

Structuring prosecutorial discretion: Prosecutorial sentencing guidelines in the Netherlands

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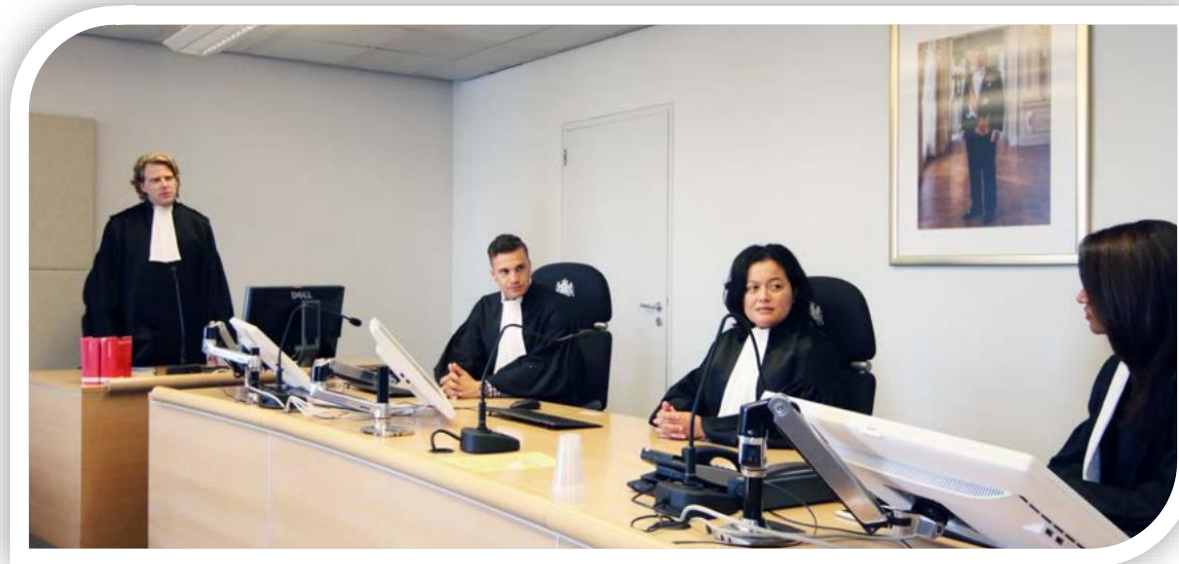
Dutch context

- Broad discretionary powers:
 - General minimum punishment
 - Offence specific maximum penalties.
- Prosecutor: sentence recommendation.



Guidelines for the prosecutor

- Since the '70's
- Uniformity and transparency
- Priorities
- Adult defendants, crimes that occur frequently.
- Type of disposal, type of punishment and severity of punishment
- Guidelines state a 'starting point', next the prosecutor can tailor the punishment recommendation



Guidelines for the prosecutor

Since `90's: Computer assisted calculation system.

Points for:

- Basic factors (value of stolen goods, harm of the victim)
- Offense-specific factors (random victim, public servant as victim, discriminatory motive)
- Legal factors (multiple offenders, provocation, attempt)
- Recidivism regulations
- Ability to bear financial penalties
- Special circumstances (e.g. financial compensation for victims already paid).

Examples

Offence	Legal maximum	Guideline
Shoplifting (< € 50)	4 years prison	€ 200 fine
Home burglary	9 years prison	6 months prison
Assault	3 years prison	100h community service
Robbery (threat of weapon)	9 years prison	15 months prison
Attempted manslaughter (kicking against a head)	8,3 years prison	14-34 months prison

Current guidelines

- Also for juveniles
- Officially published (n ≈ 80)
- Posted on the website of the Prosecution's Office
- The defendant can rely on them
- During trial the prosecutor always has to give reasons for his sentencing recommendation.
- If the judge deviates a lot from the sentencing recommendation of the prosecutor, he has to give reasons.
- Guidelines can be used for 80% of the cases

Example current guideline: Assault

Circumstance	Standard Penalty Guideline	First Offender	1× Recidivism*		Multiple Recidivism*
No injury, but pain	Dry slap	€400 Fine	5y 2y	48 hrs Community service 48 hrs Community service / 3 weeks prison	1 month prison
	Multiple punches / kicks	32 hrs Community service	5y 2y	8 hrs Community service 48 hrs Community service / 3 weeks prison	1 month prison
	Strike/blunt weapon, headbutt, thrown object	60 hrs Community service	5y 2y	90 hrs Community service 90 hrs Community service / 6 weeks prison	2 months prison
Minor injury	Dry slap	€750 Fine	5y 2y	80 hrs Community service 80 hrs Community service / 5 weeks prison	6 weeks prisons
	Multiple punches / kicks	60 hrs Community service	5y 2y	90 hsr Community service 90 hsr Community service / 6 weeks prison	2 months prison
	Strike/blunt weapon, headbutt, thrown object	120 hrs Community service	5y 2y	180 hsr Community service 180 hsr Community service / 3 months prison	4 months prison
More serious injury	Dry strike	80 hrs Community service	5y 2y	120 hrs Community service 120 hrs Community service / 2 months prison	11 weeks prison
	Multiple punches / kicks	100 hrs Community service	5y 2y	150 hrs Community service 150 hrs Community service / 10 weeks prison	14 weeks prison
	Strike/blunt weapon, headbutt, thrown object	150 hrs Community service	5y 2y	220 hrs Community service 220 hrs Community service / 15 weeks prison	5 months prison
Stabbing weapon or object treated as such	Customized penalty or see Articles 302/45 Sr	—	—	—	—

Special Considerations

The following factors **increase the severity** of the sanction:

- Joint perpetration (excluding public violence)
- Vulnerable victims (including domestic violence) → use domestic violence or child abuse guideline instead
- Offenses against civil servants, other officials, or journalists (+200%)
- Event-related (+75%) or soccer-related (+50%)
- Alcohol/drugs combined with (nightlife) violence (+75%)
- Premeditation, serious bodily injury, or resulting in death (customized)
- Aggression in traffic
- Discriminatory motives (mandatory prosecution +100%)

Thank you



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