

**The criminal investigation of offences
'outside the judicial district of a court'**

A legal comparative study of the experiences with Title VIA of the
Fourth Book of the Dutch Code of Criminal Procedure

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SUMMARY

1. Topic and background

This study delves into the question to what extent and in which manner Title VIA of the fourth book of the Dutch Code of Criminal Procedure (hereafter: CCP) – consisting of articles 539a-539w – should be amended in order to remove any impediments, shortcomings and sources of confusion.

Title VIA contains provisions relating to the criminal investigation of offences 'outside the judicial district of a court'. The title creates a basis in Dutch law for exercising certain criminal investigative powers on the territory of foreign states, the (Dutch) territorial sea and the high seas, the air above and the (cosmic) space. Not only does Title VIA provide a general foundation for criminal investigations by Dutch authorities in foreign countries, it also contains a number of specific rules for such investigations which depart from the other rules in the Code of Criminal Procedure. Dutch police officers will, after all, usually not be present at the moment a criminal offence is committed on far away locations, such as at sea or on a plane. Moreover, a suspect cannot simply be brought before a judicial authority when that suspect resides on a ship in the ocean. Certain powers contained in the Code of Criminal Procedure are, in principle, assigned to police officers (and other specifically assigned investigative officers), but when exercised extraterritorially, they are also assigned to others, including commanders of military ships or aircraft, shipmasters and commanders of civil aircraft. In principle, those officers can only act when instructed by the public prosecutor (who has a central role in this legislation), except in cases of urgency.

In exerting such extraterritorial penal enforcement powers, states are bound by strict requirements of sovereignty and territoriality. Article 539a CCP provides that Dutch penal enforcement abroad can only take place within the limitations set by international and interregional law.

Extraterritorial criminal investigation often implies passive legal assistance: whereas, in case of classical mutual legal assistance, the requesting state asks the requested state to engage in investigative actions, in case of extraterritorial investigation the authorities of the requesting state exercise these powers themselves, though outside of their own state.

Little is known about the application and interpretation of Title VIA. Although quite some research has been conducted as regards the theoretical basis of Title VIA, it is unclear whether and in which manner Title VIA is applied in practice, whether officers know about the title and whether it leads to any problems. It is because of this knowledge gap in particular that the Ministry of Justice and Security is in need of an exploratory investigation into the experiences with and application of Title VIA, which this research project provides. The Code of Criminal Procedure is currently being modernised and it is possible that the articles 539a CCP (etcetera) will also become the subject of modernisation.

2. Research questions and methods

The main research question is to what extent and in which manner Title VIA of the fourth book of the Dutch Code of Criminal Procedure should be amended in order to remove any impediments, shortcomings and sources of confusion. This question will be dealt with through the next four sub-questions:

1. What can be said, in general, about the background and development of the provisions in Title VIA with regard to criminal investigation 'outside the judicial district of a court'?
2. How often have the articles in Title VIA been applied in concrete cases from 2010-2018, and in which contexts?
3. What experiences do the actors involved have with the application of the title?
4. What comparable legal provisions exist in the United Kingdom, Belgium, Germany and France and what are the differences and similarities with the Dutch legislation?

In order to answer the first question, the legislation and legislative history have been analysed so as to describe the most important aspects and background of the legislation. In order to do so, an analysis of Parliamentary documents, the most important case law and legal scholarship have been analysed.

The second question relates to the frequency and manner in which the articles have been applied in practice. To this end, research has been conducted into all published cases that mentioned any of the articles in the title. Aligned with the third question, the experiences of relevant actors in practice have also been analysed - in particular with regard to criminal investigations at sea, because in that area the importance of Title VIA has appeared to be particularly high. To this end, interviews have been undertaken with persons who have dealt with extraterritorial criminal investigation in practice, such as public prosecutors, police officers and shipmasters. Furthermore, in the starting phase of this research, some exploratory interviews have been undertaken with legal scholars that have been dealing with this legislation from a more abstract point of view. In total, seventeen semi-structured interviews have been conducted.

The interviews have been conducted by means of a global topic list which was drafted based on information gathered during the earlier stages of the research, but which has also organically developed by taking into account other respondents' answers. It concerns qualitative and explorative data gathering. Considering the limited number of interviews, the information presented is not completely representative of all of the experiences in extraterritorial criminal investigation, though it does give a general picture of the issues involved. During the interviews, real cases from the respondents' practice played an important role. Also, questions were posed about some global (fictional) scenario's about criminal investigation at sea or on board of an aircraft.

Initially, the idea was to study several real-life cases based on dossiers from the public prosecution service and to investigate the number of cases in which Title VIA had played a role in 2010-2018. However, gathering reliable information about the number of cases has proved to be impossible. The interviews showed that the title

did not play an explicit role in criminal investigations and dossiers, only a role in the background. Therefore, the research team decided to ask for dossiers in which the themes from Title VIA played a more implicit role. This led to three relevant dossiers.

The fourth research question has been answered by taking stock of the relevant legislation in the United Kingdom, Belgium, Germany and France. This comparison was conducted in order to look for inspiration as to how these states have dealt with similar problems experienced in the Dutch situation. As such, some global bottlenecks can be identified that could be of relevance for the Netherlands.

These results, jointly, give insight into potential impediments, shortcomings and sources of confusion in the current legislative framework, particularly with regard to fundamental principles of the rule of law such as legal certainty and protection of fundamental rights, but also with regard to the effectiveness - in terms of how practicable the norms are for those parties that have to deal with them.

3. Findings

3.1 Background and development of Title VIA

Title VIA entered into force in 1967 and has, since then, remained largely unchanged. The provisions were slightly amended in 1969, in order to confer certain powers on the commander of a civil aircraft (next to the powers for shipmasters and commanders of military ships and aircraft that were already conferred in 1967) and thus comply with the Tokyo Convention (the Convention on Offences and Certain Other Acts Committed on Board Aircraft).

In the 1926 Code of Criminal Procedure, the idea was still that criminal investigations would only take place on Dutch territory. In the 1960s this changed; one of the reasons behind the legislative proposal in 1965 was that the legislation that existed was too fragmented, unclear and inadequate to deal with the challenges of extraterritorial criminal procedure. There was certain legislation in place in the field of navigation - e.g. the shipmaster was assigned the power to maintain public order on board and the authority over all passengers, and thus had the task of acting in urgent situations - as well as temporary regulations with regard to illegal radio stations at sea. The legislative proposal aimed to provide a permanent, national and conclusive arrangement with a wide scope, amongst other things to deal with the increasing international traffic in passengers and the international legal obligation to create sufficient provisions for protection at the high seas. Moreover, the increasing possibilities for communication between ship and shore made criminal investigations easier. The legislature also wished to regulate more precisely which powers were to be used and what role the public prosecutor had.

3.2 *Content and meaning of the legislation*

Although article 146 CCP, in principle, confines the authority of police officers to 'the territory which they have been assigned to or where, in accordance with the provisions of the Police Act 2012, they fulfil their task outside of that territory', article 539 CCP gives a specific foundation for acting outside of that territory. Article 539a CCP is the core provision of Title VIA - it enables the exercise of criminal investigative powers outside of the judicial district of a court. However, the powers in this title can only be exercised if international and interregional law permit (art. 539a, par. 3, CCP). The requirement of a foundation in international law can be complied with if the requested state gives permission in a concrete case, or if a treaty or convention is applicable that regulates this permission in a more structural manner.

Article 539a CCP does not only deal with criminal investigative powers; it deals with any criminal procedural powers 'other than during criminal trial'. The legislature based the exclusion of the criminal trial on the judicial layout: when Title VIA was adopted, courts were not competent to judge offences outside of their judicial district which they had been assigned within the Dutch territory - it was feared that otherwise they would be in each other's business (a situation that has changed by now, as the regulation on judicial districts has been amended). A different rationale for excluding the criminal trial from this legislation was that powers such as interrogating witnesses could also be exercised by the investigative judge.

'As long as the Title does not provide otherwise', the criminal investigative powers in the Code of Criminal Procedure and in specific criminal investigative legislation can be used outside of the Netherlands. Title VIA is mainly furnished to provide a number of specific rules for the (extraordinary) circumstance where criminal investigations need to take place outside of the Netherlands, especially on ships or on board of an aircraft. In these circumstances, after all, Dutch criminal justice authorities will mostly not be present. On the one hand, some of the common criminal procedural guarantees will be less easily applicable and have thus been left aside in such circumstances, such as judicial checks of detention; on the other hand, certain guarantees - such as the role of the public prosecutor - have been strengthened.

Every person exercising the powers in Title VIA must report this 'immediately' to the public prosecutor, and must as quickly as possible obtain instructions from the public prosecutor on how to act (art. 539b, par. 2 and 3, CCP). Failure to exercise this reporting duty is a criminal offence (art. 446a Criminal Code).

The second section of Title VIA deals with the exercise of special investigative powers. Certain investigative measures, which would normally be assigned only to state authorities - like powers of stopping and arresting persons - are also assigned to commanders of military ships or aircraft, shipmasters and commanders of civil aircraft.

A rule such as that of art. 59a, par. 1, CCP - providing that the suspect will be brought before an investigative judge within 3 days and 18 hours from the moment of arrest - has not been included in this title. It is striking that detention can last up to 18 days (from arrest) if the public prosecutor cannot be reached (art. 539/ par. 6 CCP),

although in practice it is indicated that this never happens. Further rules with regard to the treatment of an arrested suspect are laid down in the *Decision ex art. 539n CCP*. This decision has remained unchanged since 1967 and still contains, amongst other things, the disciplinary measure of 'supply of water and bread instead of ordinary nutrition'.

The third and last part of Title VIA is dedicated to the obligations of the shipmaster (called 'skipper'), who - amongst other things - is assigned the responsibility to inform the public prosecutor 'immediately and in the quickest manner possible' about any crime committed on board which 'has endangered the safety of the ship or its passengers or has caused a person's death or serious physical harm' (art. 539u, par. 1, CCP). Violations of this duty to inform are criminalised in art. 471a Criminal Code.

With regard to aviation, a slightly different regime applies (as appears from legislative history), because the title's application to aviation is constrained by the limitations of the Tokyo Convention, which sets rules on how to act against criminal offences on board aircraft. For instance, the power to deliver a suspect to the competent authorities of the state where the aircraft lands (art. 539l par. 3 and art. 539t CCP) are derived from this Convention.

3.3 *Application in practice*

The provisions of Title VIA are scarcely mentioned explicitly in case law. Title VIA probably plays a role in the background much more often, without legal practitioners feeling the need to actually point out these articles. The case law in which the articles from Title VIA is mentioned, has regard to various issues and situations - in the territory of other states (in joint police operations such as cross-border observation, activity of Dutch police infiltrators; arrest of suspects and interrogation of witnesses abroad) as well as at sea (operations against piracy and hijacking; witness interrogations on ships). There are no cases known that have regard to extraterritorial criminal procedure in aviation. The most important topics that have arisen are the requirement of art. 539a par. 3 to remain within the limits of international law (in particular, the question to what extent courts actually review compliance with this rule and what consequences they attach to its violation) and the scope of the title (whether it applies to the criminal trial).

A code of practice of the competences in Title VIA is not provided - there are no criteria on *when* extraterritorial actions should be undertaken. This research has come across an instrument related to navigation specifically: the Public Prosecution's Directive on (pre-)criminal investigation and prosecution of maritime criminal offences. This Directive, however, mainly contains rules about *who* should act. Furthermore, the investigative and prosecution authorities have discussed internally about the question when to act in different situations and how to use investigative powers with regard to maritime situations. One of the public prosecutors indicated that, when the Netherlands has jurisdiction as flag state, the Public Prosecution Service actually quite regularly takes up extraterritorial investigation, the idea being that the Netherlands has a responsibility to act against criminal offences committed on board of an aircraft or on ships under the Dutch flag.

From the interviews, the researchers have learned that many respondents have limited concrete notion of Title VIA and the concrete possibilities and limitations of the title's powers are not so well known. It seems like some respondents do have (partial) knowledge of the content of the investigative powers that are applicable, without however relating this to the title as such - for instance, because other regulations provide similar powers and are perhaps more likely to be on top of their minds (e.g. rules on the shipmaster's responsibility to maintain public order). Many respondents act primarily out of practical considerations when dealing with criminal procedure at sea, the legal basis functioning on the background only. Other respondents do indicate that Title VIA is essential for the exercise of competences at sea: they indicate that the way they operate now would not be possible without the title. An adequate legislative basis thus remains important.

The legislature, in 1967, took the view that the public prosecutor should have a directing and coordinating function in extraterritorial criminal procedure. Because nowadays the public prosecutor has a directing function in criminal procedure more generally, also in Dutch cases, Title VIA fits the current situation well in this regard. However, one may question whether extraterritorially the public prosecutor can really exercise this function well, because it may be doubted if the prosecutor is always (directly) informed where legislation so requires. Presumably many situations will be solved practically and internally, without the public prosecutor playing a role.

When Title VIA was adopted in 1967, it was often difficult for shipmasters (and others) to quickly contact the public prosecutor, although the (still largely unchanged) title then already gave an indication that contact was actually possible. In the past decades this has become much easier due to technological changes. Moreover, expertise in the Public Prosecution Service has increased; e.g. its Amsterdam Office for Serious Fraud, Environmental Crime and Asset Confiscation deals with, amongst other things, criminal offences related to Dutch ships on the North Sea (in the field of environmental incidents, crises or disasters, traffic, safety, and fishing). The bureau of the so-called North Sea prosecutor can be reached 24/7, although some respondents indicated that it was not always possible to immediately contact an expert in maritime criminal procedure. Because contacting the outside world from a ship has been a difficult manner for ages (until relatively recently), shipmasters have long acted as the sole authority on their ships and many incidents did not reach the outside world. Although contact with the prosecutor and thus acting on their instructions has become much easier nowadays, not every shipmaster has internalised this way of thinking yet.

A respondent from the nautical realm indicates that commanders of military ships need not often use their powers derived from art. 539a, etcetera, CCP, because in practice officers with criminal investigative powers (from the Royal Netherlands Marechaussee [KMar] or the Coastguard) will join in these peace missions – sometimes even legal advisers. It is positive that they take over such criminal investigative tasks from the commander (on the basis of art. 539e CCP), since they are specifically educated for these tasks. If police officers are available, they will be in charge. Because the KMar or Coastguard will generally join on such missions, a general criminal investigative duty for military commanders – a possibility provided for in art. 539d CCP – is not missed.

As opposed to military ships, it is impossible to send police officers or KMar officers on every civil ship. On civil ships the legislation thus plays a different role: if anything happens, the shipmaster will be in charge of criminal investigative measures – although sometimes private security personnel will be in place. On civil ships, *security officers* may be employed. They do not have the status of police officer, though in practice they do perform tasks like, for instance, taking up testimonies. Some respondents advise to educate *security officers* further and assign them the task of special investigative officer on board of (large) ships, so that the quality of – for instance – their written interrogation reports will be better guaranteed. At this moment the title of *security officer* can be acquired after a short course which mainly focuses on counterterrorism and less on other criminal investigative powers and procedures. The function is not geared at criminal investigations, apart from ship security as such.

Rather than contacting the public prosecutor about an incident, oftentimes this is first reported to the police, who will then contact the public prosecutor. Shipmasters will often tend to go to the nearest port to solve problems and then leave as quickly as possible – delays can have serious economic consequences. It is good practice to free a person from detention as soon as possible, but in practice this will often mean having the person leave the ship in the nearest port, according to a respondent from the nautical realm. For navigation this is not specifically laid down in the law, as opposed to aviation, where art. 539I par. 3 under a CCP creates the possibility to deliver a suspect to the competent authorities of the state where the aircraft lands. It remains unclear, both for navigation and aviation, how the prohibition of *refoulement* – States Parties to the European Convention on Human Rights should not hand over any person to a state where there are substantial grounds to believe that they will run a real risk of being subjected to torture, inhuman or degrading treatment or punishment – plays out here.

Some respondents indicated that for serious crimes, police and prosecution should exercise greater control over the actions of the shipmaster. This could be done by involving police officers at an earlier stage in the process after a criminal offence has been discovered.

In aviation, the measures in Title VIA are even less well-known and considered less relevant than in navigation. When asked about the experiences with the provisions in the title on aviation, a respondent from the field of criminal investigation/prosecution indicated that Title VIA is not at all relevant to their work. A possible explanation is that flights are usually rather short – and in many cases, there are stopovers – while at sea it can last for several days before the nearest port is reached. That criminal investigative actions are relatively more common on ships as compared to aircraft, also has to do with the economic activity taking place in navigation, which comes with all kinds of regulations relating to labour conditions and the environment. Accidents on board are also more thinkable than in an aircraft. In practice, in aviation it will be common to hold an aggressive passenger and transfer this passenger to the authorities of the state where the aircraft lands – a possibility which is based on the Tokyo Convention and which art. 539I par. 3 CCP refers to.

3.4 Conclusions

3.4.1 Usefulness and necessity of Title VIA in general

In general it can be noted that Title VIA – which entered into force in 1967 and has hardly been changed since – has become so outdated now that it does no longer represent the actual *problématique* of extraterritorial criminal procedure. The title contains a number of provisions that have not kept pace with, amongst other things, technological developments and the evolution of criminal procedure as applied on Dutch territory. When Title VIA came into being in 1967, it was often difficult for shipmasters (and others) to quickly contact the public prosecutor. In the past decades, that has become significantly easier.

The added value of the general instruction norm in art. 539a CCP lies primarily in its importance for the rule of law and the principle of legality in criminal procedure. Art. 539a CCP regulates the actions of (amongst others) Dutch police officers abroad and makes the necessary link between Dutch criminal procedural rules and criminal procedural activity abroad. The legal comparison conducted in this study shows that the countries surrounding the Netherlands do not have a general norm like art. 539a CCP for operations abroad.

3.4.2 Consequences of a violation of art. 539a par. 3

From the Supreme Court's case law with regard to art. 359a CCP (about unlawfully obtained evidence) it follows that in the absence of a valid international legal basis for extraterritorial criminal procedure operations, courts can suffice with the mere recognition of an irregularity without any sanction. From a rule of law point of view, this can be criticised. The value of article 539a CCP in light of the rule of law lies in the basis that it provides for extraterritorial powers to be exercised abroad on the same footing as in the Netherlands, as long as this is in line with international and interregional law. The legislation in Title VIA is generic and, in this regard, is different from the sectoral legislation in the surrounding countries. This Dutch legislative approach has the advantage of being clearly structured. However, the approach in case law is that an alleged violation of the sovereignty of another state - by acting against the international law limitation in art. 539a par. 3 CCP, does not have to lead to any legal consequence (as meant in art. 359a CCP). A potential consequence of this is a disincentive for the authorities to stay within the boundaries of international law. It is important that the norm, as laid down in art. 539 par. 3 CCP, is upheld and strengthened. It is thus recommended that, in case of any legislative action in this field, the explanatory memorandum pays attention to this issue.

3.4.3 Language use

Title VIA contains outdated language. The title's name ('criminal procedure outside the judicial district of a court') illustrates this. With regard to the modernisation of the Code of Criminal Procedure it is recommended to amend this name to better meet the contents of the legislation. Moreover, with regard to the contents, some of the language used is outdated. For instance, the title uses the term 'skipper', whereas in navigation practice this term is reserved for inland navigation and fishery. The term 'shipmaster' would be more appropriate.

3.4.4 Scope

With regard to the scope of the title, in some court cases participants expressed the desire to have the actual trial take place in another country. This was not complied with, in line with the text of art. 539a CCP. In light of the contemporary means of communication, there is no reason to introduce extraterritorial criminal trials at this moment.

3.4.5 Familiarity with Title VIA in practice

Title VIA basically assigns commanders and shipmasters a function of deputy police officer. This role and the competences that come with it, are a (small) part of their education. However, because their primary tasks are of such a different kind and because the powers need only be used incidentally, the question arises whether these actors have sufficient actual knowledge of the legislation. This leads to the following recommendations:

- Where possible, it is recommended to educate *security officers* to enable them to act as a special investigative officer.
- In the shipmaster's education, more attention could be paid to the investigative powers in the title. Were the title to be revised, it would be recommended to seize this opportunity to further increase the familiarity with these issues in the course programme. Shipping companies could play a role here as well.
- It is worth considering to provide user friendly information material to various professional parties.

3.4.6 Contemporary means of communication and guaranteeing respect for fundamental rights

Title VIA has not been adapted to the developments over the decades in the generic regulation on investigative powers and the rights of suspects. The specific investigative powers in the title shall be considered as *lex specialis* in relation to the generic rules in the Code of Criminal Procedure (and specific criminal procedural laws); as long as the title does not provide otherwise, the generic rules should be applied. However, it is not always clear which parts of the generic criminal procedural rules are still applicable and when Title VIA means to give separate rules. For instance, with regard to art. 539p CCP (on the surrender of objects for seizure), no guarantee is provided that a demand cannot be directed at the suspect (like in art. 96a par. 2 CCP), but it is unclear whether this should be taken to mean that the suspect can indeed be demanded to surrender such objects. In many provisions in Title VIA, for instance with regard to interrogation, legal assistance and the right to information, nothing specific is provided for and thus it should be taken to mean that the common rules in the Code of Criminal Procedure are applicable.

In legal practice there is a widespread consensus that, considering the available means of communication, it is no longer necessary for extraterritorial criminal procedure to widely depart from the generic criminal procedural rules. This is particularly true with regard to respecting the rights of suspects, such as related to access to a lawyer before and during police interrogation. Besides the lack of rules on consultation of a lawyer and on audio

or video recordings, respondents noted that sometimes interrogations have been conducted in English with a non native English speaking suspect - after finishing the interrogation, the suspect would be presented with a summary in their own language. As an alternative to physical assistance to a suspect on board of a ship, nowadays a video conference can be used.

It is of high importance to align the provisions in Title VIA more with the fundamental rights of suspects - such as the right to legal assistance - which have gradually been implemented in the generic part of the Code of Criminal Procedure. It is recommended, when revising Title VIA, to make clear in which circumstances and how the generic criminal procedural rules (in the Code of Criminal Procedure and other laws) should be followed and when these rules are derogated from. For instance, the legislature could consider drafting rules for access to a lawyer and for video conferences of witness interrogations.

It is necessary to point out that smaller ships do not always have the same possibilities as large ships have. Still it appears that, despite outdated rules, practice has already adjusted in a number of ways. For instance, the Public Prosecution Service indicates that, with regard to incidents on board of ships, the right to consult a lawyer before and assistance during the interrogation will - via telephone or mariphone - be pointed out to suspects.

- The fact that it is possible under the title's rules to detain a person for 18 days when a public prosecutor cannot be reached, is no longer necessary and justified in light of the current possibilities for communication.
- It is recommended to revise the Decision ex art. 539n CCP. According to this Decision, which is still in force, an arrested suspect on a ship can be 'put on bread and water'. This rule finds its origin in the Principles of Prisons Act which was in force at the time of adoption of the title. It needs no explanation that these provisions, after more than fifty years, are in need of revisiting.

3.4.7 Differences between navigation and aviation

There are big differences between navigation and aviation practice, whereas the law is similar in many respects. The differences are related to, amongst other things, the duration of travel, distance and means of communication. The average duration of a flight, for instance, does not match the possibility of eighteen days' detention, whereas this is more thinkable with regard to navigation. In aviation, the powers in Title VIA are even less well-known and are considered less relevant than at sea. Therefore one may question whether it is justified to apply the same rules in both areas.

3.4.8 The duty to report

The duty to report about the use of the title's powers, as laid down in art. 539b CCP, is in place for any criminal offence. In practice, it has not appeared to be realistic to have all criminal offences reported - some cases are solved informally. This could be a reason to further qualify the reporting duty, for instance, by limiting it to certain crimes and/or the use of specific powers.

3.4.9 The shipmaster as a suspect

Title VIA leaves a void for the situation in which the commander or shipmaster is suspected of a criminal offence. There is no additional legislation for that situation, whereas commanders and shipmasters would be in the position to influence the reporting for their own ends (e.g. the ship journal). Moreover, with regard to the shipmaster - who has a far reaching reporting duty - the relationship between their duties and the right against self-incrimination can lead to difficulties. After all, a situation can arise where - in case the shipmaster is suspected - they will be forced to provide evidence of criminal offences against themselves. It is recommended to codify a specific procedure for this situation.

3.4.10 Legal basis and code of practice

Title VIA, and particularly art. 539a CCP, can be regarded as complementary: for most criminal investigative powers (not mentioned in the title), there is no specific legislation on how they should be used abroad. With regard to powers that are contained in the second and third part of Title VIA, a more specific regulation - which would clarify how the powers in Title VIA and the guarantees surrounding them relate to generic criminal procedural rules - could be beneficial.

Since art. 539a CCP is described in such a general way, and since Dutch criminal procedure operations abroad hardly ever come with a specific and separate legal foundation (apart from the implementation legislation of mutual legal assistance instruments), one may question whether the Code of Criminal Procedure should give more guidance as to which powers can be used under which conditions by Dutch authorities or officers abroad. Considering the requirements of legal certainty, one could investigate whether it would be advisable to create a specific legal basis for the exercise abroad of certain far reaching powers.

Moreover, it could be useful to draft a transparent code of practice on how and when the criminal justice authorities should act extraterritorially.

3.4.11 Concentration of specialist knowledge

The expertise with regard to criminal procedure at sea is, on the one hand, concentrated because of the role of the North Sea public prosecutor - who is in fact a 'maritime public prosecutor' in a broader sense. On the other hand, specialist knowledge is fragmented, because the Rotterdam Court in first instance has a special maritime chamber - which does not deal with criminal law, however.

The legislation could furthermore make clear that a report should always be made with a specialised authority.

Although the bureau of the North Sea public prosecutor can be reached 24/7, those who report do not always manage to reach a specialised officer on short notice. It is recommended to better facilitate quick contact with an officer specialised in the area of criminal procedure at sea.