DNA LEGISLATION IN THE NETHERLANDS

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INTRODUCTION

The Forensic Science Laboratory in The Netherlands started DNA investigation in casework in 1989. The use of DNA evidence as exculpatory evidence was admitted by the Dutch Supreme Court in 1990. Despite the fact that DNA investigation offered enormous possibilities especially in sexual assault cases, the application of DNA profiling was sometimes prevented by the existing legislation. The willingness of a suspect to give a bloodsample or other bodily material for DNA-investigation became an obstacle in an increasing number of cases.
Thereupon the Dutch Minister of Justice proposed a bill regarding the DNA investigation in crimecases in December 1991. The bill was a response to the report of a commission which studied the renewal of the penal code, including the use of DNA investigation. The proposals were passed into law almost without alternation and legislation came into force on the first of September 1994.

The new DNA-legislation is characterised by a number of elements:
- the compulsory sampling of bodily material
- the role of the investigating judge
- the role of the prosecutor
- the right of the defendant to have a second DNA test
- the construction of a database of DNA profiles
- the chain of evidence

These elements will be discussed below.

THE COMPULSORY SAMPLING OF BODILY MATERIAL

According to the new law, only the Investigating Judge can require to give bodily material, when a suspect refuses to give a sample voluntarily. However, the compulsory sampling is restricted to crimes liable to a penalty of eight years or more of imprisonment. The warrant can also be given if it concerns certain specific offences with a maximum punishment of at least six years of imprisonment, such as serious kinds of maltreatment, public violence and fornication. It is necessary that facts and circumstances indicate serious charges against the suspect and DNA investigation is necessary in the pursuit of truth. The compulsory sampling of bodily material has to be performed by a surgeon.

THE ROLE OF THE INVESTIGATING JUDGE

As mentioned it is only the Investigating Judge who can order the compulsory sampling of bodily material from a suspect. When biological evidence has been found in a crime, he can order to determine the amount of DNA in crime scene samples. This part of the investigation is restricted to the Forensic Science Laboratory. When a report states that there is enough DNA for two or more DNA tests, mostly this will result in a continuation of the order to start a DNA profiling. The Forensic Science Laboratory reports when the investigation will take place and when the results are available. The suspect can exercise the right to have a second expert present at this first DNA investigation. If there is not enough material available for a second DNA test, the suspect has a choice to which laboratory the DNA test is granted. Besides the Forensic Science Laboratory only one other independent laboratory in The Netherlands is allowed to perform forensic DNA analysis. In case of two or more suspects there is no individual right for a suspect to point a laboratory.

THE ROLE OF THE PROSECUTOR

The power to order a DNA investigation in a crime without a suspect is given to the Prosecutor and is not limited to certain serious cases. The Prosecutor can independently demand the Forensic Science Laboratory to start a DNA investigation of the biological evidence in order to determine the origin. In the near future DNA profiles of biological samples can be compared to DNA profiles of suspects in prior criminal cases and biological crime scene samples in a database. A match has to be reported to the Prosecutor. The suspect, when become known in a later stage, will have the right for a second DNA test if enough material is left for a second investigation.

THE RIGHT OF A SECOND DNA TEST

An important element of the DNA legislation is the right of the suspect to demand a second DNA test. Within fourteen days after the suspect has been informed by the Investigating Judge or the Prosecutor about the results of the first DNA test, the suspect can request a second test. If the suspect has used the right to have a second expert present at the first DNA investigation, he is not entitled to have a second DNA test. The new law lays down that a minimum of material has to be used for DNA investigation. Using the PCR technique as a standard technique in the Forensic Science Laboratory meets this requirement. At least half of the stain material is retained, especially for a second DNA test. For privacy reasons no information about the identity of the involved persons may get known to the independent laboratory. Reference cell material of an individual is transferred under a unique number. Therefore the results of the second DNA test are send to the Forensic Science Laboratory, which completes the report by adding the identity of the individuals before sending the report to the investigating judge. Remaining stain and reference material from the second DNA test has to be returned to the Forensic Science Laboratory.

THE CONSTRUCTION OF A DATABASE OF DNA PROFILES

DNA legislation allows the Forensic Science Laboratory to set up a database. This database contains DNA profiles from cell material of suspects in prior criminal cases and DNA profiles of samples detected at loci delicti. The aims of the database are the

identification of repeated offenders, deceased persons, persons who are unable to identify themselves and to get statistical information on allele and genotype frequencies. The database is administered by the Forensic Science Laboratory and the consultation is stick to strong regulations. By order of the Prosecutor the DNA-profile of a suspect has to be deleted immediately in case the registered person was suspected wrongly. DNA profiles of suspects will be deleted after a period of thirty years, those of samples detected at loci delicti after a period of eighteen years.

CHAIN OF EVIDENCE

To guarantee that forensic DNA investigations will be performed carefully, the legislation contains very detailed procedures. Forensic working procedures for police officers and surgeons have been drawn up: the sampling of liquid blood, buccal cell or hair roots by surgeons, the sampling of bloodstains, bloodstained items, semen stains and saliva stains by police officers. Special sets for sampling bloodsamples, buccalcell samples or a hair sample have been developed by the Forensic Science Laboratory. Regulations are given for the preservation and the expedition of goods to the Forensic Science Laboratory. To ensure the chain of evidence, all secured reference material and goods have to be provided with numbered seal. A seal with the same number is found on the official police report of the seizure of goods. During the course of the analysis this unique seal number is the identification of the stain.

CONCLUSION

The extension of the Dutch Code of Criminal Procedure with provisions on behalf of forensic DNA investigations has enlarged the possibilities of forensic investigations enormously.
Under the new law a compulsory sample can be taken from a suspect and a right of a second DNA test has been created. Very detailed procedures ensure the chain of evidence and the quality of the DNA investigation. In practice the execution of the procedures is very time-consuming and not always useful. Therefore it is necessary to reconsider the effectiveness of the procedures in the next future.

REFERENCE

Kampen P van, Nijboer H (1994) DNA fingerprinting in the Dutch Code of Criminal Procedure. Expert Evidence, 3(2):70-74