Corporate Criminal Liability in the Netherlands

B.F. Keulen & E. Gritter

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1. Introduction

This report will provide a brief overview of the concept of corporate criminal liability in the Netherlands. Following a description of the historic development of this concept, attention will be paid to the substantive law regarding corporate liability – including the concept of secondary liability and defences – and to specific rules for the trial and the punishment of legal persons. Special attention will also be paid to the position in Dutch criminal law of the public law legal person, such as the provinces. The report will be completed with a short evaluation of the concept of corporate criminal liability in the Netherlands.

2. Historical Development

At the time the Dutch Penal Code (DPC) came into force (1886), the legislator was of the opinion that criminal offences could only be committed by natural persons. This opinion was strongly influenced by the ‘classic ideas’ of German scholars such as Von Feuerbach and Von Savigny. There was, of course, an awareness of the fact that corporations existed. To deal with crimes committed in a corporate context, several offences were designed which addressed the officers of a legal person. This was done under regulatory law, but also within the DPC.

The next important step in the development of corporate criminal liability was taken outside the formal boundaries of criminal law. In the time of the Great Depression, the Dutch legislator was confronted with exceptional circumstances that called for exceptional measures. In order to combat the consequences of the depression effectively, the Dutch legislator developed a special branch of law, disciplinary in nature, that made it possible, for instance, to prosecute and punish corporations. The legislator was of the opinion that the official body of criminal law was not a suitable mechanism with which to combat the depression. An

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1 See, for a more extensive treatment of the subject, Gritter 2007. For a recent treatise in English, see De Doelder 2008.
2 In this report, the words ‘corporation’ and ‘legal person’ will be used as synonyms, although not every legal person in Dutch criminal law is necessarily a corporation.
3 Gritter 2007, p. 33 ff.
4 In particular bestuurders and commissarissen (managing directors and supervisory directors).
adaptation of the criminal law was deemed inappropriate, because it was believed that the special measures would only be temporary. As soon as the depression ended, the special disciplinary law could be abolished. The depression, however, was followed by the Second World War. The special disciplinary law was maintained during the War in order to regulate – as far as possible – the economy in that period.

After the War the legislator paid special attention to the enforcement of economic law. Owing to the development of several special measures to address the depression and regulate the economic situation during the War – within and outside the field of criminal law – the rules governing the criminal and quasi-criminal enforcement of economic law had become quite diffuse. The state of the law had become such that in certain cases several criminal and quasi-criminal courts were competent. In 1951, a new act emerged that aimed to unify the rules governing the investigation, the prosecution and the punishment of economic crimes. The quasi-criminal, disciplinary branch of the law that had become so important was abolished.

This new act, the Economic Offences Act (EOA), applied – and continues to apply – only to the enforcement of economic offenses. Economic offences were – and remain – a group of regulatory offences, usually but not always of an economic nature, that are labelled as such by the legislator. The legislator was of the opinion that the effective combating of these economic crimes required special substantive and procedural rules. According to the legislator, an economic offence had features that require a different approach than other, non-economic offences. One of the special substantive rules for the combating of economic offences was set out in Article 15 EOA. This article stated that economic crimes could be committed by legal persons, and that legal persons could be prosecuted and punished. Accordingly, since 1951, the criminal liability of corporations was accepted in the Netherlands in the field of economic regulatory law. In the explanatory notes, the Dutch legislator gave criminal liability not only a practical basis, but also a more fundamental one. It stated that the acceptance of corporate criminal liability made it possible to apply appropriate sanctions in this field of law, such as the suspension of business activities. In addition, the government expressed the view that corporations should have legal personality in this area of law, and were susceptible to punishment: ‘Corporations also have a name to lose’.

Subsection (2) of Article 15 EOA contained a number of factors that a criminal court could take into account when faced with the question of whether a corporation had committed a particular economic offence. It reads that an economic offence is committed by a corporation, if – for instance – the offence was actually committed by natural persons who acted within the scope of the corporation’s activities (e.g. on the basis of employment), regardless of whether any particular individual committed the offence, or whether the offence was committed collectively. In the explanatory notes the government stated that liability could also be established on other factors, for example with relation to crimes addressed to persons acting in a certain capacity – such as ‘employer’ – or with relation to crimes of mere omission.

Article 15 EOA was repealed in 1976, when a general provision regarding corporate criminal liability came into force: Article 51 DPC. To this day, this article is regarded as the basis for corporate criminal liability in Dutch criminal law in every area of the criminal law.

3. The Dutch Concept of Corporate Criminal Liability

3.1. Introduction

Since 1976, a corporation has been able to commit any offence, in principle. Its liability is therefore no longer restricted to the class of ‘economic offences’. Article 51 DPC states:

1. Offences can be committed by natural persons and legal persons.
2. If an offence has been committed by a legal person, prosecution can be instituted and the punishments and measures provided by law can be imposed, if applicable, on:
   1. the legal person, or
   2. those who have ordered the offence, as well as on those who have actually controlled the forbidden act, or
   3. the persons mentioned under 1. and 2. together.
3. For the application of the former subsections, equal status as a legal person applies to a company without legal personality, a partnership, a firm of ship owners, and a separate capital sum assembled for a special purpose.

When an offence is committed by a legal person, the prosecution service decides whether the legal person will be prosecuted, or any other natural or legal person for ordering or controlling the offence. Criteria for this decision are not laid down in the DPC. The establishment of corporate criminal liability will be discussed in the following section. We will address the \textit{actus reus} and the \textit{mens rea} of an offence, as well as grounds for defence and justification. However, we will first consider the scope of Article 51 DPC – the legal entities that can commit an offence.

3.2. Legal Persons in Criminal Law

According to Article 51 DPC, offences can be committed by ‘legal persons’. The answer to the question of whether a particular entity has legal personality is to be found primarily in Dutch private law. In Articles 2:1, 2:2 and 2:3 of the DCC (Dutch Civil Code), legal personality is, for instance, attributed to the \textit{besloten vennootschap} (BV: limited company) and to the \textit{naamloze vennootschap} (NV; public limited company). Legal personality has also been attributed to state organs such as provinces. In section 4, special problems surrounding the prosecution of state organs will be discussed separately.

Article 51 subsection 3 widens the scope of the criminal law by stating that certain entities without legal personality in civil law can nevertheless commit an offence. The enumeration includes collective entities such as firms and partnerships, but it excludes sole

\footnote{De Hullu 2009, p. 163. Some scholars tend to restrict the scope of Art. 51 DPC by excluding offences of a more physical nature, such as rape. In our opinion, a corporation can be criminally liable, regardless of the nature of the offence. Whether a corporation in a particular case should be prosecuted for a more physical offence like rape or battery is another matter (please note that the Dutch prosecution service (\textit{Openbaar Ministerie}) does not operate a system recognising the principle of mandatory prosecution, meaning that the legality principle does not apply).}

\footnote{The translation is an adaptation of the one used by De Doelder 2008, p. 566.}

\footnote{In several cases, however, the prosecution service is bound by its own policy rules regarding this decision.}
traders. In the case of sole traders, the owner of the business may under certain circumstances be ‘vicariously liable’ for offences committed within the scope of that business.9

3.3. Secondary Liability

Subsection 2 of Article 51 DPC provides for secondary liability if an offence is committed by a legal person. It covers natural and legal persons who order the commission of an offence, and persons who ‘actually control’ the commission of the offence. This secondary liability is not limited to the ‘formal’ officers of a legal person (e.g. its directors), nor to persons who act as though they hold an official position within the legal person. As a result, employees without any authority may be held criminally liable within the framework of Article 51(2) DPC.10 In addition to crimes involving more active control, mere passive involvement in an offence committed by a legal person can also be punished. The Hoge Raad (the Dutch Supreme Court) has ruled that ‘conditional intent’ (dolus eventualis) in any event suffices for this form of secondary liability.11

3.4. Criminal Liability

3.4.1. Actus reus

In the course of the twentieth century, Dutch case law developed several ‘criteria’ or ‘factors’ that were relevant to establishing the criminal liability of a corporation. The factors and criteria were of various natures, which made the doctrine regarding corporate criminal liability rather diffuse and elusive. In one case, the fact that the corporation had gained ‘profit’ from the offence committed was decisive;12 in another, criminal liability was grounded on finding that the offence – the pollution of water – was committed during the ‘normal conduct of the company’s business’.13 The substance that was illegally disposed of was one that emerged during the normal, everyday production process in the company’s factory.

Several cases indicated that the ‘criteria’ that had previously been developed to establish the vicarious liability of the owner of a sole-trader enterprise could also be decisive to establishing the criminal liability of a corporation. These criteria originated from a case in which a question arose about whether the owner of a business (a natural person) could be held criminally liable for several offences, actually committed by an employee.14 The conduct concerned the illegal export of goods and the making of untrue statements in export documents. In general terms, the Dutch Supreme Court ruled that an owner could be held criminally liable for the conduct of his employee if the conduct was at his ‘disposal’ (or if the owner was able to intervene in the conduct), and if – with regard to the course of events – it could be said that the owner had ‘accepted’ the conduct. These criteria – in short, ‘disposal and acceptance’ – were applied in relation to the establishment of corporate criminal liability.

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9 Usually, the liability of the owner of a business is termed ‘vicarious liability’. In Dutch law, however, the question of liability of the owner always amounts to a question of whether the owner has himself committed the offence. See also section 3.4.1.
10 See Wolswijk 2007, p. 86.
12 HR 27 January 1948, NJ 1948, 197.
in several cases under the Dutch Supreme Court. Several authors argued that these criteria ought to be regarded as the main factors for establishing corporate criminal liability.

In 2003 the Dutch Supreme Court settled the matter by providing a clarifying, general ruling on how corporate criminal liability should be established. The Supreme Court ruled that the basis for criminal liability is in any event an attribution of illegal conduct that can be considered ‘reasonable’. Accordingly, a corporation can only be held criminally liable if there is an illegal act or omission that can be ‘reasonably’ imputed to the corporation. To make this more concrete, the Dutch Supreme Court provided a guiding principle for this ‘reasonable attribution’: the attribution of certain (illegal) conduct to the corporation may under certain circumstances be reasonable if the (illegal) conduct took place within the ‘scope’ of the corporation. The Dutch Supreme Court then enunciatively summed up four situations or ‘groups of circumstances’ in which conduct, in principle, may be said to be carried out ‘within the scope of a corporation’:

- where the case concerns an act or an omission of someone who works for the corporation, whether or not under a formal contract of employment;
- the conduct concerned fits the everyday ‘normal business’ of the corporation;
- the corporation gained profit from the conduct concerned;
- the course of action was at the ‘disposal’ of the corporation, and the corporation has ‘accepted’ the conduct – acceptance including the failure to take reasonable care to prevent the conduct from being performed.

The circumstances enumerated can all be traced back to earlier decisions and earlier legislation. However, the decision by the Dutch Supreme Court to extend the circumstances or criteria that are of relevance in establishing ‘vicarious liability’ – the criteria of ‘disposal and acceptance’ – was a remarkable innovation. The Dutch Supreme Court ruled in its 2003 case that a corporation can be found to have accepted the course of action that took place, if it failed to take reasonable care to prevent the conduct that was performed. Several authors had previously argued that the criterion of ‘acceptance’ came down to proof of intent. The 2003 case before the Dutch Supreme Court shows however that while acceptance can come down to proof of intent, proof of intent is not necessary. Mere proof of a failure to take appropriate steps to prevent criminal harm suffices to establish acceptance.

The Dutch Supreme Court case has clarified the concept of corporate criminal liability, but it has of course not solved every problem. The exact meaning of the case is still in discussion and will probably continue to be. The debate focuses on the precise meaning of the circumstances, the weight accorded to the various circumstances and the true meaning of the basis for corporate criminal liability – the ‘reasonable attribution of (illegal) conduct’.

The Dutch approach towards establishing corporate criminal liability can be characterized as a rather ‘open’ approach – there is no rigorous theory to turn to for guidance. In particular, Dutch criminal law does not recognise a theory like the ‘identification doctrine’, in which only top level directors can cause the corporation to be liable. In fact, in Dutch criminal law any employee can cause a corporation to commit an offence as long as it can be ultimately construed that the corporation ‘has committed’ the offence. In addition, as has been shown, other factors can also lead to corporate criminal liability.

The Dutch approach may put some pressure on legal certainty, but it has several advantages in our opinion. The open approach leaves room for ‘tailor-made’ jurisprudence, in which the courts are free to weigh relevant circumstances and factors. It acknowledges that the possible variation in cases is in fact endless. As long as the reasoning in a verdict is sufficient, the jurisprudence will be transparent.

3.4.2. Mens rea

In the 2003 case on corporate criminal liability the Dutch Supreme Court limited its considerations explicitly to the actus reus part of the offence. The case has therefore no direct relevance to the establishment of the mental element of a crime in relation to a corporation. Accordingly, the law on this point has to be deduced from other cases. It should be noted that this section is mainly concerned with offences that require proof of a mental element: the so-called misdrijven. As far as misdemeanours or contraventions (overtredingen) are concerned, the prosecuting authority is usually relieved of the burden to prove a mental element. In such cases, proof of a criminal actus reus suffices for punishment.

With regard to establishing ‘intention’ and ‘negligence’ – the main subjective elements in Dutch criminal law – the case law of the Dutch Supreme Court shows that there are roughly two approaches. A first ‘indirect’ way to establish mens rea comes down to the attribution of the mens rea of a natural person to the corporation. A natural person’s intention can thus in certain circumstances be ‘ascribed’ to the corporation. A second, more ‘direct’ way of establishing the mens rea of a corporation is to derive the mens rea from other circumstances closely related to the corporation itself, such as its policy and decisions. By means of its agents, a corporation may make a confession, for example. In court a corporation could state, for instance, that it was known within the corporation that fraudulent acts took place but that the management had decided not to take any action. It can thus be proved that the legal person intended the fraud.

The ‘direct’ way of establishing the mens rea of a corporation is particularly suited to cases of gross negligence. In Dutch criminal law, gross negligence can be derived ‘objectively’ from the failure to act according to standards of conduct. If the failure to meet the standards causes death, for instance, gross negligence manslaughter can in principle be established.

3.4.3. Justification and Excuse

Like natural persons, corporations can raise defences that, if accepted, will justify the conduct found, or excuse unlawful conduct. In theory, a legal person may plead any defence a natural person could raise under Dutch criminal law. Of these defences, the extra-statutory (unwritten) general defence of ‘lack of sufficient culpability’ requires special attention. This excusatory defence contains several specific important grounds for disculpation, including the exercise of ‘due diligence’. With relation to a corporation, a successfully raised defence of due diligence will most probably have the effect of rebutting proof of the actus reus. This is, at least in theory, a logical consequence of the 2003 Dutch Supreme Court case, in which the

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17 The case concerned a misdemeanour that did not require proof of a mental element.
18 Insofar as grounds for excuse or justification are absent; see section 3.6.3.
‘acceptance of conduct performed’ (one of the criteria for vicarious liability) was said to include ‘the taking of reasonable steps to prevent the commission of the offence’.  

3.5. **Sanctions**

There is no section in the DPC regulating which sanctions can be applied when a legal person is convicted. It has to be deduced from the nature of the criminal sanction whether it can be given effect for legal persons.

As far as the primary sanctions are concerned, only the imposition of a fine is relevant. The DPC sets a maximum fine for each criminal offence. There are six categories. The first category maximum is EUR 370; the sixth category maximum is EUR 740,000. Every criminal offence is assigned to one of the first five categories. However, the DPC has a special provision for fines and legal persons. Where a legal person is convicted and the applicable category does not allow for appropriate punishment, a fine from the next higher category may be imposed (Article 23 DPC). Therefore, if the criminal offence is assigned to the fifth category (EUR 74,000) a fine of EUR 740,000 may be imposed on conviction of a legal person. However, the question remains whether EUR 740,000 is an appropriate punishment in the most serious cases.

Imprisonment is of course not an option in sentencing legal persons, and it is generally assumed that the same is true for community service because a legal person cannot be imprisoned where the community service is not performed. The DPC does not have the option of a subsidiary fine.

Secondary sanctions under the DPC are the forfeiture of certain rights, forfeiture of assets and publication of the verdict; only the latter two sanctions can be imposed on legal persons. Publication of the verdict can be a very effective sanction but is not often imposed, perhaps because the media attention surrounding the prosecution will usually have already done a lot of damage to the legal person.  

In addition to these punitive and deterrent sanctions, the DPC also provides for the imposition of measures. Some relate to the mental health of the convicted person, and are therefore irrelevant to legal persons. Another measure concerns the prohibition of the circulation of property (Article 36c/36d DPC). This measure can also be applied to property belonging to a legal person. Consider, for instance, shirts imported without a permit.

The DPC also provides a measure permitting the imposition of an obligation to pay a specified sum of money corresponding to unlawful profit (Article 36e DPC). This measure can also be imposed on legal persons. The same is true for a compensation measure – an obligation to pay a specified sum to the State on behalf of the victim (Article 36f DPC). The State then hands the money over to the victim.

Beyond the DPC, there are specific secondary sanctions which can also be imposed on legal persons. Of particular relevance is the Economic Offences Act, regarding specified criminal offences related to the regulation of economic activities, including environmental law. If a legal person is convicted of such a crime, there is not only the possibility of publication of the verdict and an enlarged sanction of forfeiture, but some or all of the activities of the legal person can be suspended for a maximum term of one year. This sanction

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22 Court of Rotterdam 13 June 2000, LJN: AA6189.
24 The EOA is not only applicable to legal persons: depending on the offence in question, a natural person can also commit an ‘economic offence’.
has, for instance, been imposed on a legal person convicted of selling dairy produce not fit for human consumption.25

If the interests in question require that action is taken immediately, the court can order that all or some of the activities are ended as a temporary measure. Such a temporary measure has for instance been imposed on a shipyard where working conditions were unsafe.26 Evading such a measure is a criminal offence according to the EOA. Another specific secondary sanction is the withdrawal of advantages granted to a corporation by public authorities for a maximum term of two years. Consider, for instance, a grant or a permit. This sanction is only occasionally imposed.

Where a criminal offence is specified as being related to the regulation of economic activities, there are also a few specific measures available. Firstly, the court may hand over control over specified economic activities of the convicted person to another. The court may also oblige the performance of whatever was omitted in breach of the law or the undoing of whatever was done contrary to the law, at the expense of the convicted person unless the court decides otherwise. These measures are also only occasionally imposed.

A legal person can be dissolved before, during or after prosecution for a criminal offence. This can have consequences on the options open for sanctions on a legal person and the possibility of executing them. If the legal person is indicted after its dissolution is knowable to a third party, the right to prosecute is lost. Those responsible for the criminal offence committed by the legal person, however, can still be prosecuted. If the legal person is indicted before its dissolution is knowable to a third party, the right to prosecute is preserved.27

If a legal person transfers economic activities connected to a criminal offence to a second legal person, the first legal person can still be prosecuted.28

4. The Special Position of the Public Law Legal Person

Article 51 DPC states that criminal offences can be committed by natural and legal persons.29 The DCC states that the State and any province, municipality or district water board are legal persons. The same is true for many other public law organizations. Consequently, public law legal persons can in principle commit criminal offences.

The Dutch Supreme Court has indeed acknowledged this possibility. In 1987, for instance, the Dutch Supreme Court upheld the conviction of the University of Groningen.30 In Anloo a burial mound had been excavated without the requisite permit. The Supreme Court stated that the University could not claim immunity because it was not a public body falling under Chapter 7 of the Dutch Constitution.

Immunity can therefore only be claimed by this kind of public body. Little more than ten years later, the Dutch Supreme Court quashed a verdict of the Court of Appeal in Leeuwarden in which a municipality was granted immunity.31 The Supreme Court decided that the immunity of such a public body (falling under Chapter 7 of the Dutch Constitution) can only be accepted when the acts concerned can only, according to the legal system, be executed by civil servants acting within the framework of a task assigned to that body. This new criterion reduced the immunity granted to a public body falling under Chapter 7 of the Dutch

26 Court of Middelburg 9 February 2009, Lijn: BH2342.
29 See for a more extensive treatment of the special position of the public law legal person, Roef 2001.
Constitution. Since then, immunity has been rarely accepted. In 2008, for instance, the Dutch Supreme Court upheld the conviction of a municipality for tax fraud in connection with a housing project.32

The State, however, still enjoys immunity. In 1994 the Supreme Court decided that the State could not be convicted for acts that allegedly contravened environmental law committed by the Ministry of Defence.33 It stated that acts of the State are considered to further the public interest. To that end, the State can act on all matters, by legislation, government, etc. Ministers can be held responsible for acts of the State in Parliament. Further, there is a special procedure by which they may be prosecuted for malfeasance. It is not compatible with this system that the State itself can be held criminally responsible for its actions.

Meanwhile, a bill that would change this state of affairs has been put forward by a number of members of Parliament.34 The bill proposes adding a subsection to Article 51 DPC that will state that public law legal persons can be prosecuted on an equal footing to private law legal persons. Punishment will, however, be excluded where the commission of a criminal offence by a civil servant or a public law legal person can reasonably be considered necessary for the execution of a task assigned by law. This bill, if and when enacted, will put an end to the immunity from prosecution of the State and all other public law legal persons listed in Chapter 7 of the Dutch Constitution. The Dutch State will be able to prosecute the Dutch State. It is only to be hoped that it will receive a fair trial, as it is doubtful whether a State has recourse to the European Court of Human Rights if the trial is not fair.

5. Procedural Law

Chapter VI of Book IV of the DCCP (Dutch Code of Criminal Procedure) is devoted to the prosecution and trial of legal persons.35 Firstly, the Chapter contains a provision on the representation of a legal person in criminal proceedings. In criminal proceedings a legal person is represented by one of its directors (Article 528 DCCP). This article details when a legal person is deemed to be present at a trial and who may be empowered to exercise the rights of the defendant at the trial. These rights include the right to question witnesses and expert witnesses and also the right to appeal against the decision of the court on behalf of the legal person.36

However, the corporate defendant not only has procedural rights, it is also a source of information. Article 528 DCCP does not specifically provide that a statement made by a director representing a legal person is to be regarded in a manner comparable to a statement made by a defendant. Nevertheless, the Dutch Supreme Court has seemed to equate the two types of statement to a large extent, in a series of cases concerning the right to remain silent. When a legal person is prosecuted, this right is possessed by the director representing the legal person.37 Moreover, a representative of a legal person cannot be called to testify as a witness against the corporation he represents.38 Legal persons and their representatives may also enjoy the privilege of non-disclosure.39

34 Official Parliamentary Documents 2007/08, 30 538.  
35 See for a more extensive treatment of the subject, Van Strien 1996.  
The choice of which director to have represent a legal person is up to the legal person. The legal person may also choose to be represented by several directors at the same time. Considered along with the jurisprudence concerning the right to remain silent, this decision implies that a legal person can supply each of its directors with the right to remain silent.

The court can order the appearance in person of a specific director – it can even order the police to bring him to trial (Article 528 DCCP). The court has the same power with regard to the defendant and any witnesses. These orders do not influence the rights and obligations of this director as a representative of the legal person.

The fact that a representative of a legal person has been granted the right to remain silent during the trial can be connected with the human rights recognized in the European Convention on Human Rights, especially Article 6. The Dutch Supreme Court has in some cases acknowledged that legal persons have human rights that can be violated. One of these rights is the right to be tried without undue delay. Legal persons also derive human rights from Article 8 ECHR. However, an attempt to raise the defence that Article 8 ECHR implies that legal persons cannot be punished for not publishing their annual accounts failed.

Chapter VI also contains some provisions regarding the communication of court notices. Article 529 DCCP is of crucial importance. It provides that court notices are notified at the address or the office of the legal person, or at the address of one of its directors. Notification can also be effected by sending the court notice by post.

A special form of notification, to which additional prescriptions are applicable, is that of ‘service’. Service of a court notice is effected by handing the notice to one of the directors, or to a person authorized by the legal person to receive the notice. The director of a legal person which is itself a director of a second legal person, is held to be a director of the second legal person. A person does not need a special mandate to be authorized to receive documents on behalf of the legal person. If a person is authorized to collect mail at the post office, he is also authorized to receive a court notice on behalf of the legal person. Furthermore, if a legal person chooses the address of its legal counsel to be its address, the legal counsel and his or her employees are considered to be authorized.

The service of a court notice to a director or a person authorized by the legal person can be made at the address of the legal person, at the office of the legal person or at the address of one of the directors. The mere attempt to serve the notice at the address of the legal person however does not suffice. If the notice cannot be served at this address, an attempt has to be made to serve the document at the address of one of the directors. The document can also be served on a director or authorized person at another place. Serving the document on one of these persons is considered as a notification in person. This is of special importance in the service of summons. When notification is effected in person, the period during which the legal person can have recourse to legal remedies ends two weeks after the judgement is pronounced.

A court notice can also be served on an employee of the legal person who declares that he is willing to deliver the notice to his superiors. This, however, is not a notification in person. If the judicial notification cannot be served in either way, it will be served at the registrar of the court where the trial will be held or was held.

43 HR 8 July 2003, NJ 2003, 596.
44 HR 22 November 1994, NJ 1995, 188.
6. **Jurisdiction**

The DPC is applicable to everybody who commits a crime on Dutch territory (Article 2 DPC). That can also be a foreign or Dutch legal person. The DPC is also applicable to every Dutch person who commits a crime outside the Netherlands, where this act constitutes a criminal offence according to the law of the State on whose territory the crime is committed. This provision is also arguably applicable to a Dutch legal person: the Dutch Supreme Court decided so in a case involving a comparable jurisdiction clause.\(^{46}\) A Dutch person found responsible for a crime committed abroad by a foreign legal person can also be prosecuted in the Netherlands.\(^{47}\) Moreover, it is not relevant whether the law of the State where the crime is committed recognizes the criminal responsibility of natural persons for crimes committed by legal persons.\(^{48}\)

7. **Evaluation**

In all, the concept of corporate criminal liability is not controversial in the Netherlands. The flexible approach to the matter adopted by the Dutch Supreme Court, as demonstrated in the 2003 case, is in line with the views of most leading authors on substantive criminal law. An important remaining contentious issue is the special position of public law legal persons, principally the State. If the signs do not deceive us, this special position will be abolished or at least diminished within a few years.

\(^{48}\) HR 18 October 1988, *NJ* 1989, 496.
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