



UvA-DARE (Digital Academic Repository)

Avoiding a full criminal trial: Fair trial rights, diversions, and shortcuts in Dutch and international criminal proceedings

Vriend, K.C.J.

Publication date

2016

Document Version

Final published version

[Link to publication](#)

Citation for published version (APA):

Vriend, K. C. J. (2016). *Avoiding a full criminal trial: Fair trial rights, diversions, and shortcuts in Dutch and international criminal proceedings*.

General rights

It is not permitted to download or to forward/distribute the text or part of it without the consent of the author(s) and/or copyright holder(s), other than for strictly personal, individual use, unless the work is under an open content license (like Creative Commons).

Disclaimer/Complaints regulations

If you believe that digital publication of certain material infringes any of your rights or (privacy) interests, please let the Library know, stating your reasons. In case of a legitimate complaint, the Library will make the material inaccessible and/or remove it from the website. Please Ask the Library: <https://uba.uva.nl/en/contact>, or a letter to: Library of the University of Amsterdam, Secretariat, Singel 425, 1012 WP Amsterdam, The Netherlands. You will be contacted as soon as possible.

VRIEND

Avoiding a Full Criminal Trial

In modern societies, full criminal trials are avoided on many occasions. This thesis is concerned with mechanisms that either divert from or speed up the proceedings. Koen Vriend argues that the fair trial rights as established by the European Court of Human Rights under Article 6 ECHR provide a normative framework that does not only apply in a full criminal trial, but that it can also be used for diverted and shortened proceedings. He shows that the concept of *fairness* - as derived from ECtHR case law - is a fundamental principle that underlies all criminal law enforcement. It provides for the appropriate framework to assess whether diverted or shortened proceedings are fair and legitimate.

Koen Vriend LLM LLB MA (1982, Hoorn, NL) is assistant professor of criminal law and criminal procedure at the University of Amsterdam. He studied law and history in Amsterdam, specialising in International Criminal Law and Holocaust and Genocide Studies. His current research focuses on evidence and forensic expertise, in particular in relation to the European Forensic Science Area 2020. This publication is the result of his PhD research.

Avoiding a Full Criminal Trial

Fair Trial Rights, Diversions, and Shortcuts in
Dutch and International Criminal Proceedings

KOEN VRIEND

Avoiding a Full Criminal Trial

A commercial edition of this thesis will be published in the International Criminal Justice Series of T.M.C. Asser Press in cooperation with Springer.

Avoiding a Full Criminal Trial

Fair Trial Rights, Diversions, and Shortcuts in

Dutch and International Criminal Proceedings

ACADEMISCH PROEFSCHRIFT

ter verkrijging van de graad van doctor

aan de Universiteit van Amsterdam

op gezag van de Rector Magnificus

prof. dr. D.C. van den Boom

ten overstaan van een door het College voor Promoties ingestelde commissie,

in het openbaar te verdedigen in de Agnietenkapel

op dinsdag 31 mei 2016, te 12:00 uur

door Koen Cornelis Johannes Vriend

geboren te Hoorn

Promotiecommissie:

Promotores:	prof. mr. T. Blom	Universiteit van Amsterdam
	prof. mr. G.K. Sluiter	Universiteit van Amsterdam
Overige leden:	prof. mr. J.H. Crijns	Universiteit Leiden
	prof. mr. W.N. Ferdinandusse	Rijksuniversiteit Groningen
	prof. mr. R.C.P. Haentjens	Universiteit van Amsterdam
	prof. mr. A.J.C. de Moor-van Vugt	Universiteit van Amsterdam
	prof. mr. H.G. van der Wilt	Universiteit van Amsterdam

Faculteit der Rechtsgeleerdheid

For my parents
For Tim

Table of Contents

List of Abbreviations	xi
1 Full Criminal Proceedings in Decline	13
1.1 The Full Criminal Trial	13
1.2 Purpose and Scope of the Study	15
1.3 Terminology: Diversions, Shortcuts, and a Full Criminal Trial	18
1.4 Research Question	19
1.5 The Normative Framework	19
1.6 Outline of the Book	20
2 Diversions, Shortcuts, and the Concept of Fairness	23
2.1 Introduction	23
2.2 Fairness and Evidence Law	25
2.3 Principles and Rules	27
2.4 Participation in Criminal Proceedings	30
2.4.1 Non-compulsion	33
2.4.2 Informed Involvement	35
2.4.3 Challenging the Evidence	36
2.4.4 Reasoned Judgement	38
2.5 Diversions and the Concept of Fairness	40
2.6 Conclusion	45

3	Diversions and Shortcuts in Dutch Law of Criminal Procedure	47
3.1	Introduction	47
	3.1.1 Rules of Admissibility	50
	3.1.2 Weighing the Evidence	55
	3.1.3 Reasoned Judgements	61
	3.1.3 Conclusion	63
3.2	Diversions in Dutch Law of Criminal Procedure	65
	3.2.1 Introduction	65
	3.2.2 The Punitive Order	65
	3.2.3 The Transaction	71
	3.2.4 The Conditional Dismissal	75
3.3	Shortcuts in Dutch Law of Criminal Procedure	77
	3.3.1 Introduction	77
	3.3.2 Facts of Common Knowledge and Contextual Facts	78
	3.3.3 Chain Evidence	101
	3.3.4 Confessions	107
	3.3.5 Cases Ad informandum	112
	3.3.6 Appeal Proceedings	115
4	Diversions and Shortcuts in the Law of International Criminal Procedure	125
4.1	Introduction	125
	4.1.1 Preliminary Observations	126
	4.1.2 Rules of Admissibility in International Criminal Proceedings	131
	4.1.3 Weighing the Evidence	144
	4.1.4 Reasoned Judgements	151
	4.1.5 Conclusion	152
4.2	Diversions in the Law of International Criminal Procedure	153
	4.2.1 Introduction	153
	4.2.2 Guilty Pleas	153
	4.2.3 Legal Framework of Guilty Pleas before the ad hoc Tribunals	154
	4.2.4 Admissions of Guilt at the ICC	162
4.3	Shortcuts in the Law of International Criminal Procedure	164
	4.3.1 Introduction	164
	4.3.2 Agreed Facts	164
	4.3.3 Judicial Notice of Facts of Common Knowledge	169
	4.3.4 Judicial Notice of Adjudicated Facts and Documentary Evidence	183
	4.3.5 Appeal Proceedings	215

5	Avoiding a Full Criminal Trial: Evading Fairness?	223
5.1	Introduction	223
	5.1.1 Waiving Rights	226
	5.1.2 Outline	227
5.2	Diversions and Shortcuts in Dutch Law of Criminal Procedure	227
	5.2.1 Diversions and the Participatory Model of Proof	227
	5.2.2 Shortcuts and the Participatory Model of Proof	235
5.3	Diversions and Shortcuts in the Law of International Criminal Procedure	249
	5.3.1 Introduction	249
	5.3.2 Diversions and the Participatory Model of Proof	250
	5.3.3 Shortcuts and the Participatory Model of Proof	253
5.4	Conclusion	269
6	Why Fairness Matters	271
6.1	Conclusion	271
6.2	A Case for Fairness	275
6.3	Recommendations	277
	Acknowledgements	281
	Summary	283
	Samenvatting	290
	Bibliography	297
	Table of Cases	307

List of Abbreviations

A. Ch.	Appeals Chamber
ACHR	American Convention on Human Rights
AJ	Appeals Chamber's Judgement
BGH	Bundesgerichtshof (German Federal Court of Justice)
C	Constitution
CC	Criminal Code
CCP	Code of Criminal Procedure
ECHR	European Convention on Human Rights
ECLD	Extraordinary Criminal Law Decree
ECLI	European Case Law Identifier
ECtHR	European Court of Human Rights
ECtHR (GC)	European Court of Human Rights, Grand Chamber
GVG	Gerichtsverfassungsgesetz (German Code on the Organisation of the Judiciary)
HR	Hoge Raad der Nederlanden (Dutch Supreme Court)
HRC	Human Rights Committee
ICC	International Criminal Court
ICCPR	International Covenant on Civil and Political Rights
ICTY	International Criminal Tribunal for the former Yugoslavia

ICTR	International Criminal Tribunal for Rwanda
LJN	Landelijk jurisprudentienummer (Dutch case law identifier)
NJ	Nederlandse Jurisprudentie (Dutch case law journal)
NOR	Naoorlogse Jurisprudentie (Dutch case law journal)
OM	Openbaar Ministerie (Dutch Public Prosecution Service)
par.	paragraph
RPE	Rules of Procedure and Evidence
SCSL	Special Court for Sierra Leone
Sr	Wetboek van Strafrecht (Dutch Criminal Code)
Stb.	Staatsblad (Dutch Official Bulletin of Acts and Decrees)
Stcrt.	Staatscourant (Dutch Government Gazette)
StPO	Strafprozessordnung (German Code of Criminal Procedure)
Sv	Wetboek van Strafvordering (Dutch Code of Criminal Procedure)
T. Ch.	Trial Chamber
TIC	taken into consideration
TJ	Trial Chamber's Judgement
UN	United Nations
UNICRI	United Nations Interregional Crime and Justice Research Institute