

**NETHERLANDS  
INSTITUTE FOR**  

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**HUMAN RIGHTS**

**AMICUS CURIAE SUBMISSION**  
**European Court of Human Rights**  
**in the case of**  
**Maassen v. The Netherlands**  
**(10982/15)**

**Written comments by**  
**The Netherlands Institute for Human Rights**  
**Pursuant to Article 36 § 2 of the European Convention on Human Rights and**  
**Rule 44 § 3 of the Rules of the European Court of Human Rights**  
**26 April 2016**

## Introduction

1. The Netherlands Institute for Human Rights (the “Institute”) is an independent body established by law. Its objectives are set out in the Netherlands Institute for Human Rights Act of 2012 (the “Act”): to protect human rights in the Netherlands, to increase awareness of these rights and to promote their observance. The Institute is the A-status National Human Rights Institution (NHRI) in the Netherlands.
2. The mandate of the Institute is set out in the same Act, inter alia: to investigate and research, to report and issue recommendations on protection of human rights and to cooperate with national, European and other international institutions engaged in the protection of human rights. The Institute submits these written comments in light of its mandate and at the specific request of the European Court of Human Rights (hereafter referred to as your Court).<sup>a</sup>
3. The Institute initiated preliminary investigations into the subject of ‘pre-trial detention’. On the basis of these investigations, the Institute decided to concentrate its further research on the legal reasoning in pre-trial detention orders by Regional Courts. The final research report on the investigation will be completed and published in the late summer of 2016.
4. These comments review the legal reasoning utilised by the Dutch Regional Courts in support of their pre-trial detention orders. The practice of Courts of Appeal is not taken into account.

## Relevance of the subject: the importance of a well-reasoned pre-trial detention order

5. Pre-trial detention orders infringe the right to liberty. Therefore, such orders need to be subject to critical judicial review and well substantiated on the basis of all relevant factors relating to the specific case and the individual suspect. The order should show that the court balanced the interests of the general public and the individual.
6. A properly reasoned detention order shows that the court made such a deliberate decision. It is a relevant factor in determining whether the detention must be considered arbitrary. It is only by giving a reasoned decision that there can be public scrutiny of the administration of justice.<sup>1</sup>
7. Reasoning of pre-detention orders is also of imminent importance to the defendant to understand why he is held in detention on remand. It shows which factors and circumstances were relevant to the decision of the court and which were not. This is crucial information for the defendant to determine whether or not he should seek legal recourse.
8. Finally, the reasoning of a pre-trial detention order is important to give the general public an insight into decisions of pre-trial detention. Without reasons referring to the individual case, the general public may have difficulty understanding the decision itself.

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<sup>a</sup> The President of the Section invited the Netherlands Institute for Human Rights to intervene as a third party in the Court’s proceedings in the above case, by letter of 24 February 2016.

## SECTION I: PRE-TRIAL DETENTION IN THE NETHERLANDS

9. In accordance with Article 15 of the Dutch Constitution, the right to personal liberty can be infringed only on the basis of an Act of Parliament. With regard to pre-trial detention and other forms of deprivation of liberty in the scope of the criminal proceedings, this basis can be found in the Code of Criminal Procedure (CCP).
10. Pre-trial detention is only allowed if the statutory requirements for the application of pre-trial detention have been met.<sup>2</sup> Judge(s) may not issue an order for pre-trial detention unless there is evidence amounting to a **serious suspicion** connecting the suspect to the offence.<sup>3</sup> This is a higher burden of proof than the reasonable suspicion required for arrest and police custody: extra evidence is needed to indicate that the suspect probably committed the offence. An order for pre-trial detention can be issued
- in case of a suspicion of an offence which carries a sentence of imprisonment of four years or more,
  - in case of a number of specific listed offences which carry sentences of less than four years imprisonment, or
  - when no permanent address or place of residence of the suspect in the Netherlands can be established and he is suspected of an offence within the jurisdiction of the Regional Courts which, according to its legal definition, is punishable by imprisonment.<sup>4</sup>

In addition, the judge(s) must be convinced that at least one of the following grounds applies for keeping the suspect in custody<sup>5</sup>:

- there is a serious danger of **absconding** apparent from particular behaviour displayed by the suspect, or from particular circumstances concerning him personally; or
  - public safety requires the immediate detention of the suspect. Important reasons requiring immediate detention are considered to exist, if (Art. 67a, par. 2 CCP):
    - there is a serious danger that the suspect might **commit an offence** punishable by a penalty of at least six years' imprisonment or whereby the security of the State or the health or safety of persons may be endangered, or give rise to a general danger to goods or there is a serious likelihood of reoffending related to a listed number of offences, and less than five years have passed since the day on which the suspect has been irrevocably sentenced to a punishment or measure entailing deprivation of liberty, a measure entailing restriction of liberty or community service;
    - the suspicion relates to an offence of a maximum statutory sentence of at least **twelve years'** imprisonment and the offence has seriously shocked society/public order;
    - there is a risk that the suspect might prevent or obstruct the **investigation** into his case.
11. Prior to pre-trial detention, a person who has been arrested on reasonable suspicion of an offence may be held for questioning at a police station for a maximum period of six hours which can be extended once by another six hours (*ophouden voor onderzoek*).<sup>6</sup> In relation to criminal offences where the law provides for detention on remand,

either the public prosecutor or the assistant public prosecutor can extend the period of police custody (*inverzekeringstelling*) by three days in the interests of the investigation.<sup>7</sup> The suspect must then be brought - within a maximum period of three days and 15 hours after his arrest - before the investigating judge of a Regional Court (*rechter-commissaris*).

12. The CCP provides for two successive forms of pre-trial detention by order of the judge after the initial period of police custody. The first form of detention is initial detention on remand (*bewaring*), which can be ordered by the investigating judge for a maximum period of 14 days.<sup>8</sup> The second is extended detention on remand by court order (*gevangenhouding*), which can be ordered by the court sitting in chamber (*raadkamer*) for a maximum period of 90 days.<sup>9</sup> The law provides that pre-trial detention cannot last longer than the combined 104 days.<sup>10</sup> Within those 104 days, the case must be brought before a trial judge for a first or preparatory hearing (*pro forma* or *regiezitting*). If the case is not ready for trial or a final verdict, the court may adjourn the trial for a month, and in exceptional cases for three months.<sup>11</sup> This may be repeated several times.
13. The courts should substantiate and reason their decisions with reference to the relevant facts and circumstances of the case; i.e. a clear description of the offence(s), the circumstances and facts on which the mandatory standard of a serious suspicion against the suspect is based, and the circumstances, facts and behaviour of the suspects which lead to the conclusion that the mandatory grounds for pre-trial detention are met.<sup>12</sup>
14. In practice, the investigating judge will list the ground or grounds that are applicable to the case and briefly reason why those grounds apply. It must be noted that these reasons are often concise, because the investigating judge usually takes a decision in the early stages of an investigation, and therefore limited information may be available. It also occurs that the investigating judge lists the text of the relevant legal provision as the ground, without substantiating why it applies in the given case. If serious suspicions and grounds apply in the case, and there are no reasons for release, the judge usually orders the initial detention on remand.<sup>13</sup> The investigating judge will typically inform the suspect directly about his decision, and will usually explain to him face-to-face about his reasons. His decision will then be put in writing, as explained above.
15. Within 14 days after the investigating judge's decision, three judges sitting in chambers dealing with the extension of detention on remand (*raadkamer gevangenhouding*) will convene to consider whether the suspect should continue to be detained before the trial starts. The chamber can detain someone for up to 90 days at a time. In practice, if detention is ordered, it is usually for a period of 30 or 90 days at a time. The suspect is often not present when the decision concerning the extension of detention is made and thus has to rely on the written court order to understand why his or her detention is prolonged.
16. Article 67b CCP provides further that pre-trial detention can be ordered or prolonged upon request of the general prosecutor where a suspect, already in pre-trial detention, is prosecuted for a different offence than for which the court order to pre-

trial detention has been issued. In case this court order is issued, this new offence of which the detainee is a suspect is considered to be included in the reasoning of the court order.<sup>14</sup> An order for pre-trial detention shall not be issued if the time the suspect already spent in pre-trial detention and police custody will exceed the anticipated final prison sentence or period of community labour (*anticipatiegebod*).<sup>15</sup>

17. Although the CCP recognises the concept of bail for suspending pre-trial detention<sup>16</sup> in practice, bail in the form of the payment of an amount of money is rare. More frequently, a conditional order is made for release from detention on remand (*schorsing*), subject to general conditions. The judge can decide either *ex officio*, or upon demand of the prosecutor or the defendant that pre-trial detention be suspended when the suspect declares his willingness to comply with certain terms the judge imposes. The general conditions are that the suspect must not flee, must not commit a criminal offence and must appear before the police or the court, when so requested. Special terms may include the obligation to adhere to instructions of a probation officer, to follow drugs treatment or a training programme or an order prohibiting contact with the victim.
18. It is relevant to note that time constraint is an essential factor when the court in chambers decides on the extension of detention on remand. It is not uncommon that more than 25 cases are dealt with during one session. This amounts to a very limited amount of time for deliberating each case during the session *in camera*. More importantly, it also severely limits preparatory time for judges, as they often only have half a day available to them for preparing the session, regardless of the number of cases.

## SECTION II: LEGAL REASONING IN PRE-TRIAL DETENTION ORDERS

### The practice of legal reasoning of grounds in pre-trial detention orders<sup>17</sup>

19. Lawyers and academics have, over the years, discussed the Dutch practice of reasoning pre-trial detention orders in legal journals. Two publications in the last five years have given a critical insight into the reasoning of judges when ordering pre-trial detention, and in particular in identifying the relevant grounds. In 2012 research by Stevens was published in which 28 Dutch judges working at seven different Regional Courts were interviewed about fictitious cases.<sup>18</sup> Those judges were asked to explain if and if so, why, they would order pre-trial detention in those situations. This gave an interesting insight into the way judges may decide upon pre-trial detention, as explained below. In addition, late 2013 Janssen, Van den Emster and Trotman, three judges of the Rotterdam Regional Court, published an article in a legal journal about their experiences with decisions on pre-trial detention.<sup>19</sup>
20. The first ground for pre-trial detention essentially contains two elements: the crime should carry a maximum sentence of at least **twelve years** and society should be 'seriously shocked' (*ernstig geschokte rechtsorde*) by the offence. Stevens' research shows that most judges often presuppose that society is seriously shocked based upon the gravity of the offence rather than scrutinising this requirement as a separate element. Judges that were interviewed by Stevens often substantiate 'gravity of the offence' by considering if, in their view, citizens would understand the suspect's

release.<sup>20</sup> The purpose of pre-trial detention with reference to this ground is often not just to prevent or limit public disorder, but to show society that dangerous behaviour does not remain unpunished. Sometimes, with regard to drug related cases, it even has a purpose of general prevention.<sup>21</sup> The three judges add in their 2013 article that judges do not tend to make a distinction between a main suspect and an accessory to the fact.<sup>22</sup>

21. Risk of the suspect **absconding** is the second ground for pre-trial detention. If the suspect is of foreign nationality, this is - according to the judges in their 2013 article - often considered an important indicator for risk of absconding. Legally, this cannot be the only reason to assume the risk of flight. However, in those cases where the suspect is of foreign nationality, it does not take many additional aspects from the suspect's behaviour to establish a risk of absconding.<sup>23</sup>
22. Pre-trial detention may be necessary to prevent the suspect from obstructing the **investigation** into his case. The three judges indicate that the 'investigation ground' is often mentioned by a judge as a reason for pre-trial detention, without making clear which further investigation is required or in what way the suspect would obstruct it.<sup>24</sup>
23. When it comes to the ground of **reoffending**, the three judges are very clear in their account of the practical application: according to them, this ground is easily held applicable without specific substantiation based upon individual facts and circumstances.<sup>25</sup> This ground may be substantiated by referring to an extensive criminal record or by pointing out psycho-social problems of the suspect that have not yet been resolved. But when factors relating to the individual are not available in the file, the gravity of the offence is often used to reason this ground. This is also one of the conclusions from the research by Stevens. Her conclusion is that the severity of the offence dictates the risk of reoffending, rather than elements relating to the individual that indicate a risk of him committing a (specific) new offence.
24. Stevens' research shows that judges in practice sometimes have the tendency to interpret the grounds for pre-trial detention in light of **other purposes** than legislation allows them, such as general security, punishment and summary execution.<sup>26</sup> This is confirmed by the three judges in their article.<sup>27</sup> The lenient way in which each of the grounds can be reasoned to exist in a specific case allows for judges to use a legal ground in theory, whilst in reality aiming for one of the purposes not defined by law.

#### **The text of pre-trial detention orders by chamber in practice**

25. The written order of the court in chambers (*raadkamer gevangenhouding*) is often minimally reasoned, without referring to the specific facts and circumstances of the case. In most cases, the court in chambers will refer back to the decision of the investigating judge and use **standard phrasing**. For example, most decisions ordering detention on remand contain the sentence

“considering, that it has become evident to the court that the suspicion, presumptions and grounds that led to the order for initial detention on remand continue to exist; considering, that the existence of these grounds is shown by behaviour, facts and circumstances as mentioned in the order for initial detention on

remand of [date], the contents of which are to be regarded as being included herein, [...]"<sup>b</sup>

26. Some district courts use a pre-printed form, listing the possible grounds for pre-trial detention echoing the text of the corresponding legal provisions. During or directly after the hearing the chamber writes an X before the relevant ground(s). Those forms leave no room for reasoning related to the individual aspects of the case.
27. Other district courts work with text blocks about certain grounds, which can be supplemented with reasons why that specific ground applies in the specific case. It may then occur that certain grounds - such as the risk of reoffending - are further specified with information about the case, whereas other grounds - such as the need for further investigation - only repeat the text of the legal provision they are based upon.
28. When the chamber decides that certain grounds mentioned in the order of the investigating judge no longer apply, this will be mentioned in the order. This decision, however, is usually not explicitly motivated. It is simply stated in the order that the chamber adopts the decision of the investigating judge, without basing its decision on the mentioned ground.
29. Similarly, the chamber may also decide that a *new ground* is applicable to the case. In those cases too, the chamber often only mentions which ground it considers relevant for the detention order. This new ground, however, is often not reasoned. It refers back to the decision of the investigating judge, adding:

“provided that the court bases its decision also on the ground of [...]"<sup>c</sup>

30. A chamber usually does not explicitly consider the *suspension* of pre-trial detention of an adult suspect, in favour of alternatives to detention, unless the suspect has requested to do so. The arguments brought forward by the suspect, however, are rarely addressed in the order. When the suspect asks for the detention order to be suspended, and the chamber rejects this request, the order sometimes mentions the rejection itself, without reasoning:

“considering that the court does not deem any terms present to grant the oral request for suspension of the detention on remand”<sup>d</sup>

Or the order may in general refer to the balance of interests, often without explicitly mentioning which particular interests were taken into account:

“considering, that the court believes that the personal circumstances of the suspect do not outweigh the interests pertaining to criminal procedure [...]"<sup>e</sup>

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<sup>b</sup> “overwegende, dat de rechtbank na onderzoek is geleden dat de verdenking, bezwaren en gronden, die tot het bevel tot bewaring van verdachte hebben geleid, ook thans nog bestaan; overwegende, dat het bestaan van deze gronden blijkt uit gedragingen, feiten en omstandigheden zoals die zijn vermeld in het tegen verdachte verleende bevel tot bewaring d.d. [datum], welke de rechtbank als hier overgenomen beschouwt, [...]"

<sup>c</sup> “met dien verstande dat de rechtbank haar beslissing tevens grondt op de [...]grond”

<sup>d</sup> “overwegende, dat de rechtbank geen termen aanwezig acht het mondeling verzoek tot schorsing van de voorlopige hechtenis in te willigen”

31. So far the investigation of the Institute indicates that the phrases mentioned above are used in a substantial number of the pre-trial detention orders by chambers. This leads to a significant amount of those orders being drafted in a virtually identical manner, simply referring back to the decision of the investigating judge.

#### **Duration of pre-trial detention in relation to length of imprisonment**

32. Research published in 2010 looked into the length of pre-trial detention and the subsequent sanction given to the defendant.<sup>28</sup> It showed that in 27% of all cases in which pre-trial detention was ordered, no penalty was imposed restricting the liberty of the defendant. A further 24% of all cases did result in imprisonment, but the duration of imprisonment was less or the same as the length of pre-trial detention. The researcher concludes from the latter fact that the duration of pre-trial detention is a compelling factor for deciding the duration of the imprisonment.<sup>29</sup> This conclusion was confirmed by judges.<sup>30</sup>

### **SECTION III: HUMAN RIGHTS STANDARDS**

#### **General safeguards on reasoning of pre-trial detention orders**

33. Safeguards for pre-trial detention orders relating to the reasoning thereof can be found in international law and jurisprudence:

- 1) a pre-trial detention order needs to be reasoned;
- 2) such reasoning must not be 'general and abstract';
- 3) to continue pre-trial detention, the authorities have to give 'relevant and sufficient' reasons and show that they displayed 'special diligence' in the conduct of the proceedings;
- 4) the severity of the sentence faced alone does not suffice to establish a risk of absconding or reoffending;
- 5) continuous judicial supervision of pre-trial detention should be as rigorous as the initial examination;
- 6) continuation of detention cannot be used to anticipate a custodial sentence; and
- 7) alternatives for detention should be considered.

34. Orders on pre-trial detention need to be reasoned. This is clearly set out in the Council of Europe recommendation on the use of remand in custody of the Committee of Ministers.<sup>31</sup> It is also established case law of your Court that the reasoning of a judge should be made clear from the wording in the judicial order itself, and not just from the case file.<sup>32</sup> This is reflected in the Dutch Code of Criminal Procedure, as explained above.<sup>33</sup> The importance of reasoned pre-trial detention decisions was recently confirmed when a working group of the National Consultations on Criminal Law Matters (*Landelijk Overleg Vakinhoud Strafrecht*), consisting of criminal court judges, published its Professional standards on criminal law.<sup>34</sup> These standards make explicit the minimum norms for good criminal justice. In these standards, the need to reason all pre-trial detention decisions is included: "Decisions on pre-trial detention are substantially reasoned".<sup>35</sup> A footnote adds: "i.e. more comprehensive than with the usual forms in which boxes are ticked".<sup>36</sup>

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<sup>e</sup> "overwegende, dat de rechtbank de persoonlijke omstandigheden van de verdachte niet vindt opwegen tegen het strafvorderlijk belang, [...]"

35. The reasoning of the decision on pre-trial detention must not be ‘general and abstract’.<sup>37</sup> This means, among others, that the reasoning may not simply constitute a repeating in an abstract and stereotyped way the formal grounds for detention provided by law.<sup>38</sup> It also means that the order should contain references to the specific facts and the applicant’s personal circumstances justifying detention.<sup>39</sup>
36. The severity of the sentence faced may be a relevant factor when determining whether there is a risk of absconding or reoffending. However, the need to continue deprivation of liberty cannot be assessed from a purely abstract point of view, taking into consideration only the seriousness of the offence.<sup>40</sup>
37. For continued pre-trial detention, the authorities have to give ‘relevant and sufficient’ reasons and show that they displayed ‘special diligence’ in the conduct of the proceedings.<sup>41</sup> ‘Reasonable suspicion’ alone is no longer enough. Four general reasons may justify continued detention: (1) the danger of flight, (2) the risk of a further offence, (3) the preservation of public order, and (4) the risk of tampering with evidence.<sup>42</sup> Some grounds, like the risk of tampering with evidence, may lose their strength after a certain lapse of time.<sup>43</sup> If reasons are ‘relevant and sufficient’ is to be determined on a case by case basis.
38. The pre-trial detention should periodically be reviewed by a judge. Reasons that may have been sufficient at the start of the period may no longer be enough to justify such detention. Such continuous judicial supervision of pre-trial detention should be as rigorous as the initial examination.<sup>44</sup>
39. Pre-trial detention may only be used for a limited number of reasons. It may not be used to anticipate a custodial sentence, as repeatedly pointed out in your case law.<sup>45</sup> The defendant is, after all, at this point presumed to be innocent.
40. Finally, your Court has repeatedly established that Article 5 § 3 ECHR obliges the authorities to consider alternative measures ‘of ensuring [the suspect’s] appearance at trial’.<sup>46</sup> Such alternative measures that would be less invasive than the deprivation of liberty are preferable due to the principle of subsidiarity.

### **Length of pre-trial detention**

41. In previous admissibility decisions of your Court against the Netherlands, the judging section found the limited duration of pre-trial detention (five months and thirty days in the case of *Hendriks*<sup>47</sup> and three months and seven days in the case of *Kanzi*<sup>48</sup>) a relevant factor to take into account when assessing whether the grounds for ordering pre-trial detention were ‘relevant and sufficient’. As pre-trial detention in the Netherlands is rarely of excessive length, this may indicate that a violation of Article 5 would only occur in exceptional cases where the length of pre-trial detention exceeds at least six months.
42. However, in previous case law, your Court made clear ‘that justification for any period of detention, no matter how short, must be convincingly demonstrated by the

authorities'.<sup>49</sup> Without any form of justification, such detention would be in violation of Article 5 ECHR. In recent years, violations of Article 5 in cases were found where the period to be taken into account consisted of months rather than years.<sup>50</sup> Very recently, your Court even found a violation of Article 5 for the unlawful deprivation of liberty for the duration of eight and a half hours.<sup>51</sup>

43. The Institute therefore respectfully submits that this also implies that such justification, even if only for a short period in detention, should not be made in the abstract by simply listing the grounds for detention, but should relate to the facts and circumstances of the case. Therefore, pre-trial detention - regardless of its length - will only be in accordance with Article 5 ECHR if from the outset it is clear why the suspect is being detained and, if new grounds are added at a later point in time, those grounds are sufficiently reasoned.

### **Concluding remarks**

44. The written orders on pre-trial detention are in practice reasoned in a concise manner, using standard phrasing and giving very few reference points as to why detention and any extension of such detention is ordered in a particular case. Often the court sitting in chamber simply refers to the reasons provided earlier by the investigating judge, even when, at a later stage, new charges are brought by the public prosecutor or when new grounds for pre-trial detention are established by the court.
45. It is respectfully submitted that the lack of reasoning appears to be one of the symptoms of a larger issue concerning pre-trial detention in the Netherlands: its application in a near automatic fashion. Whilst the Dutch legislation sets out guarantees in line with Article 5 ECHR, its application in practice has led to a tendency of 'extension of detention, unless' rather than as an *ultimum remedium*. Such quasi automatic prolongation of detention contravenes the guarantees set forth in Article 5 § 3 ECHR and the presumption of innocence.<sup>52</sup>
46. Is it important to note that not only amongst academics and criminal defence lawyers, but also within the judiciary, a discussion regarding the improvement of the legal reasoning of pre-trial detention orders is taking place. This has recently led to some courts initiating pilots to improve their reasoning in pre-trial detention orders. Whilst the results of these pilots are not yet public, the Institute highlights this as a positive development.
47. The Institute respectfully suggests to address the human rights norms relevant for reasoning of pre-trial detention in the judgment of your Court. Regardless of the outcome of the specific case put before you, the Institute believes it will be extremely valuable for Dutch criminal court judges if your Court would underline the significance of a well-reasoned pre-trial detention order, with references to the specific case at hand, regardless of the length of detention.

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- <sup>1</sup> Tase v. Romania (29761/02, 10 June 2008, §41).
- <sup>2</sup> These requirements are summed up in Articles 67 and 67a of the CCP. Article 67 contains the cases in which pre-trial detention may be applied, while Article 67a specifies the grounds.
- <sup>3</sup> Art. 67 § 3 CCP.
- <sup>4</sup> Art. 67 § 1 and § 2 CCP.
- <sup>5</sup> Art. 67a § 1 CCP.
- <sup>6</sup> Art. 61 CCP.
- <sup>7</sup> Art. 57 CCP.
- <sup>8</sup> Art. 63 and 64 CCP.
- <sup>9</sup> Art. 65 CCP.
- <sup>10</sup> Art. 63 and further CCP.
- <sup>11</sup> Art. 282 § 2 CCP. In practice, such exceptional circumstances are easily found. Therefore in most cases, the case is adjourned and pre-trial detention extended for 3 months.
- <sup>12</sup> Art. 24, 78 § 2, 67a CCP.
- <sup>13</sup> Other reasons may include the ‘anticipation order’, as explained in paragraph 16.
- <sup>14</sup> Art. 67b, 78 § 2.
- <sup>15</sup> Art. 67a, § 3 CCP.
- <sup>16</sup> Art. 80 CCP.
- <sup>17</sup> M.J. Borgers and G.J.M. Corstens, *Het Nederlandse strafprocesrecht*, 2014, chapter XII.10.
- <sup>18</sup> L. Stevens, ‘Voorlopige hechtenis in tijden van risicomanagement. Lijdende of leidende beginselen?’, *Delikt en Delinkwent* 2012/36 (hereafter: Stevens (2012)).
- <sup>19</sup> J.H. Janssen, F.W.H. van den Emster and R.B. Trotman, ‘Strafrechters over de praktijk van de voorlopige hechtenis. Een oordeel van de werkvloer!’, *Strafblad*, December 2013, pp. 430-444 (hereafter: Janssen, Van den Emster and Trotman (2013)).
- <sup>20</sup> Stevens (2012), p. 384.
- <sup>21</sup> *Ibid.*, p. 385.
- <sup>22</sup> Janssen, Van den Emster and Trotman (2013), p.435.
- <sup>23</sup> *Ibid.*, p.435.
- <sup>24</sup> *Ibid.*, p. 436-437.
- <sup>25</sup> *Ibid.*, p. 436.
- <sup>26</sup> Stevens (2012), p. 387-389.
- <sup>27</sup> Janssen, Van den Emster and Trotman (2013), p. 438.
- <sup>28</sup> L. Stevens, ‘Voorlopige hechtenis en vrijheidsstraf’, *Nederlands Juristenblad*, NJB 2010, 1208.
- <sup>29</sup> *Ibid.*
- <sup>30</sup> Janssen, Van den Emster and Trotman (2013), p. 437-438.
- <sup>31</sup> Recommendation Rec(2006)13 of the Committee of Ministers to member states on the use of remand in custody, the conditions in which it takes place and the provision of safeguards against abuse. Rule 21(1): “Every ruling by a judicial authority to remand someone in custody, to continue such remand or to impose alternative measures shall be reasoned and the person affected shall be provided with a copy of the reasons.”
- <sup>32</sup> *Estrikh v. Latvia* (73819/01, 18 January 2007, §122); *Urtans v. Latvia* (16858/11, 28 October 2014, §35).
- <sup>33</sup> See paragraph 12 above and Art. 24, 78 § 2, 67a CCP.
- <sup>34</sup> Professional standards criminal law (*Professionele standaarden strafrecht*), available at <https://www.rechtspraak.nl/SiteCollectionDocuments/20160220-professionele-standaarden.pdf#search=professionele%20standaarden> (in Dutch only).
- <sup>35</sup> Paragraph 2.8 sub 2 of the Professional standards.
- <sup>36</sup> Footnote 22 of the Professional standards.
- <sup>37</sup> *Smirnova v. Russia* (46133/99 and 48183/99, 24 July 2003, §63).
- <sup>38</sup> *Buzadji v. Moldova* (23755/07, 16 December 2014 §36) - the case has been referred to and is currently pending before the Grand Chamber.
- <sup>39</sup> *Dubinskiy v. Russia* (48929/08, 3 July 2014, §65).
- <sup>40</sup> *Dubinskiy v. Russia* (§64); *Letellier v. France* (12369/86, 26 June 1991, §51).
- <sup>41</sup> *Clooth v. Belgium* (12718/87, 12 December 1991, §44).
- <sup>42</sup> *Smirnova* (§59).
- <sup>43</sup> *Letellier*, (§39).
- <sup>44</sup> *Urtans v. Latvia* (§29); *Estrikh v. Latvia* (§117).
- <sup>45</sup> *Dubinskiy v. Russia* (§64); *Letellier v. France* (§51).
- <sup>46</sup> *Jablonski v. Poland* (33492/96, 21 December 2000, §83).
- <sup>47</sup> *Hendriks v. the Netherlands* (admissibility decision, 43701/04, 5 July 2007).
- <sup>48</sup> *Kanzi v. the Netherlands* (admissibility decision, 28831/04, 5 July 2007).
- <sup>49</sup> *Shishkov v. Bulgaria* (38822/97, 9 January 2003, §66); *Dubinskiy v. Russia* (§30 and §59).
- <sup>50</sup> See, for example, *Tase v. Romania*, in which pre-trial detention lasted 4 months and 3 days; *Zimin v. Russia* (48613/06, 6 February 2014), in which pre-trial detention lasted 8 months; *Shishkov v. Bulgaria*, in which pre-trial detention lasted 7 months and 3 weeks.
- <sup>51</sup> *Popoviciu v. Romania* (52942/09, 1 March 2016).
- <sup>52</sup> *Tase v. Romania* (§40).