

**Foreword .....5**

**I. The judiciary system in the Netherlands..... 6**

    The Judiciary: one autonomous organisation ..... 7

    The court system.....10

    The Council for the Judiciary .....14

    Integral management and finances.....16

**II. The Dutch Judiciary in practice: a selection of special features.....19**

    The press as watchdog of the judiciary.....20

    Patents Chamber with international reputation .....24

    The judge looks in the mirror.....28

    Oiling the wheels of civil procedure .....32

    Uniformity provides fast and certain administration of justice .....36

**III. Facts and figures.....41**

The core business of the Judiciary has always been and will always be the independent delivery of justice. In this respect, the Judiciary is a going concern. This however does not mean that there is no room for change. The Dutch judiciary system went through many changes in recent years. Over the past few years, the judiciary has become more self-sufficient and operates at a greater distance from the Ministry of Justice.



In the years ahead, a major challenge for the Judiciary will be to restructure the judicial map in a way that enhances efficiency and judicial quality, while assuring easy access for all its users. Another challenge will be to adapt to the changing standards and growing demands of its users, stakeholders and society at large with regard to quality, speed, accessibility, integrity and consistency. For this purpose, the Judiciary has recently conducted an extensive reflection on the future of the Judiciary, in close cooperation with its most important stakeholders. This reflection will ultimately result in a vision for the Judiciary in 2020.

In this brochure, you will find information on the organisational

structure and tasks of the judiciary, as well as a selection of various activities and projects that are being carried out within the Dutch Judiciary.

I hope that this publication will encourage you to think about the common values, similarities and differences between the various judicial systems around the world and will ultimately contribute to a greater insight into each other's judiciary institutions.

F.W.H. van den Emster  
Chairman of the Netherlands Council  
for the Judiciary



## I. The Judiciary system in the Netherlands



## The Judiciary: one autonomous organisation

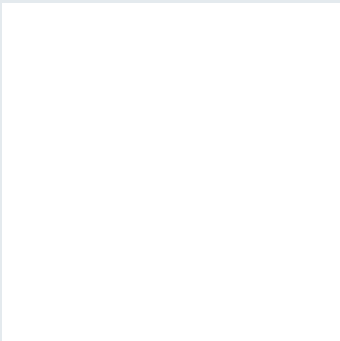


The judge has a central position under the rule of law. A well-functioning judiciary that enjoys the trust of the citizens forms one of the most essential conditions for enabling a state to function under the rule of law. But the authority of the judge is no longer self-evident. Society is placing more and more demands on the judiciary system with regard to judicial quality, speed, accessibility, integrity and consistency. In order to be able to meet these demands for quality, the judicial organisation was strengthened.

In 2002, the judiciary system in the Netherlands was subject to a far-reaching reorganisation by law. This move reinforced the constitutional

position of the judiciary and further safeguarded the independence of the judge. At the national level, the Council for the Judiciary was established, while the courts throughout the country were given the responsibility for running their own organisation on the basis of integral management.

The Council for the Judiciary is part of the judiciary system, but does not administer justice itself. It has taken over responsibility for a number of tasks from the Minister of Justice. These tasks include the allocation of budgets to the courts, supervision of financial management, human resources policy, IT and housing. The Council supports the courts in



executing their tasks in these areas. Another of its central tasks is to promote the quality of the judiciary and to advise on new draft legislation which has implications for how justice is administered. The Council also acts as a spokesperson for the judiciary at the national as well as at the international level.

The introduction of integral management means that the courts stand firmly on their own two feet. Each court has its own collegial court board, chaired by the court president. The board is responsible for the general management and day-to-day running of the court. The sector heads serve on the board, as does the director of operations. This ensures

unity within the court regarding main issues. Within this framework, the sector heads also have a measure of freedom in the management of their own sectors.

The courts are accountable to the Council for the Judiciary with regard to how they use their resources. The courts are not accountable to the Council for the way in which judicial decisions are arrived at.

In its turn, the Council reports to the Minister of Justice on the way in which resources are being used. The increased autonomy of the Judiciary means that the Minister is less directly involved. He does however hold political responsibility for the

functioning of the judiciary system as a whole. ■

Judicial map of the Netherlands  
Status on 1 April 2010



# The court system



The Netherlands is divided into 5 court of appeal and 19 district court jurisdiction areas. Each district court has a number of subsidiary court locations and/or subsidiary places of session.

In 2010, the Government submitted a policy document to Parliament in which it proposed to restructure the Judiciary into 10 judicial districts and 4 court of appeal jurisdiction areas and to reduce the amount of subsidiary court locations and places of session.

## District Courts

### District Court Sectors

The district court generally consists of a subdistrict sector, a criminal law

sector, a civil/family law sector, and an administrative law sector.

### Subdistrict sector

It is relatively simple for ordinary citizens to have their case heard in the subdistrict sector. They have the right to argue their own case and do not need a lawyer to represent them in court. Cases are handled by a single judge. The subdistrict judge usually delivers an oral judgement immediately after the hearing.

In terms of civil law, the subdistrict judge deals with all cases involving landlord and tenant cases, hire purchase and employment. He also deals with all conflicts involving an amount under € 5,000. The

legislator has recently submitted a legislative proposal to Parliament which broadens the jurisdiction of the subdistrict sector to all civil cases involving amounts up to € 25,000 and to cases of consumer purchase and consumer credit. If Parliament adopts this law, it will be in force from 1 January 2011.

In criminal law, the subdistrict judge only deals with minor offences. Often these are cases in which the police or the public prosecutor proposes a settlement. If the accused refuses to accept such a proposal, the case comes before the subdistrict judge.

### Criminal law sector

The judges of the criminal law sector



deal with all criminal cases which do not come before the subdistrict judge. These cases can be heard by a single judge or in full-bench panels with three judges. The full-bench panel deals with more complex cases and cases in which the prosecution demands a sentence of more than one year's imprisonment.

### Civil/family law sector

The civil sector handles cases not specifically allocated to the subdistrict judge. Most of these cases are decided by a single judge, but here too there are full-bench panels with three judges to deal with more complex cases. The civil sector also handles family and juvenile cases, although a considerable number of

district courts have a separate sector for dealing with such cases.

### Administrative law sector

With only a handful of exceptions, administrative disputes are heard by the district court. The administrative law sector also handles aliens law cases and tax law cases.

In many cases the hearing by the administrative law sector is preceded by an objection procedure under the auspices of the administrative authorities. These cases are usually heard by a single judge, but here too, the district court can decide to appoint three judges to a case which is complex or which involves fundamental issues.

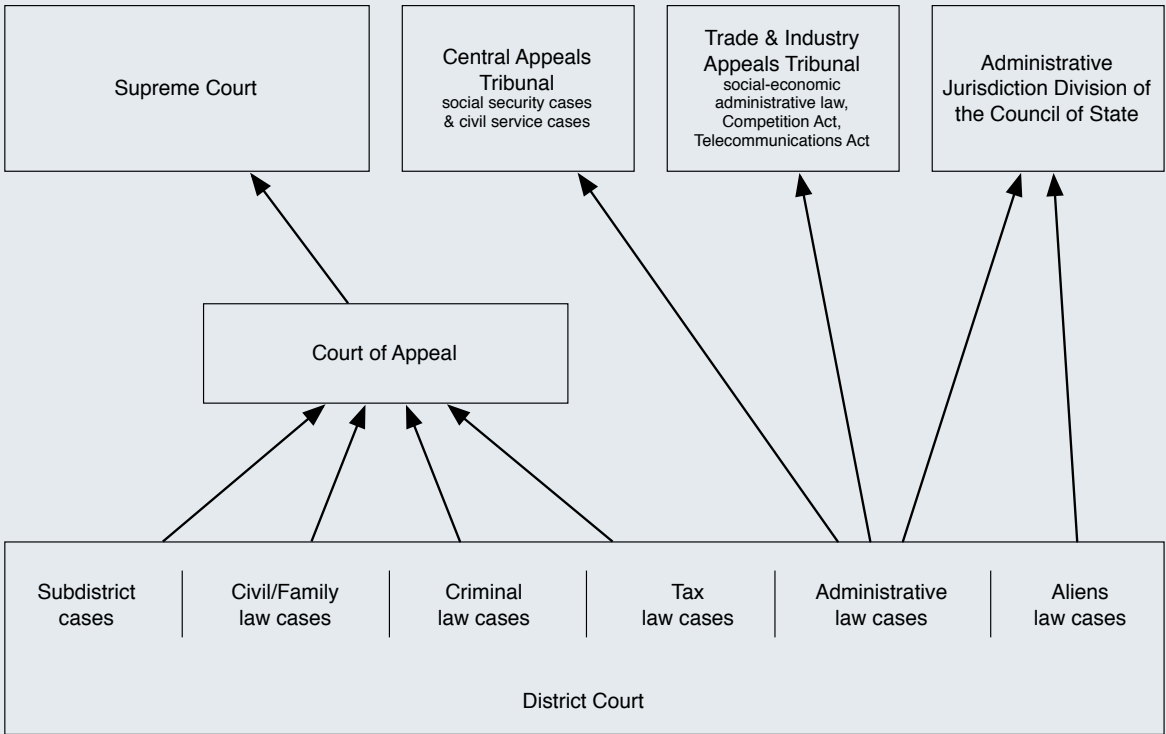
In cases involving civil servants and social security issues, appeal is a matter for a special appeals tribunal, the Central Appeals Tribunal. In most other administrative law cases, an appeal can be lodged at the Administrative Jurisdiction Division of the Council of State.

## Courts of Appeal

The 19 districts are divided over five areas of court of appeal jurisdiction: The Hague and Amsterdam in the west, Arnhem in the east, 's-Hertogenbosch in the south and Leeuwarden in the north.

The courts of appeal deal with civil and criminal cases in which an





The court system



appeal has been lodged against the judgment passed by the district court. The court of appeal re-examines the facts of the case and reaches its own conclusions. In most cases it is possible to contest the court of appeal's decision by appealing in cassation to the Supreme Court of the Netherlands. In addition to criminal and civil cases, the court of appeal also deals with all appeals against tax assessments, in its capacity as administrative court.

**The Supreme Court**

The most important function of the Supreme Court is cassation in civil and criminal law in the Netherlands and the Netherlands Antilles and

Aruba, and in Dutch tax law. Supreme Court rulings serve as a guideline to the lower courts. Only matters of due legal process are dealt with in cassation. The Supreme Court accepts the facts of a case as determined by the lower court and only investigates whether the law has been correctly applied. The appeal in cassation fulfils an important function in promoting unity of law.

The Public Prosecution Service has an office attached to the Supreme Court, consisting of the Procurator General and the Advocates General. Their primary duty is to issue an independent recommendation regarding the case to be judged. In addition, the Supreme Court

and the Procurator General to the Supreme Court are charged by law with the following special tasks: dealing with complaints about judges, suspending and dismissing judges, and prosecuting and passing judgment on offences committed by senior public officials in the course of their duties.

**Administrative law tribunals**

**Administrative Jurisdiction Division of the Council of State**  
The Administrative Jurisdiction Division of the Council of State in The Hague is the highest administrative court with general jurisdiction in the Netherlands. It hears appeals lodged by members of the public,

associations or commercial companies against decisions by municipal, provincial or central governmental bodies. Disputes may also arise between two public authorities. The decisions on which the Division gives judgment include decisions in individual cases (e.g. refusal to grant a building permission) as well as decisions of a general nature (e.g. an urban zoning plan).

**The Central Appeals Tribunal**  
The Central Appeals Tribunal is a court of appeal which is mainly active in legal areas pertaining to social security and the civil service. In these areas it is the highest judicial authority. The Central Appeals Tribunal is based in Utrecht.

**The Trade and Industry Appeals Tribunal**  
The Trade and Industry Appeals Tribunal is a special administrative court which rules on disputes in the area of social-economic administrative law as well as on appeals for specific laws, such as the Competition Act and the Telecommunications Act. The Trade and Industry Appeals Tribunal is based in The Hague. ■

# The Council for the Judiciary



## Tasks

The Council for the Judiciary’s tasks relate to budgetary matters and the qualitative aspects of the administration of justice.

The Council is responsible for preparing, implementing and accounting for the Judiciary’s budget. The budget system is based on a workload measurement system maintained by the Council. The Council encourages and supervises the development of operational procedures in the day-to-day running of the courts. The specific tasks in question are human resources policy, housing, IT and external affairs.

The Council has a range of formal

statutory powers, which enable it to carry out these tasks. The Council is empowered to issue binding general instructions to the boards of the courts with regard to operational policy.

The Council supports the recruitment, selection and training of judicial and court officials. It carries out its tasks in these areas in close consultation with the court boards. The Council is also responsible for the appointment of the members of the court boards.

The Council’s task as regards the quality of the judiciary involves promoting the uniform application of the law and enhancing juridical quality. In view of the independence

of the judge, the Council cannot interfere with the content of individual judicial rulings.

The Council also has an advisory task. It advises the Government on draft legislative proposals which have implications for the judiciary system. This process takes place in ongoing consultation with the court boards.

Furthermore, the Council for the Judiciary functions as a spokesperson for the Judiciary at the national and the international level.

**Composition**

Currently, the Council is made up of four members. Two of the current members - including the Chairman

- come from the Judiciary; the other two members previously held senior positions at a government department.

The Council has an office to assist it in its activities and to carry out any preparatory work that may be required.

**Strategic planning**

Every four years, the Council for the Judiciary sets a number of policy priorities in the Agenda of the Judiciary together with the court boards. The Agenda sets out the Judiciary’s strategic goals for the following four years. These are later translated into concrete activities in the annual plans of the courts

and of the Council for the Judiciary. Additionally, in 2009, an exploration of the future course of the Judiciary took place, resulting in a longer term vision of the Judiciary in 2020.

**Approach**

In order to ensure that the various tasks are carried out properly, the Council regularly consults with court presidents, directors of operations, sector heads and the Board of Representatives (an advisory body made up of judicial and non-judicial representatives from the courts.

**Support units**

Studiecentrum Rechtspleging, abbreviated to SSR, is the judicial training centre for the Netherlands.

SSR organises the initial programmes leading to qualification as judge or public prosecutor, and their ongoing education thereafter. The institute also trains legal and administrative staff working at the courts and the public prosecutor’s offices.

In addition to the training centre, the Judiciary has national services in the field of IT. ■





# Integral management and finances

Integral management

An important feature of the Judiciary Act (*Wet organisatie en bestuur gerechten*) is integral management. Each court has its board which is in charge of the general management and day-to-day running of the court. This board consists of the president of the court, the director of operations and the heads of the sectors.

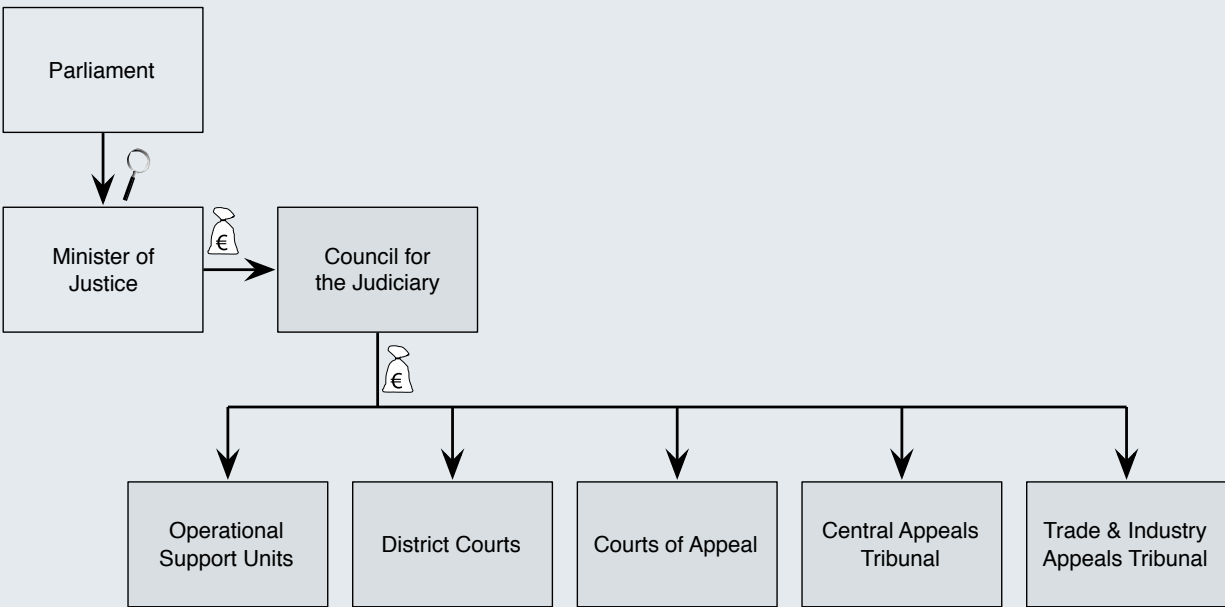
Integral management in the courts means that the court board is responsible for the administration of justice as well as for the day-to-day administration of the court, including the finances. To provide support for the court board, there are management support units in areas such as human resources and

organisation, finance and information management, but these support units are never in a position to take over the court board's responsibility.

Finances

The allocation of financial resources to the Judiciary is decreed by law on an annual basis. The annual budget of the Judiciary is output-based and is obtained by multiplying the price per case by the number of cases.

The Council for the Judiciary distributes these resources among the courts and is accountable to the Minister of Justice for the lawful and effective use of the allocated resources. The court board decides how these resources are spent within the own court.



The financing of the Judiciary

The relationship between the court board and the Council for the Judiciary is embedded in a planning and reporting cycle with year plans, progress reports (every four months) and annual reports. The Council is responsible for a general annual plan and an annual report for the Judiciary in the Netherlands. ■



## II. The Dutch Judiciary in practice: a selection of special features



Each introduction to a national judiciary system starts with a factual description of the system, if only in outline. This is also the case in this brochure. What are the special characteristics of the judiciary system in the Netherlands, or – if you like – its peculiarities? Which new demands is the changing society placing on the judiciary? And how do Dutch judges deal with these demands in practice?

In the following pages, you will find a series of interviews with Dutch judges on various special features of the Dutch judiciary, such as “intervision”, greater uniformity in civil procedures, special chambers and “press judges”. ■

## The press as watchdog of the judiciary

The press act as a watchdog of the judiciary. This is generally a good thing. Sometimes, however, they bark too loudly. In such cases, judges are increasingly inclined to intervene in the public debate to put things in perspective.



As elsewhere in the world, the power of the media is increasing in the Netherlands. Law, particularly criminal law, is exciting. This is why the media are becoming ever more closely involved. This can be particularly problematic if they publish their reports when the criminal investigation has barely started.

“The judiciary benefits from openness,” believes Elianne van Rens, press judge at the District Court of The Hague. “The press play a useful role as watchdog. They hold up a mirror to judges.”

Although reporting is creating more openness, this also has its drawbacks. “The press are making their views

known so early now that they can sometimes be accused of trying to stir up public opinion,” says Van Rens. “If a criminal case gets newspaper coverage, a suspect may have been convicted by public opinion before his case has even come to trial. And the Dutch Parliament then starts to ask questions and criticises the courts on the basis of newspaper articles. I don’t think this is correct, if only because it harms the reputation of the Judiciary.”

At the same time, the public are increasingly aware of the power of the media and are deliberately turning this to their advantage. If a public prosecutor or judge accidentally loses a file, he or she can now be

almost certain that it will somehow end up – through the intermediary of an ‘honest finder’ – on the desk of journalist Peter R. de Vries, the country’s best known ‘crime fighter’. Although developments of this kind surprise Elianne van Rens, she accepts them as a fait accompli. The clock cannot be turned back, so it’s up to the Judiciary to find a solution.

And this is what it is doing. “Previously we simply said that courts ‘spoke through their judgments’. But that’s no longer sufficient. Now we must explain the judgments and do so in a language that people understand.” This realisation has already led the criminal courts to modify their judgments: instead of a

brief statement of the legal findings, the judgments now explain at greater length why the judges have reached the decision in question. In addition, each district court in the Netherlands has traditionally had one or more press judges, who provide the media, on request, with an explanation of the judgments given by ‘their’ court.

To put things in perspective, judges are also increasingly inclined to intervene in the public debate. For this purpose the Council for the Judiciary has established a spokesperson’s pool at the end of 2009. Members of this pool deal with the media in public debates on general topics. Van Rens gives an example: “Take the criticism of





judgments in which sex offenders are given community service orders. A spokesperson from the pool can explain in general terms why courts in the Netherlands pass such sentences. And why it is important that the courts should remain free to impose a sentence tailored to fit the facts of the individual case.”

Although the Press Guidelines of the Dutch Judiciary are mainly reactive, Van Rens considers that they provide judges with a sound basis for their dealings with the press. If a judge considers it necessary, a case can even be conducted behind closed doors. Only the announcement of the case and the judgment are then public. Press protests are pointless in

such cases. “There’s no right or wrong in cases of this kind,” says Van Rens. “You can at most look at them from different perspectives. This is why the decision is always left to the judge dealing with the case.”

Although the media presence is nowadays more prominent, Van Rens says she is happy about the situation in the Netherlands. The press do not often betray the trust placed in them in the context of the Press Guidelines. Van Rens notes that the public service broadcasters apply stricter ethical limits than the commercial broadcasters. Nonetheless, where necessary, the media are willing to adopt a restrained approach. For example, they do not make

recordings of suspects in the courtroom unless they have been given express permission. Moreover, it is still not usual to release the names of suspects. They are generally still referred to only by their first name or initials. However, this practice may be deviated from in high-profile cases in which the name of the suspect is already out in the public arena.

In such circumstances, judges are once again aware of their own responsibility. Van Rens comments: “When a suspect has acquired public notoriety, the judge can take this into account in sentencing. And if a suspect is acquitted after his case has received extensive media coverage, the judge is extra conscious of the

need to give a clear explanation of the grounds for the judgment.” ■

### Judiciary streamlines contacts with the press

The judiciary attracts lively media interest. This is why all district courts and courts of appeal have their own communications department. The professional press officers who staff these departments provide the media with information about court schedules, writs of summons and petitions under embargo, and also answer questions.

In principle, nothing is said about matters that are still sub judice. For information about general topics, the local press officers refer the media to the Communications Department of the Council for the Judiciary.

Judges appreciate the benefits of having communications departments. The existence of such departments means that judges need speak to the media directly only to explain a judgment or discuss substantive legal issues. To streamline communication at this level too, all courts have designated one or more so-called press judges. They generally hold this position for a number of years as experience is needed in dealing with the press.

For the guidance of both the Judiciary and the media, the Netherlands also has what is known as the Press Guidelines. These set out the main rules for dealing with the press. For example, they list which articles of the Convention for the Protection of Human Rights and Fundamental Freedoms and of the Dutch Constitution safeguard the public nature of court proceedings and which articles are intended to ensure respect for private life. The Guidelines also indicate in which cases the law allows the judge to decide that a session that is in principle public, should nonetheless be held behind closed doors.

In general, sound and film recordings may be made during public sessions of the courts. Only legal professionals such as judges, public prosecutors and attorneys-at-law may be shown on film. Suspects, witnesses and members of the public may not be filmed under any circumstances. This prohibition is designed to protect their privacy, but it has the added benefit that it prevents parties from using the media as a platform.

# Patents Chamber with international reputation

The Dutch Patents Chamber, which is part of the District Court of The Hague, has an international reputation in its field. And rightly so: its proceedings are relatively short and its judgments are of a high standard.



The work of the Intellectual Property (IP) Division of the District Court of The Hague, as the Patents Chamber is now known, covers all aspects of intellectual property law. It has exclusive competence in various fields such as patent law, Community trademark law, Community design law, plant breeders’ rights, neighbouring rights royalties, the private copying charge scheme and integrated circuit topography law. This exclusiveness gives the division a special position within the Dutch Judiciary. Owing to European legislation, its work has a strong international character. It also applies special procedures.

Rian Kalden is vice-president at the

District Court of The Hague and heads the IP Division. In the Division, there is room for eight judges, a staff lawyer and a senior legal officer. They are well-versed in all aspects of intellectual property law. Patent law in particular plays a major role. The main areas of litigation are pharmaceuticals, electronics and mechanical engineering. Rian Kalden comments, “Whereas most judges in the Netherlands tend to have more affinity with the humanities and languages, the judges in this division have a more scientific orientation. And this is in fact essential. Without a genuine interest in technology and a feeling for technical matters, you can’t be a good patent judge.”

Logically, the division is therefore staffed by highly motivated and ambitious judges with a real love for the subject. In Europe they are viewed as an authority. “We rank among the top in Europe and we’re very proud of that,” says Kalden. “Patent holders and lawyers regard Dutch judgments in patent cases as authoritative, like those of England and Germany. We are one of the key jurisdictions.” To maintain their strong position, the patent judges take part in conferences where they can discuss with other European patent judges. This also enables them to keep abreast of developments in key industries.

The popularity of the Dutch Patent Chamber is certainly due in part to

the speed with which it administers justice. In the field of intellectual property law, both Dutch and foreign litigants make much use of interim injunction proceedings (*kort geding*). Such expedited proceedings are instituted by writ of summons and result in an order for interim relief. This typically Dutch procedure has no influence on the subsequent proceedings on the merits. Within Europe, it is a unique way of quickly obtaining clarity about the validity of European patents and patent infringements.

European patent judges, including those in The Hague, have an increasingly heavy workload. Nowadays, companies have to



conduct parallel proceedings in the countries in which they wish to enforce their patent. Previously, patent judges could impose a cross-border injunction in the case of an infringement of a European patent. Now, however, the European Court of Justice has made this impossible in proceedings on the merits, and such injunctions are generally no longer imposed in interim proceedings either. As a result of the parallel proceedings that have replaced cross-border injunctions, patent judges are increasingly faced with substantial court files containing judgments and case documents from other countries. This often gives rise to a de facto cross-border appeal procedure. “What industry needs in fact is a

concentrated patent jurisdiction with judgments that have cross-border effect,” says Kalden. “There’s now talk of setting up a single court, the European and Community Patent Court. At first instance there would be a central division as well as local and regional divisions. But the debate has been going on for dozens of years and, although some progress has been made, there’s no immediate prospect of a political breakthrough.” The IP Division of the District Court of The Hague does everything it can to provide litigants with clarity at the earliest possible opportunity. Interim injunction proceedings are of help in this respect, but they are not the whole answer. Proceedings of this

kind may be fast, but they do not always provide sufficient scope for the production of evidence. Moreover, they must always be followed by proceedings on the merits if they are not to cease to have effect. To save time, the IP Division, in consultation with the Bar, has devised an expedited procedure for patent cases. Such proceedings are conducted according to a strict timetable. The parties limit themselves to a single round of written pleadings and then have the right to address the court orally with a longer speaking time than normal. Judgment generally follows six weeks later. The entire proceedings take between 12 and 15 months. The IP Division also deals with special procedures pursuant to the European

### Special chambers

Some courts have been given an exclusive competence by law. For example, the District Court of The Hague has its Patents Chamber, the Court of Appeal of Amsterdam its Enterprise Section and the Court of Appeal of Arnhem its Agricultural Tenancies Section. Exclusive supplementary competences may also be allocated by law. The District Court of The Hague, for example, has been assigned to hear divorce petitions from parties living abroad.

Sometimes, concentration of particular types of cases occurs as a result of the local situation in practice. For example, the District Court of Rotterdam tends to hear a high proportion of shipping-related cases as the city has one of the world’s busiest ports.

This concentration of certain types of cases results in professional specialisation and thus helps raise standards. This is a positive development, as society needs more specialised judges. Moreover, this enables the Judiciary to keep pace with the increasing specialisation within the Bar.

As regards the distribution of special chambers across the Netherlands, the quality and efficiency of the decision-making are aspects of particular importance

to the Council for the Judiciary. The interests of the parties also play a major role: only if the nature of the case requires a specialist approach may a litigant be expected to travel to a specialised district court further away. For example, legal proceedings about social assistance benefits are conducted close to home, whereas a litigant engaged in proceedings about intellectual property can be expected to travel further afield.

A court that has exclusive jurisdiction in the Netherlands to hear a certain type of case must ensure that it has sufficient specialised judges. This makes special demands on the selection, training and rotation of judges and on the legal support staff. To reduce vulnerability and guarantee continuity, the Judiciary must also safeguard and maintain its level of knowledge.

Enforcement Directive, which was transposed into Dutch legislation in 2007. For example, evidence can be seized in an ex parte procedure. In the Netherlands, however, an applicant can actually obtain possession of what has been seized only through a subsequent inter partes procedure.

Other Dutch district courts are also called upon to hear cases of this kind in intellectual property disputes. The IP Division in The Hague is trying to ensure, through a nationwide expert group, that the Directive is uniformly applied in the Netherlands.

Since the implementation of the Enforcement Directive, parties may

also use an ex parte procedure to seek an injunction for an infringement of an intellectual property right. This is new within the Dutch legal system. “As no defence is possible, this amounts to an infringement of the principle that both sides should be heard,” explains Kalden. “This is why the IP Division has introduced – initially by way of trial – the possibility for a party who fears that he will be faced with an ex parte injunction to make his position known in advance. Industry thinks this is a worthwhile facility.”

The IP Division ensures that the defendant can apply for the injunction to be lifted again in the short term. Kalden: “This is how we

are compensating as far as possible for the lack of opportunity for the defence to put its case.” ■



# The judge looks in the mirror

Intervision is a splendid instrument to help judges gain more insight into their own behaviour. Self-reflection is all the more important now that the judge’s authority can no longer be taken for granted and increasingly depends on how the judge conducts himself. Fortunately, Dutch judges are willing to have a mirror held up to them.



Intervision was first introduced to the Dutch Judiciary at the start of this century, but has already become a way of life. “It is a quality instrument and is now a fixture in our culture,” says Hans Steenberghe.

Steenberghe, judge at the subdistrict sector of the District Court of Utrecht, is leading the latest intervision project there. The first time he really engaged with this instrument was when he was responsible as vice-president for the quality of the judicial process at the District Court of Utrecht. Meanwhile, he has become a warm supporter of regular intervision.

Intervision can definitely use an ambassador. “You have to keep

stimulating judges to participate. Their agendas are so busy that intervision can be hard to fit in. However, when they do take the time, they soon become enthusiastic. Judges are prepared to make themselves vulnerable and are receptive to input.”

Permanent renewal is vital to prevent the process from becoming routine. Steenberghe: “Sometimes a concept becomes a bit stale and needs to be revitalised.” This is precisely what he has done by adding two challenges in Utrecht, where intervision is now cross-disciplinary and theme-driven.

Looking across the boundaries of civil, administrative, family and criminal

law has great practical benefits. Intervision is aimed at giving each other feedback about behaviour during a session. The legal content of the case doesn’t play a role. However, in practice, this can prove to be difficult. “Put two civil judges in a room together, and the conversation will soon turn to aspects of law”, Steenberghe says. He also mentions the close working relationships that judges in the same sector have with each other. They know each other well in a professional sense, which means that the fresh pair of eyes you need for intervision may be missing. Talking with a colleague from a different sector solves both problems in one go.

It did not take Steenberghe long to come up with a theme for the latest intervision round. “The key is the judge’s authority. That is what everything hinges on. But precisely that authority is being increasingly questioned. Some say that this critical stance is undermining the judge’s authority. I disagree. Criticism need not harm the judge’s authority.”

But the judge’s authority can no longer be taken for granted.

“It can in the first instance. Parties who come to the judge for a decision implicitly accept his authority. The courtroom setting underpins that authority. In this sense nothing has changed. What is different is that



nowadays the judge’s behaviour plays a crucial role in maintaining his authority. Is the judge confident or hesitant? Is he brief and to the point or long-winded? Does he know his business? Litigants are inherently unsure about the outcome of their case. This makes them hyper-sensitive to how the judge behaves. If one party gets a lot of time to speak, while the other is repeatedly cut short, the latter is likely to feel his case is not going well.”

Does that matter?

“If the judge needs to get more information from one party than from the other, that’s fine. But the judge must avoid any suggestion of being

biased or having too little knowledge of the case. As a judge you need to be aware of the impression your behaviour can make. Because then you can make adjustments, and explain why you are doing what you are doing.”

Don’t citizens simply want a strict but fair decision-maker?

“Of course they do. But the judge’s authority doesn’t depend on his pandering to that wish.”

Staring sternly over the rim of your reading glasses is not the answer to the calls for more authority?

“No. Obviously the judge needs to

### The judge’s behaviour

A young but already familiar instrument for improving the quality of the judicial organisation is intervision. Dutch courts encourage their judges to observe and discuss each other’s behaviour during the court sessions, either with or without an independent third party. The legal content of the case is emphatically not the issue.

The underlying idea is that the judge influences the course of the proceedings with his behaviour during the court session. If the judge doesn’t listen carefully, draws conclusions too quickly, divides his attention unevenly between the parties, or fails to keep things under control, the litigants will read things into this. Their observations of the judge’s behaviour will determine how they see their chances and what their next move will be. The judge’s behaviour is therefore of crucial importance.

Intervision is usually done in pairs: two judges attend each other’s sessions and give each other feedback on their performance. The unwritten rule is to encourage reflection by asking questions. Offering criticism or ready-made solutions is not effective. Indeed, the intervision process is all about learning new insights through your own effort. There is, however, a brochure to help judges adopt the right approach and to ask the right questions.

Intervision is voluntary, because it isn’t effective if you are not open to it. How individual pairs of judges go about their intervision process is entirely up to them. Some pairs make video recordings; others find that too much fuss. Some hold their intervision session in their courthouse office; others mix business with pleasure and meet over lunch. Some find assistance from a coach useful; others

prefer to do it on their own. Whilst the importance of intervision is now fully endorsed within the Judiciary, certain obstacles remain to be overcome. The first is the high work pressure: it’s not easy getting off the daily treadmill for an activity that is not directly productive and of which the benefits are hard to measure. Secondly, there are signs of saturation creeping in. To keep judges enthusiastic, the intervision process needs regular refreshing.

have a certain aura of strictness. But you must never play a role. Acting strict is only effective if you genuinely are strict, for instance because the situation at the session calls for that. I am deeply convinced that the best way for the judge to maintain his initial authority is by approaching the litigants as guests in his courtroom, by treating them respectfully and as equals. And by ensuring that the judge and litigants understand each other. How? Every judge does that in his own way. This is why it is so good to learn from each other.”

Intervision with a controversial theme: that is clever.

“Judges are now fairly used to

discussing each other’s behaviour. They have sufficient professional resilience to have a mirror held up to them. But it’s always difficult to keep that enthusiasm alive. A theme is a great way to create focus.”

Do you already have more good ideas for the future?

“I would like to see a single nationwide approach to intervision. As things are, every court does its own thing. And another wish I have is to make more time for joint evaluations of the set theme; so that we can find out whether the judge’s authority in the session depends on the specific nature and details of the case, or whether certain universal aspects are at work.” ■

## Oiling the wheels of civil procedure

“It’s the biggest development in civil procedural law in years”, says Hans den Tonkelaar, vice-president of the District Court of Arnhem. He is referring to the requirement that parties appear in person before the court after the statement of defence, which has been obligatory by law since 2002. As the parties to a dispute now have to appear in court at an early stage, the length of disputes has been greatly reduced. “The Netherlands can boast an excellent civil procedure,” Den Tonkelaar comments.



Hans den Tonkelaar, who is also professor of law at Radboud University Nijmegen, is closely involved in improving the administration of justice in the Netherlands. One way in which civil procedure has been improved, is through the introduction of the standard requirement that the parties to a dispute appear before the court in person after the statement of defence has been lodged. Den Tonkelaar is pleased that this post-defence hearing has been made obligatory. Not only does the appearance of the parties improve the quality of the administration of justice, but it also oils the wheels of civil procedure. Whereas formerly a defended action instituted by writ of summons could easily take two years, parties can now

often expect to get a final judgment within a year. In other words, time and costs have been halved.

Nonetheless, the huge impact of this change does not surprise Hans den Tonkelaar. Under Dutch law, litigants have for some years been obliged to set out all the arguments and all relevant facts, plus the positions of the other party, in the writ of summons and statement of defence. Parties can no longer keep their powder dry for tactical reasons until a later stage. If parties are also required to make a personal appearance at an early stage, the courts can also get to the root of the dispute sooner. By questioning the parties, the court

can identify the basic issues earlier and gauge the emotions that have brought the parties before the court. “It’s not always about finding the ultimate, just solution,” explains Hans den Tonkelaar: “During the post-defence hearing, the judge can also ask the parties what it would be worth to them to end the dispute. The very fact that this down-to-earth question is asked by a person who is invested with the authority of the law helps to ensure that many disputes are now ended in the corridors of the court buildings, where the parties gather during pauses in the post-defence hearing to negotiate a settlement.”

Nowadays, judges manage as well as monitor the course of civil

proceedings. Not only can they nudge the parties towards an amicable settlement of disputes, they can also give judgment after the post-defence hearing if they consider they have sufficient information about the dispute. Den Tonkelaar continues: “In relatively simple cases where there is no order to adduce evidence or obtain an expert opinion, judgment can be given within six months. “In his view, one of the main arguments in favour of post-defence hearings is that they remove the need for replies and rejoinders. “What’s more,” he adds, “a second round of written pleadings can actually delay and complicate a case unnecessarily.” It should be noted, incidentally, that





Getting judgment quickly

There are two ways of getting judgment quickly in civil cases in the Netherlands. The first is to apply for an interim injunction (*kort geding*). However, the importance of this procedure is now being eclipsed by a second and relatively new option – the appearance of the parties in person before the court after the statement of defence (*comparitie na antwoord*).

The appearance of the parties in person after the statement of defence is a *de facto* hearing that forms part of written proceedings in a defended action. The purposes of this ‘post-defence hearing’ are to obtain further information from the parties, assess whether a settlement is possible and make arrangements on the way to approach the case.

Previously, the personal appearance of the parties was an optional interlude between two stages of the written proceedings. A hearing was sometimes held after submission of the writ of summons and statement of defence.

Thereafter the parties were entitled to proceed to the second stage of the written proceedings (reply and rejoinder). This has now changed. The post-defence hearing is now the standard procedure. Once the court has obtained sufficient information from this hearing, it can give final judgment forthwith.

One of the factors that saves time is that litigants may no longer withhold information from the court or the other party. The defendant must also supply all relevant information. This means that the proceedings will be instituted only when the dispute has been sufficiently clarified. This helps to avoid placing an unnecessary burden on the capacity of the courts. As the second stage of the proceedings is now part and parcel of the first stage, it is justified to omit it.

The traditional method of obtaining a judgment quickly is to apply for an interim injunction. This is an independent and special procedure

which is instituted by writ of summons for the purpose of obtaining interim relief from a civil court. A party to a dispute may refer the matter to an interim relief judge within two months, after which the parties will receive judgment within two weeks. In cases where speed is of the essence, judgment can be obtained even faster.

Although the parties may institute proceedings on the merits after an interim injunction proceeding, they often accept the judgment of the interim relief judge and do not litigate further.

Unlike other forms of interim relief (in family, administrative and criminal law proceedings), an interim injunction is open to appeal and appeal in cassation. In such cases, the proceedings are instituted in the ordinary way by writ of summons, unless a fast-track procedure is once again necessary.

the time saving does not necessarily apply to the large volume of smaller cases dealt with by the subdistrict sector, where litigants are not required to have legal representation. The subdistrict sector judges therefore decide on a case-to-case basis whether a post-defence hearing would be worthwhile.

The Judiciary has been experimenting with post-defence hearings since the 1990s, when a project to expedite civil proceedings was introduced. This concentrated on proceedings in which the court considered that there was a real chance of settlement. The resounding success of this project ultimately resulted in legislation. “This has also impacted the selection

of judges,” says Den Tonkelaar. “The hearing now plays a much more important role in civil proceedings. This is why it is important for judges to have good communication skills. They must inspire confidence and be capable of getting to the core of the case quickly, but they must also radiate authority.”

And there is yet another important consequence. Now that judgment can be obtained more quickly in ordinary civil proceedings, the importance of interim injunction proceedings is diminishing. Hans den Tonkelaar explains: “As the proceedings on the merits now produce a judgment much more quickly than in the past, this may be

a more attractive option for parties to disputes. After all, in ordinary proceedings it is possible to hear witnesses and consult experts. By contrast, interim injunction proceedings are less suited to this.”

Nonetheless, interim injunctions will continue to be an appropriate remedy for such matters as the rectification of publications, intellectual property disputes, tendering procedures, disputed advertisements and restraining orders. Here speed is often of the essence. But the Judiciary has in any event no intention of discouraging applications for interim injunctions. Nor does Den Tonkelaar see anything wrong in the fact that applications for interim injunctions are sometimes used

as a means of exerting pressure.

The Judiciary is geared to dealing with a constant flow of interim injunction applications. Den Tonkelaar estimates that around one third of all planned cases are discontinued before the hearing because the parties reach agreement at the last moment. “In these cases”, he comments, “the threat represented by the announcement of an application for an interim injunction clearly produces the desired effect. Courts take account of this in their planning. Like the airlines, they overbook their ‘aircraft’!” ■

## Uniformity provides fast and certain administration of justice

Greater uniformity in civil proceedings commenced by a writ of summons has speeded up the administration of justice in the Netherlands and introduced greater legal unity. But no one need fear the advent of robojudges.



Marieke Zomer is coordinating vice-president at the District Court of Zwolle-Lelystad, a medium-sized court. In previous years, she chaired the 'Litigating Nationwide' Project, which was established for the purpose of ensuring that all Dutch courts adopted the same working methods. "Mission accomplished," she notes with satisfaction. "Everything passed off relatively smoothly."

This is in itself a real achievement since it was necessary to secure the cooperation not only of the judges but also of the court registries, the Judiciary's ICT organisation and naturally the Bar, which had to introduce a national roll of lawyers. Both the courts and the Bar feared

that they would be overwhelmed with work once the expertise of local counsel was lost. They were also concerned about whether the online facilities would be sufficient.

Marieke Zomer decided to adopt a step-by-step plan with interim deadlines: "This was how we showed that we meant business and that things were really going to change."

Zomer praises the positive attitude of the Bar and expresses special appreciation for the courts of appeal, which had to make great strides in a relatively short space of time. "The district courts were much further in the process of cooperation and reaching agreement with one another



than the courts of appeal," she says. "Furthermore, the courts of appeal had to switch to a new internal procedural system. The change was therefore greater for them." Zomer also notes that the more intensive nationwide consultations in each sector (i.e. the civil, family, administrative and criminal law sectors) have helped to create greater uniformity. "These are important instruments in the establishment of a uniform system," she comments.

There is now even a degree of enthusiasm about the reforms, which is not confined to the sectors that used to be affected by the obligation to appoint local counsel. The family law sectors, where proceedings are

instituted by petition rather than writ of summons, have – at the end of 2009 – also introduced electronic messaging on the progress of proceedings, which may possibly lead in due course to a kind of online case list. This is also being studied by the subdistrict sector (where legal representation is not compulsory), although here the element of privacy may be an inhibiting factor.

The 'Litigating Nationwide' Project Group was able to take advantage of a number of existing advances in various fields. For example, there was already a simple digital system for monitoring the daily status of proceedings. It was merely necessary for electronic tools in the form of





wizards – templates that ensure that judgments always have the same layout – to gain general acceptance. Procedural regulations also already existed. The only problem was that they were not used by all courts in the same way and to the same extent.

So it was a question of getting people to think along the same lines?  
“Yes, to a large extent it was. It was necessary not only for people to become aware of the existence of these different working methods but also for them to query the benefits. This requires a radical change in thinking, which will take years. On the other hand, the fact that we can now consult a Civil Law Handbook through our nationwide intranet is regarded as

very convenient. Achievements of this kind help to promote acceptance.”

This is mainly about a practical change. What higher goal does this serve?  
“The aim is to improve the quality of the administration of justice. We simply wish to provide a better product. By facilitating the procedural side of things we think that more attention can be paid to the substance. It speeds up the process and helps us to make better decisions. This is what society expects of us.”

Isn’t the danger of uniformity precisely that the administration of justice is reduced to the level of an unthinking routine?

“As far as procedural matters are concerned, judges are only too pleased to receive assistance.”

And is the autonomy of the judiciary safeguarded in all this?  
“The more legal aspects there are in a case, the stronger the judicial autonomy. This will not change. The courts are well aware of their autonomy. And that’s how it should be. They must not become an extension of the legislature.”

So no fears that judges will become robots?  
“Certainly not. There’s no suggestion that judges must work through a checklist to arrive at a decision. The limits of uniformity are reached at

### Litigating nationwide

Although the Netherlands is only a small country, each of the district courts and courts of appeal in the 19 court districts used to apply their own procedures in civil proceedings commenced by a writ of summons. In recent years, much has been done to introduce greater uniformity into civil procedure. The advantages are speed and greater legal unity.

The obligation to appoint local counsel, for example, was abolished in September 2008. Before this, attorneys-at-law could not institute proceedings directly outside their own district, as they were by definition unaware of the different usages that applied elsewhere. This was why it was necessary to appoint a local attorney to act as local counsel (*procureur*). Often, the main role of local counsel was to pass on court documents from the attorney and monitor deadlines.

In recent years, this working method came to be seen as causing unnecessary expense and delay. As society in general speeded up, litigation could not lag behind. Hence the abolition of the obligation to appoint local counsel. Now, every attorney can personally institute proceedings before every court.

The first step towards greater uniformity in civil procedure in the Netherlands was to introduce

national procedural regulations for the civil law sectors of the courts. These set out precisely how proceedings should be conducted and thus established much greater uniformity. Nonetheless, the separate courts still interpreted the national rules slightly differently. However, as every attorney can now institute proceedings before every court, uniformity is essential. The courts have therefore made new and stricter arrangements, as the chance of procedural errors due to local differences must be minimized.

This greater uniformity means that all courts have now introduced written hearings. These are held by the district courts on Wednesdays and by the courts of appeal on Tuesdays. Since the abolition of the obligation to appoint local counsel, the case lists administered by these courts have been made accessible online to every attorney in the country. Indeed, more and more procedural acts, such as requests for extra time in which to lodge procedural documents, can now be performed only through the online case list.

As it is now possible to litigate nationwide, the courts can no longer allow any differences between their working methods. This has helped to speed up litigation and introduce greater legal unity.

a given point. Nonetheless, in many cases, judges’ decisions will hardly come as a surprise. Although legal unity is not an aim in itself, we must, to some extent, provide predictable outcomes in less complicated cases that do not involve legal issues on matters of principle.”

“As resistance to uniformity diminishes, more agreements will be reached on legal issues too. I do not exclude the possibility that in due course we may arrive at Ikea-type judgments – relatively fast and standardised judicial rulings in straightforward cases. I have no problem at all with this, provided the nature of the judgment is made clear.”

“I don’t believe that faster decision-making will undermine judicial autonomy. Judges would never allow their autonomy to be taken away from them in this way. What’s more, they’re quite capable of determining where an autonomous decision is important and where less so. After all, let’s be clear about this: in many cases the main social role of the courts is to ensure that a decision is made.” ■





III. Facts and figures

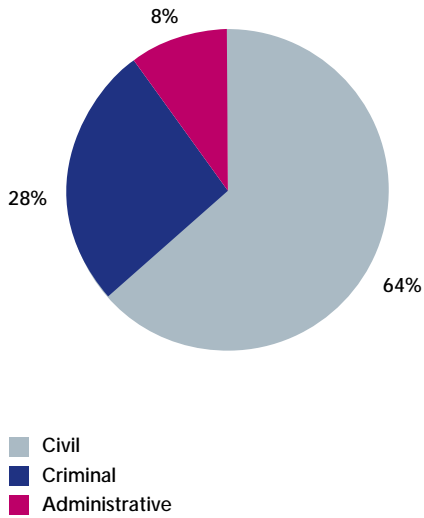


Number of Dutch court cases, 2008, (x 1.000)

	Civil	Criminal	Administrative	Total
First instance	1010	433	116	1559
Appeal	15	23	10	47
Cassation	1	3	1	5
Total	1026	459	127	1612

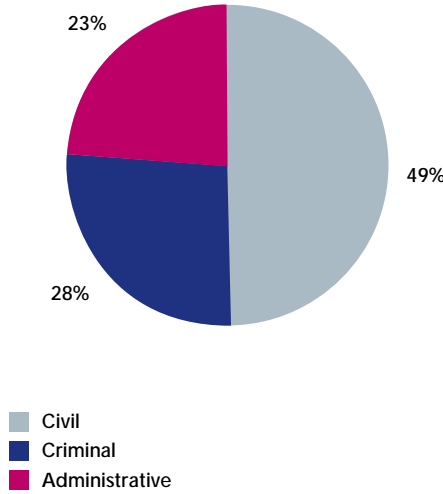
Source: Annual Report of the Judiciary, 2008; Annual Report of the Supreme Court, 2008; databases Council for the Judiciary

Distribution of cases within the Judiciary by branch of law, 2008



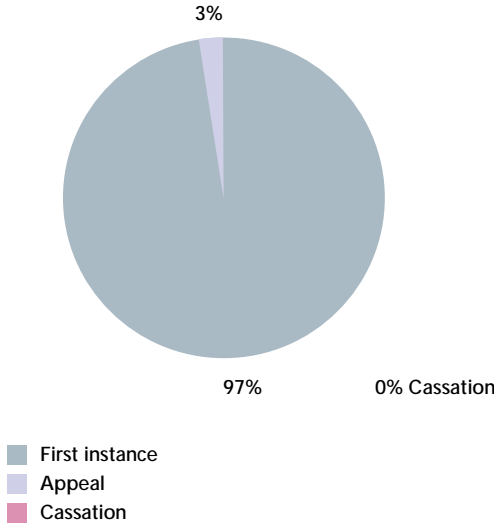
Source: Annual Report of the Judiciary, 2008; Annual Report of the Supreme Court, 2008; databases Council for the Judiciary

Distribution of staff within the Judiciary by branch of law, 2008



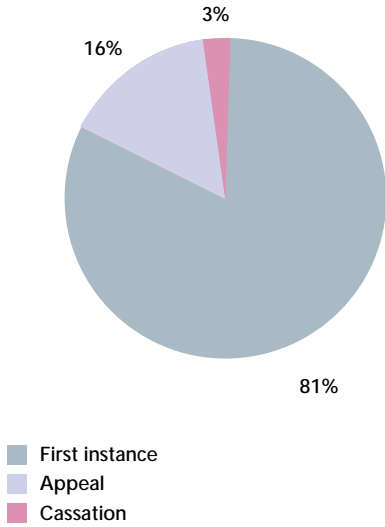
Source: Annual Report of the Judiciary, 2008; Annual Report of the Supreme Court, 2008; databases Council for the Judiciary

Distribution of cases in first instance, appeal and cassation



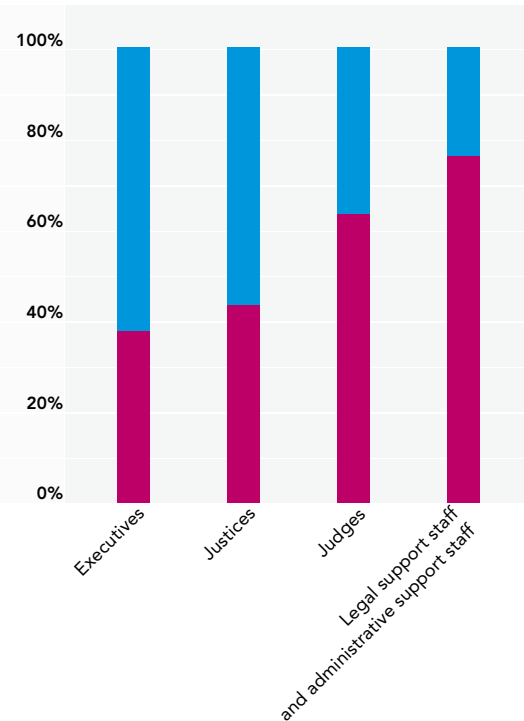
Source: Annual Report of the Judiciary, 2008; Annual Report of the Supreme Court, 2008; databases Council for the Judiciary

Distribution of staff in first instance, appeal and cassation



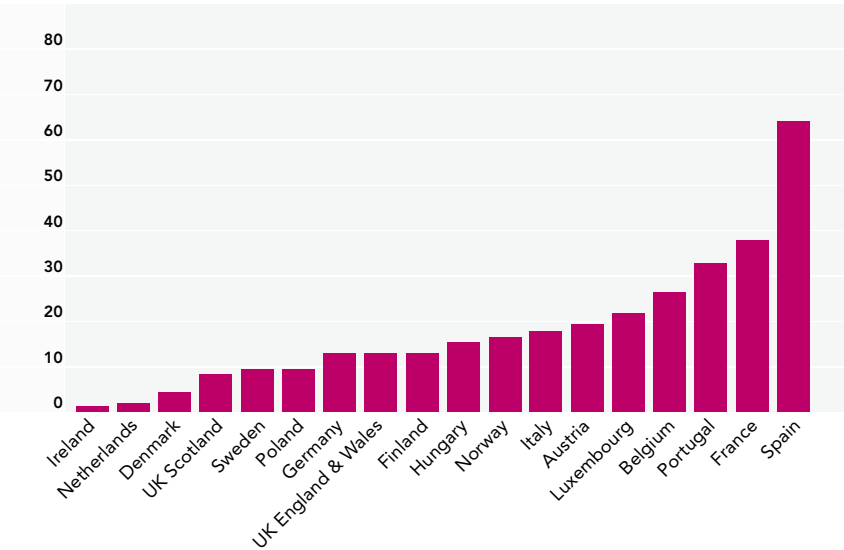
Source: Annual Report of the Judiciary, 2008; Annual Report of the Supreme Court, 2008; databases Council for the Judiciary

Percentage of female and male staff within the Judiciary, 2008



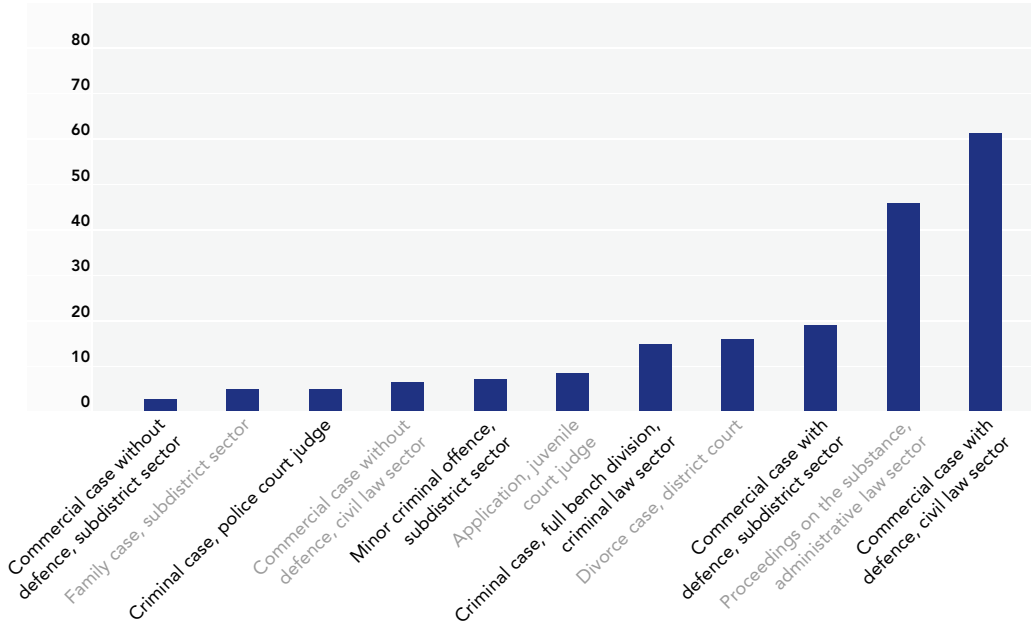
Source: Annual Report of the Judiciary, 2008

Number of first instance courts per million inhabitants, 2006



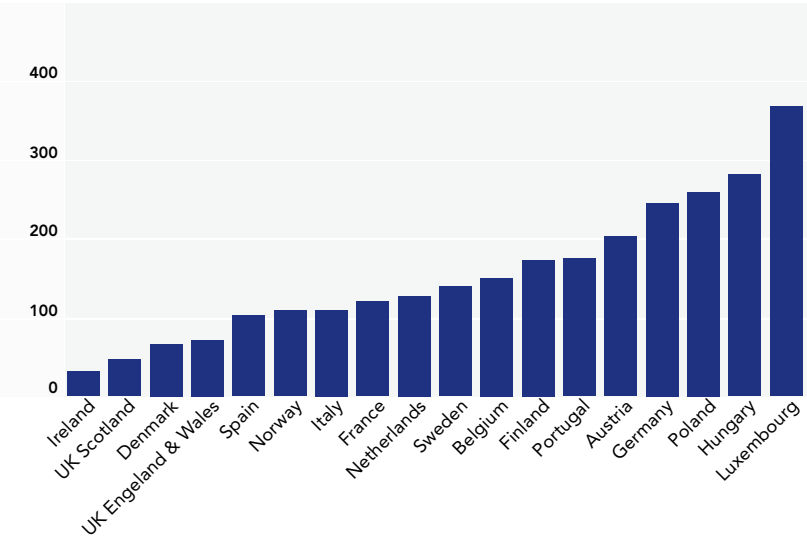
Source: CEPEJ, European judicial systems, edition 2008 (data 2006): Efficiency and quality of justice

Average processing times by types of case in first instance in weeks, 2008



Source: Annual Report of the Judiciary, 2008

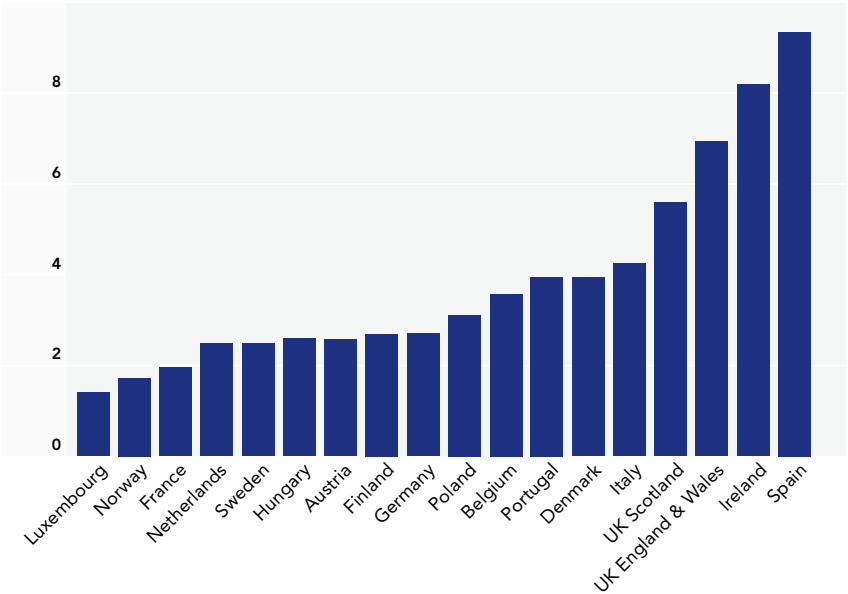
Number of professional judges per number of inhabitants, 2006



Source: CEPEJ, European judicial systems, edition 2008 (data 2006): Efficiency and quality of justice



Average number of non judge staff per professional judge, 2006 (in FTE)



Source: CEPEJ, European judicial systems, edition 2008 (data 2006): Efficiency and quality of justice





# The Judiciary System in the Netherlands



de Rechtspraak





**More information**

Judiciary Information Service:  
voorlichting@rechtspraak.nl

**Relevant websites with  
information in English**

www.rechtspraak.nl  
joint official website for the  
Netherlands judiciary system  
(including information on all courts)

www.ssr.nl  
the Netherlands judicial  
training centre

www.raadvanstate.nl  
the Council of State

www.justitie.nl  
the Netherlands  
Ministry of Justice

**Publishing details**

The Council for the Judiciary  
PO Box 90613  
2509 LP The Hague  
The Netherlands

**Translation**

Taalcentrum-VU, Amsterdam

**Design**

Cross Avenue

**Lithography and printing**

OBT Opmeer BV

**Print run**

5000

**Published**

August 2010