Prison policy, prison regime and prisoners’ rights in the Netherlands under the 1998 Penitentiary Principles Act

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Introduction

An increasing number of people are incarcerated for a short- or long-term present in Dutch penitentiary establishments annually. Over the last twenty-five years, the composition of the Dutch prison population has changed considerably. In comparison with the prison population in the 1980’s, in present day the Netherlands, prisons contain prisoners of a different type detained on various titles and when convicted serving much longer sentences for a different kind of offences.

Prisoners are by no means a homogeneous group. They vary in age, gender, nationality, ethic background, education, et cetera. The group also varies on the reason for being deprived of their liberty. Some are detained awaiting (pending) trial – the pre-trial detainees – others are detained to serve a prison sentence either imposed by a court as sentence or imposed by a court as a sentence substituting the non payment of a pecuniary sentence. A third group is detained in order to implement an entrustment order imposed by the court as sentence or in combination with a prison sentence for convicts who due to a mental disorder cannot be held fully criminal responsible for the offences committed. A fourth group is prisoners who are detained as a result of a penal measure imposed by the court against persistent offenders – mainly drug or alcohol addicts.

Finally there is a group of prisoners who are detained in deportation centers for illegal foreign nationals in order to ensure their deportation.

The Minister of Justice is ultimately responsible for the Prison Administration and the development of prison policy. Regular prison memoranda or prison policy plans are issued. They indicate changes in prison philosophy and regime policies.

Between 1953, when the Principles of Prison Act came into force, and 1999, when its successor the Penitentiary Principles Act came
into effect, four major prison memoranda have been published, showing that high expectations of the rehabilitation ideal have been gradually altered towards a more down to earth philosophy.

The latest prison-memorandum was issued in 1994. In Dutch it is called ‘Werkzame detentie’. It means both effective incapacitation and laborious or industrious detention. Security, humanity and efficiency became the keywords for this new prison policy.

The main reason for developing a new prison policy was the changing characteristics of the prison population. There are an increasing number of prisoners serving very long prison sentences; there are more aggressive prisoners and prisoners with a high escape-risk or psychotic and drug addicted prisoners.

There were also an increasing number of non-native prisoners who would be expelled after their release. The number of nationalities, foreign languages, religions in prison, et cetera was growing annually.

Another reason to reconsider prison policy was the enormous extension of the penitentiary capacity since the 1982 prison memorandum. During the last decade, the prison rate doubled and the Netherlands had one of the fastest growing prison populations in the world.

The incarceration rate per 100,000 inhabitants grew from 45 in 1990 to more than 128 in 2006 (see <www.prisonstudies.org>.

In recent years, no memorandum has been issued but that does not mean that no major changes in the prison policy have take n place: recently the organization has been restructured and a new detention concept has been developed (De nieuwe inrichting), tailor made detention and treatment for adults have been implemented, multi-person cells have been introduced and establishments for persistent offenders have been opened.

Despite major prison constructions activities in recent years, projections by the Ministry of Justice suggest the need for ever more capacity.

The Dutch Prison Service was reorganized in the mid 1990’s after a lengthy and complex process. Until then, the management of Dutch prisons and penitentiary institutions was directed by the Central Prison Directorate of the Ministry of Justice. Almost all decisions concerning personnel and prisoners were made by this Directorate. A so-called deconcentration process put an end to this situation. Since then, the prison governors are vested with powers that previously belonged to the Prison Directorate. In 1995 the National Agency for Custodial Institutions was established. The office is located near the Ministry of Justice. The Agency has four main divisions: a prison division, a division for Entrustment Orders Treatment Institutions, a division for
juvenile custodial institutions and a division for special detainees like drug couriers (the so-called drug swallowers) and illegal immigrants who are detained in order to ensure their deportation. Within the National Agency there are departments for transport of prisoners, for religious care and for training of prison wardens. The task of the Agency is to coordinate the decentralized management, and to develop and implement a system of planning and control.

The deconcentration process brought a division between strategic prison policy-making and implementation of this policy. The former is the task of the Directorate General, Prevention Youth and Sanction of the Ministry of Justice, the latter the task of the National Agency and prison governors.

The National Agency is supervised by a number of inspectorates such as the Inspectorate of health for the health care in prison, the Inspectorate of labor for the labor conditions in prison. Since January 2005, the Agency is also supervised by the Inspectorate for the Implementation of Sanctions, which supervises the main tasks of the Agency: the realization of security and the treatment of prisoners.

This division between policy-making and policy implementation is very favorable to prison organization, because local management has ample opportunity to make its own decisions in personnel, financial and material matters.

The 1998 Penitentiary Principles Act

The main legislation on the enforcement of prison sentences is the 1998 Penitentiary Principles Act (PPA: *Penitentiaire beginselenwet*), and the attached Penitentiary Rules (a Royal Decree) in which principles laid down in the PPA are elaborated in more detail. The Act replaced the 1953 Principles of Prison Administration Act and considerably changed the regulations on differentiation of penitentiary establishments or institutions and on the selection of prisoners. As of January 1, 1999, the Act is in effect.

The core of the Penitentiary Principles Act consists of four topics. The Act:
- legalizes some restrictions of human rights;
- takes as a starting point that the implementation of prison sentences does not take place under the principle of separation, but under the principle of association;
- guarantees a minimum of facilities and activities for prisoners; and
- provides prisoners with legal safeguards.
The guiding principles of the Penitentiary Act are: the principle of resocialisation, the principle that a sanction is implemented as soon as possible after it is imposed, and the principle that the incarcerated person is to be subjected to as few restrictions as possible.

The Penitentiary Principles Act, furthermore, covers the principles governing the regulation of different types of penitentiary institutions. The three different types are:
- remand houses, mainly for implementation of pre-trial detention orders and for implementation of certain prison sentences or other kinds of deprivation of liberty;
- prisons for the implementation of prison sentences at large; and
- institutions for persistent offenders.

Penitentiary institutions do not include institutions for the treatment of those detained under an entrustment order due to their mental disorder at the time of committing a crime, or the institutions for juvenile detainees. The Penitentiary Principles Act is not applicable to these institutions. A separate set of Principle Acts exists for the deprivation of liberty of juveniles and the implementation of entrustment orders.

The Penitentiary Principles Act also elaborates the principles in respect of classification of prisons, level of association, selection of prisoners, use of control on and violence against prisoners, degree of contact with the outside world, social, spiritual and medical care, prison work, recreation, discipline and the complaint procedure for prisoners.

The PPA is both applicable to prisoners and to pre-trial detainees. As a rule, the legal position of a pre-trial detainee is similar to that of a convict. The PPA provides rights and obligations for all persons detained, regardless of the title of detention – prison sentence, pre-trial detention order, fine default detention, detention of persistent offenders measure or expel detention order (sect. 1 PPA).

Prison sentences or measures depriving someone’s liberty are to be served in a penitentiary institution or through participation in a penitentiary program (sect. 2 PPA).

**Penitentiary programs**

The new Penitentiary Principles Act (sect. 4) and Penitentiary Rules (sect. 5 and further) have introduced the penitentiary programs as a back-door variant of community sanctions. Characteristic of a penitentiary program is that part of the sentence is not served in prison but outside prison, e.g. at home, in a drug rehab centre et cetera.
Penitentiary programs are discretionary programs. The prison governor may nominate prisoners for a penitentiary program and a selection officer makes a decision based upon various factors, such as the prisoner’s attitude and behavior, recidivism risks and their ability to cope with responsibilities due to extended liberties. Participation in these programs can be granted to motivated detainees when:

- they have served at least five-sixths of their sentence or at least six months;
- the remaining term to serve is at least four weeks and one year maximum; and
- no contra indications for participation in a penitentiary program exist.

Not eligible for participation in a penitentiary program are prisoners who still have to serve their entrustment order, prisoners who after serving their sentence will be expelled or deported or have to leave the country and prisoners who serve their sentence in an extra high security prison. The convicted person is supervised by the person who is responsible for the daily running of the penitentiary program. As a rule, this is a probation officer. The prisoner is obliged to participate in activities aimed at reintegration and rehabilitation outside the prison. The penitentiary program consists of activities for at least 26 hours per week aimed at improving social skills, improving the likelihood of later employment, the provision of education and special medical or psychiatric care, or a general attempt to ensure adequate preparation for the return to free society. Penitentiary programs are combined with electronic monitoring during at least the first one third term of the period of the penitentiary program.

**Types of penitentiary institutions**

Prior to the introduction of the 1998 Penitentiary Principles Act a number of statutory criteria were developed for the classification of prisoners, such as age of the prisoner and the length of prison sentence. The PPA no longer recognizes age and length of sentence as statutory criteria for differentiation; however, in practice they still play a role. The differentiation based on gender is still in use. Men and women may be detained in one penitentiary establishment but as a rule, in separate wings. They may, however, participate in common activities. The main differentiation criterion since the PPA came into force is the level of security.
The various penitentiary establishments can be distinguished on the basis of their destination and their level of security. There are five levels of security (sect. 13 PPA):
- very low security;
- low security;
- normal security;
- extended security;
- extra high security.

There are at present (2007) twenty penitentiary establishments for adults, many of which include one or more remand houses and one or more types of prisons. In nine penal establishments, separate wings or departments exist for female prisoners. Dutch penitentiary establishments are rather small. The largest has a capacity of approximately seven hundred cells. The total detention capacity for adults is around 18,000.

Many prisoners are so-called self-reporters. Those are convicted persons who are not serving their sentence immediately on the imposition of the prison sentence. Those convicted persons are not deprived of their liberty at the time the prison sentence is imposed but, after a period of time, they are summoned to report to a penitentiary establishment to serve their prison sentences. It is assumed from the fact that they themselves report, that they accept the sentence and will not try to escape. They therefore present a minimal security risk and can be kept in a restricted security penitentiary establishment.

Penitentiary establishments are as a rule either prisons, remand houses or establishments for persistent offenders. In special cases, the Minister of Justice may designate an institution as both a remand house and a prison or an establishment for persistent offenders (sect. 9 subsect. 1 PPA). The prisons account for a total of approximately 4,600 (2007) cells. The various kinds of prisons are:

*Extra high security level prisons*

After a number of spectacular escapes in 1991, the system of extra high security units was introduced for prisoners who present a high escape risk, and who were labeled as extremely dangerous. In four prisons, units of twelve cells each were established. The weak point of the extra high security unit was that facilities for outdoor exercise, sport and visits were not located in
the unit but in other parts of the prisons. Several extremely dangerous prisoners attempted to escape, using extreme violence and taking hostages. A decision was made to build one fully-fledged EHS-prison in Vught. All the facilities are inside the walls of the prison. The EHS-prison in Vught comprises eighteen cells (12 prison cells and 6 remand house cells). In fact, it is a prison within a prison. Given the limited capacity, placement in an extra high security prison takes place only after a thorough assessment of risks of escape. Prisoners who present an extremely high escape risk, and whose escape would be unacceptable for society in terms of recidivism for serious violent crimes or in terms of considerable societal unrest, may be placed in an EHS-prison. Detention in an extra high security unit is for a period of six months but can be extended each time by six months, provided that the risks of escape still exist. The prisoner as a rule will serve the final 18 months of his sentence in a lower security level prison. A prisoner can challenge a decision to place him in an EHS-prison or to renew his placement.

The regime in the EHS-prison is very restricted. No contact is allowed with prisoners of other units. Regular body-checks and special cell-check take place. Visits by family and friends take place in a room separated by a glass wall. Visitors are searched prior to the visit. Prisoners are checked prior to and after the visit. All talks with visitors are recorded. In exceptional cases the prisoner has to wear handcuffs outside the cell. At least twice a week forty five minutes sport is allowed, and at least six hours a week recreational activities are permitted.

*Extended security level prisons*

Prisons with a level of extended security hold prisoners that pose an extended risk of escaping or an extended societal risk. These prisoners are not fit for detention in full association with others or are suffering of mental disorders. Many of them are violent, have a subversive nature or have a manipulative attitude. In these prisons as a rule an individual regime is applied.

*Normal security level prisons*

Prisons with a normal security level are as a rule for prisoners who have to serve a remaining detention period of three months and are fit for a full association with other inmates or who did not report themselves after being requested to do so. They are arrested and placed in a normal security level prison.
Low security level prisons

These prisons house two kinds of prisoners: prisoners serving the last phase of their (long) sentence and so-called self-reporters, detainees who, at the time they were sentenced by the court for less than two years, were not detained in pre-trial detention, and who report themselves after having been requested to do so.

Prisoners generally begin their sentence in a normal security level prison but can be placed in a prison with restricted security when he does not pose an escape risk or societal risk and still has to serve between six and eighteen months, and furthermore shall have a leave address, because in this prison he might have the right once every month for a weekend leave.

Very low security level prisons

These prisons play a role in the detention phasing. Prisoners in these prisons sometimes come from low security level prisons. Prisoners in very low security level prisons do not form escape risks or societal risks. Their sentence must have been at least six months imprisonment and at least half of the sentence must have been served. The remaining part of the sentence must be at least between six weeks and a maximum of six months. In these prisons, there are possibilities for re-education and participation in labor projects.

There are at present around 12,500 (2007) places available in remand houses. The major kinds of remand houses are:

- Police cells at police stations, in cases of detention capacity problems, may be used to detain persons who are remanded into custody or have been arrested for a crime. The stay in a police cell is restricted to ten days maximum. The PPA is not applicable in police cells.
- Remand houses for pre-trial detainees. The daily activities mainly consist of prison labor. A pre-trial detainee may take part in educational programs. Participation in programs is not obligatory.
- Remand houses for convicts who have to serve a remaining deprivation of liberty of three months maximum.
- Remand houses for detention of illegal immigrants who are not allowed to enter the country or who are ordered to leave the country (sects 56 and further Aliens Act). Detention of illegal immigrants is an administrative measure, but is executed in a secure institution. The conditions are identical to those for pre-trial detention. Around twenty five percent of the annual remand house population consists of illegal immigrants.
- Penitentiary establishments for persistent offenders.
In 2001 a new custodial measure was adopted: compulsory detention of persistent drug addicts who frequently commit less serious offences such as public violence, shoplifting or vandalism, but are nonetheless considered a serious public nuisance. In view of the pettiness of the committed offences, they were as a rule punished with short prison sentences. Therefore, it was not possible to start treatment in a penitentiary setting effectively. The new measure authorizes confinement of addicts in a special ‘penitentiary treatment centre’ for up to two years. During this period, detention will be used to get the addict to cooperate in a treatment program aimed at detoxification, normalization, and reintegration.

In 2004 the compulsory detention of persistent drug offenders was incorporated in a measure of compulsory detention of persistent offenders. The measure can be imposed by the court at the request of the prosecution service for an offender:

- who has committed a crime for which pre-trial detention can be ordered (crimes which carry a statutory maximum penalty of less than four years of imprisonment or specifically designated crimes), and
- who has, in the previous five years, been sentenced at least three times to a deprivation of liberty or community service, and
- who is likely to re-offend,

provided that the safety of individuals or goods requires such a measure.

Unlike the compulsory detention of persistent drug offenders, the 2004 measure mainly has as its objective the reduction of serious public nuisance. When the offender is addicted to drugs or suffering from a disorder related to the crime, the measure may contribute to the solution of the addiction or disorder, e.g. by a compulsory drug rehab.

The term of the compulsory detention is, as a rule, two years, and in exceptional cases, one year. The compulsory detention can be imposed on probation.

Detention for persistent offenders can be combined with a day program or without a day program. A day program is only offered to those who are motivated. The program focuses on the development of skills related to:

- self care and hygiene;
- labor;
- education;
- spending of leisure time;
- financial administration;
- unsupervised settling; and
- social attitude.
The Minister of Justice determines the designation of each penal establishment or wing and determines for each penitentiary institution the level of security. The Minister may designate parts of a penal establishment as a wing with a separate designation. Furthermore the Minister sets the rules concerning placing and transfer of prisoners.

*Wings for suspects or convicts of terrorist crimes*

Recently two special wings for terrorist inmates have been established, an eighteen cell wing in the penitentiary establishment in Vught and a twelve cell wing in the penitentiary establishment of De Schie in Rotterdam. The level of security in both wings is that of extended security. The main reason for concentrating the detention of terrorist suspects and convicts in two separate wings is the fear that they would otherwise infect other inmates with their fundamentalist ideas. Therefore the risk for radicalization and recruitment needed to be reduced.

All terrorist inmates operate under an individual regime. The prison governor decides whether the detainee may take part in individual or common activities. Juvenile terrorist inmates (> 16 years) are detained in the same wing with adult terrorist inmates. The Netherlands has made a reservation with regard to section 27 sub c Convention on the Rights of the Child to this effect. Every twelve months the penitentiary consultant assesses whether a prisoner’s stay in the special wing for terrorists has to be continued. The governor may refuse visits by visitors or telephone calls with persons for a total of 12 months in order to maintain order and safety of the prison establishment, to protect public order and national security, to prevent criminal offences and to protect victims of crime.

The main objective of the regime in the wing for terrorists is re-socialisation. The prisoners’ rights are similar to the prisoners’ rights in regular prisons; there is however no possibility offered to take part in labor activities. Many prisoners’ rights in the terrorists wings may be restricted in order to maintain order and safety in prison, to protect public order and national security, to prevent criminal offences and to protect victims of crimes.

*Selection of prisoners*

The variety of penitentiary institutions for adults means that detainees have to be selected. Selection is made by a penitentiary consultant (sect. 15 PPA) on the basis of a risk profile. Such a profile is made for each detainee and consists of data on his previous attitude in penitentiary establishments, the
characteristics of the crime committed, his financial position and, if applicable, his membership of a criminal organization. Using this risk profile, the penitentiary consultant decides in which penitentiary institution a person must serve his or her sentence. If during the course of the sentence it becomes clear that the person does not fit in well with the institution selected, he can be transferred to another institution. In practice, one of the most important reasons for transfer is that the convicted person is not fit to associate with other inmates. A detainee has the right to lodge a complaint against his committal to the selected penitentiary institution, or his transfer to another institution. The complaint is dealt with by the penitentiary consultant (sect. 17 PPA). When the prisoner still disagrees with the decision of the penitentiary consultant, he can lodge an appeal with the Council for the Administration of criminal justice and youth protection in The Hague, which serves as an administrative High Court.

Level of association in prisons

Prison sentences as a rule are implemented in association. The Minister of Justice decides the level of association of each individual penal institution (sect. 19 PPA). A distinction is made between complete freedom of association (sect. 20 PPA), and limited association (sect. 21 PPA). Under the regime of complete freedom of association, prisoners spend their daytime in common quarters. They have common meals, common recreational activities and common labor activities. The penitentiary rules lay down the number of hours weekly they can spend outside their cells. At present, they may spend at least 59 hours outside their cells and between 18 hours and 63 hours activities are offered. Under limited association, prisoners are confined to their cells except for periods of communal or group activities. In the case of complete association, communal activities are the rule and confinement to cell an exception; in the case of limited association it is the other way round. Thus, for example, in a prison for those deemed unfit to mix with other prisoners, association is restricted to work, outdoor exercise, church services and, in special cases, educational and recreational activities. The level of association can therefore vary from being let out of the cell only for work, exercise, church and recreation, to staying out of the cell all day long. Whatever the level of association, night-time is always spent in the cell. In order to decide under what level of association a prisoner’s sentence will be implemented, the Minister of Justice sets criteria. Based on these criteria, a
decision is taken as to whether a prisoner is placed in a single cell or in a common cell with two or more prisoners. For prisoners who are not able to serve their prison sentence in full or restricted association with others, an individual regime is applied (sect. 22 PPA). The characteristic of an individual regime is that even on a daily basis it can be decided whether and to what extent the prisoner is fit to participate in common activities. Otherwise he has the right to take part in activities without association with others.

Until 1993, the Dutch prison system operated a principle whereby no more than one prisoner may occupy each cell. By force of circumstances, in particular the lack of prison capacity in the early 1990’s, the one-prisoner-per-cell rule came under pressure. Exceptions to the rule were adopted. Since 1993, prisoners for fine default, and those who are placed in detention due to an expulsion order, may be accommodated in a common cell. Furthermore, in emergency situations pre-trial detainees and prisoners in remand houses may be accommodated in common quarters, which, since the adoption of the 2002 Provisional Act on Emergency Capacity for Drug Traffickers (State Journal 2002, 124), is also the case for the so-called drug mules or drug swallowers. The regime for these drug couriers was not covered by the PPA but by the Provisional Act. The regime was of a very sober character with restricted rights. Prisoners did not have the right to take part in prison labor, education, recreation and sports. Although the Act expired in 2005, the sober regime is still applied.

Since the reform of section 21 PPA in 2004, prisoners who serve their sentence under a limited association in some penitentiary establishments can be placed in a double cell provided that they consent. Recently, a new prison for short-term prison sentences has been constructed in which six prisoners per cell are housed as a pilot. By placing two prisoners in a cell, prison capacity can be extended and there seems to be a constant need for more capacity. One can question whether a prisoner’s consent is needed for him to be placed in a double cell. The majority of prisoners serve only short-term prison sentences. For them a double cell or a multi-person cell as a rule may be appropriate. The reconstruction of single cells into double cells will have beneficial effects on prison capacity and may also have beneficial effects on the prison regime because money used for the construction of new prisons cannot be spent for prison regime activities.
Prison regime

The 1994 prison memorandum formulated the new prison policy. The core of that policy was that a standard regime for all detainees in closed (secure) penitentiary institutions would be applied, in which productive labor for 26 hours was a central element. The intention was that labor would be profitable and could increase the budget of the penitentiary institution. Next to the 26 hours of labor, a daily activity program including open air visits, recreation and sports was offered.

Labor, however, never became the core of regime activities nor became profitable. Nowadays in virtually all remand houses prison labor has been abolished due to high costs and small profits. This means that pre-trial detainees spend most of their time in their cells.

In 2003 proposals for a new prison regime were formulated, aiming at a flexible and functional implementation of deprivation of liberty sanctions and measures. The effect of these proposals was that the day program in the regime of full association is 59 hours minimum of which between 18 hours and 63 hours should be offered for activities and visits. There exists a minimum of 18 hours and a maximum of 63 hours for activities and visits for the regime of restricted association. For detainees this means that only between the hours of 08.00 and 17.00 hours can they have activities outside their cell and that an evening program is no longer offered. At 17.00 hours, detainees are locked in their cells and remain there until 08.00 hours the next morning.

The main elements of a day program are:

- **Meals.** In the majority of the prisons, meals are served in the cell except in penitentiary establishments with complete freedom of association. In some penitentiary establishments, prisoners are occasionally allowed to prepare their own meals.

- **Stay at cell.** In order to make it possible for all prisoners to enjoy activities, sometimes other prisoners have to spend time in their cell watching tv, listening to music, writing letters et cetera.

- **Open air visit.** The prisoner has the right to spend at least one hour daily in the open air. In some prisons in summer, open air visits are more frequent or last longer. For prisoners, open air visits are used for exercise, to talk with other prisoners or just to relax.

- **Visit to the library.** There is a library in many prisons. In the library, prisoners can select books or cd’s or can read newspapers or play games. Books and cd’s may be taken to their cells. Sometimes prisoners cannot visit a library but can order books or reviews by selecting these from a list.


- **Creativity.** Prisoners are offered means to express their artistic creativity.
- **Sports/fitness.** Every prisoner may participate in sport activities such as football or basketball or fitness twice a week for at least 45 minutes each time. Bodybuilding and the like is very popular with prisoners.
- **Recreation.** During recreation-time, prisoners can play games (cards, chess, table tennis, play billiards), watch tv or chat together. Recreation time is also used for making telephone calls.

**New detention concepts**

Since 2003, two new detention concepts have been developing. The reasons for developing new concepts are twofold:

- the constant increase of the need of prison capacity; and
- the reduction of the prison service budget.

The increase in the incarceration rate (1992: 49, 1995: 66, 1998: 85, 2001: 93, 2006: 128) is the result of a wider application of pre-trial detention and of a more punitive climate. More short-term prison sentences as well as more long-term sentences are now imposed. Initially the reaction to the increase in prisoner numbers was to construct new prisons. This resulted in a substantial increase to the prison budget. As an unlimited increase of the budget is impossible, a reduction in the budget for other elements, such as certain conveniences and provisions, was the result.

Although the prison budget substantially increased, the increase was insufficient and plans were developed to implement prison sentences more efficiently, effectively and in relation to demand, taking into consideration the need to increase the security for society, the reparation of the legal order and the safety of detainees and prison staff. Against this background, two new detention concepts are developing:

- the Tailored Detention and Treatment for Adults Concept; and
- the Detention Concept Lelystad (hereafter: DCL).

The first concept is still under discussion. Let us therefore look at the second concept, which, since January 2006, has been in operation.

In the new penitentiary institution at Lelystad, there is place for 150 short-term detainees who have (still) to serve four months.

What are the characteristics of DCL?
The first characteristic is that all cells are multi-person cells of 55 m² with three bunk beds. At the footboard of every bed a touch screen is placed...
through which the detainee can watch tv, make telephone calls as long as his budget suffices, put orders through to the prison shop, make an appointment with the prison physician, notify prison staff that he desires halal or kosher food or can read newspapers or books. Every cell is equipped with a microwave to heat meals, with a separate shower and wash stand, a toilet, a washing machine and a dryer. Detainees have to keep their cells clean and do their own laundry.

The cell is unlocked between 08.45 and 12.15 hours and after the lunch between 13.15 and 17.00 hours. Detainees can choose five activities per day: sports, recreation, education and cleaning duty in groups. Participation in the cleaning duty and education is compulsory three times a week.

During the education activity, societal and personal items are discussed such as alcohol and drugs, health and debts. Education takes place through group discussion or e-learning.

The penitentiary institution consists of compartments of five cells each. Detainees do not meet inmates from other compartments.

Only six prison wardens are present for 150 detainees, two of which sit in a room with observation cameras, two who supervise the fatigue duty and the situation in the compartments and two who supervise open air visits, sports and recreation activities.

During the night, two prison wardens are in the observation room. In situations of emergency, a support team can be ordered.

Detainees can communicate through intercom with the observation room. Detainees wear an electronic bracelet which they need to log in their touch screen. The electronic bracelet is furthermore a locator for the tracing and tracking system. In the observation room the position of a detainee is traceable on a computer screen.

The prison wardens all carry a palmtop computer containing information on detainees. Through this computer wardens can communicate and watch the observation cameras.

Furthermore experiments are running with the electronic detection of aggression through voice frequencies.

In order to stimulate good behavior and personal responsibility positive behavior is rewarded. There are four types of rewards: a telephone card of € 5, a pack of hand-rolling tobacco, extra visits or one night in a cell other than his regular one. The most popular reward is the telephone card. Non-compliance with the prison rules may result in a placement in a penitentiary institution with less activities and conveniences.

This rather new detention concept has been evaluated. Neither detainees nor prison wardens have been negative about the regime, although some nega-
tive elements have been expressed: for the detainees, there is too little privacy, too much boredom and idleness; and for the wardens, feelings of insecurity and negative evaluations of the reward scheme for detainees. It may reasonably be expected that the use of electronic devices in the DCL concept will be expanded to other prisons as well.

Although the first concept is still under discussion, the main lines of the Tailored Detention and Treatment for Adults are already set. The basic principle is that the implementation of detention is made dependent on the specific groups of detainees. Based upon two objective criteria – the title of detention and the length of the detention – detainees are divided into three categories (the so-called domains):

- **Pre-trial detainees (domain 1).** These detainees have not yet been sentenced or their sentences are not yet final and appeal or cassation is pending.
- **Short-term detainees (domain 2).** These detainees are serving a (remaining) prison sentence of four months maximum. The court either imposed a short-term sentence or the time to serve is short because the time spent in pre-trial detention is to be deducted from the imposed prison sentence.
- **Long-term detainees (domain 3).** These are detainees who are serving (remaining) prison sentences of more than four months.

The division into three categories affects various factors of the detention regime, the day program and the security measures. For the pre-trial detainees, the day program is restricted to activities such as sports, recreation, religious care, visits and open air visits. For this category, they must be at the disposal of the organs of the criminal justice system (police, prosecution service, court) for a smooth running of the pre-trial investigation or court trial. The short-term detainees receive a basic day program similar to that of the pre-trial detainees, as well as additional practical support to prepare for their return to free society. Long-term detainees receive the basic day program but may also receive a supplementary program consisting of behavioral training provided that they are motivated and suitable. The prison staff receives training to stimulate long-term prisoners into making use of these supplementary programs.
Labor and education are not part of the basic day program. In order for education programs to be effective, they are only offered to those detainees who are imprisoned for a longer period. It is only available for detainees in domain 3. Labor is also only available for long-term detainees. In the past, pro-
ductive labor was a major part of the day program. It was however only profitable in a number of areas yet it consumed part of the prison budget. Prerequisites for prison labor are now that the possibility to take part in prison labor will only be offered when it is budget neutral or profitable. Within these various categories, tailored detention is frequently related to security, accommodation and treatment as well as to the content and intensity of the day program. Furthermore, it is possible to tailor detention in relation to various risk factors (escape, managerial and recidivism risks). Detainees are co-responsible for their own detention track. Good behavior will be rewarded (more visits, more activities); bad behavior will be discouraged by sanctions such as restriction of visits.

Prisoners’ rights

The PPA provides rules for the prison regime and the legal position of detained persons. The main rights are related to contacts with the outside world, the right or duty to take part in prison activities in leisure time or to take part in religious services, aspects of food, clothing, personal belongings, open air visits, medical and mental care, disciplinary measures, safety and order in the penitentiary institution, complaints procedures, and so forth. In the Netherlands, a detainee may have a television and video in his cell, at his own expense, as well as books and a bird or a small aquarium. The model prison rules (huisregels) establish which objects are forbidden in a prison cell. All these objects are statutorily forbidden:
- objects similar to those which have already been provided by the State as inventory of the cell;
- flashes, candles, oil lamps, vibrators, sex puppets, film and video equipment, binoculars, telescopes, photo equipment, a transmitter and communication equipment;
- pets, except one or two fishes to be held in an aquarium not bigger than 40 by 25 by 30 cm, and a birdcage not bigger than 35 by 35 by 50 cm with one or two small birds;
- objects with a discriminating, militant or indecent nature.

The model prison rules determine, sometimes in detail, the provision or possession of other objects such as clothes (7 pairs of underwear), shoes and other personal belongings that may be held in the cell. Objects, other than those explicitly forbidden or allowed, may be allowed or refused by the prison governor. He may allow the prisoner to keep a personal computer, a CD player, an electric kettle and a hairdryer in the cell.
Visits

The inmate has a right to receive visitors for at least one hour per week at the times and places determined in the model prison rules (sect. 38 PPA). Pre-trial detainees, however, who are detained under restrictions set by the examining judge, do not have this right unless the public prosecutor or examining judge issues directions to the prison governor to allow the pre-trial detainees to receive a visitor.

Those who wish to visit an inmate must obtain prior permission by telephone or in writing. Visitors may be refused in the interest of maintaining order and safety of the penitentiary establishment, the protection of public order and national security, the prevention of criminal offences or the protection of victims of a crime.

The governor may limit the number of visitors simultaneously admitted to the detainee if it is in the interest of maintaining order or safety of the penitentiary establishment. The visit takes place in visiting rooms supervised by prison wardens. In visiting rooms, as a rule, other prisoners receiving their visitors are present as well. Individual visits, however, may be granted by the prison governor.

The conversation between the inmate and his visitor may be overheard or intercepted, provided that the prison governor informs the inmate prior to the visit that this may happen.

As a rule, there is no glass or plastic screen between the inmate and his visitor. The governor, however, may decide that such a screen will be placed and that communication must take place through intercom. Visitors must wear an identity card and their clothing may, prior to the visit, be examined for the presence of objects that may be a risk to order or safety in the institution. The examination may also concern objects brought by the visitor. The governor has the authority to confiscate objects for the duration of the visit. The visitor must pass a detection gate. Visitors may not hand over anything to the inmate.

Before and after visiting hours, the inmates’ clothing may be searched or the inmate may be ordered to undergo a bodily examination.

Lawyers may visit their clients without time restrictions. They must identify themselves and pass a detection gate. Their belongings may be examined.

Prisoners serving a long-term prison sentence may be granted the right to receive a so-called non-supervised visit. These visits may be used for sexual relations. The request for non-supervised visits by pre-trial detainees, however, will be granted only in very, very exceptional circumstances. A long stay in pre-trial detention and deterioration of the relationship with the prisoner’s partner are not seen as sufficient reasons for granting a non-supervised visit.
Telephone calls

Except where restrictions have been placed upon a pre-trial detainee, every detainee has the right to have telephone calls with persons outside the penal establishment for ten minutes at least once a week. Telephone calls are at the expense of the detainee, unless the prison governor determines otherwise. The detainee can buy telephone cards in the prison canteen (shop). If he is found in possession of more telephone cards than are needed for regular use, this may constitute an offence against the order in the penal establishment, which may be punished with a disciplinary sanction.

The governor may decide to supervise telephone calls conducted by or with the pre-trial detainee if this is necessary to establish the identity of the person with whom the detainee calls or for the following reasons:
– the maintenance of order or safety in the penal establishment;
– the protection of public order and national security;
– the prevention or investigation of criminal offences; or
– the protection of victims of crimes.

The supervision may include interception or recording of the telephone conversation. Prior to the telephone calls, the detainee must be informed of the nature and reason for the supervision.

The governor may deny the detainee the opportunity to make telephone calls, or may terminate a telephone conversation within the time allotted for the reasons previously mentioned.

The decision to deny the detainee the opportunity to make telephone calls remains in force for a maximum of twelve months.

Free telephone calls without restrictions can be made to persons and bodies listed in section 37 PPA (e.g. judicial authorities, the Ombudsman, and so forth), provided that the necessity and opportunity for those telephone calls exist. No other supervision shall be exercised over these telephone calls than that necessary to establish the identity of the person called. Lawyers frequently complain that telephone conversations are supervised, despite the statutory guarantee that telephone calls with their clients may not be intercepted. The Minister of Justice has issued instructions to prison governors to stop supervision of telephone calls between inmates and their lawyers. Pre-trial detainees, who are detained under restrictions as set by the examining judge, are not allowed to make telephone calls except to their lawyers, in urgent cases at any time, in non-urgent cases during regular telephone hours.

E-mail, telefax and mobile phones are outside the legal scope of section 39 PPA, and therefore may not be used.
Letters and parcels

As a rule, a detainee can send, at his own expense, and receive as many letters as he wishes. The prison governor, however, has the authority to restrict the number of letters in order to maintain order and safety.

The prison governor has the authority to examine covers and other postal items and check the content for contraband. He may also supervise letters or postal items sent by or intended for a detainee. This supervision may comprise the copying of letters or of other postal items. The detainee shall be notified beforehand that letters or postal items will be examined and supervised.

The governor may refuse to distribute certain letters or other postal items and he may confiscate objects if this is necessary in order to maintain order or safety in the penal establishment, to protect public order and national security, to prevent or investigate criminal offences, or to protect victims of – or those involved otherwise in – criminal offences.

Non-distributed letters are returned to the sender, kept for the detainee, destroyed with his consent or handed over to the police in order to prevent or investigate a criminal offence. Each detainee has an unrestricted right to send letters to Members of the Royal Family, Members of Parliament, the Minister of Justice, judicial authorities, the National Ombudsman and the Council for the Administration of Criminal Justice and Youth Protection (sect. 37 PPA).

The right to send and receive letters is also restricted for pre-trial detainees who are detained under restrictions. All letters they send or receive must be checked and supervised.

The refusal by the governor to distribute or post a letter must be substantiated in writing, and signed by the governor.

A late distribution of a letter, because the letter had to be translated, is not a ground for complaint.

On the occasion of a birthday or at Christmas, the detainee may receive a parcel of a restricted value (€33 maximum).

Food, clothing, and personal hygiene

The penitentiary establishment provides the inmate with food (sect. 44 PPA). If the doctor of the establishment prescribes a special diet for health reasons, or if the prisoner is not allowed to eat the regular meal for religious or ideological reasons, special food will generally be provided. The expenses for food are limited but in conformity with the recommendation of the National Nutrition Information Office. Every inmate may buy, at his own expense, supplementary sandwich fillings, fruit, snacks, soft drinks, confectionery,
cigarettes and tobacco in the prison canteen. As a rule, smoking is permitted in remand houses and prisons. The governor may order that smoking is forbidden in certain areas and at certain times. During the daily open-air visit, smoking is always permitted.

The inmate is entitled to wear his own clothes and shoes or footwear, unless these pose a possible risk to order and safety or personal health. He may be obliged to wear specially adapted clothes or footwear during work or sport. If the inmate refuses to wear these clothes or footwear, he may be excluded from labor or sport. The penitentiary institutions take care that clothes are laundered.

For personal hygiene, the penitentiary establishment provides soap, toothpaste, a toothbrush, shaving equipment, a comb and shampoo, and sanitary towels for female inmates. In the prison canteen an inmate may buy supplementary products for personal hygiene. In principle, an inmate may have a beard or moustache. The governor ensures that a hairdresser is regularly available to cut hair, beards or moustaches.
After sport activity, and at least twice a week, an inmate is obliged to take a shower. No right to a daily shower exists, but it is quite often permitted.

*Prison labor*

A detainee has the right to participate in prison labor. The prison governor controls the availability of prison labor, provided that this labor is not in conflict with the nature of the detention.
Convicted prisoners are obliged to perform properly the prison labor ordered, either within or outside the prison establishment. Pre-trial detainees cannot be obliged to work. If they are willing to participate in prison labor, they are to be treated in the same way as convicted prisoners.
Working hours are to be laid down in the model prison rules in conformity with good practice outside the prison.

The Minister of Justice enacts rules concerning wages for prison labor. The prison governor takes care of the assessment of wages and payment.
Those inmates who are obliged to work but refuse to do so, are generally disciplined by way of confinement to their cell or separation in a cell. Other disciplinary punishments, such as deprivation of visiting rights or denial of leave, may be imposed as well.
Those inmates who are not obliged to work and are unwilling to participate in prison labor have to stay in their cell during working hours.
Refusal to participate in prison labor may mean a lack of money to buy tobacco or other canteen-goods (such as extra sandwich filling), no money to rent a TV or pay for telephone cards or stamps. Hence, by refusing to work, a prisoner further diminishes the quality of his stay in prison. Since 1996, penitentiary establishments have been allowed to keep the profit of prison work instead of donating that money to the State-treasury. In exchange for the payment of detainees, no financial subsidy is available anymore. Since 1996, the penitentiary institutions have had to pay the ‘wages’ of detainees themselves.

In 1996, a provisionary set of rules on payment of detainees was introduced. On January 1, 1999, the current Rules on Payment of Detainees came into force. For every hour an inmate works he is paid € 0.64. The prison governor may decide upon a supplementary payment of 100% maximum.

In case there is no work available, or the inmate cannot work due to illness, he receives 80% of the average daily income. Special rules apply to work requiring a higher level of skill. In very low or low security penitentiary establishments, detainees can work outside prison and earn around € 110 per week.

The money an inmate can earn is not a real payment for the work since it is not market related or related to the Minimum Wages Act. It is in fact merely pocket money and the new set of rules does not lead to a substantially higher income for the inmates than in the previous period.

The penitentiary institutions also have to pay for the machinery, the equipment, the depreciation of equipment and the cost of materials.

The canvassing of labor is a task for the prisons themselves. Annually, more than 2.5 million hours are available for prison work.

A number of limitations negatively affect the quality of prison work.

Some limitations concern the inmates. Inmates often originate from deprived social backgrounds. They lack sufficient vocational education. The majority of them have been unemployed or were not used to employment before they ended up in jail. Half of the inmates are foreigners, who may not be able to understand work instructions. Quite a number of inmates are drug addicts or suffering from psychological or psychiatric problems, and so forth. These are important differences compared with the situation ‘outside’. Unlike in the outside world, where employees can be selected on the basis of their capacities and skills, in prisons a selection on the basis of those criteria cannot take place at all, or only to a limited extent.

Some limitations concern labor facilities. Prisons are not constructed like factories, since prison labor was merely incidental to their main purpose. That means that only recently constructed prisons could take into account the emphasis on prison labor. New prisons contain more modern work facilities.
In a number of prisons, reconstruction activities are carried out to improve the work facilities.

Other limitations concern the kind of work that is carried out in prisons. Much of that labor can be called ‘general labor’, which in fact is labor that can be carried out without investment in machineries and equipment, and which does not require intensive coaching or supervision. This work can be repetitive, boring and relatively low grade. The main labor consists of packaging activities. There is also prison work available at a higher level, which requires more special equipment and supervision. This work consists of offset printing, bookbinding, carpentry, metalwork, fabrics and textile fashioning, leather manufacture, and assembly. For this type of work vocational training can be offered. In prisons, there is restricted vocational training for welders, lathe-operators, carpenters, painters and bricklayers.

In recent years, due to budgetary cuts, the expenses to provide detainees with prison labor facilities had to be reduced. The provision of labor facilities annually amounted to tens of millions of Euros. Reduction in these expenses could be realized through a large scale, centralized and demand related prison industry and conform market prices. Furthermore, maintenance labor carried out by prisoners for the penitentiary establishment or labor for governmental organizations could also reduce the expenses for the prison industry. Prison labor in conformity with the level of skills and education of the prisoner may enhance his smooth return into society and reduce his recidivism risk.

Money

The possession of cash money by detainees is as a rule prohibited (sect. 46 PPA). A (pre-trial) detainee must hand over any money he is carrying when he arrives at the remand house or prison. He will be given a receipt for it. The money is kept by the administration and credited to the detainee’s personal account. Any money which is transferred or sent to the detainee is also put into this account. Earnings out of prison labor are added to the personal account as well. From this personal account, a detainee may buy supplementary articles from the prison canteen of up to € 90 maximum, of which € 22.50 maximum may be spent on buying telephone cards. If a detainee does not possess any money when he arrives at the penitentiary establishment, some money may be loaned to him to be deducted from earning out of prison labor. Of course the detainee, in such cases, must be prepared to work.
Religious care

The prison governor has to ensure sufficient religious or spiritual care in his prison, which should as far as possible fit to the religious or ideological beliefs of the detainees (sect. 41 subsect. 2 PPA).

The registration of the religious belief of a detainee is laid down in his individual detention file. On the basis of that registration, he may attend services or contemplative meetings of his choice, but there is no right to do so. The prison governor shall make it possible for detainees to attend religious meetings and services and to have contact with the religious minister of his choice connected with the prison service or who otherwise may visit him on his request. The governor may deny participation in religious meetings and services when the order or safety of the prison demands so (sect. 23 PPA).

Detainees in disciplinary cells may also attend religious meetings except when their behavior will disturb the service.

When a detainee is in pre-trial detention and the judge has ordered that he has to stay apart from other inmates, participation in a religious service as a rule is allowed except when there is no personnel to supervise this separation.

Detainees of various denominations are present in Dutch penitentiary establishments. The major religions present are Catholic, Protestant and Muslim. There is a small group of Serbian/Greek orthodox, Buddhist, Jewish, Hindu and humanist detainees.

Food is provided to specific religious detainees in conformity with religious dietary laws as far as possible. Kosher and halal food is ordered from a special caterer. Kosher food is provided daily, halal food at least three times a week. Unlike kosher food, halal food can be substituted by vegetarian food. Vegetarian food is provided on a daily basis.

Detainees may have in their cells various religious objects, such as a crucifix, prayer rugs, Jewish prayer shawls (Tallit), Buddhist prayer beads, images of Sakyamuni Buddha, the Koran, Koran chains, religious books and reviews. Some objects are forbidden, such as incense sticks and candles, which are used on Shabbat or on Jewish holidays.

For the possession of religious objects the prisoner needs the consent of the prison governor. The governor can refuse a request when the possession of the object is in conflict with the interest of maintaining order or safety in the prison or the interest of limiting the governor’s liability for the objects.
Medical care

Medical care is provided by a physician who is (as a rule, part-time) employed by the penitentiary establishment (sect. 42 PPA). The inmate has a right to consult a physician of his choice, however, at his own expense. The physician or his substitute, employed by the penitentiary establishment, will have regular consultation hours or will be present if this is necessary in the interest of the prisoner’s health and will examine inmates in order to assess whether they are fit to participate in prison labor, sports or other activities. The prison governor is responsible for ensuring that medical care is properly arranged, that medication prescribed by a physician is provided, and that medical treatment prescribed takes place inside or outside the penitentiary establishment.

In many penitentiary establishments, a physician is assisted by one or more nurses who select the requests by inmates to consult the physician in order to set priorities. The costs for medical care are borne by the State, except the costs of consultation of a physician of the prisoner’s own choice. There is one fulltime physician for every three hundred detainees, and one nurse for every fifty.

A physician provides medical care but has other responsibilities as well. He supervises inmates who are, by decision of the prison governor, confined to their cell as a disciplinary measure or placed in an isolation cell as a measure to ensure order. Furthermore, the physician, by request of the prison governor, may perform a bodily examination in cases where there is a serious threat to health.

Medical care includes regular dental care, but on request only. Some expensive or time-consuming dental care like inlays, false teeth, and so forth, is merely provided to long-term prisoners and not to pre-trial detainees, except when the inmate has maintained good dental care prior to his detention and the Dental Care Consultant at the Ministry of Justice gives permission for it.

The number of inmates with mental health problems is increasing. This causes serious problems in penitentiary establishments. Sixty percent of the prisoners have psychological problems due to drug addiction. For inmates who need special psychiatric or psychological help, Individual Treatment Wards are present in penitentiary establishments.

In situations of crisis, mentally disturbed (pre-trial) detainees can be transferred to the Forensic Observation and Treatment Ward (FOBA) in Amsterdam with a capacity of 60 male and 6 female inmates. In the Forensic Observation and Treatment Ward, permanent psychiatric treatment for mentally disturbed inmates is provided. In cases in which a (pre-trial) detainee is, due
to his mental disturbance, unfit to be detained, he may be placed in a forensic psychiatric clinic or in a psychiatric hospital.

A serious problem is presented by HIV-infected prisoners, since a considerable part of the Dutch prison population comes from groups with an increased risk of HIV-infection. Exact data on the prevalence of HIV in Dutch prisons are not available since there is no compulsory testing for HIV. On the basis of conversations, or external symptoms, or other indications, the prison physician may be informed as to whether the detainee belongs to the group of high risk HIV-infection.

A circular on the policy to prevent HIV-infection in prisons has been issued. As to its key features, this policy does not deviate from Aids policy in free society. That policy is based on two pillars: information and prevention. The policy aims at informing prisoners and prison staff of the way in which transmission takes place, and calls for preventive measures to reduce the risk of infection. Prison wardens and prisoners are informed of the nature of the Aids problem, the ways in which infection may take place, and the nature of high-risk behavior. This information serves two goals: taking away needless feelings of anxiety on the one hand, and alerting everyone where necessary on the other.

The Aids policy is set up in such a way that it assumes that every detainee is potentially HIV-positive.

Part of the policy to prevent the spread of HIV is the supply of methadone (for prisoners who are drug addicts) and condoms. The exchange of clean syringes is under discussion.

In spite of numerous measures taken in prison to prevent drugs being brought in, it is generally known that drugs are available in Dutch prisons; mainly soft drugs like hashish or marihuana, but sometimes even hard drugs, such as heroin and cocaine. Drugs are smuggled in by visitors or detainees returning from prison leave or by prison personnel.

There are a number of drug addicts in Dutch prisons that ask for special care. A special drugs discouragement policy has been established. Care and counseling is offered at the Drugs counseling wing.

A number of prisons possess drug-free wings that function autonomously, and are for inmates this wish to kick their addiction. Transfer to a drug-free wing, where the treatment is both of a medical and psychosocial nature, depends inter alia on the prisoner’s acceptance of certain conditions. On the basis of the Penitentiary Rules, the prison governor may – for the benefit of order, security or the smooth operation of the penitentiary institution – require a prisoner to hand over urine for a test on the presence of drugs, order cell inspections or bodily examinations.
Protection against drugs cannot be offered outside the drug-free wings. The possession and use of drugs is of course forbidden and results in the application of sanctions. A positive urine test result or the refusal to submit to such a test will lead to disciplinary sanctions.

Short-term prisoners, who in open society took part in a methadone-program, may get their dose in the prison as well. For long-term prisoners (> six months) who were part of a methadone-program, a gradual reduction of methadone per day is advised by the medical advisor of the Ministry of Justice, except for those addicts with serious psychiatric pathology, or for HIV-infected or pregnant detainees.

Other rights

Every detainee has the right to stay outdoors in open air for at least one hour per day, generally together with other inmates. Where the pre-trial detainee is detained under restriction, he must remain in a segregated area outdoors. The detainee has the right to take part in sports activities at least twice a week for three-quarters of an hour in total, if his health condition is favorable. As a rule, every type of sport may be done that is possible inside a penitentiary establishment. Combat sport is allowed, unless strong contra-indications exist. An inmate has the right to buy protein in order to take part in sports in the penitentiary establishment. Sports primarily consist of sport that is primarily aimed at increasing physical strength, i.e. weight lifting.

Every detainee also has the right to take part in recreation activities for at least six hours per week. More hours per week may be granted if the detainee is deemed to deserve them, for example due to his prison labor efforts. Recreation consists of table tennis, playing chess, watching television, etc.

In many penitentiary establishments there is a library with books and reviews, sometimes in foreign languages. A detainee may borrow books or reviews at least once a week. Books may also be borrowed from public libraries. Personal copies of books may be used after a thorough check on contraband. Books that may cause a danger to the order in the penitentiary establishment may be refused by the prison governor. Detainees may, at their own expense, order newspapers and reviews and rent a television set; they are entitled to stay up-to-date with news and current affairs.

A detainee may also follow educational courses and may participate in other educational activities, to the extent that these are deemed compatible with the nature and duration of the detention and the character of the inmate.
Disciplinary sanctions and special security measures

Disciplinary sanctions can be imposed by the prison governor where the behavior of the inmate is in conflict with good order, security and discipline (e.g. the possession of a small quantity of marihuana or alcohol or serious misbehavior during transport; sect. 50 PPA). Before a sanction can be imposed, the inmate must be heard, preferably in a language that he understands (sect. 57 1 sub j PPA). Disciplinary sanctions are:

- Solitary confinement of two weeks maximum. Solitary confinement is implemented in a cell separate from the premises. The cell contains only a toilet, a mattress and a foam rubber block to sit upon. During solitary confinement, the prisoner may not take part in prison labor and recreational activities. He may, however, receive mail and visitors, attend religious services and he may also spend one hour per day in the open air (sect. 55 PPA). The prison governor may, however, reduce these contacts with the outside world. In cases in which the solitary confinement exceeds 24 hours, the prison governor has to inform the Supervisory Committee and the prison physician or his substitute promptly;
- deprivation of the right to receive visits for four weeks maximum, provided that the behavior was related to the visit; for example where the visitor had attempted to smuggle drugs on the prisoner’s request;
- exclusion from participation in one or more activities for two weeks maximum;
- refusal, withdrawal or restriction of the next prison leave; and
- a fine of two weeks’ wages for prison labor. The prison governor may also impose a sanction where the fine is not paid on time.

The prison governor may also impose a combination of disciplinary sanctions. In cases in which the behavior of the inmate has caused material damage, the prison governor will have to negotiate with the prisoner on the payment of compensation.

The implementation of disciplinary sanctions can be suspended by a probationary period of three months. The prison governor shall immediately give the inmate a reasoned, dated and signed written notification of his decision, and inform the inmate that he can lodge a complaint with the prison complaints committee against any disciplinary sanction imposed (sect. 58 PPA). In addition to disciplinary measures, the prison governor can also impose safety measures. Whereas disciplinary sanctions serve to correct the inmate’s behavior, safety measures can be applied where the order and safety of the penitentiary establishment or the safety or well-being of the prisoner is at stake.
Safety measures are: the exclusion of a prisoner from regime activities or isolation in an isolation cell for two weeks maximum, either of which can be extended by an additional two weeks if circumstances so require. Contact with the outside world can be restricted or excluded, except contact with wardens and prison officers. Due to the far-reaching nature of these measures, the Supervisory Committee and the prison physician have to be informed within 24 hours (sect. 24 PPA).

Furthermore, the prison governor can order that a prisoner’s body be examined if this is necessary to prevent serious risk to the order and safety in the penal establishment or to the inmate’s health. Internal bodily examination includes anal or vaginal examination and the insertion of an endoscope. The examination takes place by a physician or on his instructions by a nurse. This intrusion to the basic rights of the inviolability of the body or the right on privacy (sects 10 and 11 Dutch Constitution) may be necessary if there are serious reasons to assume that the inmate has concealed parts or ammunition of a firearm or cocaine in his body.

**Prisoners’ complaint procedure**

In 1976, the Legal Status of Prisoners Act came into force, since which time prisoners have had the right to lodge a complaint against decisions taken by or on behalf of the prison governor:

- to impose a disciplinary sanction;
- to refuse to distribute or post letters sent to the prisoner or written by him or to refuse prison visits; or
- against any measure imposed by him or on his behalf which infringes the prisoner’s statutory rights.

Complaints also can be filed on the grounds of delayed or the absence of decision-making. No complaints are possible on general rules or regulations, or concerning the actual behavior by, or on behalf of, the governor.

This right is regulated in sections 60-73 PPA. The complaint is put before the complaints committee, which is appointed by the Prison Supervisory Board attached to every prison and consists of three members of this Board. The Chairman of the committee is preferably a member of the judiciary.

In the written complaint, the decision of the governor must be cited and the reasons for the complaint must be given. The written complaint has to be submitted within seven days after the day on which the prisoner was notified of the decision complained of. Within four weeks, a decision on the complaint has to be rendered.
The session of the complaints committee is not public. The prison governor sends in writing his reaction to the committee. Both the complainant and prison governor have the right to give oral statements related to the complaint. The complainant has the right to legal aid and interpretation. The verdict of the complaint committee is in writing and declares either the complaint inadmissible or ill-founded or declares the complaint well-founded. In cases in which the complaint is declared well-founded, the complaints committee either takes a new decision or instructs the governor to take a new decision in conformity with the verdict of the complaint committee. Where the complaint committee annuls the governors’ decision, but the decision had already been implemented, (financial) compensation to the prisoner is possible. The prisoner or prison governor may appeal against decisions of this committee to the appeal committee of the Council for the Administration of Criminal Justice and Youth Protection. Several thousands complaints are filed annually with the complaint committee. A quarter of the complaints concern the enforcement of disciplinary measures; the majority of the complaints concern measures that deviate from what the prisoners see as their valid rights, for example placement in a single cell instead of a common cell, the refusal to grant leave or the prescription of medicaments by the penitentiary institution’s physician. In exceptional cases, the prisoner may address the National Ombudsman, whose task, however, since the introduction of the PPA is very restricted.

**Rules for prison leave**

Various types of leave exist:
- general leave;
- regime related leave; and finally
- occasional prison leave.

The leave regulations are laid down in the 1998 General Provisional Leave Rules (*Regeling tijdelijk verlaten van de inrichting*). According to these rules, leave is granted on an individual basis. A number of objective criteria have to be met in order for general leave to be granted:
- one third of the sentence must have been served;
- the remaining sentence must be at least three months;
- the remaining sentence may not exceed one year; and
- the date for early release must have been fixed.
According to the General Provisional Leave Rules, the maximum occasions for leave is six. Leave is granted for up to sixty hours, including traveling time. The application of these general leave rules means that, during the last year of their sentence, prisoners are allowed sixty hours leave every two months.

The decision on whether or not to grant leave is as a rule taken by the prison governor. The decision to grant leave for the first time is taken by the Minister of Justice in cases in which the leave may cause public unrest. Foreign nationals, who will be deported, expelled or extradited at the end of their sentence, and prisoners in an extra high security unit or in an extended security prison, are not allowed leave.

Regime related leave is granted to detainees who have served at least one month in low security level (RSL) prisons and in very low security level (VRSL) prisons. Prisoners in RSL-prisons have a monthly weekend leave and prisoners in VRSL-prisons have the right to stay every weekend outside prison.

The regime related leave is an instrument in the preparation of the prisoner’s return to free society.

The monthly weekend leave is for 52 hours but may be twice extended to 76 hours. An extended weekend leave for public or Christian holidays such as Christmas, Easter or Whitsun, may be granted for good behavior.

There are a number of subjective indications that are applicable for all prison leave decisions. Leave must serve to prepare the prisoner for release. This criterion is almost always met by definition, except where there is a risk of the following:

- a risk of absconding, re-offending, breach of the peace or public commotion can be expected;
- a well-founded suspicion that leave will be used to smuggle in contraband goods, or will lead to drug or alcohol abuse;
- the convicted person is unable to keep to agreements;
- there is no leave address; or
- a risk of an unwanted confrontation with the victim of the crime can be demonstrated.

In such cases the prison governor can refuse any type of prison leave.

The rules on occasional prison leave are related to pressing personal circumstances such as serious illness, the death of a relative, the birth of a child, and for medical, psychiatric or psychological reasons as well as for the participa-
tion in exams or for study and vocational training. Occasional prison leave is
granted as a rule for one day and may be supervised and secured.
Failure to keep the conditions of leave, for example, by returning too late or
under the influence of alcohol, may be dealt with in a number of ways. If the
prisoner is in an open prison, a breach of conditions usually results in trans-
fer to a closed institution. Alternatively, weekend leave may be reduced or
completely withdrawn. If a prisoner fails to return from normal leave, this af-
fects future leave. In addition, it may be treated as a violation of prison order
and discipline and be punished accordingly.

Early release, pardon and aftercare of prisoners

Conditional release

Conditional release provisions were incorporated in the Criminal Code as
early as 1886. At that time, conditional release was intended as a gesture of
leniency for good conduct, to be applied only in exceptional cases and only
to prisoners who had served rather long sentences. This concept of condi-
tional release was expressed in the legal prerequisites for conditional release,
and the granting of release lay within the discretion of the prison administra-
tion.

In 1915, the regulations on release were changed considerably. Conditional
release became a means of improving the rehabilitation of the offender into
free society. The objective of the conditional release was to improve the of-
fender’s future conduct by means of supervision by the probation service
and by attaching conditions to the release.

Following the 1915 reform, prisoners were eligible for conditional release af-
ter having served two-thirds of their sentence and at least nine months. The
period of parole lasted a minimum of one year. The release decision was
taken by the administration (the Prison and Probation Department of the
Ministry of Justice) at the request of the local prison board.

In the 1960’s and 1970’s, the importance of the conditional release as a reha-
bilitative instrument decreased.
Gradually, the conditional release changed from being a favor to almost an
automatic right. Against this background, in 1980 a Committee was set up to
advise the Minister of Justice as to whether conditional release should be re-
tained and if so whether it would be advisable to articulate in the penal code that eligible prisoners have the right to be paroled.

The Committee did not support the idea of an automatic release. The Government, however, preferred a system which would reduce the pressure on the prison system, get rid of red-tape, and save a great deal of money and time by introducing a system of automatic early release, that came into force on January 1, 1987.

The essence of the release rules was that:
- prisoners serving a sentence up to a maximum of one year must be released after having served six months plus one third of the remaining term; and
- prisoners serving a sentence of more than one year must be released after having served two thirds.

*The 2008 conditional early release Act*

One of the disadvantages of the former early release policy was that an ex-prisoner can not be supervised or monitored after the date of his release because his release is unconditional. However, in the first months after the release social integration and the prevention of re-offending is of great importance and might be improved if conditions to his early release could be attached.

Therefore, in July 2008 conditional early release has been re-introduced. The essence of the 2008 conditional early release Act is that:
- prisoners serving a prison sentence of more than one but less than two years will be released after having served one year and one third of the remaining term;
- prisoners serving a sentence of more than two years will be released after having served two thirds.

The release is conditional. Special and general conditions are set for a release. The general condition is that the parolee will not re-offend. Special conditions may be imposed, such as:
- mandatory participation in a program assisting in a smooth return to society or providing special care, such as treatment for addiction;
- restrictions of someone’s freedom to act or to move;
- electronic monitoring.

The special conditions may not restrict the freedom to practice one’s religion or personal belief or one’s civil liberties.
The special conditions are set by the public prosecutor after prior consultation with the probation service and the National Agency of Correctional Institutions. The prosecution service supervises the compliance with the special conditions, and the probation service can be ordered to provide help and assistance to the parolee as well as reporting breaches of conditions to the prosecution service.

Early release may be postponed or refused when:
- the prisoner, because of mental disorder, is serving his sentence in an entrustment order treatment institution and the continuation of his treatment is deemed necessary; or
- the prisoner has been guilty of grave misconduct after the commencement of the serving of the sentence, which means
  - there are serious suspicions or a conviction for a crime whilst serving the original sentence, or
  - a number of disciplinary sanctions have been imposed; or
- the prisoner has refused to agree with the special conditions set by the prosecution service; or
- the imposition of special conditions is unlikely to reduce recidivism risk; or
- a prison sentence imposed by a foreign court is implemented and the transfer of the prisoner by the foreign state was undertaken under the restriction that no early release would be offered.

Decisions to postpone or refuse conditional release are taken by a criminal court. Non-compliance with the general or special conditions may lead to a full or partial revocation of the conditional release.

**Pardon**

The 1998 Pardon Act, which was revised in 2003, empowers the Queen to grant a pardon when petitioned either by the person sentenced or by the prosecution service. Only clearly reasoned petitions will be processed by the Pardon Office of the Ministry of Justice. Under section 122 of the Constitution and the provisions in the Pardon Act, pardon may be granted for all prison sentences and for fines over €340 as well as for certain measures imposed by Dutch courts. Pardon furthermore may be granted for all sentences imposed by foreign courts but implemented in the Netherlands, provided that the foreign sentence is converted into a
Dutch sentence or the prisoner is transferred to the Netherlands on the basis of a treaty.

There are two statutory grounds to grant pardon. The first is that the court when sentencing did not – or could not – take account of a circumstances that if the court had been aware of would have led to a different sentence or to no sentence at all. The second ground for pardon is that the (continuation of the) implementation of a sentence in all reasonableness cannot serve the purpose for which the implementation was intended.

The prosecution service and the court that imposed the sentence are, generally, to be consulted before the pardon may be granted. Pardon may involve a complete or partial remission of the sentence, the suspension of the implementation of the sentence or the conversion of the sentence into a less serious one, such as a task penalty. A pardon decision can have conditions attached. The conditions of a conditional pardon are similar to the conditions of a suspended sentence. The probation service can be ordered to support and assist the conditionally pardoned offender.

In recent years, the number of pardon requests has been rather stable (2006: 3,500) and 50% of requests are related to prison sentences. In 25% of petitions, a (conditional) pardon was granted. Prison sentences may be converted into a task penalty by way of a pardon.

Aftercare of released prisoners

Prisoners are, while being detained, prepared for their return into free society in order to avoid re-offending. Long-term prisoners will receive behavioral interventions such as support to find a job, training to avoid aggression or aid to settlement debts.

For proper integration into free society, four conditions have to be met:
– the possession of an ID-card;
– a dwelling;
– income; and
– care.

Many prisoners leave prison without knowing where to sleep that night. This is detrimental for recidivism reduction. The National Agency for Correctional Institutions therefore has recently set up a project in which social workers in prisons communicate with representatives of municipalities in order to improve the aftercare for released prisoners.
Furthermore, when a released prisoner asks for help on his or her own initiative, the probation service will transfer the client to other organizations outside the criminal justice system, such as social services or health care services. These services provide all kinds of material help such as assistance in housing, employment, and debt relief. For the resettlement of released prisoners, aftercare projects have been set up in which volunteers play an important role.

Under the new conditional release regulations (2008), the ex-convict can be obliged to stay in contact with the probation service, which supervises the compliance with the imposed conditions but also supports and advises the ex-convict.