

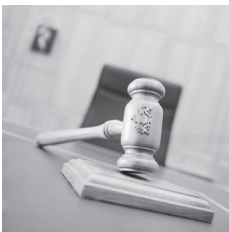


de Rechtspraak

Council for the Judiciary

# The Financing System of the Netherlands Judiciary





## **1. Introduction**

This brochure deals with the financing system of the Netherlands Judiciary. The Council for the Judiciary (hereafter: 'the Council') plays an important role in this process. For more information about the Dutch judicial system we would like to refer you to the introductory brochure entitled 'The judicial system in the Netherlands'. This brochure can be found on the English part of the website at [www.rechtspraak.nl](http://www.rechtspraak.nl) under Publications.

### **Special position of the Judiciary system**

As a result of the principle of the separation of powers, the Judiciary system has long been independent of the Ministry of Security and Justice (hereafter: Ministry) in substantive matters concerning the Judiciary. Until 2002, however, the Minister of Security and Justice (hereafter: Minister) was directly responsible for the operational aspects of the courts. The Ministry and the courts discussed the required levels of staffing, IT and funding. This changed in 2002 when the Council was established. Since then the Council has supervised the operation of the courts and there is no longer any direct relationship between the Minister and the 16 independent courts. The Minister deals solely with the Council when it comes to operational matters concerning the Judiciary. The special position of the Judiciary is also reflected in the fact that since 2002 it has had its own separate heading in the justice budget, alongside the central Ministry and the administration agencies.

### **Financing regulated by law**

The funding of the Judicial system is regulated in the Act on the composition of the judiciary and the organisation of the justice system and set out in more detail in the Court Sector (Funding) Decree 2005. The Decree introduced the concept of output based funding to the judicial system and brought about a switch from a cash commitments system to a cost-benefit system.



### **A staggered Financing system**

The Netherlands Judiciary is financed on basis of a staggered system. The Minister funds the Judiciary as a whole by means of a financial contribution to the Council (section 2). The Council then makes financial contributions to each of the 16 courts (section 3). Although the financing of the Judiciary as a whole and the financing of the courts are similar in many aspects, the two financing systems also differ in a number of important aspects.

## **2. The cash flow from the Ministry of Security and Justice to the Council for the Judiciary**

### **Output based funding**

The Minister provides the Council with an annual contribution of approximately €50 million Euro. The great majority (95%) of this amount is attributable to output funding (price x quantity) and is described by the term 'output-related contribution'. This output-related contribution is calculated by multiplying the number of case disposals (judgments) by the prices applicable to them. The more cases the judicial system handles the more money it receives. And the lower the contribution for the Judiciary the fewer the cases that can be disposed of.

### **The number of disposals**

In January of each year the Council submits a proposal to the Minister for the number of cases to be disposed of in the following year. This proposal is based on inflow and output forecasts drawn up by the Council together with the Minister and partners in the various administration agencies that fall under the responsibility of the Ministry (such as the Public Prosecution Service and the Immigration and Naturalization Service). In September the Minister submits the budget for the Ministry to Parliament. In it he indicates how many court cases he proposes to fund. This number may differ from the number in the Council's budget proposal. Any such differences must be explained in the Ministry's budget.



Parliament can then form an opinion on the Minister's decision.

### **Payment in arrears**

After the end of the calendar year it becomes clear how many cases the courts have actually handled. This may be higher or lower than the number agreed in the Ministry's budget. This excess or shortfall is settled at a rate of 70% of the price applicable to the case. The number of cases actually disposed of is shown in the annual report of the Council and is one of the subjects covered in the audit by the external auditor. The Council sends the annual report to the Minister, who presents it in turn to Parliament.

### **The price of a case**

Ten categories of case and price are distinguished by the Minister in financing the Judiciary: six at the district courts, three at the courts of appeal and one at the Central Appeals Tribunal. They are shown in the following table. The classification is based on various fields of law (civil, criminal, administrative etc.). The price varies from €40 Euro for a sub-district court case to €6,615 Euro for a civil case before a court of appeal. The price differences are due to the time it takes to dispose of a case. This depends on, among other things, whether the case is disposed of by a judge sitting alone or by a panel of three judges or appeal court justices.

<b>Prices per case 2011 -2013</b>	<b>(euros)</b>
District courts	
Civil law	894
Administrative law	2,015
Criminal law	874
Sub-district court cases	140
Immigration law	855
Tax law	1,105



Courts of appeal	
Civil law	3,615
Criminal law	1,316
Tax law	3,057
Central Appeals Tribunal	3,321

### Quality standards

To avoid undue emphasis by the Judiciary on the number of case disposals, the Council has formulated various quality standards. Examples of these standards are the number of hours of permanent education for each judge, the number of criminal sentences for which a reasoned judgment must be given in accordance with a new method called Promis, and the number of cases in which a second judge must read through the draft judgment. More information can be found in the brochure entitled "Quality of the judicial system in the Netherlands", which can be consulted on the English part of the website at [www.rechtspraak.nl](http://www.rechtspraak.nl).

### Price negotiations

The Minister fixes the ten prices after negotiations with the Council. The outcome (the prices for the ten case categories) is included in the central government budget. If the Council and the Minister fail to reach agreement, this is disclosed. The costs per product group in previous years form the starting point for the negotiations. In previous price negotiations the Council argued that higher prices were necessary in order to achieve further improvements in quality. The same argument applies to the consequences of new legislation, which can increase the workload per case. In previous price negotiations the Ministry reasoned that prices could be lowered if the courts were to maximize efficiency.

### Prices apply for 3 years

Unlike the number of case disposals, which is the subject of annual negotiation between the Council and the Minister, the prices per case are fixed for a 3-year



term (2011-2013, 2014-2016 etc.). Barring exceptional circumstances, the prices are not adjusted during this term even if it transpires that the actual costs are higher or lower. It follows that the judicial system loses out if prices are higher but gains if prices are lower.

### **Non-output-based income**

A small part of the budget for the Judiciary (5% or €2 million Euro) is not (yet) output-based. This concerns cases which are dealt within only one court or a few courts (e.g. the cases heard by the special chambers and the Trade and Industry Appeals Tribunal) or for which the rules of the financing system have not yet fully crystallised (mega cases in criminal law). In addition, the Judiciary receives other contributions, particularly from the Ministry, for activities unrelated to the duties described in the Act on the composition of the Judiciary and the organisation of the justice system. Examples are the activities of the various disciplinary tribunals (for lawyers, notaries, accountants and other professions) and the secretarial support for the prison system supervision boards.

Court costs (e.g. costs incurred by the courts in hiring experts) in administrative and civil cases are fully reimbursed by the Ministry. In criminal cases the court costs are borne by the Public Prosecution Service.

For the sake of completeness, mention should finally be made of the court fees. These are the financial contributions which individuals and businesses must pay to the Ministry if they are involved in legal proceedings. Although the court fees are collected by the courts, they do not form a source of income for the judicial system. This is because the courts remit the full amount of these fees to the Ministry, which also determines the amount of the fees.



### **Own funds**

If the income received by the Judiciary is found at the end of the calendar year to exceed the expenditure, it is said to have an operating surplus (a 'profit'). This result is then credited to the own funds of the Judiciary. An operating deficit results in a reduction in the own funds. The own funds must always be positive. If the own funds amount to more than 5% of the contribution, the excess is creamed off by the Ministry. In recent years, one of the ways in which the Council has used its own funds is to make extra output and quality agreements with the courts. These agreements could not have been funded solely from the contribution of the Ministry.

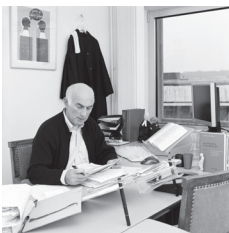
## **3. The cash flow from the Council for the Judiciary to individual courts**

### **Output based funding**

A court's budget is also largely output-financed and is created by multiplying the number of cases which the court expects to handle in a year by the relevant prices. In its annual plan each court makes a proposal for the number of case disposals. After administrative consultations with the Council, the outcome is formalised in administrative agreements. After the end of the calendar year settling takes place on the basis of the actual output reported by the court in its annual financial statement. These annual accounts form part of the audit by the external auditor. Any excess or shortfall in output is settled at 70% of the applicable price.

### **The price of a case**

The financing of a court by the Council is more detailed than the financing of the Council by the Minister of Justice (where there are just 10 case categories or 'product groups'). 53 case categories and prices are used to determine the budget of a district court, 19 for a court of appeal and 3 for the Central Appeals Tribunal. The prices for the courts are fixed annually by the Council.



By way of illustration the table below shows the case categories and prices for immigration cases heard by the district courts.

### **2012 prices of the case categories in the immigration product group**

	(euros)
501 Extended asylum procedure disposal	1,108
502 Regular disposal	868
503 Detention case disposal	314
504 General asylum procedure disposal	542
505 Dublin case disposal	298

### **Efficiency incentives**

Each court receives the same amount for a given case category. Courts which manage to keep their costs low can thus retain a surplus. In this way there is an incentive for courts to reduce costs. The lower costs are then reflected in the price negotiations between the Council and the Ministry.

### **Own funds**

If the income received by a court is found at the end of a calendar year to exceed its expenditure, it is said to have an operating surplus (a 'profit'). This result is then credited to the own funds of the court. Any operating deficit results in a reduction in the court's own funds. A court's own funds must always be positive. If necessary, the Council must supplement them. In such a case, however, the Council sets conditions (repayment and improvement measurements). If the own funds amount to more than 3% of the contribution, the excess is creamed off by the Council.

### **Time allocation surveys**

The Council is obliged to carry out periodical time allocation surveys to assess the lead times of the various case categories. Under the Court System Decree 2005 these lead times are one of the factors that determine the prices of





the case categories. In practice, the influence of the time allocation surveys is limited. The survey findings serve as a key by which the prices agreed with the Minister are translated into prices for the case categories. There is no direct relationship between the findings and the absolute level of the prices. This absolute level is the result of the negotiating process referred to above, which is based on the outturn costs in previous years.

### **Integral budget**

The contribution which the court receives from the Council to implement the administrative agreements is an integral budget. The court board itself determines how it will apportion its budget (consisting of the Council's contribution and the own funds) among staff, equipment and among the various sectors in order to achieve the agreed output. Consequently no amounts are earmarked for particular sectors or equipment.

### **Central budgets**

The sum of the budgets of the individual courts is less than the budget for the judicial system as a whole. Some 25% of the contribution from the Ministry (approx. €35 million) is not translated into the prices of the case categories. Three factors are important here: (i) As there are major differences between rent levels in the various regions, the Council reimburses the courts for 100% of the actual rents paid for the court buildings. (ii) To promote standardization and efficiency, it has been decided that the maintenance of ICT systems should be arranged centrally by the Council. Courts therefore receive these services in kind and are not responsible for the costs and budgets concerned. (iii) The Council's Bureau generates staff and other costs for the services it performs for the courts.



**Notes**



**Publishing details:**

Council for the Judiciary, The Netherlands

Visiting address: Kneuterdijk 1, The Hague

Postal address: P.O.Box 90613, 2509 LP The Hague

The Netherlands

**For more copies:**

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Design Simone Alderliesten

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