructions pursuant to the provisions of this Part, shall be stated.

4. The entries shall be dated and signed by the master.

5. At the first request of an investigating officer, the master shall present the register to him for his inspection.

Section 539w

1. At the first request of the civil servant, who has access to the vessel of the master pursuant to any statutory provision, he shall give him the opportunity to board or leave the vessel.

2. In the lawful performance of his office, the civil servant shall not be subject to the authority of the master of a vessel over the persons on board.

Part VII. Judicial Orders for Maintenance of Public Order

Section 540

1. In the case of being caught in the act in the commission of any criminal offence which has seriously prejudiced public order, the measures described in the following provisions may be applied, if there are serious suspicions against the suspect and there is a serious danger of repetition or continuation of that offence.

2. In the application of the measures described in this Part, including arrest, the case of being caught in the act shall be deemed to exist if:

a. the deprivation of liberty defined in section 240 of the Criminal Code, sections 154a and 176a of the Municipalities Act took place shortly after being caught in the act and
b. during the arrest and the taking into police custody directly thereafter the applicable time limits were observed.

Section 541

[1.] The public prosecutor of the place where the criminal offence was committed shall be authorised to have the suspect arrested and promptly arraigned before the examining magistrate.

[2.] The public prosecutor shall also be authorised to have witnesses, expert witnesses and interpreters called to appear before the examining magistrate. The notice to appear may also be given verbally by a **police officer, appointed for the performance of police duties,** or another

civil servant or official, insofar as that civil servant or official has been designated for that purpose by **Our Minister of Security and Justice,** or be given in writing; the public prosecutor may also give verbal notice to appear.

[3.] The suspect shall be taken into police custody by order of the public prosecutor for maximum two days or, if the investigation is completed within that period, until the end of the investigation.

Section 542

1. The public prosecutor shall be present at the hearing of the examining magistrate and, after having presented the case, shall submit the application which he considers necessary in connection with the provisions of this Part.

2. The examining magistrate shall hear the case right away. The hearing shall be conducted in accordance with the provisions of **Chapters Two to Five inclusive and Seven** of Part Three of Book Two.

3. The examining magistrate may order the witnesses, expert witnesses and interpreters designated by him to appear before him, where necessary with an attached order to forcibly bring them. The notice shall be given in accordance with subsection (2) of the preceding section.

4. In that case the examining magistrate may adjourn the hearing for maximum twenty-four hours and he may determine that the police custody be extended by the duration of the adjournment.

Section 543

[1.] If the examining magistrate finds that there are no grounds for application of any measure under section 540, he shall order the immediate release of the suspect.

[2.] If he does find that there are grounds, the examining magistrate shall give the suspect the necessary orders for the prevention of repetition or continuation of the offence for a definite period of time and request from him a statement of willingness to comply with those orders. The period shall expire by operation of law the moment the judgment rendered in regard of the criminal offence becomes final, or, if a punishment or measure is imposed in said judgment, as soon as the judgment is enforceable.

[3.] The examining magistrate may also require the provision of security, in a form to be determined by him, for the purpose of compliance with the orders.

[4.] The provisions of section 80(3) and (4) shall apply in regard of the provision of security.

[5.] The orders may not place any restrictions on the freedom of religion or beliefs or the political freedom.

Section 544

If the statement of willingness is made and the required security provided, the examining magistrate shall order the immediate release of the suspect.

Section 545

1. If the statement of willingness is not made or the required security is not provided, the examining magistrate shall order that the suspect be taken into police custody. The examining magistrate may issue the same order in the case of suspicion of a serious offence, if he is of the opinion that prevention of repetition or continuation of the criminal offence cannot be adequately ensured by orders as referred to in section 543(2), and that said custody is urgently required in the interest of maintaining public order. The police custody order may only be issued if a summons to appear before the court is delivered within the period of police custody.

2. The police custody order shall be in force for a period of seven days and shall take effect on the

date of enforcement. Section 68(1), shall apply mutatis mutandis. The police custody order shall be immediately enforceable.

3. The examining magistrate shall take decisions in accordance with subsection (1) and also with sections 543 and 544.

4. The suspect may file an appeal against the police custody order within three days after enforcement with the District Court which shall decide as soon as possible but at the court session at the latest.

5. A remand in custody order may not be issued in regard of the suspect who has been taken into police custody under this section.

Section 546

[1.] As soon as the serious danger for repetition or continuation of the offence has abated, the public prosecutor shall order the immediate release of the suspect.

[2.] The examining magistrate may at all times, either ex officio, or on application of the public prosecutor or of the suspect, order the release of the suspect. Section 544 shall apply.

[3.] The District Court may, ex officio or on application of the suspect, revoke the police custody order. Section 69(2) shall apply.

[4.] The order may also be revoked on pronouncement of the judgment rendered in regard of the offence referred to in section 540. In addition, revocation shall always be ordered if no punishment or measure is imposed for that offence.

Section 547

1. If the suspect fails to comply with the orders given to him, any investigating officer shall be authorised to arrest him and to immediately bring him before the public prosecutor again. The investigating officer may enter any place and search it for the purpose of arresting the suspect.

2. In this case or if the suspect could not be arrested, the public prosecutor shall promptly apply to the examining magistrate to institute a hearing. The examining magistrate shall comply with this application as soon as possible.

3. The preceding provisions of this Part shall apply to the hearing and the calling of witnesses.

Section 548

[1.] If the examining magistrate finds grounds to do so on the basis of the hearing referred to in the preceding section, he shall order the immediate release of the suspect.

[2.] In the other case the examining magistrate shall, if the suspect has been guilty of violating the orders given to him, order that he be taken into police custody. Sections 545(2), (4) and (5), and 546, with the exception of the second sentence of subsection (2), shall apply.

[3.] In any case the examining magistrate may, if he finds that the suspect has failed to comply with the orders given to him, also state in the order referred to in subsection (1) or (2), that the security has fallen to the State.

[4.] Section 83 shall apply mutatis mutandis.

Section 549

The decision rejecting an application submitted by the public prosecutor pursuant to the provisions of this Part shall not be open to appeal.

Section 550

1. Sections 89-93 shall apply mutatis mutandis to the time spent in police custody.

2. Section 40 shall apply mutatis mutandis to police custody ordered by the public prosecutor and the examining magistrate under the provisions of this Part.

Part VIII. Special Provisions pertaining to the Detection of Offences punishable under the Criminal Code

Section 551

1. In the case of suspicion of a criminal offence as defined in sections 92 to 96 inclusive, 97a to 98c inclusive, 240, 240a, 240b, 248a, 250 and 273f of the Criminal Code, the civil servants. referred to in section 141, shall have the power for the purpose of seizure to request the surrender of all objects liable to seizure, insofar as said request serves to enable confiscation or withdrawal from circulation, and seizure of those objects after surrender. Section 96a(4) shall apply mutatis mutandis.

2. They shall have access to all places in which they have reasonable grounds to believe a criminal offence is being committed.

Section 551a

In the case of suspicion of a serious offence as defined in sections 138, 138a and 139 of the Criminal Code, any investigating officer may enter the place concerned. They shall have the power to remove or have removed all persons unlawfully staying there or to remove or have removed all objects found there.

Section 552

The civil servants, referred to in section 141, shall have access to any places which they have reasonable grounds to believe are being used by a trader, as designated by Governmental Decree, under section 437 of the Criminal Code. Section 90*bis* of the Criminal Code shall apply.

Part IX. Complaint

Section 552a

1. The interested parties may file a written complaint about the seizure, about the use of the objects seized, about the failure to issue an order to return the objects, about the request of data, about the request to assist in the decryption of data, about the inspection or the use of data, recorded during a search or provided on request, about the inspection or the use of data, stored, processed or transferred by means of a computerised device or system and recorded during a search in such device or system, about the inspection or the use of data as referred to in sections 100, 101 and 114, about the request to store and keep data available, and about the disablement of data, found in a computerised device or system as referred to in section 125o, the revocation of the measures concerned or the failure to issue such revocation order.

2. The interested parties may request in writing destruction of data, recorded during a search or provided on request.

3. The written complaint or the request shall be filed at the registry of the court determining questions of fact, before which the case is being prosecuted or was last prosecuted, as soon as possible after the seizure of the objects or the inspection or disablement of the data. The written complaint or the application shall be inadmissible if it is submitted three months after the date on which the prosecuted case was concluded.

4. If prosecution has not been, or not yet been, instituted, the written complaint or the application shall be filed, as soon as possible, but not later than within two years after the seizure, inspection

or disablement, at the registry of the District Court, in whose district the seizure, inspection or disablement took place. The District Court may deal with the written complaint or the application, unless the prosecution was started before the court could commence with the hearing of the written complaint or the application. In that case the clerk to the court shall send the written complaint or the application to the court, referred to in the preceding subsection, in order to be dealt with by that court.

5. The clerk to the court, which is competent to deal with said written complaint or application, shall promptly send a copy of the written complaint to the person from whom the object was seized, if he is not the complainant or has not relinquished his ownership of the object either and his address is known, and shall inform him that he may file a written complaint. By order of the presiding judge of the court, the clerk to the court shall also notify other interested parties of the written complaint, offer them the opportunity to either file a written complaint, relating to the same object or the same data, within a time limit to be stated in the notification, or to be heard during the hearing of the written complaint. In the latter case the notification shall be deemed to be notice to appear.

6. The court in chambers shall hear the written complaint or the application at a public court session.

7. If the court finds the complaint or the application well-founded, then it shall issue an order in accordance therewith.

Section 552ab

1. The interested parties, persons other than the suspect, former suspect or convicted offender, may file a written complaint about the issuance of a punishment order containing instructions as referred to in section 257a(3)(a), (b) or (c) and about an out-of-court settlement as referred to in section 511c on the grounds that said order or settlement pertains to objects which belong to them and the public prosecutor, who issued the instructions or entered into the out-of-court settlement, did not appear to be prepared to return those objects or to reimburse the value which said objects should have reasonably fetched when sold.

2. The written complaint shall be filed at the registry of the District Court, to which the public prosecutor, referred to in subsection (1), is attached, not later than three months after the suspect, former suspect or convicted offender has complied with the instructions given or the terms of the out-of-court settlement, or the complainant has learned thereof.

3. The court in chambers shall hear the written complaint at a public court session.

4. The complainant and the public prosecutor shall be given the opportunity to be heard during the hearing of the written complaint. The District Court shall also have the suspect, former suspect or convicted offender notified to appear in order to give him the opportunity to be heard in regard of the written complaint. He may have the legal representation of a lawyer who shall be given the opportunity to make any comments he sees fit. The decision given by the District Court in chambers shall be reasoned and shall be pronounced in public. The clerk to the court shall timely notify in writing the date of pronouncement of the decision beforehand to the complainant and to the suspect, former suspect or convicted offender who appeared for the hearing. If the District Court finds the complaint well-founded, then it shall declare the cancellation of the conditions or the out-of-court settlement, referred to in subsection (1).

Section 552b

1. The interested parties, other than the suspect or convicted offender, may file a written complaint about the confiscation of objects belonging to them or about the withdrawal from circulation of such objects. A complaint may not be filed if the amount, at which the objects were estimated in the decision, has been paid or collected, or a default custodial sentence has been imposed.

2. The written complaint shall be filed at the registry of the court which rendered the decision as highest court determining questions of fact within three months after the decision has become enforceable.

3. The court in chambers shall hear the written complaint at a public court session.

4. If the court finds the complaint well-founded, it shall revoke the confiscation or the withdrawal from circulation and shall issue an order as referred to in section 353(2)(a) or (b).

5. On revocation of a confiscation order, the court may declare the objects withdrawn from circulation if they are liable therefor. Sections 33b, 33c and 35(2) of the Criminal Code shall apply mutatis mutandis.

Section 552c

The civil court shall have jurisdiction to hear disputes on the exercise by the Public Prosecution Service of its powers pursuant to section 94*d*.

Section 552ca

1. As soon as the Public Prosecution Service has grounds to believe that a seized object does not belong exclusively to the suspect, it shall conduct the necessary inquiries in order to establish the party who could be regarded as entitled thereto, and when it wishes to apply the provisions of section 116(3), it shall notify the person from whom the object has been seized of his rights pursuant to section 552a.

2. If a person, other than the person subject to seizure, applies to the Public Prosecution Service for application of the provisions of section 116(3), it shall notify this other person, when it considers itself unable to comply with said request, of his rights pursuant to sections 552a to 552c inclusive.

3. The public prosecutor, who is notified of submission of a complaint pursuant to section 552a by the clerk to the court, shall inform the presiding judge of the court which person, in his opinion, may be regarded as the party entitled to the seized object to which the complaint pertains.

Section 552d

1. A decision given in chambers pursuant to section 552a, 552ab or 552b shall be promptly served on the complainant.

[2.] An appeal in cassation may be filed by the Public Prosecution Service within fourteen days after the date of the decision given in chambers, and by the complainant within fourteen days after the service.

Section 552e

1. Section 119 shall apply mutatis mutandis to an order given in regard of an object pursuant to this Part.

2. An order to return an object, which was declared confiscated or withdrawn from circulation and for which compensation was granted, shall not be complied with until the sum has been repaid to the State.

Section 552f

1. The court before which the case will be prosecuted, was prosecuted or could have been prosecuted as court of first instance shall be competent to give decisions in chambers as referred to in section 36b(1)(4°) of the Criminal Code.

2. The decision in chambers shall only be given on a reasoned application of the public prosecutor.

3. If the identity of the person who is the owner of objects, for which an application for withdrawal from circulation has been made, is known, then a copy of the application shall be served on him.

4. The court in chambers shall hear the application at a public court session.

5. The decision given in chambers shall be promptly served on the interested party, if known.

6. The public prosecutor may file an appeal in cassation within fourteen days after the date of the decision given in chambers and the interested party within fourteen days after the service.

7. The interested party, who has filed an appeal in cassation or has been heard under subsection (4) of this section, may not file a complaint in accordance with section 552b.

Section 552fa

1. By a separate judicial decision given in chambers on application of the public prosecutor, the destruction of data disabled under application of section 125o may be ordered in the case of data in relation to which a criminal offence was committed or which was used in the commission of a criminal offence, insofar as the destruction is necessary for the prevention of new criminal offences.

2. A copy of the application shall be served on the administrator of the computerised device or system in which the data is or was stored.

3. Section 552f(1), (4), (5) and (6) shall apply mutatis mutandis.

4. If the court rejects the application, it shall order that the data be again placed at the disposal of the administrator of the computerised device or system.

Section 552g

Objects which have been declared confiscated or withdrawn from circulation and are held by the State shall be treated in accordance with sections 117 and 118 until the punishment or measure can no longer be revoked.

Part X. International Mutual Legal Assistance

Chapter One. General Provisions

Section 552h

1. The following sections of this Part shall apply to requests for mutual legal assistance made by the authorities of a foreign state in connection with a criminal case, and addressed to a body, whether specified by name or not, of the justice authorities or the police force in the Netherlands, insofar as the handling of such requests is not provided for in provisions laid down by or pursuant to other acts.

2. Requests for mutual legal assistance shall be deemed to be requests to conduct or render assistance with, whether jointly or not, investigative acts, to forward documents, case files or convincing items of evidence or to provide information, or to serve or deliver documents or to give notices or notifications to third parties.

Section 552i

1. If the request is not addressed to a public prosecutor, the addressee shall promptly forward it to the public prosecutor in the district where the requested act must be conducted, or where the request was received, or to a public prosecutor at the National Office of the Public Prosecution Service or the National Office of the Public Prosecution Service for Financial, Economic and Environmental Offences.

2. The request shall not be required to be forwarded if it pertains solely to information and the coercive measures or powers, as referred to in sections 126g to 126z inclusive, sections 126zd to 126zu inclusive and section 126gg, or the application of section 126ff, are not necessary in order to obtain such information.

3. An entry shall be made of each request granted, in accordance with subsection (2), in a register in a format to be established by Our Minister. The entry shall include, in any case, the nature of the request, the capacity of the person making the request and the action taken on the request.

4. In the handling of a request the authority competent pursuant to subsection (2) shall observe the general and special instructions given by the public prosecutor.

Section 552j

The public prosecutor, who has received the request, shall promptly decide on the action to be taken thereon. If acts must be taken in more than one district of a District Court, the public prosecutor in each of those districts shall be authorised to handle the entire request. Where necessary, the public prosecutor, who has assumed the handling of the entire request, shall call on the assistance of the Public Prosecution Service in other areas of jurisdiction for the fulfilment of said request. In the interest of a speedy and effective handling, he may transfer the request to his counterpart in another district.

Section 552k

1. Insofar as the request is based on a treaty, the requested action shall be taken as much as possible.

2. In cases where the request is a reasonable request which is not based on a treaty, and in cases where granting the request is not obligatory under the applicable treaty, the request shall be fulfilled, unless granting the request is in violation of a statutory regulation or an instruction of **Our Minister of Security and Justice**.

Section 552l

1. Action shall not be taken on the request:

a. in cases where there are grounds to believe that it has been made for the purpose of an investigation instituted with the aim of prosecuting or punishing the suspect or harming him in any other way on account of his religious, ideological or political beliefs, his nationality, his race or his ethnic group;
b. insofar as granting the request would serve to assist in a prosecution or trial which is incompatible with the principle on which section 68 of the Criminal Code and section 255(1) of this Code is based;
c. insofar as it has been made for the purpose of an investigation into offences for which the suspect is being prosecuted in the Netherlands.

2. In cases where there are grounds to believe that the request has been made for the purposes as referred to under (*a*) of the preceding subsection, the request shall be submitted to **Our Minister of Security and Justice**.

Section 552m

1. Requests made for the purpose of an investigation into criminal offences of a political nature, or offences related thereto, shall be fulfilled only pursuant to an authorisation of **Our Minister of Security and Justice**. Such authorisation may only be granted for requests which are based on a treaty and only after consultation with the Minister of Foreign Affairs. The authorities of the requesting state shall be informed of the decision on the request through diplomatic channels.

2. Subsection (1) shall not apply to a request made by the authorities of a state which is a contracting party to the European Convention on the Suppression of Terrorism (*Treaty Series* 1977, 63) or to the Agreement concerning Application of that Convention among the Member States of the European Communities (*Treaty Series* 1980, 14) in regard of any of the criminal offences, referred to in article 1 or article 2 of that European Convention or to the Council of Europe Convention on the Prevention of Terrorism (*Treaty Series* 2006, 34), or to a request made by the authorities of a state which is a contracting party to the Protocol to the Agreement on Mutual Legal Assistance in Criminal Matters between the Member States of the European Union concluded in Luxembourg on

16 October 2001 (Treaty Series 2001, 187).

3. Requests, which have been made for the purpose of an investigation into criminal offences in regard of dues, taxes, customs, foreign currency, or related offences, and which, if granted, might be of interest to the National Tax and Customs Administration, or requests pertaining to information which is in the possession of the National Tax and Customs Administration or has come to the knowledge of civil servants of this service in the performance of their office, shall require the authorisation of **Our Minister of Security and Justice** for their fulfilment. Such authorisation may only be granted to requests which are based on a treaty and only after consultation with the Minister of Finance.

Section 552n

1. The public prosecutor shall place a request from a foreign authority, which may be granted and is based on a treaty, in the hands of the examining magistrate:

a. if it pertains to taking testimony from persons, who are not prepared to appear voluntarily and to give the requested statement;
b. if it pertains to assisting in the taking of testimony from a witness or expert witness by way of video conferencing by or under the direction of a foreign judicial authority;
c. if a sworn statement, or a statement given before a court is specifically requested;
d. if it is necessary, with a view to the requested action to be taken, to seize convincing items of evidence and the examining magistrate must exercise powers for that purpose.

2. In cases other than those provided for in the preceding subsection, the public prosecutor may place the request from a foreign judicial authority in the hands of the examining magistrate.

3. The request shall be submitted by means of a written application, in which the acts required from the examining magistrate shall be described.

4. The application referred to in the preceding subsection may be withdrawn at all times.

Section 552o

1. Insofar as the application, referred to in section 552*n*(3), has been made with a view to fulfilment of a request, which may be granted and is based on a treaty, from a foreign judicial authority, it shall have **the same legal effects as an application for the conduct of investigative acts by the examining magistrate pursuant to section 181**, as regards:

a. the powers of the examining magistrate in regard of the suspects, witnesses and expert witnesses to be questioned by him, and those powers to order the surrender or bringing of convincing items of evidence, to take measures in the interest of the investigation, to have a DNA test conducted and to order the taking of cellular material for that purpose, to enter places, to search places and to seize convincing items of evidence;
b. the powers of the public prosecutor;
c. the rights and obligations of the persons to be questioned by the examining magistrate;
d. the legal representation of a defence counsel;
e. the actions of the clerk to the court.

2. In derogation of subsection (1), an application from a foreign judicial authority as referred to in section 552n(3), which has been made with a view to fulfilment of a request, which may be granted and is based on a treaty, to assist in taking testimony from a witness or expert witness by way of video conferencing by him or under his direction, shall have the same legal effects as **an application for the conduct of investigative acts by the examining magistrate pursuant to section 181**, as regards the application of sections 190(1),(2) and (5), 191(1) and (4), 210(1, second sentence), 213, 214, 215, 217 to 219a inclusive, 221 to 225 inclusive, 226, 226a(1), 226c(1), 226f and 236.

3. Convincing items of evidence, which would be liable to seizure if the offence, in connection with which the mutual legal assistance is requested, was committed in the Netherlands and that offence

may constitute grounds for extradition to the requesting state, shall be liable to seizure in accordance with subsection (1) of this section.

4. Unless the applicable treaty provides otherwise, coercive measures shall not be used in the fulfilment of a request for mutual legal assistance other than in accordance with the preceding subsections.

Section 552oa

1. Insofar as a request from a foreign authority, which may be granted and is based on a treaty, pertains to the exercise of the powers described in sections 126l, 126m, 126nd(6), 126ne(3), 126nf, 126ng, 126s and 126t, 126ue(3), 126uf, 126ug, 126zf, 126zg, 126zm(3), 126zn and 126zo, said powers may be exercised.

2. If a request for mutual legal assistance, which may be granted, pertains to the exercise of other powers, described in Parts IVa to Vc inclusive and Ve of Book One, said powers may be exercised.

3. Unless the applicable treaty provides otherwise, the powers described in Parts IVa to Vc inclusive and Ve may not be used and section 126ff may not be applied in the fulfilment of a request for mutual legal assistance other than in accordance with the preceding subsections.

4. The public prosecutor may only provide the foreign authorities with official records and other objects obtained through the exercise of any of the powers described in sections 126l, 126m, 126nd(6), 126ne(3), 126nf, 126s, 126t, 126ue(3) and 126uf, insofar as is permitted by the District Court, with due observance of the applicable treaty.

5. Sections 126aa(2) and 126bb to 126dd inclusive shall apply mutatis mutandis. Section 126cc shall apply only insofar as the official records concerned and other objects have not been provided to the foreign authorities. The public prosecutor shall ensure that the person concerned may inspect the official records and other objects which pertain to him at any time.

Section 552ob

1. Insofar as is provided for in a treaty, telecommunications may be intercepted, at the request of a foreign authority, with a view to direct transmission abroad. Section 126m(1), and section 126t(1) shall apply mutatis mutandis.

2. If the intercepted and directly transmitted telecommunications pertain to a user of telecommunications who is in the territory of the Netherlands, the conditions shall be attached to the transmission that data obtained from the interception of the telecommunications:

a. insofar as said telecommunications contain statements made by or to a person who could assert privilege under section 218 if he were to be asked about the content of these statements in the capacity of a witness, may not be used and should be destroyed; and
b. may only be used for the criminal investigation in the context of which the request for mutual legal assistance was made and that prior permission must be requested and obtained for the use of said telecommunications for any other purpose.

shall be attached to the transmission

3. Section 126bb shall apply mutatis mutandis.

Section 552oc

1. A notification, on the basis of a treaty, from the competent authorities of another state about the intention to intercept or the interception of telecommunications of a user who is in the territory of the Netherlands, shall be promptly forwarded to the public prosecutor designated for that purpose by the Board of Procurators General.

2. The public prosecutor shall promptly place the notification in the hands of the examining magistrate by means of a written application in which, within the time limit set in the applicable treaty, authorisation to grant permission for the intended interception or the interception by the competent foreign authorities is requested.

3. The examining magistrate shall take a decision on the application in accordance with the provisions of the applicable treaty and the provisions laid down by or pursuant to section 126m or 126t.

4. If the authorisation is granted, the public prosecutor shall inform the authorities from whom the notification was received, within the time limit set in the applicable treaty that permission is granted for the intended interception or the interception of telecommunications of a user who is in the territory of the Netherlands. He shall attach to said permission the conditions set by the examining magistrate and the conditions that the data obtained by intercepting the telecommunications of the user during his stay in the Netherlands:

a. insofar as said telecommunications contain statements made by or to a person who could assert privilege under section 218 if he were to be asked about the content of these statements in the capacity of a witness, may not be used and should be destroyed, and
b. may only be used for the criminal investigation in the context of which the notification was given and that prior permission must be requested and obtained for any other purpose.

5. If the authorisation is granted, section 126bb shall apply mutatis mutandis.

6. If the authorisation is not granted, the public prosecutor shall inform the authorities from whom the notification was received, within the time limit set in the applicable treaty, that permission is not granted for the intended interception or the interception and shall demand, insofar as is required, the immediate discontinuance of the interception

7. It shall also be included in a statement, as referred to in subsection (6), which relates to interception already started, that the data obtained from the interception of telecommunications of a user during his stay in the territory of the Netherlands may not be used and must be destroyed, unless, with due observance of the applicable treaty, some use is permitted by **Our Minister of Security and Justice**, in special cases and under more detailed conditions, in response to a new request for that purpose.

Section 552p

1. The examining magistrate shall have the request returned to the public prosecutor, after having added the official records of the questionings he has conducted and of his further actions, as soon as possible.

2. The convincing items of evidence seized by the examining magistrate and the data carriers in his keeping, on which data, gathered through the use of any power conferred on him under the law of criminal procedure, is recorded, shall be placed at the disposal of the public prosecutor, insofar as the District Court, with due observance of the applicable treaty, has granted leave to do so. **The convincing items of evidence seized by the public prosecutor and the data carriers in his keeping, on which data, gathered through the use of any power conferred on him under the law of criminal procedure for the purpose of seizure, is recorded, shall also be provided to the foreign authorities, insofar as the District Court, with due observance of the applicable treaty, has granted leave to do so.**

3. Unless it is probable that the parties entitled to the seized convincing items of evidence do not reside in the Netherlands, the leave required pursuant to the preceding subsection shall be granted only on condition that on provision to the foreign authorities it shall be stipulated that the items of evidence will be sent back as soon as they have been used as is necessary for the purpose of the criminal proceedings.

4. The provisions laid down by and pursuant to sections 116 to 119 inclusive, 552*a* and 552ca to 552*e* inclusive shall apply mutatis mutandis to the stipulations of subsections (1) to (3) inclusive.

The District Court, which is competent to grant the leave required pursuant to subsection (2) of this section, shall take the place of the court which is competent under said sections.

Section 552q

1. For the purpose of fulfilment of a request for mutual legal assistance, documents shall be served on and delivered to third parties subject to analogous application of the statutory regulations pertaining to the service and delivery of Dutch documents of a similar nature.

2. If a request, which may be granted, explicitly states a preference for either service on or delivery to the addressee in person, this shall be done as much as possible.

Chapter One A. International Joint Investigation Teams

Section 552qa

1. Insofar as is provided for in a treaty or for the purpose of implementation of a framework decision of the Council of the European Union, the public prosecutor may, for a limited period, for the purpose of the joint conduct of criminal investigations, together with the competent authorities of other countries, set up a joint investigation team. Section 552l(1)(c) shall not apply.

2. The public prosecutor shall agree in writing the setting up of a joint investigation team with the competent authorities of the countries involved.

3. The purpose, the duration, the place of operation and the composition of the joint investigation team, the investigative powers to be exercised by Dutch civil servants on foreign territory and by foreign investigating officers on Dutch territory as well as the obligation for foreign investigating officers to comply with a summons as referred to in section 210 or notice to appear as referred to in section 260, shall be laid down, in any case, in the agreement referred to in subsection (2).

Section 552qb

Investigative powers shall be exercised in the territory of the Netherlands for the purpose of the investigation of the joint investigation team, referred to in section 552qa, in accordance with the provisions laid down by and pursuant to this Code and the applicable treaties in force between the countries involved in the joint investigation team.

Section 552qc

Documents, which are prepared by foreign members of the joint investigation team referred to in section 552qa, pertaining to official acts of detection and prosecution which they have conducted in the framework of the investigation of the investigation team abroad, shall have in the Netherlands the evidential value accorded to documents concerning similar acts performed by Dutch civil servants in the Netherlands, on the understanding that their evidential value shall not exceed the evidential value which said documents have under the law of the state from which the foreign members originate.

Section 552qd

1. Convincing items of evidence and data carriers on which data is recorded, which have been seized in the Netherlands or have been gathered through the exercise of any power under the law of criminal procedure for the purpose of the investigation of the joint investigation team, referred to in section 552qa, which has its place of operation outside the Netherlands, may be immediately placed temporarily at the disposal of the investigation team.

2. The public prosecutor, who is involved in the joint investigation team, shall attach to the temporary provision, referred to in subsection (1), the conditions that Dutch law will continue to apply in full to those items of evidence and data carriers and that they may be used as evidence only after they have been permanently placed at the disposal of the investigation team.

3. The public prosecutor may place the items of evidence and the data carriers, referred to in

subsection (1), permanently at the disposal of the joint investigation team which has its place of operation abroad , insofar as the District Court has granted leave to do so. Section 552oa(4) and (5) and section 552p(3) and (4) shall apply mutatis mutandis.

Section 552qe

1. The public prosecutor who is involved in the joint investigation team, referred to in section 552qa, which has its place of operation outside the Netherlands, may also issue an order as referred to in section 126m(1) or section 126t(1), with a view to the direct transmission to and the recording of telecommunications by means of a technical device by the joint investigation team.

2. If the telecommunications pertain to a user of telecommunications who is in the territory of the Netherlands, the conditions that the data obtained through the interception of telecommunications:

a. insofar as said telecommunications contain statements made by or to a person who could assert privilege under section 218 if he were to be asked about the content of these statements in the capacity of a witness, may not be used and should be destroyed; and
b. may only be used for the investigation of the investigation team and that prior permission must be requested and obtained for any other purpose.

shall be attached to the order referred to in subsection (1)

3. Section 126bb shall apply mutatis mutandis.

Chapter Two. Offences committed on board Aircraft

Section 552r

1. If, after a foreign aircraft has landed in the Netherlands, the investigation which has to be instituted into the events which took place on board the aircraft pursuant to article 13(4) of the Convention on Criminal Offences and Certain Other Acts Committed on Board Aircraft (*Treaty Series* 1964, 115) pertains to an offence to which Dutch criminal law does not apply, it shall be instituted in accordance with the provisions which apply to a criminal investigation in regard of serious offences other than those defined in section 67(1). For the purpose of application of section 146, the offence shall be deemed to have been committed at the location where the aircraft landed.

2. The investigating officers, who conduct the investigation, may seize, in addition to the objects referred to in article 94, the objects which are furnished by the captain of the foreign aircraft after the landing pursuant to article 9(3) of the Convention.

3. The provisions laid down by and pursuant to sections 116-118, 119, 552*a* and 552*ca*-552*e* shall apply mutatis mutandis. The District Court, within whose area of jurisdiction the aircraft has landed, shall take the place of the competent court pursuant to section 117(3).

Section 552s

1. In cases where there are grounds to believe that the act of a person on board an aircraft, which led to said person being delivered to the competent authorities pursuant to article 9(1) of the Convention after the aircraft had landed in the Netherlands, constitutes a violation of a criminal provision based on discrimination on account of race, religion or belief, no investigation shall be conducted.

2. In cases where there are grounds to believe that the act referred to in the preceding subsection constitutes a violation of a criminal provision of a political nature, an investigation shall only be conducted with the authorisation of **Our Minister of Security and Justice**. Said authorisation may be granted only after consultation with the Minister of Foreign Affairs.

Chapter Three. Transfer and Taking over of Criminal Proceedings

§ 1. The transfer of criminal proceedings by Our Minister of Security and Justice

Section 552t

1. If the public prosecutor considers it advisable, in the interest of a proper administration of justice, that a foreign state institutes criminal proceedings against a suspect in regard of an offence which he is charged with detecting, he shall submit a reasoned proposal for the purpose of initiating the institution of criminal proceedings in that state to **Our Minister of Security and Justice**, accompanied – where possible – by the criminal file.

2. **If pre-trial detention has been applied and the public prosecutor makes a proposal pursuant to subsection (1), he shall notify the suspect, who is in the Netherlands or who has a known place of residence or abode outside the Netherlands, that he has proposed transfer of the prosecution, to which the criminal investigation pertained, to a foreign state. This notice shall be served on the suspect.**

3. In the case of a notice as referred to in the preceding subsection, notice of a decision to discontinue prosecution shall not be given.

4. If the injured party has given notice of wishing to join in the proceedings, a proposal, as referred to in subsection (1), may only be made with his written consent, or if this consent is not obtained, with the authorisation of the competent court. The authorisation shall be granted on application of the public prosecutor.

5. The suspect may file a written complaint about the notice, as referred to in subsection (2), with the Court of Appeal within fourteen days. Sections 12b, 12c, 12e(2), 12f and 12h-12l shall apply mutatis mutandis, on the understanding that for the purpose of application of this provision, where reference is made in said sections to the complainant or the person whose prosecution is requested, this should be understood to mean the suspect.

6. A proposal, as referred to in subsection (1), may be limited to initiating the institution of criminal proceedings in the foreign state for imposition of a sanction for the purpose of special confiscation of unlawfully obtained gains and the enforcement thereof.

7. In the application of subsection (1), the public prosecutor shall add the official records or other objects, referred to in section 126aa(1), to the case file, insofar as he considers said records and objects to be relevant to the investigation in the case, as soon as possible after completion of the investigation into telecommunications, and, if notice, as referred to in subsection (2), is obligatory, not later than on the date on which he had this notice issued for service on the suspect.

Section 552u

1. **Our Minister of Security and Justice** shall decide on the action to be taken on a proposal as referred to in the preceding section as soon as possible after its receipt, with due observance, if the request for the institution of criminal proceedings made to the authorities of the foreign state can be based on a treaty, of the provisions of that treaty.

2. Except in cases where an applicable treaty provides otherwise, a request for the institution of criminal proceedings shall be made to the authorities of a foreign state via the Minister of Foreign Affairs.

3. A request for the institution of criminal proceedings made to the authorities of a foreign state may be withdrawn up to receipt of a notification of the decision taken on said request in that state at the latest. Such request shall be withdrawn when the Court of Appeal orders continuation of the prosecution in the Netherlands pursuant to section 552*t*(5).

Section 552v

1. After the public prosecutor has made a proposal as referred to in section 552*t*, he may not bring the criminal case against the suspect before the court nor proceed with the enforcement of a judgment rendered in the case against the suspect, except if

a. the proposal is rejected,
b. the request for the institution of criminal proceedings made to the authorities of the foreign state is withdrawn, or
c. notification from the authorities that the request is refused or that criminal proceedings instituted in response to the request have been discontinued.

2. In that case the public prosecutor shall withdraw a notice as referred to in section 552*t*(2). He shall notify the suspect of the withdrawal.

Section 552w

Our Minister of Security and Justice shall inform the public prosecutor, who has made a proposal as referred to in section 552*t*, in writing of the decision he has taken in this regard and also of the receipt of notifications concerning decisions of the authorities of the foreign state in response to the request for the institution of criminal proceedings made on the proposal of the public prosecutor.

§ 1a. The transfer of criminal proceedings by the public prosecutor

Section 552wa

Insofar as the applicable treaty explicitly provides for the direct transmission of requests for the institution of criminal proceedings by the justice authorities, the public prosecutor shall be authorised, if he considers it advisable, in the interest of a proper administration of justice, that a foreign state institutes criminal proceedings against a suspect in regard of a criminal offence which he is charged with detecting, to make requests for the institution of criminal proceedings to foreign justice authorities. Sections 552t(2) to (7) inclusive, 552u(3) and 552v shall apply mutatis mutandis.

§ 2. The taking over of criminal proceedings by Our Minister of Security and Justice

Section 552x

The public prosecutor, who directly receives a request from a foreign authority for the institution of criminal proceedings, shall, insofar as the applicable treaty does not explicitly provide for the manner of transmission, notify **Our Minister of Security and Justice** of that request and shall submit his opinion and that request with the accompanying documents.

Section 552y

1. Our Minister of Security and Justice shall refuse a request from a foreign authority for the institution of criminal proceedings right away, if it is immediately apparent that

a. the request pertains to a foreign national who has his permanent place of residence or abode outside the Netherlands;
b. the offence for which criminal proceedings are requested
   1°. is not punishable under Dutch law;
   2°. is of a political nature or relates to a criminal offence of a political nature;
   3°. is a military offence;
c. the right to institute criminal proceedings for the offence for which prosecution is requested is precluded by lapse of the period of limitation under Dutch law or the law of the state which transmitted the request;
d. the request for the institution of criminal proceedings is intended to harm the person to whom it pertains on account of his religious, ideological or political beliefs, or his nationality, his race or his ethnic group;
e. criminal prosecution in the Netherlands would be in violation of the provisions of section 68 of the Criminal Code.

2. The condition, referred to in subsection (1, opening lines) and (*a*) shall not apply if the request pertains to criminal proceedings for the purpose of special confiscation of unlawfully obtained gains as referred to in Part IIIb of Book IV.

Section 552z

1. With the exception of the case referred to in the preceding section, **Our Minister of Security and Justice** shall forward the request for the institution of criminal proceedings and the accompanying documents to **the public prosecutor in the district of the District Court** where the person to whom the request pertains has his permanent place of residence or abode. The request shall not be forwarded if the public prosecutor concerned has already submitted his opinion to **Our Minister of Security and Justice** in accordance with the provisions of section 552*x*.

2. In the case of a request as referred to in section 552*y*(2), which pertains to a foreign national who has his permanent place of residence or abode outside the Netherlands, the Minister shall forward the request and the accompanying documents to **the public prosecutor in the district of the District Court** in which the objects, on which the measure for special confiscation of unlawfully obtained gains may be enforced, are located.

Section 552aa

1. The public prosecutor to whom the request for the institution of criminal proceedings has been forwarded in accordance with the provisions of the preceding section, shall submit his opinion to **Our Minister of Security and Justice**.

2. The person, to whom the request pertains, shall be heard on said request by the public prosecutor, or at any rate shall be properly called to be heard for that purpose, if the request is based on a treaty and the Netherlands has competence to institute criminal proceedings under this treaty. Section 273(1) shall apply mutatis mutandis.

Section 552bb

1. **Our Minister of Security and Justice** shall take a decision, in which the request for the institution of criminal proceedings shall either be granted or refused, as soon as possible after receipt of the opinion of the public prosecutor.

2. The Minister shall refuse a request in any case, if any of the grounds set forth in section 552*y* is found to exist.

3. The Minister shall also refuse a request which is not based on a treaty, if, in the opinion of the Public Prosecution Service, the person to whom the request pertains cannot be prosecuted in the Netherlands for the offence as charged in the indictment.

4. If the request is based on a treaty, then the Minister shall take into account the grounds for refusal of a request for the institution of criminal proceedings set forth in said treaty.

Section 552cc

Before deciding on the request for the institution of criminal proceedings, **Our Minister of Security and Justice** may invite the authorities of the state, which transmitted said request, to provide further information within a period of time to be set by him, if required in view of the decision to be taken on the request.

Section 552dd

1. **Our Minister of Security and Justice** may withdraw the granting of a request for the institution of criminal proceedings up to the start of the court hearing, if circumstances have been brought to light in the preliminary investigation or otherwise which, if they had been known when the decision was taken on the request, would have led to its refusal.

2. The granting of a request for the institution of criminal proceedings may also be withdrawn, if the punishment to which the defendant was sentenced cannot be enforced.

Section 552ee

1. **Our Minister of Security and Justice** shall notify his decision on the request for the institution of criminal proceedings to the public prosecutor and the authorities of the state which transmitted said request.

2. He shall also inform those authorities of the outcome of the criminal proceedings instituted in response to the request.

Section 552ff

A person whose prosecution is precluded in the Netherlands because of a lack of prosecutorial authority, may nevertheless be arrested, insofar as is permitted under a treaty. Sections 52-93 shall apply mutatis mutandis.

Section 552gg

1. The documents pertaining to official acts in regard of detection and prosecution, which were submitted further to their request for the institution of criminal proceedings by the authorities of the state which transmitted said request, shall have the same evidential value accorded to documents concerning similar acts performed by Dutch civil servants, on the understanding that their evidential value may not exceed the evidential value that said documents have in the foreign state.

2. If a request, as referred to in section 552y(2), is granted, a criminal financial investigation may be instituted, in accordance with the provisions of Chapter Nine of Part IV of Book I.

Section 552hh

1. A request for extradition of a person who is in the Netherlands and who is suspected or has been convicted of a criminal offence, referred to in any of the provisions of the treaties referred to in subsection (2), shall be regarded as a request for the institution of criminal proceedings which has been granted, if that request is from a state which is bound to the provisions of the treaty concerned and if the extradition is declared inadmissible by court judgment or the request is refused by Ministerial Order.

2. Subsection (1) shall pertain to criminal offences, referred to in:

   – article 1 of the European Convention on the Suppression of Terrorism (*Treaty Series* 1977, 63);
   – articles 5, 6, 7 and 9 of the European Convention on the Prevention of Terrorism (Treaty Series 2006, 34).

3. The provisions of section 552y(1, opening lines) and (a) shall not apply to a request as referred to in the final passage of subsection (1).

4. In addition, the provisions of section 552y(1, opening lines) and (b)(2e) shall not apply to requests based on the European Convention on the Prevention of Terrorism and on the Agreement concerning Application of that Convention among the Member States of the European Communities (*Treaty Series* 1980, 14).

§ 2a. The taking over of criminal proceedings by the public prosecutor

Section 552ii

1. Insofar as the applicable treaty explicitly provides for direct transmission of requests for the taking over of criminal proceedings by justice authorities, the public prosecutor shall be authorised to independently decide on a request to take over the criminal proceedings from a foreign judicial authority. Sections 552y, 552aa(2), 552bb(2) and (4) and 552cc to 552gg inclusive shall apply mutatis mutandis.

2. Insofar as the applicable treaty explicitly provides for direct transmission of requests for the taking over of criminal proceedings by the justice authorities, the request, if it is addressed to another public prosecutor than the one referred to in subsection (1) or (2) of section 552z, shall be promptly

forwarded to that public prosecutor.

§ 2b. The taking over of the criminal proceedings from an international court

Section 552iia

1. Our Minister of Security and Justice shall decide on a request to institute criminal proceedings from an international court.

2. The public prosecutor, who directly receives a request for the institution of criminal proceedings from an international court, shall forward that request and the accompanying documents to Our Minister of Security and Justice.

Section 552iib

Before taking his decision on the request for the institution of criminal proceedings, Our Minister of Security and Justice may give the international court, which transmitted the request, the opportunity to provide further information within a period of time to be set by him.

Section 552iic

Unless Our Minister of Security and Justice immediately finds that the request for the institution of criminal proceedings cannot be granted, he shall forward the request and the accompanying documents to the public prosecutor at the National Office of the Public Prosecution Service for his opinion.

Section 552iid

1. Our Minister of Security and Justice shall take a decision, in which the request for the institution of criminal proceedings shall be either granted or refused as soon as possible after receipt of the opinion of the public prosecutor.

2. He shall notify his decision to the international court which transmitted the request and to the public prosecutor.

3. He shall also inform the international court of the outcome of the criminal proceedings instituted in response to the request.

Section 552iie

Sections 552dd and 552gg(1) shall apply mutatis mutandis when criminal proceedings are taken over from an international court.

Part XI. Mutual Recognition

Chapter One. Freezing Order

§ 1. Orders issued by another member state of the European Union

Section 552jj

1. Orders, as referred to in subsection (2), issued by a competent judicial authority of another member state of the European Union, may be recognised and executed in the Netherlands.

2. Orders for seizure of objects which are located in the territory of the Netherlands and under the law of the issuing member state:

a. may serve to reveal the truth or demonstrate unlawfully obtained gains;
b. may be declared confiscated or withdrawn from circulation;

c. may serve to preserve the right of recovery in respect of a sanction for the purpose of special confiscation of unlawfully obtained gains

shall be recognised and executed.

Section 552kk

1. An order from the authorities of the issuing member state shall be accompanied by a completed certificate, which is set out in the form established for that purpose by Governmental Decree.

2. The order shall also be accompanied by a request for mutual legal assistance pertaining to:

a. surrender of the object to which the seizure order pertains to the authorities of the issuing member state, insofar as the seizure has been ordered with a view to establishing the truth;
b. confiscation or withdrawal from circulation of the object to which the seizure order pertains;
c. special confiscation of unlawfully obtained gains in connection with which the seizure order was issued.

3. In derogation of subsection (2), the authorities of the issuing member state may indicate in the certificate that the objects seized will remain in custody in the Netherlands pending a request as referred to in subsection (2), stating the date on which submission of the request can be expected.

4. If the certificate has not been presented, is incomplete or manifestly does not correspond to the order, the public prosecutor shall give the authorities of the issuing member state the opportunity to submit, complete or correct the certificate within a reasonable period of time to be set by him. The public prosecutor may decide to accept an equivalent document in the place of the certificate. If the information required for execution of the order has been obtained in another manner, the public prosecutor may decide that submission of the certificate is no longer necessary.

5. If the order and the accompanying documents have not been sent to the public prosecutor, the addressee shall promptly forward said order and documents to the public prosecutor and inform the competent authorities of the issuing member state thereof.

Section 552ll

1. The public prosecutor shall recognise an order, which may be recognised and executed, and shall execute it in accordance with the provisions of section 552nn.

2. The public prosecutor may only refuse the execution if:

a. after expiration of the period of time referred to in section 552kk(4), the certificate has not been presented, is incomplete or manifestly does not correspond to the order;
b. there is an applicable privilege or an immunity under Dutch law which makes it impossible to recognise and execute the order;
c. the granting of a request, as referred to in section 552kk(2), would serve to render assistance with a prosecution or trial which would infringe the principle on which section 68 of the Criminal Code and section 255(1) of this Code is based;
d. the order has been issued for the purpose of an investigation instituted in regard of an offence which, if it was committed in the Netherlands, would not be punishable under Dutch law;
e. it is instantly clear that a request, as referred to in section 552kk(2), cannot be complied with.

3. The execution of an order shall not be refused on the grounds of subsection (2)(d), if the offence on which the order is based, is stated in or falls within the scope of the list of offences and type of offences established by Governmental Decree for that purpose and that offence carries a maximum custodial sentence of at least three years under the law of the issuing member state.

4. The public prosecutor shall promptly decide on the recognition and execution of the order and, where possible, within 24 hours after its receipt. He shall promptly notify the authorities of the issuing member state of his decision. The notification shall be given, in any case, in writing and shall be reasoned, if the public prosecutor refuses to execute the order on the ground of

subsection (2).

Section 552mm

1. The public prosecutor may postpone the execution of the order, if:

a. its execution might damage an ongoing criminal investigation;
b. in the context of a criminal investigation a decision has already been taken to seize the object to which the order pertains;
c. it is an order as referred to in section 552jj(2)(b) or (c) and in a context other than that referred to under (b) a decision has already been taken to seize the object to which the order pertains and this decision under Dutch law takes precedence over seizure in the context of a criminal investigation.

2. If the public prosecutor postpones the execution, he shall promptly inform the authorities of the issuing member state in writing, stating the grounds for the postponement and, where possible, the expected duration of the postponement.

3. As soon as the grounds for postponement cease to exist, the decision shall be executed. The authorities of the issuing member state shall be promptly informed in writing thereof.

4. The public prosecutor shall inform the authorities of the issuing member state of all restraint measures taken in regard of the object to be seized.

Section 552nn

1. The seizure order shall be executed by order of the public prosecutor or the examining magistrate and Chapter Three of Part IV of Book One shall apply mutatis mutandis, unless provided otherwise in this Part.

2. The public prosecutor shall execute the order with due observance, as much as possible, of the procedural requirements indicated by the authorities of the issuing member state in the order, insofar as said requirements are not contrary to the fundamental principles of Dutch law.

3. If the authorities of the issuing member state have not indicated the location of the object to be seized in a sufficiently precise manner, the public prosecutor shall request additional information from these authorities.

4. If, for the purpose of execution of the order, the use of other powers under the law of criminal procedure is required, these powers may be exercised only in accordance with section 552o of this Code or section 13a of the Act on the Transfer of Enforcement of Criminal Judgments [*Wet Overdracht Tenuitvoerlegging Strafvonnissen*].

5. Section 117(1) to (4) inclusive shall apply mutatis mutandis, on the understanding that the authorisation, referred to in subsection (1), shall be granted only after consultation with the authorities of the issuing member state.

6. The public prosecutor shall promptly send the authorities of the issuing member state written notification, if:

a. the order has been executed;
b. the exercise of other powers under the law of criminal procedure is required for execution of the order;
c. the order cannot be executed because the object to be seized has been destroyed or cannot be found in the location indicated by the authorities of the issuing member state, or the location of the object to be seized, in spite of the information referred to in subsection (3), has not been indicated in a sufficiently precise manner by the authorities of the issuing member state.

Section 552oo

1. Sections 552a, 552c to 552d(1) inclusive and 552e(1) shall apply mutatis mutandis, on the understanding that the court shall not review the basis of the order.

2. If a written complaint is filed or a legal action is brought before the court, the public prosecutor shall promptly inform the authorities of the issuing member state thereof, indicating the grounds of the written complaint or the action brought before the court. As soon as the court has rendered a decision on the complaint or the legal action, the authorities of the issuing member state shall be notified of the decision.

Section 552pp

1. The seizure shall at least continue until a decision has been taken on the request referred to in section 552kk(2) and this decision has been executed, unless

   a. the seizure has already been lifted by an order issued by the court;
   b. the authorities of the issuing member state have indicated that that the order is going to be withdrawn.

2. In the case of subsection (1)b, the public prosecutor shall order the immediate return of the seized object.

3. After consultation with the authorities of the issuing member state, the public prosecutor may set conditions in order to limit the duration of the seizure. Before lifting the seizure in accordance with the conditions set, he shall give the authorities of the issuing member state the opportunity to express their views on this intention.

Section 552qq

1. The public prosecutor shall grant a request as referred to in section 552kk(2)(a), insofar as the District Court, with due observance of the applicable treaty, grants leave to do so. Section 552ll(3) shall apply mutatis mutandis.

2. Unless it is probable that the person entitled to the seized objects does not reside in the Netherlands, the leave required pursuant to subsection (1) shall be granted only on condition that on surrender to the authorities of the issuing member state, it shall be stipulated that the objects will be sent back as soon as they have been used as is necessary for the purpose of the criminal proceedings.

3. Sections 552a, 552ca, 552d(1) and 552e(1) shall apply mutatis mutandis, on the understanding that the written complaint shall be filed at the registry of the District Court which is competent to grant the leave required pursuant to subsection (1).

§ 2. Orders issued by the Netherlands

Section 552rr

The public prosecutor may issue an order pertaining to seizure as referred to in section 94(1) or (2) or section 94a(2) of objects which are located in the territory of another member state of the European Union, and transmit this order to the authorities of that other member state with a view to recognition and execution thereof in that member state.

Section 552ss

1. The order shall be accompanied by a completed certificate, which is set out in the form established for that purpose by Governmental Decree.

2. The public prosecutor may include in the order procedural requirements which shall be observed by the authorities of the executing member state as much as possible.

3. The order and the certificate shall be accompanied by a request for mutual legal assistance

pertaining to:

a. surrender of the object to which the seizure order pertains to the Dutch authorities, insofar as the seizure has been ordered with a view to establishing the truth;
b. confiscation or withdrawal from circulation of the object to which the seizure order pertains; or
c. special confiscation of unlawfully obtained gains in connection with which the seizure order was issued.

4. If submission of a request, as referred to in subsection (3), is not yet possible, the public prosecutor shall request the authorities of the executing member state to keep the objects to be seized in custody until the request has been submitted and a decision given thereon, stating the date on which submission of the request can be expected.

Section 552tt

1. The public prosecutor shall transmit the order and the certificate directly to the authorities of the executing member state which is competent to recognise and execute the order.

2. If the competent authority in the executing member state for recognition and execution of the order is unknown, the public prosecutor shall request the necessary information.

3. The order may be transmitted by regular post, telefax or electronic mail, provided that the authenticity of the transmitted order and certificate can be established by the authorities of the executing member state.

Section 552uu

1. The interested parties may file a written complaint about issuance of the order. Sections 552a and 552d shall apply mutatis mutandis, on the understanding that the written complaint shall be filed at the registry of the District Court in the district where the public prosecutor issued the order.

2. If the court finds the complaint well-founded, the public prosecutor shall immediately withdraw the order and promptly inform the authorities of the executing member state thereof.

3. If in the executing member state an interested party files a complaint about the recognition and execution of the order and the authorities of the executing member state inform the public prosecutor thereof, he may provide the necessary information about the order to these authorities.

Section 552vv

The public prosecutor may withdraw the order at all times. If he withdraws an order, he shall promptly inform the authorities of the executing member state thereof.

Chapter Two European Evidence Warrant

§ 1. European evidence warrant issued by another member state of the European Union

Section 552ww

1. A European evidence warrant issued by a competent judicial authority of another member state of the European Union, which has been set out in the form included in the annex to the Framework Decision no. 2008/978/JBZ of the Council of the European Union of 18 December 2008 on the European Evidence Warrant for the Purpose of Obtaining Objects, Documents and Data for Use in Proceedings in Criminal Matters (OJEU L 350) pertaining to:

a. seizure of objects or documents for the purpose of establishing the truth, insofar as said objects are located in the territory of the Netherlands;

b. obtaining stored or recorded data insofar as said data is located in the territory

of the Netherlands and is accessible under Dutch law;

c. the transfer of the objects, documents or data, referred to under (a) and (b), to the issuing authority;

d. provision of prosecutorial or police data to the issuing authority.

shall be recognised and executed.

2. A European evidence warrant, which has been issued by another authority than the one designated by the issuing member state as competent to issue an European evidence warrant, shall be considered as equivalent to a European evidence warrant, as referred to in subsection (1), issued by a competent judicial authority, insofar as that warrant may be executed without the use of coercive measures. If the use of coercive measures is required for execution of the warrant, the warrant may be recognised and executed only if it is validated by a judicial authority of the issuing member state.

3. A European evidence warrant, which pertains to obtaining stored or recorded data relating to the communication traffic data of a user of a communication service as referred to in section 126la, may not be recognised and executed.

Section 552xx

1. The public prosecutor shall recognise and execute a European evidence warrant, which may be recognised and executed, in accordance with the provisions of section 552aaa, unless execution is refused under section 552yy.

2. If the warrant is incomplete or manifestly incorrect or in the case referred to in section 552ww(2, second sentence) has not been validated by a judicial authority, the public prosecutor shall give the authorities of the issuing member state the opportunity to complete or correct the warrant or to have it validated by a judicial authority within a reasonable period of time to be set by him.

3. If the warrant has not been sent to the public prosecutor, the addressee shall promptly forward said warrant the public prosecutor and inform the authorities of the issuing member state thereof.

Section 552yy

1. The execution of a European evidence warrant shall be refused if:

a. the execution of the warrant would serve to assist in a prosecution or trial which is incompatible with the principle on which section 68 of the Criminal Code and section 255(1) of this Code is based;

b. without prejudice to the provisions of subsection (3), the offence, for which the warrant has been issued, would not be punishable under Dutch Law if it had been committed in the Netherlands and the use of coercive measures is required for execution of the warrant;

c. without prejudice to the provisions of subsection (3), the execution of the warrant necessitates the exercise of powers which, if the offence, for which the warrant has been issued, had been committed in the Netherlands, could not be exercised under Dutch Law;

d. there is an applicable privilege or an immunity under Dutch law, including the right to assert privilege referred to in section 218, which makes it impossible to execute the warrant;

e. the warrant has not been issued by a judicial authority and has not been

validated by such an authority either after expiration of the period of time referred to in section 552xx(2), while the exercise of coercive measures is required for execution of the warrant.

2. **The execution of a European evidence warrant may also be refused if:**

    a. **The offence for which the warrant was issued:**

    1˚. is considered to have been committed wholly or to a significant extent in the territory of the Netherlands or outside the Netherlands on board a Dutch vessel or aircraft; or

    2˚. was committed outside the territory of the issuing member state, while under Dutch law prosecution could not be instituted if the offence would have been committed outside the Netherlands;

    b. **execution of the warrant would harm essential national security interests or jeopardise the source of the information or the warrant pertains to the provision of classified data of intelligence services;**

    c. **the warrant is incomplete or manifestly incorrect after expiration of the period of time referred to in section 552xx(2).**

3. **The execution of a warrant shall not be refused under subsection (1)(b) or (c), if the offence for which the warrant was issued, is stated in or falls under the scope of the list of offences and types of offences referred to in article 14 of the Framework Decision no. 2008/978/JBZ of the Council of the European Union of 18 December 2008 on the European evidence warrant for the Purpose of Obtaining Objects, Documents and Data for Use in Proceedings in Criminal Matters (OJEU L 350) and under the law of the issuing member state that offence carries a maximum custodial sentence of at least three years.**

4. **If the public prosecutor considers refusing execution under subsection (1)(a), or subsection (2)(b) or (c), he shall consult with the issuing authority and shall, where necessary, ask it to supply the necessary information.**

5. **If the public prosecutor considers refusing execution under subsection (2)(a)(1˚), he shall consult Eurojust. In cases where the public prosecutor decides to refuse execution, contrary to the opinion of Eurojust, then the General Secretariat of the Council of the European Union shall be informed thereof.**

6. **Without prejudice to the provisions of section 552xx(2), the public prosecutor shall decide on recognition and execution of the warrant as soon as possible but within thirty days after its receipt at the latest. He shall promptly inform the issuing authority of his decision. If it is not reasonably possible to take a decision within thirty days, he shall inform the issuing authority of the underlying reasons and the period of time within which a decision can be expected. If the public prosecutor refuses execution of the warrant, the notification shall be given in writing and shall be reasoned.**

Section 552zz

1. **The public prosecutor may postpone the execution of the European evidence warrant if:**

    a. **its execution might damage an ongoing criminal investigation;**

    b. **the objects, documents or data, to which the warrant pertains, are already being used in judicial proceedings;**

2. **If the public prosecutor postpones the execution, he shall promptly inform the authorities of the issuing member state thereof in writing, stating the grounds and, where possible, the anticipated duration of the postponement.**

3. **As soon as the grounds for postponement no longer exist, the European evidence warrant shall be executed. The authorities of the issuing member state shall be promptly informed thereof in writing.**

Section 552aaa

1. **A European evidence warrant shall be executed by order of the public prosecutor in accordance with the applicable provisions of this Code, unless provided otherwise in this Part.**

2. **The public prosecutor shall place a European evidence warrant in the hands of the examining magistrate, if its execution necessitates the exercise of powers reserved to the examining magistrate. The submission shall be made by means of a written application, in which the acts requested of the examining magistrate are described. This application shall have the same legal effects as an application for the conduct of investigative acts by the examining magistrate pursuant to section 181.**

3. **Insofar as the European evidence warrant pertains to an offence as referred to in section 552yy(3), the powers necessary for execution of the warrant may also be exercised in cases other than those mentioned in the applicable provisions.**

4. **Unless execution under section 552zz has been postponed, it shall be carried out within sixty days after receipt of the warrant. If this is not reasonably possible, the public prosecutor shall inform the issuing authority thereof, stating the reasons and the period of time within which execution can be expected.**

5. **The public prosecutor or the examining magistrate shall execute the warrant with due observance, as much as possible, of the time limits and procedural requirements indicated by the authorities of the issuing member state in the warrant, insofar as said time limits and requirements are not contrary to the fundamental principles of Dutch law. The term "procedural requirements" shall also include the request of the authorities of the issuing member state to be present during the execution of the warrant.**

6. **If indicated by the issuing authority in the warrant and insofar as is directly related to the European evidence warrant, the following acts may be conducted in the execution of the warrant:**

    a. **obtaining other relevant objects, documents or data than those mentioned in the warrant;**

    b. **recording the statements of persons who are present during the execution of the European evidence warrant.**

7. **The public prosecutor shall promptly inform the issuing authority if:**

    a. **it is not possible to observe the procedural requirements, as referred to in subsection (5);**

    b. **during the execution of the warrant he has come to the conclusion that additional measures are required;**

    c. **during the execution of the warrant acts were conducted in violation of the applicable provisions.**

8. **The public prosecutor shall promptly send the issuing authority written notice if the**

warrant cannot be executed because the objects, documents or data, requested in the warrant, have disappeared, have been destroyed or cannot be found in the location indicated by the issuing authority or because the location, where said objects, documents or data are reportedly located, has not been indicated in a sufficiently precise manner by the issuing authority.

Section 552bbb

1. **Sections 552a, 552d(1) and 552e(1) shall apply, on the understanding that the court shall not review the substantive reasons for issuing the European evidence warrant which has led to exercise of the power in regard of which the written complaint has been filed.**

2. **As soon as the public prosecutor has grounds to believe that a seized object does not exclusively belong to the person subject to seizure, he shall conduct the necessary inquiries into other parties entitled thereto in the Netherlands, and he shall notify said parties of the right to file a written complaint pursuant to section 552a within fourteen days after receipt of the notice.**

3. **If a written complaint has been submitted, the public prosecutor shall promptly inform the authorities of the issuing member state thereof, stating the grounds of the written complaint. The authorities of the issuing member state shall be notified of the decision on the written complaint.**

Section 552ccc

1. **If the execution of a European evidence warrant has been carried out by the examining magistrate, he shall promptly place the objects, documents or data obtained at the disposal of the public prosecutor.**

2. **The public prosecutor shall immediately transfer the objects, documents or data obtained for the purpose of execution of a European evidence warrant to the authorities of the issuing member state, unless a written complaint has been filed and a decision has not yet been taken thereon or the complaint filed has been declared well-founded.**

3. **If necessary for the purpose of stopping a criminal offence or preventing new criminal offences, the public prosecutor may provide a copy of the documents or data obtained to the authorities of the issuing member state, pending a decision on the complaint filed.**

4. **Unless it is probable that the party entitled to the seized objects or documents does not reside in the Netherlands, the objects or documents shall be handed over to the authorities of the issuing member state on condition that they will send said objects or documents back as soon as they have been used as is necessary for the purpose of the criminal proceedings.**

§ 2. European evidence warrant issued by the Netherlands

Section 552ddd

1. **The public prosecutor or the examining magistrate may issue a European evidence warrant for the purpose of obtaining objects, documents, stored or recorded data or prosecutorial or police data which can serve to establish the truth and which are/is located in the territory of another member state of the European Union or, in the case of stored or recorded data, which is located in the territory of another member state of the European Union and is accessible under the national law of that member state.**

2. **A European evidence warrant may only be issued insofar as the objects, documents or data, to which the warrant pertains, could have been obtained under Dutch law if they were located in the Netherlands.**

3. **A European evidence warrant may not be issued in order to obtain stored or recorded data on the communication traffic data of a user of a communication service, as referred to in section 126l, in another member state of the European Union.**

Section 552eee

1. **The European evidence warrant has been set out in the form included in the annex to the Framework Decision no. 2008/978/JBZ of the Council of the European Union of 18 December 2008 on the European evidence warrant for the Purpose of Obtaining Objects, Documents and Data for Use in Proceedings in Criminal Matters (OJEU L 350).**

2. **The warrant shall be drawn up or translated in the official language or one of the official languages of the executing member state or in another official language of the institutions of the European Union, if that member state has declared that it accepts warrants drawn up or translated in that other language.**

3. **The public prosecutor or the examining magistrate may include procedural requirements in the warrant which the executing member state must observe as much as possible in the execution. Said requirements may also include the request to be present at the execution of the warrant.**

4. **If a European evidence warrant is issued as a supplement to a previously issued European evidence warrant or as a follow-up to a previously issued warrant as referred to in section 552rr, this shall be indicted in the warrant.**

Section 552fff

1. **The public prosecutor or the examining magistrate shall transmit the European evidence warrant directly to the authorities of the member state, which are competent to recognise and execute the warrant, in whose territory he has reasonable grounds to believe the objects, documents or data are located or, if the warrant pertains to stored or recorded data, in whose territory he has reasonable grounds to believe the data is accessible under the national law of that member state.**

2. **If the authorities of the executing member state which are competent to recognise or execute the warrant are unknown, the public prosecutor or the examining magistrate shall request information thereon from, inter alia, the European Judicial Network contact points.**

3. **The transmission may be effected by regular post, telefax or electronic mail, provided that the authenticity of the transmitted European evidence warrant can be established by the authorities of the executing member state.**

Section 552ggg

1. **The interested parties may file a written complaint about the issuance of the European evidence warrant. Sections 552a and 552d(1) shall apply mutatis mutandis, on the understanding that the written complaint shall be filed at the registry of the District Court in the district where the public prosecutor or the examining magistrate issued the warrant.**

2. **If the court finds the complaint well-founded, the public prosecutor or the examining magistrate shall immediately withdraw the European evidence warrant and promptly notify the authorities of the executing member state thereof.**

3. **If an interested party files a complaint about the recognition and execution of the European evidence warrant in the executing member state, the public prosecutor or the examining magistrate may provide the necessary information about the warrant to the authorities of that member state.**

Section 552hhh

Rules pertaining to the gathering and provision of information on the implementation of the provisions of this Chapter may be set by Ministerial Regulation.

Book Five. Enforcement and Costs

Part I. Enforcement

Chapter One. General Provisions

Section 553

Judicial decisions shall be enforced by the Public Prosecution Service or on his proposal by Our Minister.

Section 554

1. The clerk to the court shall voluntarily provide free of charge a copy of the judgment or appeal judgment to the injured party who has joined in the criminal proceedings. The injured party shall have the judgment or appeal judgment enforced, insofar as it relates to his claim, in the manner set for judgments in civil cases. In the case of a verbal judgment, the judgment shall be enforced by force of a notice from the clerk to the court, containing a copy of the annotation of the judgment, stating the injured party, the person against whom and the judge(s) by whom the judgment was rendered, and the words “In the Name of the King” shall be stated at the top.

2. The provisions of subsection (1) shall apply mutatis mutandis if the court has imposed the compensation measure as referred to in section 36*f* of the Criminal Code and in the absence of payment of the sum due, detention has been applied.

Section 555

If any service, summons, appearance notice, notification, notice or communication is prescribed under this Code, it shall be given by order of the Public Prosecution Service which detects or prosecutes or last prosecuted the case, unless provided otherwise.

Section 556

[1.] For the purpose of enforcement of judicial decisions or its own decisions, the Public Prosecution Service may give the necessary special or general orders to the bailiffs and to the **police officers, appointed for the performance of police duties**, the military personnel of the Royal Netherlands Marechaussee, or other civil servants or officials, insofar as said persons have been designated for that purpose by **Our Minister of Security and Justice**, as well as to the master for the purpose of enforcement on board of a Dutch ship or seagoing fishing vessel or installation designated in accordance with section 136*a*(2), insofar as is permitted under international law and interregional law. For the purpose of enforcement of warrants for the seizure of registered shares and securities and for the seizure and return of immovable registered property, the special order shall be directed to the bailiff.

[2.] Where necessary for the purpose of that enforcement, the Public Prosecution Service shall call on the assistance of the Public Prosecution Service in other areas of jurisdiction, which may issue the same orders as referred to in the preceding subsection.

[3.] Section 146(2) and (3) shall apply in regard of all civil servants who carry out the enforcement or by whose order the enforcement is carried out.

Chapter Two. Enforceability of Decisions

Section 557

[1.] Insofar as is not provided otherwise, a decision may not be enforced as long as there is a regular legal remedy which may be exercised against it and, if said remedy is exercised, until said remedy is withdrawn or a decision has been given thereon.

[2.] If a notification as referred to in section 366 is prescribed, then the judgment or appeal judgment may be enforced after the service of this notification. In the case of judgments or appeal judgments rendered in absentia, for which such notification is not required, the enforcement may be carried out after pronouncement of judgment. Appeal or appeal in cassation shall suspend or postpone the enforcement.

[3.] The last sentence of subsection (2) shall not apply:

1°. to orders granted in the judgment or appeal judgment, which are immediately enforceable;
2°. if, in the opinion of the Public Prosecution Service, it is established that the legal remedy has been exercised after expiration of the time limit set therefor, unless on application of the person who exercised the legal remedy, and after he has been heard, if he requested such in the application, the District Court or Court of Appeal judge hearing applications for provisional relief determines otherwise.

4. A judgment on application of the Public Prosecution Service, as referred to in section 36*e* of the Criminal Code, may be enforced only after the conviction, as referred to in section 36*e*(1) or (3) of the Criminal Code has become final.

Section 558

1. Remission or commutation may be requested in regard of all principal and additional punishments imposed by the Dutch criminal court in a final judgment, on the understanding that remission or commutation shall not be granted for unconditional fines up to an amount of € 340.

2. Remission or commutation may also be requested and granted in regard of:

a. punishments imposed pursuant to a judicial decision in a foreign state, and to be enforced in the Netherlands under application of section 43 of the Act on the Transfer of Enforcement of Criminal Judgments or after a notice of objection filed pursuant to section 35 of that act has been declared ill-founded;
b. a term of imprisonment which has been imposed by the International Criminal Court for a serious offence aimed at the administration of justice by the International Criminal Court and whose enforcement is carried out in the Netherlands in accordance with section 67 or 68 of the International Criminal Court Implementing Act [*Uitvoeringswet Internationaal Strafhof*];
c. **punishments or measures imposed in another member state of the European Union and to be enforced in the Netherlands under application of the Act on Mutual Recognition and Enforcement of Financial Penalties and Confiscation Orders [*Wet Wederzijdse Erkenning en Tenuitvoerlegging Geldelijke Sancties en Beslissingen tot Confiscatie*] and the Mutual Recognition and Enforcement of Sanctions involving Deprivation of Liberty and Suspended Sanctions Act [*Wet Wederzijdse Erkenning en Tenuitvoerlegging Vrijheidsbenemende en Voorwaardelijke Sancties*].**

3. Remission or commutation may be requested or granted in regard of measures of detention under an entrustment order with compulsory treatment, detention in an institution for persistent offenders, imposition of a measure involving deprivation of liberty, withdrawal from circulation and special confiscation of unlawfully obtained gains, which were imposed by the Dutch court in an irrevocable judgment.

Section 558a

1. An application for remission or commutation shall suspend the enforcement or commencement of the punishment for which remission or commutation is sought and whose enforcement has not yet commenced, in the cases in which the application pertains to an irrevocable judgment or appeal judgment and sentence of:

a°. a custodial sentence of six months or less;
b°. a suspended custodial sentence of six months or less and whose enforcement has been ordered pursuant to section 14g or 77dd of the Criminal Code;
c°. a fine;
d°. community service.

2. An application for remission or commutation shall also suspend the enforcement of the punishment or measure in the cases, in which one year after the judicial decision, for which remission or commutation is sought, has become irrevocable, the enforcement, other than on application of the convicted offender, has not yet commenced.

3. Rules pertaining to the date of commencement of the enforcement, referred to in subsections (1) and (2). may be set by Governmental Decree.

Section 559

Section 558a shall not apply if:

a. the convicted offender is absent without leave;
b. the convicted offender is deprived of his liberty by law, either pursuant to the judicial decision which imposed the custodial sentence for which remission or commutation is sought, or on other grounds pursuant to judicial decision in the Netherlands or in a foreign state;
c. the application for remission or commutation pertains to one or more punishments or measures in regard of which a decision was previously given on an application for remission or commutation;
d. the application is submitted at a time when the offender, who was sentenced to a custodial sentence or a measure involving deprivation of liberty, is in the territory of a foreign state, which is in the process of handling a request from the Netherlands for his extradition and for the purpose of said extradition has ordered his provisional arrest;
e. the application pertains to punishments or measures, whose enforcement has been transferred to a foreign state.

Section 559a

1. **Our Minister of Security and Justice** shall give notice of the commencement of suspension of the enforcement, which accompanies the submission of an application, to the Public Prosecution Service and the convicted offender.

2. When an application for remission or commutation of a custodial sentence, of the measure of detention under an entrustment order with compulsory treatment or of the measure of detention in an institution for persistent offenders, does not entail postponement of the enforcement by law, **Our Minister of Security and Justice** may nevertheless decide that the enforcement will be postponed or suspended until a decision has been given on the application. He shall give the Public Prosecution Service notice of that decision.

3. The postponement or suspension shall commence as soon as the Public Prosecution Service, which is charged with enforcement of the judicial decision, has been informed of the notice referred to in subsection (1). The postponement or suspension shall last until a decision has been given on the application.

4. After the notice referred to in subsection (1) or (2) has been given, the Public Prosecution Service shall see to it that the enforcement of the punishment or measure, for which remission of commutation has been sought, is postponed or suspended in accordance with the applicable statutory provisions.

Section 560

An application for remission or commutation submitted by a third party shall not be handled if it appears that the person on whom the punishment or measure has been imposed does not consent to the application.

Section 560a

Applications for reduction, amendment or remission of measures imposed by the Dutch criminal court other than those referred to in section 558(3), shall be forwarded to the authority, which is competent under the law to terminate the enforcement of those measures or to amend or annul the obligations imposed in said measures, for the purpose of rendering a decision thereon.

Section 560b

If an application for remission or commutation is granted in regard of a punishment or measure, whose enforcement has already commenced or is completed, the amount of the fine paid or the already paid part of the sum of unlawfully obtained gains determined by the court, shall be returned.
Objects which have been declared confiscated or which have been withdrawn from circulation shall be returned by the custodian following a decision to grant the application for remission or commutation of that punishment or measure. Section 119(2) shall apply mutatis mutandis.

Section 561

[1.] Insofar as the enforcement is permitted, the punishment order or the judgment or appeal judgment shall be enforced as soon as possible.

[2.] If the punishment consists of a fine or a measure as referred to in section 36f of the Criminal Code, then the Public Prosecution Service, which is charged with the enforcement, shall then determine the date or - in the case of application of section 24a of the Criminal Code- the dates - on which the payment must be made at the latest. It shall ensure that the convicted offender is timely notified thereof. If it is stated in the punishment order on which date or dates the payment must be made at the latest, then further information to the suspect shall not be required.

[3.] The Public Prosecution Service may grant a postponement of payment or permit payment in instalments. If section 24a of the Criminal Code has been applied, the Public Prosecution Service may, on application of the convicted offender, agree in writing to a more favourable payment arrangement for him.

Section 561a [Repealed as of 16-10-1964]

Section 562

1. If, before the enforcement of a judgment or appeal judgment, containing a custodial sentence, which has become final, the convicted offender is affected by a mental defect, the court, which pronounced the judgment or appeal judgment, may order postponement of the enforcement.

[2.] Postponement shall be ordered, either on application of the Public Prosecution Service, or on application of the defence counsel of the convicted offender. The provisions of Part Three of Book One shall apply in regard of the defence counsel.

[3.] After his recovery, the postponement order shall be revoked by the same court, on application of the Public Prosecution Service.

Section 563

[1.] If, in spite of the mental defect suffered by the convicted offender, a punishment other than the punishment referred to in the preceding section can be enforced, the guardian shall be invited to comply with the judgment or appeal judgment in the normal manner. If the convicted offender does not yet have a guardian, one shall be appointed for that purpose, where necessary, on application of the Public Prosecution Service by whose order the enforcement must be carried out.

[2.] The preceding section shall apply in regard of the default punishment.

Chapter Three. Enforcement of Punishment Orders, Orders involving Deprivation of Liberty and Convicting Judgments or Appeal Judgments

Section 564

[1.] The order for enforcement of an order involving deprivation of liberty or a convicting judgment or appeal judgment shall contain the most precise description possible of the person to be apprehended, a specification of the decision or the order on which the arrest is based, and a specification of the location to which the arrested person should be taken, or of the judge or civil servant before whom he must be brought.

2. If explicitly stipulated in the order, the person to be apprehended, insofar as is permitted under international law and interregional law, may be arrested outside the area of jurisdiction of a District Court.

3. The provisions of the preceding subsection shall not apply when the order pertains to forcibly bringing a suspect, witness, expert witness or interpreter to court.

4. Any person who has arrested a person in accordance with the order, shall immediately bring him to the location or before the judge or civil servant, stated in the order.

5. If the arrest is made outside the area of jurisdiction of a District Court, then sections 539*b*(2), (3) and (4), 539*n* and 539*o* shall apply mutatis mutandis.

6. Rules pertaining to the issuance of an order, as referred to in subsection (1), may be set by or pursuant to Governmental Decree.

Section 564a

If the arrest is made outside the area of jurisdiction of a District Court and the arrested person claims that he is not the person against whom the order has been issued, then the person, who made the arrest, shall promptly inform the Public Prosecution Service, which issued the order, of the claim made by the arrested person in the quickest possible manner.

Section 565

1. The civil servant charged with the enforcement may enter and search any place for the purpose of arresting the person to be apprehended.

2. With a view to establishing the whereabouts of the person to be arrested, the public prosecutor may, or, if the sections designate the assistant public prosecutor or the investigating officer as competent, this civil servant, may exercise the powers referred to in sections 96 to 102a inclusive, 125i to 125m inclusive, 126g, 126k to 126ni inclusive and 26ui, on the understanding that:

a. a power shall only be exercised with a view to establishing the whereabouts of the person to be arrested in the event that the person to be arrested is being prosecuted or has been sentenced to a custodial sentence or a measure involving deprivation of liberty has been imposed on him for a serious offence of the same gravity for which the power in question may be exercised under the section in question;
b. a power which, under the section in question, may be exercised only with the authorisation of the examining magistrate, may likewise only be exercised with a view to establishing the whereabouts of the person to be arrested with written authorisation to be granted by the examining magistrate on application of the public prosecutor;
c. if for the exercise of a power under the section in question an order or application is required, in the event of the exercise of said power with a view to establishing the whereabouts of the person to be arrested, the order or the application shall contain, insofar as is relevant, the information which must be included according to the relevant sections of the law.

Section 566

1. A person, against whom an order involving deprivation of liberty or a convicting judgment or appeal judgment is enforced, shall be admitted to the prison or institution intended for that purpose either on presentation of the pre-trial or police custody order, or the convicting judgment or appeal

judgment or an extract thereof, or on presentation of the order of enforcement issued by the Public Prosecution Service.

2. In the latter case the civil servant, who issued the order, shall have the pre-trial or police custody order or, in the case of enforcement of a custodial sentence, the convicting judgment or appeal judgment or an extract thereof, sent as quickly as possible to the head of the institution.

3. In the case of enforcement of a custodial sentence, imposed by a verbal judgment, the admission referred to in subsection (1) of this section shall take place on presentation of:

a. either the court record, or a copy thereof or an extract therefrom;
b. or the document annexed to the duplicate of the summons or appearance notice, or a copy thereof, containing an annotation of the verbal judgment;
c. or the order of enforcement issued by the Public Prosecution Service, or a copy thereof.

4. Section 146(2) shall apply to all civil servants who carry out the enforcement or by whose order the enforcement is carried out.

5. In the case, referred to in the preceding subsection under (*c*), the civil servant, who issued the order, shall have either the court record, or a copy thereof or an extract therefrom, or the document annexed to the duplicate of the summons or appearance notice or a copy thereof, containing an annotation of the verbal judgment, sent to the head of the institution as quickly as possible.

Section 567

The heads of prisons, approved schools and institutions, in which the detention is enforced, shall be obliged to keep a register in accordance with a format to be established by **Our Minister of Security and Justice**.

Section 568

[1.] On admission of a person, against whom an order involving deprivation of liberty or a convicting judgment or appeal judgment is enforced, his surname, forename, occupation, place of birth and place of residence or abode shall be entered in the register. If any details are unknown, this shall be entered in the register.

[2.] The entry shall also indicate:

the judge or the civil servant whose decision is being enforced;

the date of that decision;

the date and the hour, on which the admission is made, and where possible, the time at which the deprivation of liberty commenced;

on conviction, the duration of the punishment.

[3.] The entry shall be jointly signed by the civil servant who enforces the order, judgment or appeal judgment. He shall receive from the head of the institution the written statement confirming the admission and shall submit said statement to the civil servant on whose order the enforcement was carried out.

Section 569

[1.] The date and the hour, on which the stay of the prisoner or the person receiving treatment in the institution ends, shall be noted in the aforementioned register alongside the entry, stating the decision pursuant to which, or any other cause as a result of which, said stay has ended.

[2.] The head of the institution shall sign the entry and the notes referred to in this section.

Section 570

[1.] Persons shall be released by the head of the institution:

a. on the last day of the term of the punishment, if the duration of the punishment does not exceed three days;
b. on the last day of the term of the punishment, which shall not be a Sunday or a public holiday, if the duration of the punishment is more than three days and less than two months;
c. in other cases of enforcement of a custodial sentence, on the last day of the term of punishment, which shall not be a Saturday, Sunday or public holiday;
d. as soon as the order involving deprivation of liberty ceases to be valid;
e. as soon as the competent authority issues the order for release to the head of the institution.

[2.] The release shall in no event take place after the date on which the term of punishment expires.

[3.] If the release pursuant to subsection (1, opening lines)(*a*), (*b*) or (*c*) takes place before the term of punishment has fully expired, the right to enforce the still remaining part of the punishment shall lapse.

[4.] For the purpose of application of the preceding subsections of this section, in cases in which an order, as referred to in section 14*a* of the Criminal Code, has been issued in regard of a part of the punishment, that part shall only be taken into account insofar as the enforcement thereof has been ordered by the court.

Section 570a

If the convicted offender must consecutively serve more than one punishment, said punishment shall be deemed to be one punishment for the purpose of application of section 570(1, opening lines)(*a*),(*b*) or (*c*).

Section 570b

1. Our Minister may, on application of the person concerned or ex officio, interrupt the enforcement of a custodial sentence.

2. Our Minister may set further rules pertaining to the interruption of the enforcement referred to in subsection (1). The rules shall set out, in any case, the criteria with which the person concerned must comply in order to be eligible for an interruption of punishment, the competence to grant said interruption and the manner in which it is granted as well as the accompanying conditions which may be set.

3. Chapter XIII of the Custodial Institutions (Framework) Act shall apply in regard of the decisions concerning interruption of the enforcement as referred to in subsection (1).

Section 571

[1.] The District Courts shall ensure compliance with the provisions of sections 566-570 and for that purpose shall have examining magistrates from its midst visit twice a year at unscheduled times the prisons, approved schools and institutions within its area of jurisdiction, in which the detention is being enforced.

[2.] A written report of the findings shall be submitted on each occasion to **Our Minister of Security and Justice**.

[3.] The public prosecutors shall be obliged to visit and report under the terms as referred to in the preceding subsections.

Section 572

[1.] The enforcement of punishment orders, judgments or appeal judgments, containing imposition of a

fine or of a measure as referred to in section 36f of the Criminal Code, shall be carried out by or on behalf of the Public Prosecution Service which issued the punishment order or brought the case before the court.

2. Rules pertaining to the enforcement shall be set by or pursuant to Governmental Decree. These rules shall pertain, in any case, to the place and manner of payment of the fines and the measures referred to in section 36f of the Criminal Code, the time limit within which that payment must be made, the accountability for the sums received and the costs of recovery, including the collection charges.

3. The rules referred to in subsection (2) shall also pertain to the administrative charges as regards the enforcement of punishment orders, judgments or appeal judgments, in which a fine is imposed.

4. The person against whom recovery is made, shall be due to pay the costs thereof, even if the punishment order, the judgment or the appeal judgment is quashed after the exercise of objection, appeal or appeal in cassation against said order or judgment.

Section 572a

The public prosecutor may request any person to provide data which is reasonably necessary for the enforcement of a judgment, an appeal judgment or a punishment order in which a fine or measure, as referred to in section 36f of the Criminal Code, is imposed. Section 96*a*(3) shall apply mutatis mutandis.

Section 573

[1.] In the absence of full payment within the time limit set pursuant to section 561, the sum due, plus the increases provided for in section 24*b* of the Criminal Code, after prior written warning, shall be recovered against the objects of the convicted offender. In connection with the recovery, domicile may be elected at the office of the Public Prosecution Service which is charged with the enforcement.

2. The Public Prosecution Service charged with the enforcement may decline to make recovery.

[3.] If full recovery is found to be impossible or recovery is declined under application of the preceding subsection, then, after a prior written warning, the default custodial sentence shall be enforced.

[4.] Unless the convicted offender does not have a known place of residence or abode in this country, enforcement of a default custodial sentence shall not be carried out until after fourteen days have expired since the date on which the warning, referred to in the preceding subsection, was sent to him.

Section 574

1. Recovery shall be made against objects seized under section 94a in the manner provided for in the Code of Civil Procedure pursuant to the irrevocable judgment or appeal judgment or the irrevocable punishment order in which the fine was imposed.

2. This judgment or appeal judgment or this punishment order shall be deemed to be the title as referred to in section 704(1) of the Code of Civil Procedure. Service of this title on the convicted offender and, if garnishment has been levied against a third party, on this third party too, may be made by service of notice containing the punishment imposed in the judgment or appeal judgment or the punishment order, insofar as is relevant for the recovery to be made.

3. The provisions of the Code of Civil Procedure shall apply in regard of third parties who believe that they are entitled, in whole or in part, to the seized objects.

Section 575

1. Recovery shall be made against objects of the convicted offender, which have not been seized

under section 94a, pursuant to a writ of execution, entailing the right to seize that property without a judgment being required. Recovery may also be made against objects as referred to in section 94a(3) and (4), which have not already been seized before the judgment or appeal judgment became irrevocable.

2. The writ of execution shall be issued in the name of the King by the Public Prosecution Service, which is charged with the enforcement of the judgment, the appeal judgment or the punishment order. It shall be enforced as a judgment of the civil court.

3. The enforcement of the writ of execution may only be suspended by an objection which, nevertheless, may in no event be directed against the judgment, the appeal judgment or the punishment order in which the fine was imposed. Objection shall be filed by means of a reasoned notice of objection, which shall be filed before the sale and not later than within seven days, to be calculated as from the date of seizure, with the court of the judge who imposed the punishment. In the case of a punishment order, the notice of objection shall be filed with the court which heard the objection thereto or, if objection would have been filed, could have heard said objection. The court in chambers shall hear the objection at a public court session. The decision given in chambers shall be promptly served on the convicted offender. Appeal in cassation may be filed against the decision given in chambers by the civil servant who issued the writ of execution within fourteen days thereafter and by the convicted offender within fourteen days after the service. The appeal of the convicted offender shall be admissible only after prior deposit of the sum still due and of all costs at the registry of the court which gave the decision in chambers or to which the judge, who gave the decision in chambers, belongs. The Supreme Court shall decide as soon as possible.

4. The provisions of the Code of Civil Procedure shall apply in regard of third parties who, on seizure of objects, believe that they are entitled, in whole or in part, thereto.

5. The costs of recovery pursuant to this section shall be recovered under the same terms as the fine, or the measure of section 36f of the Criminal Code, from the convicted offender. The costs of recovery shall include the collection charges.

Section 576

[1.] Recovery may be made without a writ of execution against:

a. earned monetary income of the convicted offender;
b. pensions, redundancy pay and other benefits to which the convicted offender is entitled;
c. the balance of an account with a bank as referred to in section 1:1 of the Financial Supervision Act [*Wet op het Financieel Toezicht*] to which the convicted offender may have access for his own benefit.

[2.] Recovery under application of the preceding subsection shall be made by means of written notice from the Public Prosecution Service which is charged with the enforcement of the judgment, the appeal judgment or the punishment order. For the purpose of exercise of the recovery, the notice shall contain an adequate description of the person of the convicted offender, and shall state which sum is still due to be paid under the conviction, by which court judgment or punishment order the fine was imposed, and the place where payment must be made. It shall be issued to the person against whom recovery is made and shall be served on the convicted offender.

[3.] Through the service of the notice, the person against whom recovery is made shall be obliged to pay the sum indicated in the notice to the State, insofar as the convicted offender has or acquires a demandable claim against him. The Public Prosecution Service shall set the time limit within which the payment must be made. The payment obligation shall lapse as soon as the sum due pursuant to the sentence has been paid or recovered and when two years have expired after the date of service at the latest.

[4.] The person against whom recovery is made, may not invoke against the State the extinguishment or reduction of his debt by payment or setoff against a counter claim other than in the cases in which he would also have been entitled to do so in the case of garnishment levied on third parties at the time of the service in accordance with the Code of Civil Procedure. If another creditor has

levied attachment on the amounts payable, against which recovery is being made, section 478 of that Code shall apply mutatis mutandis. For the purpose of application of sections 33 and 301 of the Bankruptcy Act, the recovery shall be considered as equivalent to garnishment levied on third parties.

5. If recovery is made against the right of the convicted offender to periodic payments as referred to in subsection (1)(*a*) and (*b*), sections 475a to 475g inclusive of the Code of Civil Procedure shall apply mutatis mutandis.

[6.] Any interested party may object to the recovery within seven days after service of the notice, referred to in subsection (2) of this section, by means of a reasoned notice of objection. Section 575(3) shall apply to this objection.

7. The costs of recovery pursuant to this section shall be recovered under the same terms as the fine, or the measure of section 36f of the Criminal Code, against the convicted offender. The term “costs of recovery” shall include the collection charges.

Section 576a

It may be determined by Governmental Decree that the State shall, on a basis and in accordance with rules to be set in said decree, have the money obtained from the enforcement of fines fall to a legal person, which has been established under public law.

Section 577

[1.] If the objects, which have not been seized, have been declared confiscated, or publication of the judgement for the account of the convicted offender has been ordered, sections 561(2) and (3) and 572(1), (2) and (4) shall apply mutatis mutandis.

[2.] If neither surrender of the objects nor payment of the estimated value or the costs of publication has been made within the period of time set therefor, sections 573, 575 and 576 shall apply mutatis mutandis.

Section 577a

Amounts payable, which have been declared confiscated, shall be enforced by service of the judgment on the debtor.

Section 577b

1. If the measure, referred to in section 36e of the Criminal Code, is imposed, sections 561(2) and (3), 572(1), (2) and (4), 573(1) and (2) and 574 to 576 inclusive shall apply mutatis mutandis.

2. On application of the Public Prosecution Service charged with enforcement, or on written and reasoned application of the convicted offender or of an injured third party, the court, which imposed the measure referred to in subsection (1), may reduce or remit the sum set therein. If the sum has already been paid or recovered, then the court may order that it be given back or paid out, in whole or in part, to a third party designated by it. The order shall be without prejudice to the right of any person to the sum given back or paid out.

3. If it appears that a higher amount has been set than the amount of the actual gains, the court shall give in chambers a decision ordering reduction or return which shall be at least equivalent to the difference.

4. The Public Prosecution Service and the suspect or the injured third party shall be heard, or at any rate shall be called to be heard for that purpose, unless – in the case of a second or subsequent application of the suspect or the injured third party – this application is manifestly ill-founded.

5. The court in chambers shall hear the application of the Public Prosecution Service or of the suspect or the injured third party at a public court hearing, except for the exception referred to in

subsection (4).

6. The application, referred to in subsection (2), may no longer be made after three years have expired since the date on which the sum, or the last part thereof, was paid or recovered.

7. The court may order, ex officio, non-enforcement of the measure, pending its decision. The order shall be promptly notified to the Public Prosecution Service which is charged with the enforcement.

8. Reduction or remission shall cancel by operation of law an increase which has already taken effect pursuant to section 24*b* of the Criminal Code.

Section 577ba

1. In the absence of full payment within the period of time referred to in section 561(2), an investigation into the assets of the convicted offender may be instituted with the reasoned authorisation of the examining magistrate, on application of the public prosecutor.

2. The investigation shall be aimed at determining the amount of the assets of the convicted offender against which recovery may be made for the purpose of enforcement of the measure referred to in section 36e of the Criminal Code.

3. The application shall be reasoned and shall state the amount of the payment obligation imposed, the sum already paid by the convicted offender in compliance therewith and whether an application, as referred to in section 577b(2), has been made.

4. The examining magistrate shall grant the authorisation referred to in subsection (1), if:

a. the remaining payment obligation is a considerable amount, and;
b. there are indications that the convicted offender owns objects against which recovery may be made pursuant to section 577b.

5. The authorisation shall be valid for maximum six months and may be extended, on application of the public prosecutor, each time for the same period until the maximum duration of two years has been reached.

6. The examining magistrate shall see to it that the investigation is not unduly delayed. The public prosecutor shall provide, voluntarily or on request of examining magistrate, the information required.

7. If the public prosecutor decides that the investigation is completed or that there are no grounds to justify its continuation, he shall close the investigation by means of a written dated decision. A copy of the decision shall be served on the convicted offender against whom the investigation was conducted. The public prosecutor shall inform the examining magistrate of the closure of the investigation.

8. The investigation into the assets of the convicted offender shall also be closed:

a. if the term of validity of an authorisation granted pursuant to subsection (1) has expired;
b. if the convicted offender has complied with his payment obligation after all.

Section 577bb

1. For the purpose of the investigation into the assets of the convicted offender, the investigating officer shall have the power, on the basis of a warrant issued for that purpose by the public prosecutor, in the interest of the investigation:

a. to request any person to state whether, and if so, which property and assets he has or has had in his possession, which belong or belonged to the person under investigation;
b. to request the person, who may be reasonably considered to be the appropriate person for that purpose and who processes data other than for personal use, to provide specific stored or

recorded identifying data of a person within the meaning of section 126nc(2);
c. to request any provider of a communication service to provide data pertaining to the name, address, postal code, town, number and type of service of a user of a communication service within the meaning of section 126la;
d. to systematically follow a person or systematically observe his movements or behaviour;
e. to enter an enclosed place, not being a dwelling, without the consent of the person entitled to use the premises or to use a technical device in order to look around that place, to secure traces there or to install a technical device there in order to be able to establish the presence or removal of property.

2. Section 126a(3) and (5) shall apply mutatis mutandis to the request referred to in subsection (1)(a).

3. Section 126nc(3) to (5) inclusive and (7) shall apply mutatis mutandis to the request referred to in subsection (1)(b).

4. The public prosecutor may determine, in the interest of the investigation, that in the exercise of the power, referred to in subsection (1)(d), a technical device may be used, insofar as no confidential communications are recorded by means of that device. A technical device shall not be attached to a person, unless with his consent.

5. The public prosecutor may determine, in the interest of the investigation, that for the purpose of exercising the power referred to in subsection (1)(d), an enclosed place, not being a dwelling, may be entered without the consent of the person entitled to use the premises.

6. Section 126g(4) shall apply mutatis mutandis to the warrant referred to in subsection (1)(d).

7. The investigating officer may, while awaiting the arrival of the bailiff, take any measures that are reasonably necessary in order to secure objects against which recovery may be made. These measures may restrict the freedom of persons who are at the location in question.

Section 577bc

1. A warrant issued by the public prosecutor as referred to in section 577bb and an amendment, supplementation, extension or withdrawal thereof, shall be in writing. A warrant issued verbally, which has been immediately put in writing, shall be considered as equivalent to a warrant issued in writing.

2. A warrant may be amended, supplemented, extended or withdrawn.

3. The warrant shall state:

a. the name of the convicted offender;
b. the term of validity of the warrant;
c. insofar as is necessary, the manner in which the warrant will be executed.

4. If an enclosed place is entered, the warrant shall also state:

a. the place to which the warrant pertains;
b. in addition, in the case of application of section 577bb(1)e, the time at which or the period within which the warrant is executed.

5. The investigating officer shall prepare an official record on the execution of the warrant. The official record shall state:

a. the data, referred to in subsections (3) and (4);
b. the manner in which the warrant is executed;
c. the data provided in response to a warrant or request;
d. the facts and circumstances which show that the conditions referred to in section 577bb have been fulfilled.

6. If a warrant has been issued verbally and an amendment, supplementation, extension or withdrawal of a warrant, as referred to in subsection (2), has not been put in writing, this shall be stated in the official record.

Section 577bd

1. The public prosecutor may, in the interest of the investigation, request the person, who may be reasonably presumed to have access to specific stored or recorded data, to provide this data.

2. Section 126nd(2) to (4) inclusive and (7) shall apply mutatis mutandis.

3. The public prosecutor shall have an official record on the provision of the data prepared, which shall state:

a. the data referred to in section 126nd(3);
b. the data provided in response to the request;
c. the reason why the data is requested in the interest of the investigation.

4. The public prosecutor may determine, in the interest of the investigation, that a request, as referred to in subsection (1), may relate to data which is only processed after the time of the request. The period to which the request relates shall be maximum four weeks and may be extended by maximum four weeks each time. The public prosecutor shall state this period in the request. Subsections (2) and (3) shall apply mutatis mutandis.

5. If a request relates to data which is processed after the time of the request, the request shall be terminated as soon as the processing is no longer in the interest of the investigation. The public prosecutor shall have an official record prepared of amendment, supplementation, extension or cancellation of the request.

6. If urgently required in the interest of the investigation, the public prosecutor may determine that the person to whom the request is directed will provide the data immediately after processing, or each time within a specific period after processing. The public prosecutor shall require for that purpose the prior written authorisation of the examining magistrate.

7. The public prosecutor may, if required in the interest of the investigation, in or immediately after the application of subsection (1) or (4), order the person who may be reasonably presumed to have knowledge of the manner of encryption of the data referred to in subsections (1) and (4) to assist in decrypting the data by either undoing the encryption or providing this knowledge. This order shall not be given to the convicted offender. Section 96a(3) shall apply mutatis mutandis.

Section 577be

1. The public prosecutor may, in the interest of the investigation, request the provision of data on a user of a telecommunication service and the communication traffic data pertaining to that user within the meaning of section 126la.

2. Section 126n(1, second sentence)(2) and (3) shall apply mutatis mutandis.

3. The public prosecutor shall have an official record prepared of the request referred to in subsection (1), which shall state:

a. the name of the convicted offender;
b. if known, the name or otherwise the most precise description possible of the person about whom data is requested;
c. the data requested;
d. if the request relates to data which is processed after the time of the request, the period to which the request relates.

4. Section 126n(6) shall apply mutatis mutandis.

Section 577bf

1. The public prosecutor may, in the interest of the investigation, order an investigating officer to record by means of a technical device non-public communications which are conducted by use of the services of a provider of a communication service within the meaning of section 126la.

2. The warrant, referred to in subsection (1), may only be issued with the prior written authorisation of the examining magistrate. Sections 126m(3) and (4) and 126ma shall apply mutatis mutandis.

3. The warrant shall be issued for maximum four weeks. The warrant shall state, in addition to the information referred to in section 577bc(3):

a. where possible, the number or another indication by means of which the individual user of the communication service is identified, and:
b. insofar as is known, the name and the address of the user, and:
c. the nature of the technical device or the technical devices by means of which the communications are recorded.

4. If required in the interest of the investigation, the public prosecutor may, if the communications, referred to in subsection (1), are recorded, request the person, who may be reasonably presumed to have knowledge of the manner of encryption of the communications, to assist in decrypting the data by either providing this knowledge or undoing the encryption. The request shall not be made to the convicted person. Section 96a(3) shall apply mutatis mutandis.

5. The request, referred to in subsection (4), may only be made with the prior written authorisation of the examining magistrate.

6. Section 577bc(5) shall apply mutatis mutandis.

Section 577bg

1. If the investigation into the assets of the convicted offender is closed, sections 126bb and 126dd shall apply mutatis mutandis.

2. As soon as two months have expired after the closure of the investigation and the notification has been made to the persons concerned as referred to in section 126bb, the public prosecutor shall ensure that the official records and objects, from which information can be derived and which have been obtained through the exercise of the powers referred to in sections 577ba to 577bf inclusive, are destroyed. An official record of the destruction shall be prepared.

Section 577c

1. If the convicted offender fails to comply with the judgment or appeal judgment in which payment of a sum of money to the State for the purpose of special confiscation of unlawfully obtained gains was imposed and full recovery against his assets under sections 574 to 576 inclusive did not appear to be possible, the court may, on application of the public prosecutor, grant leave for the enforcement of detention for failure to comply with a judicial order for maximum three years.

2. The application for leave shall be submitted to and heard in chambers by the court determining questions of fact, which last tried the case.

3. The public prosecutor shall send the convicted offender notice for the hearing of the application. The application shall be heard at a public court session.

4. The application shall not be granted if the convicted offender adduces evidence demonstrating that he is unable to comply with the payment obligation.

5. In the assessment of the application, the court in chambers shall take into account partial payments made by the convicted offender and the recovery already made by the Public Prosecution Service pursuant to sections 574 to 576 inclusive.

6. If the application is granted, the court in chambers shall set the duration of the detention. On application of the public prosecutor or of the suspect or ex officio, the court in chambers may set the amount of the sum still due. The imposition of detention shall not cancel the indebtedness. The decision of the court in chambers shall be served on the convicted offender. Section 564 shall apply mutatis mutandis.

7. The detention may be terminated by the public prosecutor at all times. The detention shall be ended if the convicted offender complies after all with the obligation to pay the sum due. The convicted offender may request the court to revoke the detention. Section 577b(4) and (5) shall apply mutatis mutandis.

Section 577d

1. If payment of a deposit has been set as an instruction or special condition in a punishment order or in an order as referred to in section 14a of the Criminal Code, sections 561(2) and (3, first sentence) and 572(1), (2) and (4) shall apply mutatis mutandis.

2. In no event shall a period of more than three months be set for the payment, to be calculated as from the date on which the judgment, the appeal judgment or the punishment order became enforceable.

3. The deposit shall be given back by order of the Public Prosecution Service which is charged with the enforcement of the judgment, the appeal judgment or the punishment order.

Section 578

1. If the Public Prosecution Service gives instructions, in accordance with section 257a, it shall set the period of time within which those instructions must be complied with, and also, if necessary, the place where this must be done. The period of time set may be extended.

2. In cases where, within three years after payment of a sum or transfer of objects, as referred to in section 257a(2)(c) or in section 511c, said payment is or said objects are found to be of a higher value than the sum of the actual gains derived by means of or from the proceeds of the criminal offence or similar offences, the Public Prosecution Service shall order – either ex officio, or on application of the former suspect or convicted offender – the return of a sum equivalent to the difference.

3. Within fourteen days after the former suspect or convicted offender has been notified of the decision on an application made in accordance with the preceding subsection, he may file a written complaint with the court at whose registry the sum was paid or the object was handed over.

4. The complaint may also be filed when thirty days have expired since the submission of the application and a decision thereon has not yet been given in the intervening period.

5. The court in chambers shall hear the written complaint at a public court session. If the court finds the complaint well-founded, then it shall order that the difference, referred to in subsection (2), be returned. Section 577b(9) shall apply mutatis mutandis. There shall be no legal remedy available against the decision of the court in chambers.

Section 578a

1. If the public prosecutor enters into an out-of-court-settlement with the suspect or convicted offender in accordance with section 511*c*, he shall set the period of time within which the terms of that out-of-court-settlement must be fulfilled. Until that time the period of time, within which an application must be brought before the court pursuant to section 511*b*(1) shall be suspended. Through fulfilment of these terms, the right to submit the application lapses or, if that application has already been submitted, the case is concluded by operation of law.

2. If after fulfilment of those terms circumstance are found to exist which would have excluded the applicability of the measure referred to in section 36*e* of the Criminal Code, the former suspect or

the convicted offender may apply to the public prosecutor for the return of sums paid or objects handed over.

3. Within fourteen days after the former suspect or convicted offender has been notified of the decision on an application made in accordance with the preceding subsection, he may file a written complaint with the District Court to which the public prosecutor is attached.

4. The complaint may also be filed if thirty days have expired since submission of the application and a decision has not been given thereon in the intervening period.

5. If the District Court finds the complaint well-founded, then it shall order the return of the sums paid or objects transferred in accordance with the principles of reasonableness and fairness.

6. The court in chambers shall hear the written complaint at a public court session.

7. The application, referred to in subsection (2), may no longer be made if three years have expired since the date on which the sum or the last part thereof was paid.

Chapter Three A. Detention for Failure to comply with a Judicial Order

Section 578b

1. If recovery has not been made or has not been fully made, the public prosecutor may submit, in accordance with sections 574, 575 and 576, an application to the single-judge division of the Sub-District Court Sector of the District Court in whose district the person, on whom the fine for which recovery is sought, was imposed in a punishment order, has his address, for authorisation to apply the coercive measure of detention for failure to comply with a judicial order against this person. The address stated in the Municipal Personal Records Database and the address given by the suspect when filing an objection shall be deemed to be the address of the person on which the fine was imposed. If the person on whom the fine was imposed is not registered in the Municipal Personal Records Database, **the public prosecutor in the North Holland district may submit the application to the single-judge division of the Sub-District Court Sector of the North Holland District Court**.

2. The single-judge division of the Sub-District Court Sector shall determine the duration of the detention, which shall amount to a minimum of one day and a maximum of one week for each criminal offence. A maximum of one day shall be imposed for each full € 25 of the sum for which recovery is sought.

3. A decision shall be given on the application only after the person, on whom the fine was imposed, has been heard, or at any rate has been properly called to be heard, by the single-judge division of the Sub-District Court Sector. If the person, on whom the fine was imposed, does not know about the prosecution, the appearance notice shall be served. No legal remedy shall be available against the decision of the single-judge division of the Sub-District Court Sector. Section 273(1) shall apply mutatis mutandis.

4. The public prosecutor or the civil servant, whom he has charged with the implementation of the detention, shall be authorised to enter any place for the purpose of taking the person, on whom the fine was imposed, into detention.

5. The detention order shall be lifted as soon as the sum due has been paid. The application of detention shall not cancel the indebtedness.

Chapter Four. Proceedings for the Purpose of Establishing the Identity of Convicted Persons or Other Sentenced Persons

Section 579

If a person, who has been arrested for the purpose of serving a punishment, continues to deny that he is the convicted offender, or if, notwithstanding acknowledgement, doubts remain, the court, which

tried the criminal offence as court of first instance, shall determine whether he is, or not, the convicted offender.

Section 580

[1.] The hearing shall be held at a court session to be set by the court, on application of the Public Prosecution Service, as soon as possible.

2. The Public Prosecution Service shall have the arrested person, the witnesses and expert witnesses, whom it wishes to have heard and those witnesses whom the arrested person wishes to have heard, summoned or called to appear. Section 260(2) shall apply mutatis mutandis in regard of all these witnesses.

3. If the Public Prosecution Service refuses to have a witness or expert witness called to appear, the court may, on application of the arrested person, order that said witness or expert witness be called to appear. Sections 263 and 264 shall apply mutatis mutandis.

[4.] If the case has been brought before a court of law, a defence counsel shall be assigned to the arrested person by the board of the Legal Aid Council by order of the presiding judge. The provisions of Part Three of Book One shall apply to the defence counsel.

Section 581

1. The hearing shall be conducted and the decision rendered in accordance with the provisions of Part VI of Book Two or of Part I of Book Four, according to whether the case is brought before a District Court or the Supreme Court. Section 394 shall apply mutatis mutandis.

2. Insofar as the provisions referred to in subsection (1) pertain to a witness whose identity is not or is only partially disclosed, said provisions shall not be applied.

Section 582

If the court does not find that the identity has been established, it shall order the release of the arrested person. In the other case the enforcement shall be deemed to have commenced at the time of the deprivation of liberty.

Section 583

[1.] The judgments or appeal judgments, containing decisions on the identity, shall be open to such appeal as is open against judgments or appeal judgments in which judgment was rendered on the criminal offence.

[2.] The appeal shall be filed and prosecuted in accordance with the regular rules. The hearing shall be conducted and the decision rendered in accordance with Parts Two or Three of Book Three, according to whether appeal or appeal in cassation is instituted.

Section 584

This Chapter shall apply mutatis mutandis in regard of persons who have been arrested for the purpose of undergoing any measure, on the understanding that if the identity is found to have been established, the measure shall be enforced.

Chapter Five. Procedure for the giving of Judicial Notices to Natural Persons

Section 585

1. Judicial notices shall be given to natural persons, as prescribed in this Code and the Criminal Code, by means of:

a. service;

b. sending;
c. verbal notice.

2. Service shall be made by delivery of a judicial letter in the manner prescribed by law.

3. Sending shall be made by means of a letter sent by ordinary or registered post or in a manner set by or pursuant to Governmental Decree.

4. Verbal notice shall be put in writing in an official record or otherwise.

Section 586

1. Judicial notices shall only have to be given by means of service in the cases prescribed by law. Summonses and notices to appear, with which the Public Prosecution Service or the procurator general attached to the Supreme Court is charged, shall always be served, unless otherwise prescribed or permitted by law.

2. In other cases judicial notices shall be given by sending them, unless giving verbal notice is prescribed or permitted by law.

Section 587

1. The delivery of the judicial letter, as referred to in section 585(2), shall be made by post.

2. In urgent cases or, if desirable for any other reason, the Public Prosecution Service may charge the delivery to a **police officer, appointed for the performance of police duties,** or another civil servant or official, insofar as this civil servant or official has been designated for that purpose by **Our Minister of Security and Justice**.

Section 588

1. The delivery shall be made to:

a. the person, who has been deprived of his liberty by law in the Netherlands in connection with the criminal case to which the judicial notice to be delivered pertains, and to the person, who has been deprived of his liberty by law in the Netherlands in other cases designated by or pursuant to Governmental Decree: in person;
b. all other persons: in person or if service in person is not prescribed and the notice is delivered in the Netherlands:
   1°. to the address where the addressee is registered as a resident in the Municipal Personal Records Database or,
   2°. if the addressee is not registered as a resident in the Municipal Personal Records Database, to the place of residence or abode of the addressee, or,
   3°. if the addressee is not registered as a resident in the Municipal Personal Records Database or does not have an actual, known place of residence or abode, to the clerk to the District Court of the district where the case will be brought or was last brought before the court.

2. The delivery to the addressee, who has a known place of residence or abode abroad, shall be given by the sending of the notice by the Public Prosecution Service, either directly, or via the competent foreign authority or agency and, insofar as a treaty is applicable, with due observance of that treaty. Summonses shall be translated in the language or one of the languages of the country in which the addressee resides or, insofar as it is probable that he is only fluent in another language, in that language. In regard of other judicial notices, a translation of the essential parts thereof shall suffice. If the competent foreign authority or agency confirms that the notice has been delivered to the addressee, this delivery shall be deemed to be a service in person, without said confirmation having to be evidenced by any separate record.

3. If in the case referred to in subsection (1)(*b*)(1°) or (2°),

a. the addressee is not present, the delivery shall be made to the person present at that address

and who declares that he is prepared to have the document promptly delivered to the addressee;
b. no one is present, the delivery shall be made to the addressee or a person authorised by him at the location stated in a written message left behind at the address stated in the notice. Delivery to a person authorised by the addressee in writing shall be deemed to be a service in person;
c. if delivery could not be made, the notice shall be sent back to the authority which issued it. If it appears that on the date of delivery and at least five days thereafter the addressee was registered as resident in the Municipal Personal Records Database at the address stated in the notice, the notice shall then be delivered to the clerk to the District Court of the district where the case will be brought or was last brought before the court. In that case, the Public Prosecution Service shall promptly send a copy of the notice to that address and this shall be noted in the record of delivery referred to in section 589.

4. Further rules may be set by or pursuant to Governmental Decree in the interest of a proper implementation of this section.

Section 588a

1. In the following cases a copy of the summons or notice calling the suspect to appear at the court session or court session at a later date shall be sent to the address last given by the suspect:

a. if, when the suspect is being questioned for the first time in the criminal case, he has given the civil servant questioning him an address in the Netherlands to which notifications about the criminal case may be sent;
b. if, at the start of the court hearing at the court of first instance the defendant has given an address in the Netherlands to which notifications about the criminal case may be sent;
c. if, on exercise of a legal remedy in the case concerned by or on behalf of the suspect, he has given an address in the Netherlands to which notifications about the criminal case may be sent.

2. The suspect may change the address, referred to in subsection (1), by making a statement in person at the office of the Public Prosecution Service which is handling the case.

3. The sending of a copy, as referred to in subsection (1), may be omitted if:

a. the address given is the same as the address to which the summons or appearance notice must be delivered pursuant to section 588;
b. the suspect, after having given on a previous occasion, as referred to in subsection (1), an address to which notifications about the criminal case may be sent, explicitly indicates on a following occasion that he wishes to change this address;
c. the summons or appearance notice has since been delivered to the suspect in person or to another person as referred to in section 588(3)(b).

4. In the case of sending, referred to in subsection (1), the applicable period of time set for the summons or the appearance notice shall be observed.

5. Further rules pertaining to the application of this section, may be set by or pursuant to Governmental Decree .

Section 589

1. A record shall be prepared of each delivery, as referred to in section 585(2), which shall state:

1°. the authority which issued the judicial notice;
2°. the number of the letter;
3°. the person for whom the letter is intended;
4°. the person to whom the letter has been delivered;
5°. the place of delivery;
6°. the date and the hour of delivery.

2. If the judicial letter is dealt with in accordance with the first sentence of section 588(3, first sentence) and (c), then the record shall state the date of delivery of the document at the address of the person for whom it is intended.

3. The record shall be prepared truthfully and signed immediately by those persons charged with the delivery, insofar as it pertains to their findings and acts at the place of those findings and acts.

4. The record shall be set in the form to be established by **Our Minister of Security and Justice**. He may set further rules in the interest of a proper implementation of this section. These rules shall be published in the Government Gazette.

Section 590

1. The court may, if delivery was not made in accordance with the provisions of sections 588(1) and (3) and 589, declare the service null and void.

2. If the addressee is registered as a resident in the Municipal Personal Records Database, but it appears at the court session that he is actually residing at a different address, the court may order that the suspect, who has not appeared, be given notice to appear.

3. In the case of failure to comply or comply on time with the obligation to send notice pursuant to section 588a, the court shall order that the court hearing be adjourned unless:

    a. a circumstance has occurred from which it follows that the date of the court session or court session at a later date was known to the suspect beforehand, or
    b. a circumstance has otherwise occurred from which it follows that the suspect does evidently not consider it important to appear at his trial.

Part II. Costs

Section 591

1. The former suspect or his heirs shall be awarded a reimbursement, to be paid out of the Treasury, for the costs which were charged to the former suspect pursuant to the provisions laid down by or pursuant to the Fees in Criminal Cases Act [*Wet Tarieven in Strafzaken*], insofar as said costs were incurred in the interest of the investigation or on account of withdrawal of summonses or legal remedies by the Public Prosecution Service were incurred for no purpose.

2. The amount of the reimbursement shall be set on application of the former suspect or his heirs. The application must be submitted within three months after the conclusion of the case. The reimbursement shall be set by the court determining questions of fact before which the case was being prosecuted, or was last prosecuted, when it was concluded, and namely by the judge or justice in the single-judge division who tried the case, or if the case was tried by a three-judge division, by the presiding judge or justice thereof. The judge or justice shall issue a writ of execution for the amount of the reimbursement.

3. The court in chambers shall hear the application at a public court session.

4. The clerk to the court shall pay out the reimbursement.

5. All the forgoing shall apply mutatis mutandis to proceedings for the purpose of establishing the identity of convicted persons or other sentenced persons, to the hearing of applications as referred to in sections 509j and 509o or the appeal as referred to in section 509*v* and to the hearing of written complaints as referred to in sections 552a to 552b inclusive.

Section 591a

1. If the case is concluded without imposition of a punishment or measure and without application of section 9a of the Criminal Code, the former suspect or his heirs shall be awarded a reimbursement, to be paid out of the Treasury, for the travel and accommodation costs incurred for

the purpose of the investigation or the trial of the case, calculated under the terms of the provisions laid down by or pursuant to the Fees in Criminal Cases Act.

2. If the case is concluded without imposition of a punishment or measure and without application of section 9a of the Criminal Code, the former suspect or his heirs may be awarded a reimbursement, to be paid out of the Treasury, for damage or loss which he has actually incurred as a result of loss of time due to **the prosecution** and the trial of the case at the court session, as well as, except insofar as section 44a of the Legal Aid Act applies, for the costs of a defence counsel. Reimbursement of the costs of a defence counsel during police custody and pre-trial detention shall be included therein. Reimbursement of these costs may also be awarded in the case of conclusion of the case with the imposition of a punishment or measure for an offence for which pre-trial detention is not permitted.

3. The preceding subsections shall apply mutatis mutandis to parents of a minor suspect, who have been given notice to appear pursuant to section 496(1).

4. Sections 90, 91 and 591(2) to (5) inclusive shall apply mutatis mutandis.

5. If the former suspect becomes deceased after submission of his application, the reimbursement shall be awarded to his heirs.

Section 592

1. The person concerned may be awarded a reimbursement, to be paid out of the Treasury for the account of the budget of the examining magistrate or the public prosecutor, for the costs of surrender or transfer of objects pursuant to an order of the examining magistrate or the public prosecutor.

2. The person concerned may be awarded a reimbursement, to be paid out of the Treasury, for the costs of complying with a request to provide data or to assist in the decryption of data pursuant to sections 126m, 126n, 126nc to 126ni inclusive, 126t, 126u, 126uc to 126ui inclusive and 126zja to 126zp inclusive. The sum of such reimbursement may be lower insofar as the person to whom the order was directed has not kept financial records and the accompanying books, documents and other data carriers for that purpose as prescribed in section 10 of Book 2 and section 15i of Book 3 of the Civil Code.

3. The examining magistrate or the public prosecutor shall issue a writ of execution.

Section 592a

If an injured party has joined in the proceedings, the court which renders a judgment, as referred to in section 333 or 335, shall decide on the costs incurred and still to be incurred for the purpose of enforcement by the injured party, the suspect and, in the case referred in section 51g(4), his parents or his guardian.

General Provision

Section 593

[1.] The General Extension of Time Limits Act shall not apply to time limits set in sections 50(2, second sentence), 345, 379 and 396.

[2.] For the purpose of application of the General Extension of Time Limits Act, the time limits set in sections 265(1), 370(1) and 398(1°) shall be deemed to be time limits within the meaning of section 1(2) of that Act.

Final Provision

The coming into effect of this Code shall be further regulated by the law.

We hereby ordain and command that this Act shall be published in the *Bulletin of Acts and Decrees* and that all Ministerial Departments, Authorities, Executive Bodies and Civil Servants to whom this shall be of concern, shall see to its careful enforcement.

Given at The Hague, the 15th of January 1921

The Minister of Justice,
HEEMSKERK.

WILHELMINA.

Issued the twenty-eighth of January 1921.

The Minister of Justice,
HEEMSKERK.