

FACTSHEET

NEW REGULATION FOR REASSESSMENT

The legislative proposal to modernise the present reassessment regulation intends to offer legal protection to citizens who have been wrongly sentenced (reassessment in their favour), and will make it possible to review closed criminal cases more quickly. It also offers greater scope for examination of the facts. In short: there are more opportunities to remedy errors.

Furthermore, it will be possible to convict a suspect for a crime for which he was previously acquitted (reassessment unfavourable to the former suspect).

Several improvement programmes have already been started by the Public Prosecution Service and the judiciary to prevent as much as possible wrongful convictions, such as the programme to strengthen investigation and prosecution following the Schiedammer Park murder case and the project to improve the grounds given in criminal judgments.

The main lines of the proposals are as follows:

A. Reassessment favourable to the person convicted (see also diagrams 1 and 2)

The Supreme Court of the Netherlands will continue to be the court in charge of review. In the event of serious crimes, former suspects can submit a request to the procurator-general of the Supreme Court asking for a more detailed factual investigation, the results of which they can use in their preparations for a reassessment request. In certain circumstances, the procurator-general is obliged to grant this request.

The ground of a new fact for requesting a retrial will be altered so as to give more consideration to new forensic expertise.

Before he decides on the request for a more detailed factual investigation, the procurator-general can submit this request to an advisory committee, comparable to the revision committee of the present Committee for Evaluation of Closed Criminal Cases (CEAS). Experts can be appointed to the advisory committee. Unless the request for a more detailed factual investigation is found to be inadmissible or obviously unfounded, the procurator-general is obliged to obtain advice from the advisory committee if the person making the request has been sentenced to a prison term of more than ten years.

In carrying out the more detailed factual investigation, the procurator-general of the Supreme Court can call in the assistance of an investigating team. If necessary, this team can be expanded with external experts and/or members of the Public Prosecution Service. In addition, the procurator-general will be competent to open a preliminary inquiry.

So, even before a former suspect has submitted an official request for reassessment of the verdict, the procurator-general can conduct an in-depth factual investigation with assistance from the following:

- a. an advisory committee, which can advise about the necessity of conducting a more detailed factual investigation and about the questions to be answered by such an investigation;
- b. an investigating team that carries out the actual investigation on behalf of the procurator-general; and/or
- c. an examining magistrate.

This investigation can also take place after the request for reassessment has been submitted if it is not certain whether the request is well-founded. At this point, both the Supreme Court and the procurator-general of the Supreme Court can formally decide to hold a more detailed factual investigation. The procurator-general may do so before presenting his opinion.

Both before and after a request for reassessment has been heard in a public session of the court, the Supreme Court may instruct the procurator-general to carry out a more detailed factual investigation. After hearing the request in open court, the Supreme Court may decide that too many things are still too unclear for a proper reassessment of the request. At that point the Court may decide to instruct the procurator-general to carry out a further investigation. Once that investigation has been completed, a new public hearing is held.

People who submit a reassessment request must have legal representation to ensure that they have expert legal assistance at their disposal.

The legislative proposal also contains specific provisions for victims when reassessment leads to acquittal. This is meant to avoid the undesirable situation of a victim having to repay compensation received to the person who was originally ordered to make these payments. The rule here is therefore that not the victim, but the State, will refund the compensation payments to a wrongly convicted person. However, this is not the case if the miscarriage of justice is due to the victim's behaviour.

In addition, the victim is entitled to information about the criminal case.

B. Reassessment unfavourable to an acquitted person (see also diagram 3)

There are two grounds on which to base a reassessment unfavourable to a person who has been acquitted:

- a) If new evidence has come to light after the acquittal has become final and conclusive that arouses the serious suspicion that, if the judge had been aware of it, the suspect would have been convicted (new fact).

b) In the event of a serious procedural irregularity or flaw. For example, if it has been determined that false exculpatory evidence was presented and there is a serious suspicion that, if the judge had been aware of this, investigation of the case would have resulted in the conviction of the suspect.

Reassessment unfavourable to a former suspect on the basis of a *new fact* is only possible if there is new forensic evidence or a credible confession by the former suspect.

To prevent prosecution from taking place too lightly, there must also be very strong evidence against the former suspect of which the judge was not aware during the trial. The evidence must be such that a serious suspicion arises that, if it had been known to the judge, it would have led to a conviction.

A further condition is that, in each individual case, reassessment must be in the interests of proper dispensation of justice. This implies that it is possible to decide against prosecution for reasons of discretion – for example, if the former suspect is in coma as a result of an accident and is not expected to wake up.

Reassessment adverse for the former suspect is in principle only possible for very grave crimes for which the right to prosecute is not limited on account of the seriousness of the offence. These are crimes that carry a life sentence. An exception to this rule is made for certain procedural shortcomings, such as a perjurious statement by a witness or a forged document. When a case involves this type of falsification, the judgment could be said to be ‘tainted’, and a reassessment unfavourable to the former suspect is possible irrespective of the seriousness of the offence, if certain conditions are met.

Offences that are statute-barred are not eligible for unfavourable reassessment. Because crimes carrying a life prison term (such as murder) do not become statute-barred, they can be subjected to reassessment adverse to the former suspect for a long time.

The main rule is that a request for an adverse reassessment can only be submitted if a case involved an acquittal or a discharge from all prosecution. It will not be possible to review the severity of the punishment in a way adverse to the former suspect. This will not apply, however, if the judge has been bribed, because the purpose of the bribe may well have been to receive a lighter sentence.

Reassessment adverse to a former suspect is only possible at the initiative of the Board of Procurators-General of the Public Prosecution Service.

Persons who have been irrevocably acquitted (or discharged from all prosecution) must not be allowed to become the object of unbridled investigative activities (for example, citizen investigation). For this reason, as long as the irrevocable judgment or ruling has not been quashed, the use of coercive measures against the former suspect is strictly regulated. It is undesirable that people who have been irrevocably acquitted or discharged from all prosecution are time and time again exposed to fishing expeditions. For this reason an evaluation procedure has been introduced for which prior permission of

the Board of Procurators-General is required. Moreover, criminal investigation is only permissible if the examining magistrate has issued an authorisation for further investigation in a closed case.

If the request for review is well-founded, the case is referred to a district court, with the possibility of appeal as well as cassation. The former suspect is therefore given a completely new trial in two fact-finding instances.

In principle, reassessment is limited to one time only. The Public Prosecution Service cannot request an adverse reassessment time and time again.

Diagram 1: the main differences between the present and the proposed regulation for reassessment

favourable to the convicted person:

Present regulation	Main changes
<p>There are three grounds for review:</p> <ul style="list-style-type: none"> • contradictory judgments; • a new fact that was not known to the judge at the time, or • a successful grievance before the European Court of Human Rights 	<p>The grounds for granting a reassessment are basically the same, but two of them will be expanded. To give more consideration to altered insights of experts, the definition of a new fact will be amended. The possibility for reassessment because of a breach of the ECHR has been somewhat expanded as well.</p>
<p>Not only the person convicted can submit a request for reassessment, but also the procurator-general of the Supreme Court.</p>	<p>New is that legal assistance is mandatory (the person convicted can apply for legal aid).</p>
<p>The threshold for a successful request for reassessment is high. If such a request is to be admissible, the former suspect must make it plausible by putting forward evidence that there is a ground for review. People who have been wrongly convicted are frequently unable to provide such evidence. This may require a comprehensive factual investigation, something for which a convicted person will not always have the means.</p>	<p>The threshold for a successful request for reassessment has been lowered. The convicted person may submit a request for a more detailed factual investigation to the procurator-general of the Supreme Court to help him prepare his request for reassessment. The procurator-general can obtain advice from an advisory committee. He may also enlist an examining magistrate or an investigating team. If necessary, the team can be expanded with forensic or other experts. The investigation may bring to light facts which show that there is a ground for retrial. For example, the investigation may show that the ruling on the evidence and the grounds given for a conviction for murder are invalid because the victim died a natural death. The convicted person can use these facts to substantiate his request for a retrial.</p>
<p>If a request for reassessment has been submitted, the Supreme Court can decide on the request without holding a court session if the request is inadmissible or obviously unfounded. If this is not the case, the procurator-general first issues an advice (his “opinion”), after which the Supreme Court decides whether or not the request for retrial is well-founded.</p>	<p>Opportunities for a factual investigation in the reassessment procedure have been expanded. Such investigation can take place:</p> <ol style="list-style-type: none"> 1. prior to a request for reassessment, at the request of the person convicted; 2. if a request has already been submitted, at the initiative of the procurator-general of the Supreme Court, before he presents his opinion; 3. at the initiative of the Supreme Court, before it takes a decision on the request.
<p>Usually the case is referred to a court of appeal if the request for reassessment is declared well-founded. Sometimes it is possible for the Supreme Court to deal with the matter itself. After referral, the court of appeal can either uphold the judgment, because the conviction proves to have been made correctly, or it may revise the judgment (for example, pronouncing acquittal). The person convicted and the Public Prosecution Service can both institute appeal in cassation against judgments by the court of appeal and in accordance with the regular rules. In that case the Supreme Court is the court of cassation in judging the case.</p>	<p>The court of appeal has been given greater scope for its decision. Contrary to the present regulation, if a conviction is upheld, the court of appeal can adjust the prison term. This may be advisable, for example, if the personal circumstances of the convicted person have changed dramatically, and he or she would otherwise request a pardon.</p>

Diagram 2: The proposed procedure for reassessment favourable to the respondent

Please note: the coloured boxes show what will change as compared to the present regulation

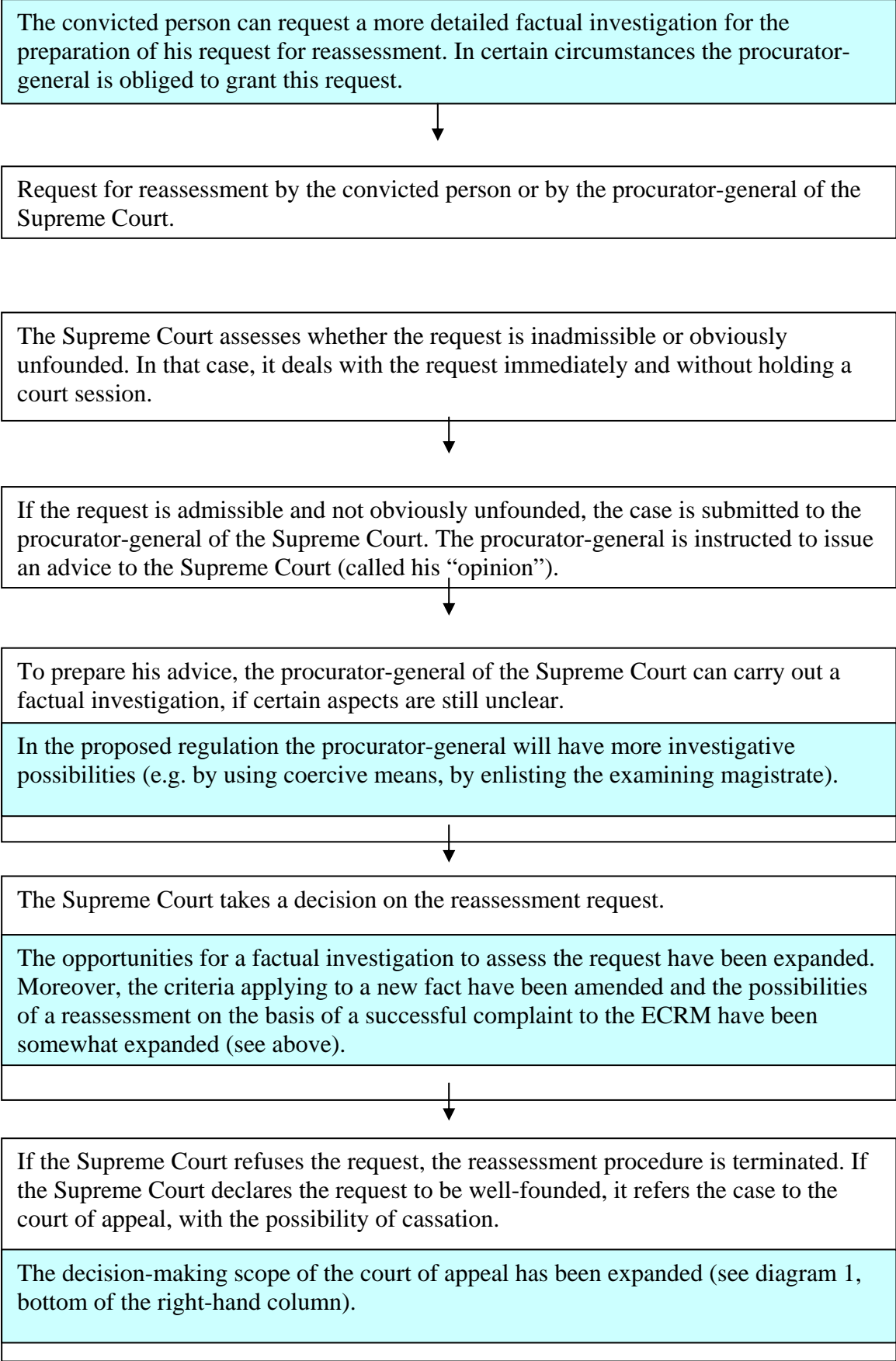


Diagram 3: The procedure for reassessment unfavourable to the convicted person

