Introductory Discussions on the Dutch Criminal Code

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Abstract: By our study, we aimed, as an objective, to present the general principles of incrimination derived from the needs of the Dutch social life, which were considered by the Dutch legislator at the time of the adoption of the Dutch Criminal Code.The presentation of the principles regulated by the general title in the Dutch Criminal Code have, as a main result, the possibility of knowing, especially by the students of the second year of study, the general normative framework that is part of the Dutch positive criminal law. The conclusions we draw are given by the identification of the substantial common substrate, part of the natural law, on which the Dutch legislator bases his construction of the Code, in order to build a future European Criminal Code, applicable throughout the European Union.

Keywords: Dutch Criminal Code; natural law; the general principles of incrimination

1. Brief History

The Dutch Criminal Code is the descendant of the French Criminal Code, which has remained in force in the Netherlands since Napoleon's joining in 1811 until 1886. In 1886, its own national criminal code came into force.

The entry into force was delayed, among other things, by the construction of three prison pavilions in which, according to the Pennsylvania prison complex, cell prisons were very rigorously erected. Moreover, these three old and peculiar buildings are still used today as such, although they have been modernized and provided with the necessary comforts.

In the new code, firstly, a number of sanctions that do not conform to the national spirit, such as forced labour for life, deportation, "civil death" and general confiscation [2]were put to an end. And in other respects, however, the penal code did not fit the Dutch spirit. Before the "French" period, the United Provinces of the

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[2] It is about the general seizure of goods (translator's note).

Netherlands were regarded as a country of great freedom and tolerance, in which the image of the wealthy bourgeois was dominant, which was manifested by a great aspiration for independence, by avoiding excesses, complying with different aspects of a problem and by maintaining the habit. (van Binsbergen & Willink, 1967).

The new code was prepared by the De Wal commission. It included exclusively those who adhered to the classic current of criminal law, whose spiritual father is considered to be Cesare Beccaria. Entirely in the style of classical thinking, the project created by this commission was distinguished by its great simplicity and sobriety, compared to the foreign criminal codes of the time: it did not know (and does not know) the tripartition, but the bipartition of the crimes. It chose then the prison sentence as the most important type of punishment ("primadona"), which had to be executed according to a cell regime, so that the gravity of the punishment does not weigh in the most possible way the seriousness of the crime committed but should be in principle the same for all convicts. This would have led to fairness, which is why it was considered very important for the judge to be granted a great freedom in establishing the sentence: it goes from general legal minimums per type of punishment (currently a day of prison sentence and five florins of pecuniary punishment) to the specific maximums for each crime (in the case of premeditated murder, a more serious crime, twenty years or life imprisonment). Confidence in the judge, expressed here, was an important aspect of the new criminal law. Regarding the significance of criminal law, a great reservation was expressed, for example, in the field of offenses against morality (the criminal law could not even "moralize" too much) and the descriptions of the offenses were written with sobriety: rarely the offenses are differentiated according to specific reasons. Thus, the criminal code does not know, for example, a special provision for passion crime; in the case of premeditated deprivation of life, it is always a question of premeditated murder or doubtless murder ("moord" or "doodslag", with or without premeditation), but special reasons can very well be a good reason for mitigating the punishment.

Many general rules, such as impeachable attempt and co-participation, have been briefly and resolutely regulated, yet their subsequent elaboration has been expressly left to the case law and doctrine.

The Minister of Justice, who successfully defended the draft of criminal code in Parliament, strongly emphasized the ultimum remedium nature of criminal law, which outlined the essence of the code.

Later, there was a large number of changes to these classic tendencies: as early as 1911, with the law on morality, by which the criminal law was profoundly amended and supplemented (by punishing pornography, homosexual relations with minors, the intermediation of prostitution, abortion, etc.), completely contrary to the then dominant liberal culture.

In this way, the Minister of Justice of that time satisfies the requirements of the confessional groups and especially of the small bourgeoisie, whose influence had increased considerably by the constitutional extension of the voting right in 1887 and whose conceptions were diametrically opposed to any form of "immoral behavior" and of "corruption", which in the highest social classes (greatly disturbing the people) have always been covered by a double Victorian morality practiced for this purpose: it was the political restoration and the minister intervened in this regard. (Kelk, 1976, pp. 53-62)

From an international point of view, the Dutch criminal law was soon known as not too harsh, even relatively gentle and human. A decisive factor was the intervention of the norm for the social reintegration of prisoners (reclassering), which was introduced in 1823 as a national charitable norm by the private entities. In the beginning, this consisted mainly in visiting the detainees isolated in their cell, later in the assistance offered to the former detainees (procuring them food and clothing) and now in offering assistance to the convicted persons with conditional suspension of the sentence and the persons conditionally released, as in drafting information reports for the court, so that it can take into account, in establishing the sentence, the social past of the culprit. Over time this norm was in fact entirely subsidized by the Government and the Ministry of Justice, within well-defined limits, it began to draw the clear lines of the social reintegration work.

Another factor that has made criminal law more human is the principle of opportunity for the prosecutor, on the basis of which they cannot exercise the criminal action.

Under the influence of the modern trend of criminal law, the traditional gentleness of the Dutch criminal system received new impetus, as it demanded greater attention from the culprit. Its typical results were a new criminal law for minors (introduced in 1905), conditional sentencing (introduced in 1915), the extension of the possibility of applying a pecuniary sentence (1924) and - last but not least - the introduction of the measure of "handing over" for delinquents with psychic problems, partially or completely uncondemnable (1928). Undoubtedly, however, a less human duty was

included in the modern orientation, which later proved to be extremely authoritative. Given that the protection of society was a high priority, it provided an easy justification for eliminating dangerous and incorruptible individuals from society.

Dutch criminal law has become a compromise and lies between the classical and the modern orientation. In the field of Dutch criminal law there was also talk of the preponderance of the "theory of the union", according to which the reward is certainly the basis of the punishment and determines its proportion, however special purposes related to behavioural connotations specifically set out the punishment to be applied within the limits of the remuneration. It is sufficient to think about special preventive arrest and conflict resolution [1].

The importance of the legal guarantee in favour of the certainty of the defendant's right, the importance of their resocialization and the protection of the society go, as far as possible, with equal steps. This does not exclude that, in this area of permanent tension, during a certain period, the balance of protection would have tilted more towards the culprit and his legal position and that in another period would have tilted more towards the society and its interests.

Despite this, this oscillation was strongly moderated by the heterogeneous nature of Dutch criminal law. This nature has been subjected to a very harsh test in the climate of the 1930s, characterized internationally by its authoritarian or totalitarian orientation, in which, indeed, an explicit conception of the interests of the community prevailed that both the classical legal guarantee for the protection of individual liberty, as well as the modern concern for an appropriate punishment or treatment of the culprit were restricted. In the Netherlands, this clearly inhuman orientation, which circulated throughout Europe, had relatively little influence: the prosecution for outrage of senior officials was extended, penitentiary developments suffered a pause and a new measure was designed that would have made prolonged detention of recidivists possible, from five to ten years, after the execution of the sentence. However, this measure has never been introduced.

Not even the international movements of the Social Protection (Prins, 1910) and the New Social Protection (Marc Ancel, 1954) were very successful, once the Dutch criminal law had developed in a certain sense in this spirit. (Remmelink, 1980, p. 35).

[1] L.H.C. Hulsman, in Straf composition.

After the Second World War, the "functionality" of the law intensified categorically. This means that it has been put more at the service of social objectives and that it has been seen more as a function in the state system. There was talk on the "instrumentalization" of criminal law, or on an increasingly clear orientation towards social efficiency, not towards the dogmatic justification of criminal law through a metaphysical concept of reward. Probably, even under the influence of powerful confrontations during World War II, with what power-holders believe they can apply to those who are subjected to them, criminal law has become more realistic. The fact that the deeply wounded community had to be reconstituted was added thereto, otherwise the economic life must resume its course. Instead, this resulted in a powerful appeal to the criminal law of the order, whose important manifestation was the law on economic crimes, which included many penalties in the sphere of socio-economic actions (1950). But also, in the more classical areas, new impulses have come, as in the detention regime. This led to a new law on the principles of the detention regime (1953), in which important principles were established for the execution of the prison sentence (among which the principle of resocialization).

In different ways, one and the other have found expression in Dutch criminal law sciences. Indeed, different ways of thinking have emerged, which have been variations on the theme of a humanitarian criminal law and which have had a certain consequence.

Firstly, Van Bemmelen's (Leiden) pragmatic humanitarianism dominated, with an emphasis on the inadequacy of unnecessary human suffering (criminal law is ultimum remedium), on intolerance, and on the need to put criminal law on the brink of irrational and moralistic tendencies (proving - thus, shortly after the Second World War, as an opponent convinced of the death penalty) (Bemmelen & Veen, 1948).

Secondly, there was the rational humanitarianism, by which the work of Vrij (Groningen) can be characterized, which, by its doctrine of "sub-sociability" (Vrij, 1947) offered a theoretical frame of reference - one might say a subsequent structuring - for the courts that were exercising their discretionary powers.

Also, Pompe's ethical humanitarianism (Utrecht), which in his delinquent-centered way of thinking, considered the human being as a starting point, the human being who is, in principle, responsible for his actions (Pompe, 1974, p. 15), in contradiction with the fatalistic (in)human image that Lombroso proposed at the time.

All these theoretical versions of criminal law have left untouched the nature of traditional Dutch criminal law: all discretionary competences have been assumed as

a starting point, as well as the "patriarchal" manner of execution, that is, according to the relatively indulgent and moralistic informal pattern in good will (Peters, 1983, p. 166).

The Utrecht doctrine, by its delinquent-centered conception, had an image of the offender as an "equal" person, who deserved to be treated with humanity, respect and trust and whose individual rights could not be violated. The approach of the "school in Utrecht"[1] was more anascopic, that is, mainly concerned with people and their interactions and basic relationships, and less with how to act on the part of the leaders: this last approach is more "catascopic" (from top to bottom), thus Vrij considered criminal law.

The central starting point was the individual and his subjective experience in managing criminal justice, in order to do justice to the perpetrator in criminal law: there was solidarity with the underdog[2]. Let's think of Churchill's words: the degree of civilization of a society results from the way offenders are treated (especially prisoners).

In integrating the legal and social sciences, the Utrecht doctrine saw important conditions for a coordinated and therefore empathetic approach of the person as a whole, provided that the practice of criminal law left at least sufficient traces.

This approach had a strong socio-psychological impact, while increasing attention was paid to the culprit with mental problems. The Psychiatric Observation Clinic for the detention regime founded in the 1950s, the current Pieter Baan Centrum, was a clear product of it. This was also true for the creation of the Van der Hoeven Clinic (Pieter Baan Centrum is intended for the research of mental disorders in persons subjected to preventive arrest related to a possible measure of handing over (tbs); the Van del Hoeven Clinic is a private care institute for the persons handed over). Finally, we can ascertain that the Utrecht school had a great influence in the 50s and 60s on the humanization of the management of Dutch criminal justice.

Towards the end of the '60s, the beginning of the '70s, there were disturbing social movements of democratization among the workers, students and others, who opposed the old power relations in the society. In particular, the criminal proceedings in Amsterdam against the students, who protested against the outdated management

[1] This is the original name of J. Leaute, A new school of forensic science. Utrecht School, Paris 1959.
[2] This indicates the one who is in a disadvantaged position (translator's note).

structure of the University occupied the university headquarters (violating a building) were seen as a symptom of the fossilized relationships that were reflected in the criminal justice practice in force. Later there was talk, to a certain extent, about a reorientation of criminal law.

In 1971 the Coornhert League was established, an association for the reform of criminal law and the administration of criminal justice.

This association took its name from the humanist Coornhert (1522-1590) who designed the project "Casa Raspa" (Rasphuis) (Jsrg & Kelk, 1992, p. 271). Mainly university professors and lawyers, but also some judges and prosecutors became Members of this association. Several very frequent congresses were organized by this association: in 1972, the one on the then completely new topic of correction and non-punishment.

The climate of criminal law was overwhelmed by a certain spirit of novelty: the judicial establishment of the punishment developed so much that the number of shorter criminal convictions increased to the detriment of the longest ones, producing a gap in prisons (1972).

The prosecutor often decided not to pursue the criminal action, which is allowed based on the principle of opportunity based on arguments regarding the general interest.

Two new currents of thinking have emerged in criminal doctrine: the "jurisdictional" orientation, initiated by Peters (Utrecht) (Peters, 1972) and the "common good" orientation, the basis of which was laid by Hulsman (Rotterdam) (Hulsman, 1965).

The jurisdictional orientation saw as a more important dimension of criminal law the way in which the natural feelings of revenge and reward of persons were formed, that is, in the respect of normalization, according to the legal principles rooted in the classical criminal law. These legal principles are "perpendicular" against the ordering function of the law. The ordering function is of course the primary one of the criminal law, but the effective legal character resides in the secondary function (control over the control according to the legal principles for the good administration of the authority).

Another important starting point for this legal conception is that in the criminal case the law itself acknowledges the need for the protection of each individual and thus the legitimacy of confronting the state over the factual and legal interpretations of its interests and controversial points.

It is precisely these norms and principles of procedural law that serve the protection of the individual against the state that are most deeply linked to the rule of law.

In order to effectively confer on these legal principles their own autonomous value, maintaining in the criminal case the structure based on contradiction is of utmost importance. It must really ensure that the parties are able to effectively and independently express their interests.

The idea, according to which the criminal law is treated with power from the perspective of the "consumer" (and less from the "official" one), stimulated the strengthening of the legal position of the juvenile defendants, of the detainees, of those who perform the military service, etc. and coincided with other international emancipation movements, such as the "civil rights movement" in the United States. It also received the support of the newly developed European jurisprudence under the European Convention on Human Rights (ECHR). Obvious conquests brought to the jurisdictional orientation are the strengthening of the legal position of the detainees (who have the formal right to file complaints with the independent supervisory commissions) and the jurisdictionalization of the measure of handing over. Those subject to being handed over can, since 1986, sumbit appeal against the extension of the measure to a special section of the Gerechtshof [1]in Arnhem and also have a limited right to file a complaint regarding the internal affairs of the institution.

The orientation of the common good, on the other hand, was aimed primarily at a critical view of the often irrational and discriminatory character of criminal law in the light of the social relations whose expression is. The inefficient use of criminal law was rejected in this orientation, that is, if it does not effectively contribute to conflict resolution or influence the behavior of persons: correction and non-punishment were in the foreground, of course where criminal law does greater harm and stigmatizes rather than serving sensitive goals.

An absolutely positive result was therefore seen in the importance of the social reintegration of the former detainees.

Finally, this current was oriented towards abolitionism which would be more beneficial for the welfare of the society. A recognizable product of this orientation was the development of the alternative sanction in exchange for imprisonment up to a maximum of six months, which was experienced in the eighties and introduced in 1989 as the main legal penalty: sanctioning by execution of unpaid work of public

[1] Gerechtshof is the Court of Appeal (translator's note).

utility [now amended by punishment with the task to be fulfilled, introduced by the law of September 7th, 2000, which entered into force on February 1st, 2001: translator's note].

It is clear that these two orientations were versions of the democratic rule of law which at the same time was a state of social assistance. Since the 1980s there have been quite drastic social developments, which have not proven to have an influence on the management of criminal justice. The society was characterized by an increasing degree of organization, on a large scale, and by a bureaucratization and automation, resulting in a huge "pragmatization", in which the pragmatic, economic thinking became predominant. The criminal law, oriented more and more strongly on the person of the perpetrator and based on the theory of the union, also suffered a certain "pragmatization". The introduction of the punishable nature of the institution in 1976 was characteristic, introducing a new article 51 in the code. Thus the link with the old dictum universitas delinquere non potest was broken.

In 1983 a new sanctions legislation was introduced:

- the categories of monetary penalties were introduced (each offense was associated with a certain category: see art. 23);

- in the case of all offenses for which the prison sentence of six years or less is provided, the agreement became possible, see art. 74 (preventing a subsequent criminal case by observing the conditions established by the prosecutor);

- the judicial pardon became possible for all the offenses (no punishment due to the low gravity of the act), see article 9a;

- accessory penalties (article 9, paragraph 3) no longer had to be applied in relation to a main punishment but could be applied autonomously.

On a limited scale, the agreement is possible even from the police (in the case of easy forms of drunk driving and shoplifting), see art. 74c, al. 3.

Then, in 1994, the criminal law for minors was considerably tightened, among others by increasing, in some cases, the specific period of detention for minors from a maximum of six months to a maximum of two years (art.77i).

And, in the atonement of the punishment, there is talk of "pragmatization". It is valid for both the detention regime, which due to longer penalties constantly fights against the lack of cells and knows more austere regimes, as well as for the "social reintegration" (reclassification), which is increasingly directed towards organizing

and accompanying the atonement of (alternative) punishment by work and less and less towards providing social assistance, helping and supporting the defendants and convicts, which was its duty. The authority has increasingly controlled this rule by restricting budgets.

Meanwhile, there has been an increase in crime, especially serious crime and organized crime, which has sometimes had extreme consequences for criminal law.

Otherwise, this is a fortiori valid for criminal procedural law, which has been recently amended and will still be subject to change, to give an aerodynamic line to the criminal case and in the meantime to avoid the defendant, through excessive legal guarantees, to be able to stop the lawsuit against him or even to adjourn it.

For the criminal code, this led to the adequacy and tightening of both special and general criminal provisions.

Thus art.416 of the code, the concealment, was tightened, and it became legally possible for the justice to obtain easier and more widely the money obtained from a crime. It is also valid for money from other crimes of this kind for which the person concerned has been convicted and is valid even for the money from the offenses committed by others, provided that the person concerned is presumed to have obtained illicit use (see article 36e). In a contemptuous tone, there was talk of "legislation - soothing".

In this regard, however, it is of fundamental importance to extend the punishable nature of preparatory actions that do not yet fall into the category of punishable attempt: this is instead a split of the old taboo of Gesinnungstrafrecht[1]. Therefore, it should be about preparatory actions regarding an offense for which a prison sentence of eight years or more and which was committed jointly (ie by several persons) is provided (see art. 46).

Outside the code there is also tightening, as in the law on economic offenses. Thus, the maximum punishment in the case of more serious environmental offenses increased from two to six years and in other cases up to four years. Over 70 provisions were transferred from 18 environmental laws into the toughest law on economic crimes (new art.1a).

Meanwhile, in recent years the victim's position has received greater attention. The measure of redemption of the victim's damages (art.36f, paragraph 1) was included,

[1] Gesinnungstrafrecht it is the criminal law of the interior attitude (translator's note).

as well as the special condition, to be applied in the conditional sentence, of the payment of a sum of money to be determined by the judge in the damages fund for the crimes of violence or in the the favor of another institution for the protection of the interests of the victims (art. 14c, paragraph 2, sub. 4).

Finally, a last evolution is that of the so-called "administrative" criminal law. This is in essence an intermediate form between criminal law and administrative law. The basic question to be asked following the well-known Ozturk judgment [1]given in 1984 by the European Court is the extent to which the guarantees of article 6 of the ECHR must be observed. The first step in the direction of "administrative" criminal law is constituted by the 1989 law on "administrative maintenance of the provisions on circulation". The regulation included here stipulates that the person who violates the rules on circulation may file a complaint with the prosecutor against the application of the monetary penalty by an investigating official. When the offender is not satisfied with the decision, it must be examined by the kantonrechter[2]. The appeal is however considered by the kantonrechter only after the appellant has secured payment of the penalty in cash or by check. Therefore, it is about a subsequent judicial control, only within the limits of the requirements provided by art.6 of the ECHR. This law has been in the meantime, at least as far as the idea of "administrative fine" is concerned. In any case, there are 18 laws to be taken into consideration for the introduction of an administrative fine, of which the law on driving hours, the law on goods, the law on closing shops and others. Regarding the amount of the fine, the amounts established in advance are preferred, in order to certify the law and the efficiency.

It is clear that in this way the departments and other authorities take the opportunity to collect fines outside the "pure" criminal law (which also happens for minor offenses along with crimes) in order to impose the rules established by them by simplified means. This must be seen as a manifestation of the centralist-bureaucratic thinking, which suits the powerful pragmatic spirit of the time. It is not surprising that, in this regard, there are great objections among criminal law researchers (Corstens, 1995). Compared to the classical principles of criminal law efficiency first! it seems a very mean message.

[1] European Court of Human Rights, Ozturk judgment against Germany of the 21st of February 1994, series A, no. 3, concerning the imposition of the payment of the expenses of interpreting to a foreigner in a judicial procedure regarding an administrative contravention (translator's note).
[2] Kantonrechter is a judge with functions comparable to those performed at that time by the mesh judge (translator's note).

2. The Criminal Code - The Criminal Code comprises 3 books, namely: 1) the general part, 2) the crimes and 3) the contraventions. In many other laws there are criminal provisions, as in the law on road traffic, in the law on economic crimes, in the law on drugs, in the law on copyright etc. All these criminal provisions are subject to the regime of the general provisions of the general part of the code (art. 91). Insofar as we are rightly departing from the latter because of the special character of a particular sector, we speak of special criminal law. The military criminal law and the law on economic crimes may refer to it. The criminal law for minors is also special: for example, it even provides for sanctions for minors and its own regulation of the prescription (art. 77b and d).

The most important differences between crimes and contraventions are due to their diversity: crimes are considered as "crimes against justice", contraventions as "crimes against the law".

Crimes against justice are breaches of what each feels as a right in the absolute sense, because it is based on classical rules strongly rooted in every member of society. Crimes against the law are breaches of the norms established in the interest of the social order and in favor of the social relations that in themselves could be conceived differently. Otherwise this subdivision should not always be made clearer, although it has a certain number of consequences, not only from the point of view of procedural law, but also substantially.

The deceit, in the sense of full awareness with intent (dolus) or fault, in the sense of serious neglect (culpa) always appear in the description of the crimes, while it is not the same with regard to contraventions. In principle, for the contraventions the theory of the material fact is valid, unless a contravener could entrust himself to the cause outside the law of exclusion of the fault: or the lack of any form of reproach and avoidance of the fact. Such a cause for excluding fault, which includes the legal causes for the exclusion of the punishment, was already recognized by the jurisprudence in 1916 on the basis of the nature of the criminal law, which was qualified as "criminal law of fault"[1].

Moreover, this cause of exclusion of the fault can be applied - albeit sporadically - also in the case of the crime, that is, when a certain element of it is not dominated by

[1] Supreme Court the 14th of February 1916, NJ 1916, 681, "Milk and water" judgment. It was about a boy from a small dairy company who sold milk diluted with water (which was a contravention), but the owner was the one who diluted the milk with water. The boy did not know, nor should he know: he was not reprimanded and for this reason he remained unpunished, although in contravention no reference was made to his mental state.

the required deceit and is therefore "objectified". An example is found in art. 180, which defines as resistance to punishment the resistance opposed to the official in the legitimate exercise of his functions. In principle, it is not necessary, in order to punish the opposing resistance, to know that said official exercises his legitimate functions. When it could be proved by serious reasons that he did not know this at all, nor could he know it, then the solution could possibly be found in the extra-legal case for excluding the fault.

Regarding the legal elements of deceit and fault (in crimes), the jurisprudence here includes less pronounced forms of conscience of serious intent or inattention. Consider, for example, the situation in which someone did not intend to cause a certain consequence but foresaw the possibility that this consequence could occur. The one who, in a similar situation, acts anyway, accepts the possible consequence and is thus consciously exposed to the possibility that cannot be overlooked for this consequence to be achieved.

It is considered then that he would have intended this consequence, provided that it is truly achieved: in this case the deceit is admitted, under the name of "eventual deceit"[1]. If someone, however, foresees the possibility of an unintended consequence caused by him, but considers for good reasons that he can avoid it and yet this does not happen, this form of awareness of the possibility is included in the fault: the interested party is reproached that he was too optimistic in his conscious assessment of the situation. Finally, fault in its pure meaning encompasses the fact that someone has acted extremely recklessly and recklessly, that is, causing a consequence without reflecting well on it (due to recklessness), while actually having to think about it. This mainly concerns the situations of murder by recklessness in the road traffic. All these shades play - again - a role only for crimes because in principle for contraventions nothing is required regarding the author's state of mind. Other differences between crimes and contraventions are found, among others, in the fact that the attempt of a crime is punishable, while the attempt of contravention is not (art. 45), even though there are different punishments (for example, arrest for contraventions and imprisonment for offenses, even if there are different terms of prescription (art.70) etc.

Most of the crimes is the commission, that is, the criminal action consists in doing and not neglecting; the latter is the case of negligence crimes.

[1] Supreme Court the 9th of November 1954, NJ 1955, 55, "Cicero" judgment.

When describing the crimes, along with the conduct (in case of crime, premeditated or by recklessness) a certain number of circumstances and, sometimes, the consequences of the conduct are often mentioned. In Dutch criminal law it is assumed that a conduct that corresponds to a legal description of the crime, is at the same time anti-judicial, only if the person concerned cannot refer to a legal justification case. Just as a cause of exclusion of fault can eliminate the alleged fault, so a cause of justification can do so against the alleged anti- juridicity. The causes of legal justification, however, are limited (art. 40; 41 paragraph 1; 42 and 43 paragraph 1). Only once Hoge Raad[1] admitted in the past a cause of justification outside the law. It was about a veterinarian, who from a professional point of view had acted correctly, however, because of the circumstances he violated the provision of a prohibition on the law on animals. This prohibition, in fact formulated too broadly, was not, however, declared applicable to its conduct, because it lacked material anti-juridicity[2].

However, this decision was not repeated later by Hoge Raad, but by lower judges: for example, in the 1970s, regarding the alternative forms of assistance granted to the minors fleeing from home, where they were barred from police investigations by the social assistants for a certain period, which is punishable under art. 280. Subsequently a similar scrupulous aid was added by the legislature as a circumstance to exclude the punishment (art.280 al.3). This has proved, ex-post, that the way of acting, which may have contributed to the promotion of this new legislation, was in accordance with the new social norms that were developing. For this reason, there are not many objections against the acknowledgement of the theory of the lack of material anti-juridicity, provided that it takes place in very small circumstances, having to handle a rational means, for a rational purpose, in order to serve an interest not protected by law, but with the possibility that the legislature may at times authorize this. "Trias Politica"[3] is still too much connected with fundamental classical thinking.

However, the legislator in a certain number of descriptions of the crimes explicitly included the expression "illegitimately" as a legal element in order to limit his influence, included in an overly broad framework. Art. 350 (the destruction of goods) is a good example: one who deliberately harms the things of others is, in principle, punishable, however, this is not valid for the destroyer who acts on their assignment.

[1] Hoge Raad (HR) is Supreme Court (translator's note).
[2] Supreme Court, the 20th of February 1933, NJ 1933, 918, "The Veterinarian" judgment
[3] Trias politica indicates the three powers of the state (translator's note).

Then, in art. 350, it is about harming or damaging with premeditation and illegitimately, that is, without their consent.

"Illegitimately" or a description thereof (as "without authorization": see art. 435) always has a concrete, specific meaning. This does not mean that, especially in the sphere of crimes against patrimony, a wider significance is usually attributed. He who by deceitful and misleading ways urges others to hand over goods or money, over which he has a direct right, can still be convicted of deception (art. 326). This was the case, for example, of a school principal, who demanded a sum of money from the school administration in order to achieve something for the school and then appropriated the money, because he still had a loan to the school administration for an outstanding salary. Despite this fact, Hoge Raad considered it to be a deception: the person concerned may have the right to money, but not to that money obtained in that way[1]. In short, the whole evolution of things was considered in itself so inadmissible that, according to the judge's opinion, the legal requirement to act "for the illicit profit" was satisfied.

With all this in mind, it follows that with respect to each crime, both a crime and a contravention, fault and illegitimacy in one way or another must be present in the criminal case or must be objectionable by the defendant. This implies that in Dutch criminal law the following general definition of crime is given: a human behaviour that corresponds to a legal description of the crime, is illegitimate and attributable from fault. Indeed, if the legal description of the crime does not mention fault and / or illegitimacy, these elements can in any case be challenged by the defendant.

Finally, in criminal law there is also another general hypothesis, namely that there is a causal link between the action of the person concerned and the consequence required by the crime and attributed to the conduct itself. Causal problems arise, however, in cases where this hypothesis can be questioned on good grounds. We are thinking, in particular, of crimes of murder (moord and doodslag, namely to deprive someone of life with premeditation), of mistreatment, of serious bodily injury or as a result of death or death by recklessness. In these crimes, causation is sometimes a problem. In German dogma, many opinions are known, such as those of Von Buri (who supported the conditio sine qua non theory), as well as the appropriate causal theories of Traeger, Rumelin and Van Kries. In the jurisprudence they all played a role, until Von Kries's conception became predominant (in essence, this corresponds

[1] Supreme Court, the 29th of April 1935, NJ 1936, 50, "School principal at Medemblik"; see also Supreme Court, the 21st of February 1939, 929, "Hohner musical instruments".

only to the aforementioned principle of excluding the fault outside the law, since the rational predictability of the interested party at the time of the action is fundamental).

However, this conception has been replaced since 1978 by a new theory, namely that of reasonable accusation. It was, in 1978, a serious road accident in which the victim died after 12 days due to a massive pulmonary embolism that resulted from the complications of the injuries suffered. This fatal pulmonary embolism in this case "was not considered of such a nature that the death of the victim could be attributed to the perpetrator as a consequence of the striking"[1]. However, in 1996, on the same basis a murder was declared by a person who shot his girlfriend. She suffered a transverse lesion and after a short time a severe lung infection; at the victim's explicit request, treatment of lung infection was discontinued, and after that she "died from a massive pulmonary embolism"[2]The latter event, however, did not prevent a well-founded accusation of the perpetrator of the death as a result of the shooting.

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[1] Supreme Court, the 12th of September 1978, NJ 1979, 60.
[2] Supreme Court, the 25th of June 1996, Griffienr. 102559.