

Dutch criminal policies at the crossroads

van Dijk, J.J.M.

Published in:
EuroCriminology

Publication date:
1990

[Link to publication](#)

Citation for published version (APA):
van Dijk, J. J. M. (1990). Dutch criminal policies at the crossroads. *EuroCriminology*, 3, 135-145.

General rights

Copyright and moral rights for the publications made accessible in the public portal are retained by the authors and/or other copyright owners and it is a condition of accessing publications that users recognise and abide by the legal requirements associated with these rights.

- Users may download and print one copy of any publication from the public portal for the purpose of private study or research
- You may not further distribute the material or use it for any profit-making activity or commercial gain
- You may freely distribute the URL identifying the publication in the public portal

Take down policy

If you believe that this document breaches copyright, please contact us providing details, and we will remove access to the work immediately and investigate your claim.

Jan J. M. VAN DIJK, The Netherlands

Dutch Criminal Policies at the Crossroads¹

In their own judgement of themselves, they are both tolerant and fanatic, tolerant in the sense that ever since they became an independent country, they decided that they would live in peace among themselves—which is so, because in Holland there is no civil strife; but they are so rigid in the application of their ideas, that they are really quite fanatical and will never agree that they are mistaken or that their contradictors are right.

From : Duke de Baena, *The Dutch Puzzle*, The Hague : Boucher, 1975.

Introductory Remarks

A valid measure of the level of punitiveness of a national criminal justice system is the detention rate per 100,000 inhabitants (the number of detainees per 100,000).

In 1980 the Netherlands possessed a population of 25 detainees per 100,000 inhabitants. In 1986 this figure had gone up to 34. According to official forecasts it may eventually go up to as far as 40 in the nineties. The main reason for this increase has been a legislative change in the Opium Act in 1976, which introduced a much higher maximum penalty for drugs trafficking. At present already more than a third of all detainees with long prison sentences have been sentenced for drugs offenses.

In a cross-national perspective the Dutch rate of detainees *per capita* is extraordinarily low, as can readily be seen from table 1.

In no other industrialized country the prisoners rate is as low as in the Netherlands (34). Other countries with low rates are Greece (39) and Norway (49).

Prison statistics are reasonably reliable, so this comparison indicates that the Dutch criminal justice system has the unique feature of producing lower numbers of detainees than any other system in a comparable social setting.

¹ Edited version of a lecture given to the foreign participants of the international conference on the occasion of the centenary of the Dutch Penal Code, 3 September 1986 in the New Church in Amsterdam, under the title *Agreeing to Differ*.

Table 1

Prisoners per 100,000 inhabitants in some industrialized nations

| | | | | | |
|----------------|--------|-----|----------------|--------|-----|
| Australia | (1986) | 70 | Japan | (1986) | 46 |
| Austria | (1986) | 103 | Netherlands | (1986) | 34 |
| Belgium | (1986) | 62 | Norway | (1986) | 49 |
| Canada | (1985) | 109 | Poland | (1980) | 270 |
| Czechoslovakia | (1980) | 230 | Portugal | (1986) | 82 |
| Denmark | (1986) | 65 | Singapore | (1986) | 135 |
| Finland | (1986) | 75 | South Africa | (1975) | 400 |
| France | (1986) | 84 | Spain | (1986) | 65 |
| FRG | (1986) | 88 | Sweden | (1986) | 49 |
| GDR | (1972) | 262 | Switzerland | (1986) | 67 |
| Greece | (1986) | 39 | Turkey | (1986) | 102 |
| Hongkong | (1986) | 110 | United Kingdom | (1986) | 95 |
| Hungary | (1986) | 205 | USA | (1985) | 300 |
| Israel | (1986) | 134 | USSR | (1975) | 391 |
| Italy | (1986) | 76 | Yugoslavia | (1977) | 101 |

Sources: HEUNI, *Criminal Justice Systems in Europe*, Helsinki, No. 5 (1985); J. R. Kubiak: *Crime and the Penal Policy of Courts in the Hungarian People's Republic*. [In:] *Archivum Kryminologii*. T.-XIV, 1987, 235-237; Prison Information Bulletin, Council of Europe, No. 8, December 1986; *Reporter*, Australian Institute Criminology Quarterly, June 1987; M. Killias: *Power Concentration, Legitimation Crisis and Penal Severity: a Comparative Perspective*. *Annales Internationales de Criminologie*, Vol. 24, 1986, pp. 181-221.

One obvious explanation for the low rate of prisoners in the Netherlands is that there may be just much less serious crime. According to medical statistics of the WHO the homicide rate in the Netherlands is 0.8 per 100,000. Most industrialized societies show higher homicide rates (e.g. USA 10; Finland 3; Bulgaria 3; Canada 2.² Both police statistics and results of victimization surveys show that the Netherlands has an average level of property crimes but a markedly lower level of crimes of violence than most other industrialized countries.³ To a certain extent the low rate of prisoners can indeed be explained by lower crime rates. However, a closer analysis of the detention rates of other European countries and the Netherlands is mainly the result of different sentencing policies. A global comparison with statistics on East-European systems shows that unconditional prison sentences make up a much lower percentage of all sentences in the Netherlands (about 20 percent) than in several Eastern European countries (with the rates of around 50 percent).⁴ In general the

² World Health Organization, *World Health Statistics Annual*. Geneva WHO, 1984.

³ J. J. M. van Dijk a.o.: *Statistics: data banks and victimization surveys*. Conference on the Reduction of Urban Insecurity. Council of Europe, Barcelona, 17-20 November 1987.

⁴ Kubiak: *Crime and the Penal Policy...* op. cit.; J. R. Kubiak: *Internal and External Factors Influencing the Operation of Criminal Justice Systems of Socialist European Countries*. *Review of Social Law* 13 (1987), 5-59.

percentages of unconditional prison sentences seem to be lower in West-European countries than in East-European countries. In comparison to the percentage of other West-European systems, the Dutch percentage of prison sentences is not particularly low. Actually, unconditional prison sentences make up a lower percentage of all sentences in Sweden and the FRG (9 percent and 6 percent respectively) than in the Netherlands.⁵

According to both Steenhuis and Downes, the differences in the size of the prison population in the Netherlands and elsewhere is mainly attributable to sharp differences in the length of prison sentences.⁶ The Dutch system has apparently exhibited a far more pronounced resistance to long terms of imprisonment than other criminal justice systems in the industrialized world. For similar offences the Dutch judiciary imposes custodial sentences which are (much) shorter than the ones imposed elsewhere. Some statistics suffice to illustrate this point. In the Netherlands the mean length of an unconditional prison sentence for a burglary is 4 months. For robbery (theft with violence) the mean is 10 months, for rape 11 months, for dealing in hard drugs 15 months and for homicide 25 months (statistics on 1985).⁷

Explanations for the Leniency of Dutch Prison Sentences

The relative leniency of the prison sentences imposed by the judges seems to form the aspect of the Dutch criminal justice system which needs to be accounted for in an international perspective. Several explanations have been brought forward by criminologists. According to one view, it is largely the fruit of a distinct penal philosophy developed at the Dutch University of Utrecht in the 50s.⁸ The post-war Utrecht school sought to blend psychiatry, existentialism and penal law. The Utrecht school has been the driving force behind the establishment of an elaborate care system for mentally ill offenders. In those days, similar schools in forensic psychiatry were influential in other countries as well. Much can be said about the humanitarian impact of forensic psychiatry, but surely not that it has generally put a lid on the length of the periods of detention. In the Netherlands chronic shoplifters were sometimes detained for long periods in order to be given treatment. For these reasons it is rather

⁵ D. Steenhuis a.o.: *The Penal Climate in The Netherlands: Sunny or Cloudy*. *British Journal of Criminology* 23, 1 (1981), 1-16.

⁶ D. Downes: *The Origines and Consequences of Dutch Penal Policy since 1945*. *British Journal of Criminology* 122, 4 (1982), 325-36.

⁷ Source: Criminal Statistics, Central Bureau of Statistics, The Netherlands.

⁸ Downes: *The Origines...*, op. cit.

unlikely that the Utrecht school can account for the lower sentencing tariffs across the board.

Another explanation for the low tariffs, and one which is rather popular among Dutch commentators, holds that Dutch prosecutors and judges are reluctant to impose severe prison sentences because many of them have been detained themselves during the German occupation. In reality quite a few of the senior prosecutors and judges were detained. Their prison experiences most probably have indeed influenced their outlook on the ethics and on the rationality of long prison sentences. However, members of the judiciary of other European countries have been exposed to the world of prison in the wartime period as well. Apparently the sentencing practices of the latter were little affected by these personal experiences.

Historical data show that the low prisoners rate in the Netherlands is not a post-war phenomenon. Long before 1945 the rate of prisoners in Holland was already remarkably low. The rate in 1930 was 60 per 100,000. In 1920 it was 70. These data shed doubt on the theory which relates the mildness of Dutch sentences to the post-war Utrecht school. They also invalidate the German prisoners' hypothesis. The latter hypothesis seems to be an example of a popular myth. As most forms of mythology it does tell you something vital about the society at issue — in this case it reflects the collective war trauma of the Dutch: the German occupation is still an important frame of reference — but it does not provide a scientifically sound answer to our question concerning the low prisoners rate.

In our view the penal philosophy of Dutch lawyers practising criminal law does not differ fundamentally from the ones of their counterparts elsewhere in Europe. The outlook of most European judges consists of a blend of classical principles and some modern utilitarian ideas about general deterrence and rehabilitation. Even if the views of the Dutch judges are different from those of their counterparts in other countries, this by itself does not explain the different tariffs. Empirical research on sentencing in the Netherlands shows that the length of sentences is not greatly influenced by the penal philosophies embodied in the law or by the personal philosophies of the sentences themselves.⁹ Quite different sentences can be based upon identical philosophies and vice versa.

In our view the severity of the sentencing tariffs must be seen as an element of the professional subcultures of the judiciary. These subcultures of punitiveness vary widely across nations. Their contents cannot be

⁹ J. J. M. van Dijk: *The Use of Guidelines by Prosecutions in The Netherlands*. [In:] J. Shapland (ed.), *Decision Making in the Legal System*. Issues in Criminological and Legal Psychology, No. 5, Leicester.

understood or explained by studying the dominant penal doctrines alone. The judicial subcultures of punitiveness are sometimes influenced by political programmes. In most cases they must primarily be understood in the wider context of national cultures. Some national cultures seem to breed judicial traditions which are relatively severe (for instance the United States and most East-European countries). Others, such as the Netherlands, Norway and Greece, seem to foster relatively mild ones. In this article we will focus our attention upon the rather special case of the Netherlands.

The Historical Background

Several historical data testify to the existence of a century-old tradition of Dutch tolerance towards criminals and other deviants. In the Dutch republic of the 16th and 17th century the administration of penal law was in the hands of local merchants who had a paternalistic and pragmatic outlook. In the words of the historian Huizinga: *it would be extremely difficult to find another ruling caste that governed a country for so long with so little coercion and generally with so much benevolence.*¹⁰ In 1567 the Dutch humanist Coornhert — a follower of Erasmus — wrote a widely quoted treatise on the ways to rehabilitate offenders (*On Disciplining Villains*). Following his proposals the city of Amsterdam opened in 1595 two penitentiary institutions where male and female offenders were taught a trade. According to the American criminologist Sellin these institutions were the first rehabilitation-oriented prisons on the European continent.¹¹ In this context it must also be noted that the persecution of witches came to an end in the Netherlands around 1600. In all neighbouring countries it went on for at least another century.

According to several authors, the administration of penal law seems to have remained relatively humane in Holland during the 18th and 19th century.¹² In the 19th century Holland retained the French Penal Code till 1886. Some of the more cruel penalties were abolished when Holland regained its independence in 1813. Also abolished was the use of juries in criminal trials. From the beginning of the 19th century the Dutch govern-

¹⁰ Citation from: A. G. Peters: *Main Currents in Criminal Law Theory*. [In:] J. J. M. van Dijk et al. (eds.): *Criminal Law in Action, an Overview of Current Issues in Western Societies*. Arnhem: Gouda Quint, 1986.

¹¹ Th. Sellin: *Pioneering in Penology: the Amsterdam Houses of Correction in the Sixteenth and Seventeenth century*. Philadelphia Press, 1944.

¹² D. Downes: *Contrasts in Tolerance: Post-war Penal Policy in The Netherlands and England and Wales*. London: London School of Economics, 1986.

ment was opposed to capital punishment. It was finally abolished in 1870. Between 1806 and 1870 capital punishment was ordered 568 times (as the mandatory punishment for certain crimes). According to a historical study, 80 percent of these sentences was changed into a custodial sentence on the basis of a pardon given by the King.¹³

On the occasion of the centenary of the Dutch penal code of 1886 the Research and Documentation Centre of the Ministry of Justice analysed the sentences passed by three district courts in 1888. This study shows that 70% of the custodial sentences were less than a month. Prison sentences of more than a year were quite exceptional (approximately 4%).¹⁴

These historical data indicate that the low detention rate of the Netherlands is an expression of a cultural mode which goes back several centuries. The explanation for this phenomenon must therefore be found in the history of the Low Countries. In this article we can of course only touch the surface of such a historical account.

The Netherlands gained independence from Catholic Spain around 1600. Economically the newly established country was extremely successful. To the embarrassment of its own people, it soon became one of the wealthiest nations in the world.¹⁵ The immediate wealth of the young nation may have helped it to develop a tolerant attitude towards its internal "enemies", that is those who committed crimes. Other structural factors have given strength to this tradition of tolerance.

The rebellion against the King of Spain was led by the Prince of Orange with the support of local groups of Calvinists. Calvinism, the religion of the lower middle classes, became the official religion of the new nation. Foreign relations and defense were firmly in the hands of the Prince of Orange. The new nation, however, lacked a clear, homogeneous power base. Economic power lied largely with the merchants, in particular with the merchants of Amsterdam, many of whom were humanists. They did not feel subordinate to either the Prince of Orange or the calvinist ministers. The Royal Palace at the Dam square in Amsterdam was originally built as the town hall. It was deliberately built in such a grand, classical style, that it would put the palaces of the Princes of Orange into the shadow. When the adjacent New Church had to be renovated, the eldersmen stopped the work when word was passed to them that the Calvinists wanted to build a tower which would be higher than

¹³ S. van Ruller : *Genade voor Recht. Gratieverlening aan ter dood veroordeelden in Nederland 1806-1870*. De Bataafsche Leeuw, 1987 (in Dutch).

¹⁴ P. van Duyne : *Farmers, Citizens and Country People in the New Criminal Code (1886)*. *Delikt en Delinkwent* 16 (1986), 1034-1049 (in Dutch).

¹⁵ S. Schama : *The Embarrassment of Riches : an Interpretation of Dutch Culture in the Golden Age*. New York : Knopf, 1987.

the Town Hall. The tower of this Church — which was the site of the international penal congress in 1986 — was never completed according to the original grandiose plan of the ministers, as can be seen today.

In my opinion these historical anecdotes about the power-struggle in the 17th century in Amsterdam indicate that Dutch politics was, right from the start, based upon successful coalitions and carefully balanced compromises between various social groups. At no point in Dutch history the country was ruled by a social elite which did not have to reckon with the wishes and interests of other groups. This tradition breeds a preference for modest, accommodating rulers. This feature seems also to have bred a preference for pragmatic tolerance and co-operation. In the Netherlands, there has never been a collective crackdown on farmers, Catholics or Jews. Actually, no Jewish ghettos have ever existed in a Dutch town. In our own century, even the war collaborators, however despised, were treated relatively lenient.¹⁶ This integrative mode may finally also explain the apparent dislike for a criminal policy, which seeks to isolate criminals from the rest of society by means of long prison sentences. To put it differently, the high level of legitimation¹⁷ of the coalition-based political system, allowed the Dutch establishment to pursue a consistently lenient criminal policy throughout the ages.

The System of "Verzuiling" (Pillarization)

In the 19th and 20th century the Calvinists, upper-middle class Protestants and Catholics developed their own political parties. In addition to this, each of these religious affiliations as well as the labour movement developed its own separate labour unions, farmers associations, homes for the elderly, schools, hospitals, universities, youth clubs, broadcasting companies, public libraries and so on. These tight and elaborate social networks which covered nearly all aspects of social life are called the "zuilen" (social columns or pillars). Politically, Dutch society in the 20th century was not a simple classes society. Until recently it was made up of several closely knitted "pillars", which took care of their own people in splendid isolation. The social elites or upper-classes of the columns reached agreements amongst each other in The Hague. In the States General the spirit of accommodation and mutual tolerance of the preceding centuries prevailed.¹⁸

¹⁶ Downes : *Contrasts in Tolerance...*, op. cit.

¹⁷ Killias : *Power Concentration...*, op. cit.

¹⁸ A. Lijphart : *The Politics of Accommodation*, 2nd rev. Berkeley and Los Angeles : University of California Press, 1975 ; C. Bagley : *The Dutch Plural Society*, Oxford : University Press, 1973.

In our view, the existence of the column-system is crucial for an understanding of Dutch criminal policy for two reasons. First of all, large parts of the younger generation were for many decades effectively socialized within the various institutions of the "zuilen". The "zuilen" have until recently, acted as a quite successful institutions of socialization and informal social control. In his portrait of the Dutch national character, written in the sixties, the former ambassador of Spain, De Baena, notes the extraordinarily subservience to "the tyranny of petty social conventions". This "tyranny" was mainly exercised by the institutions of the "zuilen". Their influence seems also to have been responsible for the low crime rates during the fifties and sixties in the Netherlands.

Secondly, the existence of the "zuilen" has probably strengthened the traditional reservations of the political elite towards a harsh criminal policy. Until the seventies, each of the religious "zuilen" possessed its own, quite extended and prestigious, probation association. These voluntary organizations were committed to the ideal of reintegrating criminals back into society. Offenders were assigned to the different probation associations according to their religious denomination. Each "zuil" — the Protestant, the Catholic and the humanist — took care of its own black sheep. The political elites of the "zuilen" were briefed about criminal policy affairs by experts from their own rehabilitation-oriented probation associations. Their arguments have effectively counterbalanced pleas for a harsher or "tougher" approach towards crime.

The Depillarization of Dutch Society since 1970

The above interpretation of the low tariff for prison sentences brings into focus the problems the Dutch criminal justice is facing today. Since the sixties the "zuilen" have lost much of their influence. In the mid-seventies the three main Christian political parties merged into one Christian Democratic party. The Catholic labour union merged with the largest socialist union. The various private probation associations merged into one neutral federation. Many more examples of the "depillarization" ("ontzuiling") of important social institutions in Dutch society could be given. This process was partly the result of the rapid social, economic and political emancipation of the Catholic and Calvinistic population groups during the post-war period. The "zuilen" were also weakened by the growth of the Welfare State and the general process of secularization. Due to these developments a declining number of the schools, youth clubs, sport clubs, etc., are presently affiliated with one of the "zuilen". Since the "zuilen" played a dominant role in the social life of large sections of the Dutch population, the sudden process of depillarization has probably

undermined some of the traditional socialization structures in Dutch society. This may explain why the cultural trend of rebellious individualism in the seventies has been particularly marked among Dutch adolescents, as evidenced by the so-called provo and squatter movements in Amsterdam. If the former Spanish ambassador De Baena would now visit the Netherlands, he would notice that several of the old conventional habits have lost their grip on the Dutch. In some cases the newly-acquired freedom leads to a tendency to satisfy personal needs at the expense of others or of the community, or even to delinquency or crime. The increased abuse of alcohol and drugs also forms part of this pattern of negative individualism. No wonder a section of the population expresses nostalgic feelings about the old society of the "zuilen".

The Crime Wave of the Seventies

For many decades the rates of registered crime in the Netherlands had been lower than in England and Germany. Since 1970, however, the rates for petty crimes went up more steeply in Holland than in neighbouring societies. The overall crime rate of the Netherlands is now at the same level as in other West-European countries. In figure 1 an overview is given of registered crime trends in five European countries with the numbers of 1970 taken as index.

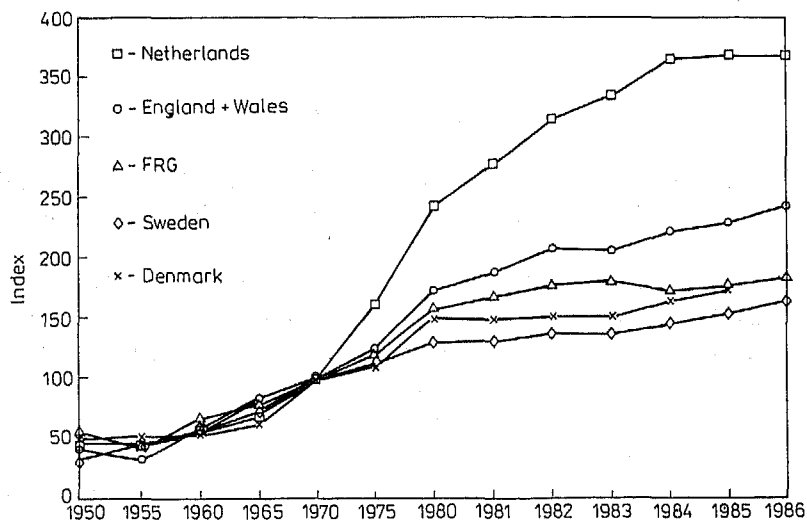


Fig. 1. The development of crimes known to the police in five European countries, 1970 = 100

It is evident from these indexed trends that the Netherlands had experienced a veritable crime boom between 1970 and 1983. To our knowledge the steep increases of the crime rate are not due to improvements of police recording. The Research and Documentation Centre conducted its first national victimization survey in 1973. The results of later surveys show that the victimization rates for household burglaries and other much occurring crimes have indeed more than doubled between 1973 and 1983. We cannot present hard empirical evidence that the increase of the level of crime during the seventies was caused by the collapse of the "pillars". It seems reasonable to assume, however, that there has been a causal connection. The continuing increases in the early eighties may partly be attributable to high unemployment rates among the young. At any rate, the Dutch criminal justice system now faces serious problems. In response to the problems of crime some groups of the population as well as certain foreign governments demand a more repressive criminal policy. It is not easy for the judiciary to withstand these political pressures altogether. The "zuilen" can no longer be relied upon to act as agents of social control. Neither do they continue to support a restrained, humane criminal policy through their own respected probation associations. Finally, the process of "depillarization" has generally eroded the respect for the authorities. The judiciary is less shielded from popular demands for more severe punishments than in the past. Consequently, the Dutch criminal justice system may gradually start imposing more severe penalties across the board. A trend towards stiffer penalties for recidivist offenders is already evident.

At the Crossroads

In 1985, the Dutch government presented to the Second Chamber a comprehensive policy plan for the maintenance of law and order in the coming years.¹⁹

The contents of this policy plan can be interpreted in two ways. On the one hand it announces the construction of five new prisons with 250 cells each. Also, the prosecution of petty crimes will become more stringent, in the sense that fewer prosecutions will be waived for reasons of expedience. This component of the plan can be viewed as a step towards a more repressive criminal policy. On the other hand, the government categorically rejects the notion that the crime problem can ever be tackled

¹⁹ *Society and Crime*, a policy plan for the Netherlands. Ministerie van Justitie, The Hague, May 1985, with an extended summary in English.

effectively by means of a more repressive criminal policy alone. Much emphasis is put on the need for more effective preventive measures, to be taken by the municipalities in particular. By 1987 the Dutch Ministry of Justice has given financial support to more than two hundred local crime prevention initiatives in 90 different cities.²⁰ Some of these are directed towards social development (for instance the prevention of truancy and drop outs and the provision of special training and leisure facilities for high-risk groups). Others are directed towards opportunity reduction (for instance more surveillance by service personnel in public transport and high-rise buildings). Much support is also given to the development of special provisions for crime victims. The Research and Documentation Centre has been asked to monitor these experiments and to evaluate them. In a historical perspective this crime prevention campaign can be seen as an attempt to restore the level of informal social control, previously exercised by the "zuilen", by introducing new forms of binding and supervision the young.

It is hard to predict what course the crime policy of the Netherlands will eventually take. Will it adopt the more repressive sentencing policy of its European neighbours? Or will it stick to its tradition of pragmatic tolerance and to its commitment to the social integration of deviants? A hundred years after the introduction of its national Penal Code, the criminal policy of the Netherlands seems to be at the crossroads. The political integration of the countries of the European Economic Community in the early nineties may induce the Dutch criminal justice system to adopt stiffer penal tariffs. This is far from a certainty, however. Even in the United States of America the administration of penal law is mainly in the hands of the individual States. In the USA sentencing tariffs are highly divergent across the nation. Two factors may prevent the Dutch criminal justice system from a rapid process of Europeanization. Firstly, the crime rates have not increased further since 1985. In comparison to other EEC-countries the Dutch rates for serious offences are still rather low. So are the rates of drug users. Secondly, the tradition of a pragmatic and tolerant criminal policy is, as I have tried to show in this article, deeply rooted in the national culture of the Dutch.

²⁰ J. Junger-Tas: *Crime Prevention in the Netherlands*. [In:] J. Graham, *Research Bulletin*; special European Edition, No. 24, (1987). Home Office, Research and Planning Unit. United Kingdom, No. 24 (1987).