NETHERLANDS INSTITUTE FOR HUMAN RIGHTS

AMICUS CURIAE SUBMISSION

European Court of Human Rights

in the case of

Zohlandt v. the Netherlands

(69491/16)

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
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Introduction

1. The Netherlands Institute for Human Rights (hereafter: the Institute) is an independent body established by law. Its objectives are set out in the Netherlands Institute for Human Rights Act of 2012 (hereafter: 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 to conduct 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.

3. The Institute has conducted research into the subject of the legal reasoning in pre-trial detention orders by Regional Courts and Courts of Appeal in the Netherlands. The final research report was published early 2017 and is available on our website.[1]

4. These written comments are based on the aforementioned research and review the legal reasoning utilised by the Dutch Regional Courts and Courts of Appeal in support of their pre-trial detention orders. It also lists the relevant human rights norms.

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 properly 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 against the interest of the individual.

6. A properly reasoned detention order shows that the court made such a deliberate decision balancing both interests. It is a relevant factor in determining whether detention must be considered arbitrary. It is only by giving a reasoned decision that the necessary public scrutiny of the administration of justice is possible.[2]

7. Reasoning of pre-trial detention orders is also of imminent importance for 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.

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.[3] Judge(s) may not issue an order for pre-trial detention, unless there is evidence amounting to serious indications (*ernstige bezwaren*) connecting the suspect to the offence.[4] This is a higher burden of proof than the reasonable suspicion required for arrest and police custody: additional 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.[5]

11. In addition, the judge(s) must be convinced that at least one of the following grounds applies for keeping the suspect in pre-trial detention[6]:
    - 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 **caused serious upset to the legal order**;
        - there is a risk that the suspect may prevent or obstruct the **investigation** into his case.

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.[7] 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.[8] The law provides that pre-trial detention cannot last longer than 104 days.[9] 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.[10] This may be repeated several times, which can result in an extension of the period of pre-trial detention.

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.[11]

14. Although the CCP recognises the concept of bail for suspending pre-trial detention,[12] 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. A judge can decide either *ex officio*, or upon request of the prosecutor or the defendant to suspend pre-trial detention under the condition that the suspect declares his willingness to comply with certain terms the judge imposes. The general conditions entail: 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 treatment for drugs addiction or a (behavioural) training programme or an order prohibiting contact with the victim.

15. Time constraint is an important 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 to deliberate on 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

16. 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 good 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.[13] 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. 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.[14]

17. 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.[15] This is confirmed by the three judges in their article.[16] 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.

General findings of the Institute's research

18. As mentioned above, the Institute carried out research into the manner in which Regional Courts and Courts of Appeal reasoned their decision on pre-trial detention. The research was conducted in 2016. Over 300 randomly selected case files from four Regional Courts (out of 11) and two Courts of Appeal (out of four) were analysed. The research focused on the reasons in the written court orders for initial detention on remand, extended detention on remand, suspension of pre-trial detention or the denial thereof. It should be noted that decisions of the Courts of Appeal did not concern cases in which the Court of Appeal decided on pre-trial detention after conviction by Regional Court, as a different legal framework applies to those decisions. Instead, this part of the research focused on decisions on appeals against a pre-trial detention order by a Regional Court.

19. A noteworthy general finding of the Institute's research is that each court has its own working methods and practices when it comes to reasoning of pre-trial detention orders. The practices diverge to a large extent. For example, one Regional Court used pre-printed forms in which boxes could be ticked to order pre-trial detention, which left no room for any reasoning focused on the individual case. Instead, one of the Courts of Appeal was actively making an effort to substantiate all relevant elements of its decisions. As the Institute looked at six different courts, it gained a good overview of the range of diverging working methods used.

20. Most Regional Courts only provided a reasoning in the first decision on initial detention on remand. In those courts, the court sitting in chamber, deciding on extended detention on remand, simply referred back to the initial decision of the investigating judge, without providing any further information or reasoning. Only one of the investigated Regional Courts provided an own reasoning within its decision itself, without (only) referring back to a previous decision.

21. Another general observation concerns the use of so-called 'standardised text blocks'. Some courts use standard phrases to motivate their decision. This means they have a list of 'reasons' they can choose from. Of course, these reasons are formulated in a general manner, sometimes merely containing the same phrases as laid down in the CCP. This may lead to remarkable situations. For example, to substantiate that the risk of flight exists in a given case, one Regional Court used the following sentence: "No fixed address of the suspect in the Netherlands can be determined and/or the suspect does not have a valid right of residence in the

Netherlands and/or he/she had the means to evade the course of justice and it can be reasonably expected that he/she will use these means."[a] Such reasoning leaves many options open by using the 'and/or'-construction. But even more striking is that the order refers to the suspect as 'he/she'. This is a strong indication that this reasoning is not an actual individual reasoning.

22. A final general observation concerns the role of the lawyer. A lawyer is almost always present when the Regional Court hears the case in chamber. In quite a number of cases, the lawyer specifically argues that either the serious indications or one or more of the grounds for pre-trial detention do not exist, or that (and why) detention should be suspended. However, this is often not reflected in the written decision and the reasoning by the court. It happens frequently that arguments made by the defence are not addressed at all in the written decision to reject a request for suspension. In those cases it is unclear if and how the arguments of the defence were weighed by the court.

Serious indications *(ernstige bezwaren)*

23. In order to put a person in pre-trial detention, serious indications (*ernstige bezwaren*) are required, connecting the suspect to the offence. Such serious indications are a fundamental element that needs to be addressed in any pre-trial detention order. The Institute's research shows that nearly all courts address these serious indications by merely noting that they exist in a given case, without specifying why this is found to be the case. This is problematic if the defence has substantially argued the suspect's innocence. In such cases, it seems necessary that the court addresses the arguments made and explains why it chose to order pre-trial detention anyway.

24. One court, the Amsterdam Court of Appeal, started a pilot in 2015 with substantiating the serious indications in a given case. This court shows in its decisions how to effectively include such reasoning. It may simply refer to evidence brought forward in the case file. For example, it used the following reasoning in a specific case: "Considering the recognition of the glasses by the person making the report and considering the damage established to the car, the Court is of the opinion that sufficient serious indications exist."[b] Such a reasoning makes clear what elements convinced the court that serious indications exist.

Grounds[17]

25. The grounds for pre-trial detention are quite similar to the four reasons given by the ECtHR for pre-trial detention.[18] The risk of reoffending is named as a ground for detention most often. In the Institute's research, this ground was present in 92% of the orders for detention on remand. The risk of obstructing the investigation was used in 28% of the investigated cases; a crime carrying a maximum sentence of at

[a] "Van verdachte kan in Nederland geen vaste woon- of verblijfplaats worden vastgesteld en/of verdachte beschikt niet over een geldige verblijfstitel in Nederland, hij/zij beschikt over (de) mogelijkhe(i)d(en) om zich duurzaam aan zijn/haar berechting te onttrekken en redelijkerwijs valt te verwachten dat hij/zij van die mogelijkhe(i)d(en) gebruik zal maken."
[b] "Gelet op de herkenning van de brillen door de aangever alsmede gelet op de aan de auto geconstateerde schade, is het hof van oordeel dat er voldoende ernstige bezwaren zijn."

least twelve years and that seriously shocked society in 17% of the cases and the risk of absconding in 13% of the cases.[c]

26. The risk of reoffending is listed most often in the files researched by the Institute. These findings are in line with statements made by the three judges in their article, that the ground of reoffending is easily held applicable and used very often.[19] The Institute's research shows that the risk of reoffending is most often substantiated with a reference to the suspect's criminal record or earlier contact with the police, namely in 61% of all Regional Court cases in which this ground is held applicable. Quite often, this means the reasoning in the order only refers to the existence of a criminal record. If a criminal record contains recent or similar convictions, a specific reference may not be necessary. In cases where the convictions are only for very different or very old crimes, however, the reasoning by the court was often still limited to a general reference to the criminal record. That is why the Institute in its research report recommended that orders in which a risk of reoffending is based upon earlier contact with the police, indicate which moments of contact the court considers relevant.[20] The Institute saw some good practices of this in a few of the case files. For example: "The person concerned is suspected of handling stolen goods and participating in a burglary. The suspect was convicted by the Regional Court of The Hague for shoplifting over six months ago. In addition, the suspect was convicted in 2013 and 2012 for aggravated theft. One must fear repetition."[d]

27. The risk of obstructing the investigation is a ground for pre-trial detention in 28% of the investigated case files. In nearly one third of those cases this ground is listed, but no reasons are provided as to why it applies. These orders usually mention that "detention on remand is necessary in reason for discovering the truth otherwise than through statements of the suspect."[e] This is the exact wording of the relevant provision in the Code of Criminal Procedure. In addition, in 39% of all orders in which the risk of obstruction of the investigation is named as a ground for detention on remand, the investigating judge uses a very general reasoning. This is most notably the case in one Regional Court. In all 16 investigated orders of that particular court that contain this ground, the exact same reason was given: "The suspect denies in whole or in part and/or one or more witnesses must be heard and/or one or more co-suspects must be arrested and/or interrogated and/or further investigative activities must be carried out by the police. It should be reasonably taken into account that the suspect, if released, could frustrate the foregoing."[f] This reasoning is very broad and contains a wide range of options without clarifying which of those options applies in the given case. Other courts,

[c] Please note that more than one ground may apply in a given case. For that reason, the added percentages are higher than 100%.

[d] "Betrokkene wordt verdacht van heling en het medeplegen van een inbraak. Het is ruim zes maanden geleden dat verdachte door de rechtbank Den Haag veroordeeld is voor een winkeldiefstal. Voorts is verdachte ook in 2013 en in 2012 veroordeeld geweest voor gekwalificeerde diefstal. Er moet voor herhaling worden gevreesd."

[e] "de voorlopige hechtenis [is] in redelijkheid noodzakelijk voor het, anders dan door verklaringen van de verdachte, aan de dag brengen van de waarheid."

[f] "De verdachte ontkent geheel of gedeeltelijk en/of er moet(en) nog (een) getuige(n) worden gehoord en/of nog (een) medeverdachte worden aangehouden en/of verhoord en/of nadere onderzoekshandelingen door de politie worden verricht. Er moet redelijkerwijs rekening mee worden gehouden dat de verdachte, op vrije voeten, een en ander zou kunnen frustreren."

however, show that it is possible to use a more individualised reasoning. For example: "The investigation into the facts is still ongoing (inter alia the person making the report and his son should be heard about the exact circumstances of the incident), which could be severely hindered by the suspect if he were to be released."[g]

28. The third ground essentially contains two elements: the crime should carry a maximum sentence of at least twelve years and legal order in society should be 'seriously shocked' (*ernstig geschokte rechtsorde*) by the offence. The Institute's research shows that the first element is often explained in the order by mentioning the offences of which the suspect is being accused. However, the second element, which is only reasoned in a third of the relevant orders and only by two of the four Regional Courts, is almost always substantiated by a very general claim that "it should be considered socially unacceptable that the person concerned, while accused of these crimes, were to be released so shortly after his arrest."[h] Another motivation frequently used is that "it cannot be explained to society" if the suspect were to be released.

29. The fourth and final ground for pre-trial detention is the risk of absconding. This ground is used in 13% of all investigated case files. The standard phrasing used by one of the Regional Courts (see paragraph 21 above) shows that courts often refer to very generic circumstances, while it remains unclear which of those circumstances exactly applies to the given case. However, some good examples could also be found, such as: "The suspect stated that she deliberately stayed abroad for a period of time, because she knew the police in the Netherlands were looking for her."[i] It is clear that such behaviour indicates a risk of absconding.

Suspension of detention

30. In the majority of the investigated cases in which a suspension (*schorsing*) of detention is requested, allowing for alternative measures to detention, this request is denied by the court. Such a decision is almost always reasoned by a general phrase about weighing the interests of the suspect against those of society. An elaboration on which interests of the suspect are being weighed against which interests of society, and why more weight is given to the latter, is usually lacking.

31. In some courts it is made nearly impossible to substantially motivate the order to decision to deny a suspension of detention, because they work with pre-printed forms. The clerk then strikes out the phrases that are not applicable to the case. There is no room for additional remarks, such as specific reasons relating to the case at hand.

[g] "Het feitenonderzoek [is] nog gaande (onder meer moeten de aangever en diens zoon nog nader worden gehoord over de exacte toedracht van het incident), welk onderzoek door betrokkene ernstig zou kunnen worden bemoeilijkt als deze op vrije voeten zou zijn."
[h] "Het moet als maatschappelijk onaanvaardbaar worden geacht wanneer betrokkene bij deze verdenking zo kort na zijn aanhouding al op vrije voeten zou komen."
[i] "(V)erdachte heeft verklaard opzettelijk een periode in het buitenland te hebben verbleven, omdat zij wist dat de politie in Nederland haar zocht."

Decisions on appeal

32. For its research, the Institute also looked at 111 case files in which a Court of Appeal took one or more decisions about detention on remand.[j] In 83% of those cases, the appeal was rejected, meaning the Court of Appeal upheld the district court's decision. In nearly all cases it was the suspect who lodged the appeal.

33. In almost 20% of the case files the decision was not reasoned at all. In these cases the Court limited its written decision to the statement: "The Court concurs with the impugned decision and the grounds upon which that decision was based."[21]

34. In 56% of the cases, one or more element (such as serious indications or ground(s)) is mentioned, but not motivated or motivated by using a standard phrase. That means that in only 25% of the investigated case files one or more element was motivated with reference to the individual circumstances of the case.[22]

SECTION III: HUMAN RIGHTS STANDARDS

General safeguards on reasoning of pre-trial detention orders

35. Safeguards for pre-trial detention orders relating to the reasoning thereof can be found in international law and jurisprudence:
    a. a pre-trial detention order needs to be reasoned;
    b. such reasoning must not be 'general and abstract';
    c. 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;
    d. the severity of the sentence faced alone does not suffice to establish a risk of absconding or reoffending;
    e. continuous judicial supervision of pre-trial detention should be as rigorous as the initial examination;
    f. continuation of detention cannot be used to anticipate a custodial sentence; and
    g. alternatives for detention should be considered.

36. Orders on pre-trial detention need to be reasoned. This is set out in the Council of Europe recommendation on the use of remand in custody of the Committee of Ministers.[23] 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.[24] This is reflected in the Dutch Code of Criminal Procedure, as explained above.[25] The importance of reasoned pre-trial detention decisions was recently confirmed in the Netherlands 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.[26] 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:

[j] Please note that these only concerned decisions on appeal against a pre-trial detention order by a Regional Court. They did *not* include decisions on pre-trial detention made after conviction in first instance, as the legal framework for those decisions is different.

"Decisions on pre-trial detention are substantially reasoned".[27] A footnote adds: "I.e. more comprehensive than with the usual forms in which boxes are ticked".[28]

37. The reasoning of the decision on pre-trial detention must not be 'general and abstract'.[29] This means, inter alia, that the reasoning may not simply constitute a repetition in an abstract and stereotyped way of the formal grounds for detention as provided by law.[30] It also means that the order should contain references to the specific facts and the applicant's personal circumstances justifying detention.[31]

38. 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.[32]

39. 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.[33] '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.[34] Some grounds, like the risk of tampering with evidence, may lose their strength after a certain lapse of time.[35] If reasons are 'relevant and sufficient' is to be determined on a case by case basis.

40. 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. [36]

41. 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 case law of your Court.[37] The defendant is, after all, at this point presumed to be innocent.

42. 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'.[38] 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

43. 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*[39] and three months and seven days in the case of *Kanzi*[40]) 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.

44. However, in other case law, your Court made clear 'that justification for any period of detention, no matter how short, must be convincingly demonstrated by the authorities'.[41] Without any form of justification, such detention would be in

violation of Article 5 ECHR. In recent years, violations of Article 5 were found in cases where the period to be taken into account consisted of months rather than years.[42] In 2016 your Court even found a violation of Article 5 for the unlawful deprivation of liberty for the duration of eight and a half hours.[43]

45. 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 arguments were put forward to the contrary, what considerations were crucial to the final decision.

Concluding remarks

46. The written orders on pre-trial detention are in practice often reasoned in a concise manner, using standard phrasing and giving 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.

47. 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.[44]

48. 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. As our research shows that this leads to substantially improved reasoning, the Institute highlights this as a positive development.

49. 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.

[1] Netherlands Institute for Human Rights, *Tekst en uitleg. Onderzoek naar de motivering van voorlopige hechtenis*, maart 2017. To be found at https://mensenrechten.nl/publicaties/detail/37467 (Dutch only). Hereafter: Netherlands Institute for Human Rights (2017).
[2] Tase v. Romania (29761/02, 10 June 2008, §41).
[3] These requirements are summed up in Articles 67 and 67a of the Code of Criminal Procedure (hereafter: CCP). Article 67 contains the situations in which pre-trial detention may be applied, while Article 67a specifies the grounds.
[4] Art. 67 § 3 CCP.
[5] Art. 67 § 1 and § 2 CCP.
[6] Art. 67a § 1 CCP.
[7] Art. 63 and 64 CCP.
[8] Art. 65 CCP.
[9] Art. 63 and further CCP.
[10] 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.
[11] Art. 24, 78 § 2, 67a CCP.
[12] Art. 80 CCP.
[13] L. Stevens, 'Voorlopige hechtenis in tijden van risicomanagement. Lijdende of leidende beginselen?', *Delikt en Delinkwent* 2012/36 (hereafter: Stevens (2012)).
[14] 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)).
[15] Stevens (2012), p. 387-389.
[16] Janssen, Van den Emster and Trotman (2013), p. 438.
[17] The statistics mentioned in the following paragraphs are based upon 222 research case files from four Regional Courts.
[18] Smirnova v. Russia (46133/99 and 48183/99, 24 July 2003, §59).
[19] Janssen, Van den Emster and Trotman (2013).
[20] Netherlands Institute for Human Rights (2017), p. 54.
[21] Netherlands Institute for Human Rights (2017), p. 42.
[22] Netherlands Institute for Human Rights (2017), p. 42.
[23] 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."
[24] Estrikh v. Latvia (73819/01, 18 January 2007, §122); Urtans v. Latvia (16858/11, 28 October 2014, §35).
[25] See paragraph 13 above and Art. 24, 78 § 2, 67a CCP.
[26] Professional standards criminal law (*Professionele standaarden strafrecht*), available at https://www.rechtspraak.nl/SiteCollectionDocuments/20160220-professionele-standaarden.pdf#search=professionele%20standaarden (in Dutch only).
[27] Paragraph 2.8 sub 2 of the Professional standards.
[28] Footnote 22 of the Professional standards.
[29] Smirnova v. Russia (§63).
[30] Buzadji v. Moldova (23755/07, 16 December 2014 §36) – the case has been referred to and is currently pending before the Grand Chamber.
[31] Dubinskiy v. Russia (48929/08, 3 July 2014, §65).
[32] Dubinskiy v. Russia (§64); Letellier v. France (12369/86, 26 June 1991, §51).
[33] Clooth v. Belgium (12718/87, 12 December 1991, §44).
[34] Smirnova (§59).
[35] Letellier, (§39).
[36] Urtans v. Latvia (§29); Estrikh v. Latvia (§117).
[37] Dubinskiy v. Russia (§64); Letellier v. France (§51).
[38] Jablonski v. Poland (33492/96, 21 December 2000, §83).
[39] Hendriks v. the Netherlands (admissibility decision, 43701/04, 5 July 2007).
[40] Kanzi v. the Netherlands (admissibility decision, 28831/04, 5 July 2007).
[41] Shishkov v. Bulgaria (38822/97, 9 January 2003, §66); Dubinskiy v. Russia (§30 and §59).
[42] 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; Shiskov v. Bulgaria, in which pre-trial detention lasted 7 months and 3 weeks.
[43] Popoviciu v. Romania (52942/09, 1 March 2016).
[44] Tase v. Romania (§40).