INTERNATIONAL COMPARATIVE STUDY ON ALLOCATION OF CASES TO AND WITHIN COURTS -

The case of the Netherlands

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1. Profile of the Judicial System

1.1 The Court Structure

The organisational scheme of Dutch courts is rather simple as far as the ordinary jurisdiction for civil and criminal cases is concerned, but a bit more complicated when involving the jurisdiction for administrative law. The Netherlands has 19 district courts (rechtbanken), 5 courts of appeal (gerechtshoven) and one court of cassation (Hoge Raad) across 12 provinces. Next to that there is a different organisation for the administrative jurisdiction.

For administrative cases there are 19 district courts, and 2 appeal courts, the Central Appeals Tribunal (public servants and social insurance) and the judicial division of the Council of State (other administrative cases). For certain subjects these courts function as specialized first and only instance (nation-wide) courts. For example, the judicial division of the Council of State judges decisions of public bodies under the Environment Management Act and the Land Planning Act. In addition, there is the district court of Rotterdam for economic competition cases, with the Regulatory Industrial Organisation Appeals Court as court of appeal. But the latter functions also as a first and only instance court for decisions of public bodies of the public industrial organisation (especially important for agriculture). Furthermore, currently there are 5 first instance courts for taxation, with the Supreme court as court of cassation. Military criminal cases are dealt with by the unit for military cases of the district court of Arnhem and by the military unit of the appeal court of Arnhem.

The Supreme court hears appeals only in cassation (i.e. points of law and not fact). All the other courts beneath the Supreme court can hear cases on both points of law and fact.

Organisationally, the 19 district courts consist of separate divisions for civil, kanton, criminal and administrative cases. The bigger courts also have divisions for family cases. Divisions may be organised in units (chambers), in which a few judges work together. They may be specialized, but not necessarily so. The 5 appeal courts also have separate divisions for civil, criminal and taxation cases. Some of the appeal courts also have a separate division for request (family) cases. The Supreme Court does not have divisions, it has units (chambers). If a court does not have a special division for e.g. family cases, these cases will be dealt with by the civil or kanton division of the court.

Most civil cases in first instance at the civil or family divisions are tried by one judge, except for the more complicated cases; judges of the kanton division always sit alone. In appeal courts judges usually sit alone; a case tried by three judges is exceptional. This holds for criminal cases as well; three judge panels are exceptions regulated by the Judicial Organisation Act. In administrative cases the same applies, but it is for the courts to decide if a case is too complex to be decided by one judge (art. 8.10 General Administrative Law Act). The Supreme Court sits either with three or with five judges.

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1 This report is written as a part of the allocation of cases to courts project, and used the questions of the research format for its structure. The research involved desk top research and interviews with mr. E. Bauw, councillor, mr. Stemker Köster, judge on secondment1, and dr. A. Klijn, department for research and development, Council of the Judiciary, in order to get a deeper insight into the dynamics of case management on a national scale and within the courts.

2 articles 6, 50-55; 63-71; 75.
1.2 Recent changes

Three major changes underlie the current situation of the Dutch Court System. Together with the institution of the General Administrative Law Act, a change of the judicial organisation Act instituted the present first instance administrative law courts in 1994. Until then, a rather complicated system of administrative tribunals existed of which the crown- and judicial divisions of the Council of State and the Central Appeals Council were the most important. Typically the Crown division of the Council of State gave advice to government on environmental and land planning cases where somebody had challenged administrative decisions. Ninety nine per cent of the time government followed their advice, until the European Court of Human Rights (ECtHR) ruled that such a system goes against the human right to fair trial under article 6 of the European Convention of Human Rights (ECHR). In the current situation, all administrative courts, including the tax divisions of the Courts of Appeal, apply the General Administrative Law Act. Following on from the jurisprudence of the ECtHR, under the GALA and the new Council of State Act, the Judicial Division of the Council of State no longer advises the Crown in cases where there appears to be a conflict between government and a party. However, the Council of State still advises on draft statutes, and on other cases requested by government. A yet unsolved problem is that there is not a superior court to guide the development of jurisprudence in administrative law. The Supreme Court has no competence and authority to review decisions of administrative (appeal) courts or of administrative court divisions, except for tax cases. This situation has been criticised as being contrary to the principle of uniformity of law and application thereof. Currently a bill is under preparation to institute a joint chamber of the administrative appeal courts (Supreme Court, Judicial Division of the Council of State, Central Appeals Council, Industrial Relations Appeals Court) to enhance more unity in the application of administrative law.

By January 1, 2002 a new organisational structure for the court administration was instituted. Before that date, the judicial organisation was administered according to a traditional ministerial model. The courts and the public prosecutions services were served by territorially organised services of the ministry of justice, following the districts of the district courts. The new organisational model vested a Council of the Judiciary, with administrative competences regarding the funding of the courts, the management of the courts and the furthering of judicial and service quality in the courts. This change also implied the institution of management boards in the courts, comprised of the chairs of the court divisions and the court-manager, presided over by the apex judge of the court (the president). As a consequence of this change, court-clerks are no longer public servants of the ministry of justice, but of the court. Formally they are assigned by the management board of the court. Judges are appointed to a court by the Crown (the government); this involves the possibility that they may be assigned to another unit or division of the same court by the management board.

Another major change by January 1 2002 was the merger of the 65 kanton (sub- district) courts as separate courts of first instance in ordinary cases (small claims, minor offences, labour and rent cases) with the district courts. There were several reasons for this change in organisation of the courts. As they were deemed to be lower in hierarchy than the district courts (which are also first instance courts dealing with civil and criminal cases), appeals also went to the district courts. One reason for this change, and perhaps a less formal reason, was that kanton court judges would work relatively isolated for long periods of time. Although some kanton courts engaged in cooperation with other nearby kanton courts, there generally speak-

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3 See case number: 1/1984/73/111, Benthem v. The Kingdom of the Netherlands
ing was very little feedback on the functioning of the kanton court judges and their staff. With the new organisation, it is possible for judges of the kanton sectors to rotate within the district court itself to one of the other divisions.5

The current situation of the court system of the Netherlands can be viewed in the chart below.

**Figure 1**

The Court System of the Netherlands, March 2004.

<table>
<thead>
<tr>
<th>Civil and Criminal Jurisdictions, Family law included5</th>
<th>Administrative jurisdictions7:8</th>
</tr>
</thead>
<tbody>
<tr>
<td>19 district Courts, divisions for civil, criminal, family and kanton cases</td>
<td>Industrial relations Appeals Court</td>
</tr>
<tr>
<td>District court of the Hague, sub-units for aliens cases, with hearing locations at the sites of the 19 district courts</td>
<td>Central Appeals Court (social insurances)</td>
</tr>
<tr>
<td>19 district Courts, divisions for administrative law</td>
<td></td>
</tr>
<tr>
<td>Amsterdam Appeal Court, sub-unit (of the trade division) for business-organisation</td>
<td>Supreme Court of Cassation, sub-unit for taxation</td>
</tr>
<tr>
<td>5 Appeal Courts, divisions for criminal and civil law family law included</td>
<td></td>
</tr>
<tr>
<td>Supreme Court of Cassation, (sub-units) for criminal law and civil law</td>
<td></td>
</tr>
</tbody>
</table>

Explanation:
Division = organisational part of a court (sector)
Sub-unit = judicial part of organisational part of a court (chamber)

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5 It took almost 10 years to have this policy implemented, because sub district court judges were very well organised in their pressure group activities against these changes. See: P. Albers, Met Recht Herzien, Tilburg 1996.
6 The military courts as sub-units of the Arnhem district Court and the Arnhem Appeal court are not included in this chart.
7 For taxation, a bill is currently in procedure in Parliament. It proposes to vest first instance competence for taxation cases in the 5 district courts of the residence cities of the 5 Appeal courts. Hence, the two tier system for taxation would change in a three tier system.
8 The chart does not show the first and only instance competences of the three highest administrative courts.
1.3 The Public prosecutions’ office

The Public prosecutions’ office is responsible mainly in criminal law matters. It is a part of the judicial organisation and is governed by the Judicial Organisation Act (articles 124-144) and certain provisions of the criminal code of the Netherlands (Wetboek van Strafverordening). The PPO are organised in correspondence to the organisation of the courts. There are nineteen prosecutorial offices in accordance with the nineteen district courts. District courts group together to serve a specific geographical region, of which there are five in the Netherlands (resortsparketten). Each region is served by a court of appeal, and therefore also a public prosecutor’s office (at this level, they are called procurators-general’s offices (procureur-generaal)). Next to that, there is a nationwide prosecutorial office, based in Rotterdam, to deal with (internationally) organised crime. On top of that there are a number of other branches of the service, such as the office for confiscation of proceeds from criminal activities (Bureau ontemingszaken OM) and the office for traffic violations, which deals with fining and charging traffic violations.9 We do not have any information about conflicts of competence between the different PPO’s. There is however, some tension between the PPO and the police.

At the Supreme Court, the head of the Parket-General, the procurator-general at the Supreme Court, has an advisory role. The Parket-General functions organisationally separately from the PPO and is independent of the Ministry of Justice and the government. As the Supreme Court only deals with cases in cassation (i.e. points of law only), the procurator-general at the Supreme Court serves to advise the court on points of law in all cases, in much the same way as the attorneys-general serve at the European Court of Justice.10 The office consists of a procurator general, a substitute and 18 attorneys-general.

The Public Prosecutions Service (PPS) is managed by a board of procurators-general, presided by the Chief Procurator General. This board of procurators General is the head of the administration service of the PPS but also coordinates the development of policies for the PPO’s. The Minister of Justice has full political responsibility for the public prosecutions service. Public prosecutors in the Netherlands are not independent as judges are, although as members of a professional service, public prosecutors have some degree of professional autonomy. The minister of justice, however, may give an instruction to a public prosecutor to prosecute a specific case.

9 For a more elaborate outline in English, see Peter J.P. Tak, The Dutch Criminal Justice System, WODC The Hague 2003 infodesk@minjust.nl.
10 This role is a remnant of its past role in which the public prosecutor also had a part to play in civil procedures. See Mr. A.B. Vast, “75 Jaar Openbaar Ministerie: uit de ivoren toren, in een glazen huis”. NJB, 14 januari 2000, afl. 2, p.96
### 1.4 Some numbers about the Dutch judicial organisation.

**Figure 2**

<table>
<thead>
<tr>
<th>Human Resources(^{11,12})</th>
<th>Number/Year</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>2000</td>
</tr>
<tr>
<td>Registered attorneys</td>
<td>11 033 p</td>
</tr>
<tr>
<td>Professional judges</td>
<td>1779 p</td>
</tr>
<tr>
<td>Prosecutors</td>
<td></td>
</tr>
<tr>
<td>Personnel of the civil and criminal courts</td>
<td>4410 fte</td>
</tr>
<tr>
<td>Prosecutors’ office administrative personnel</td>
<td></td>
</tr>
</tbody>
</table>

The following numbers are based on statistics of the Central Statistics Agency (Centraal Bureau voor de Statistiek -CBS). The CBS measures numbers of incoming and decided cases per type of case (civil – summons or request, criminal – and administrative), and also distinguishes per type of court.

It should be mentioned that the Council of the judiciary and the courts use very different statistics. The council of the judiciary gives absolute numbers based on ‘outflow’ of cases. The cause of a case to ‘flow out’ of a court may be a judicial decision, but this can also have other causes, e.g. withdrawal of a case. The Council of the Judiciary does not define the term ‘absolute numbers’ to which the word ‘productivity’ refers – so, despite the nice presentation of numbers, transparency is lacking. The Council does also use a system of weighted productivity in hours, using the workload measuring system as a basis. *None* of these numbers can be used for international comparative purposes, however. In order to understand increase or decrease in productivity in terms of the measurement system of the council, we need series of numbers over several years – and the council exists for 2.5 years by now.\(^{13}\)

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\(^{11}\) Distric courts have sectors for civil, administrative and criminal law; these numbers include the Industrial relations appeals court and the Central Appeals Council – administrative courts, but the Council of State is excluded.

\(^{12}\) See footnote 1.

\(^{13}\) See: [http://www.rechtspraak.nl/Raad_voor_de_rechtspraak/default.htm](http://www.rechtspraak.nl/Raad_voor_de_rechtspraak/default.htm)
2. Legal rules and actual functioning of case allocation between courts and within courts

2.1 Legal rules on case allocation

In Dutch rules of procedure, a general distinction is made between rules of absolute competence, according to the subject matter, and rules of relative competence, according to territory. Of course, rules of relative competence are only relevant in situations where at the same level more courts are competent according to rules of absolute competence. In this chapter we treat the rules on case allocation according to the civil, the criminal and the administrative jurisdictions.

2.1.1 Rules of civil procedure

After World War II in the Netherlands the same discussion arose about civil adjudication as in other countries. The most striking criticisms are that procedures are too expensive, too slow and not efficient enough. Until now, the Netherlands did not revise its rules of civil procedure fundamentally, but a process of gradual adaptation did take place. A thorough revision en-

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15 See note 13.
16 See note 13.
17 These numbers (source: CBS, Rechtspraak in Nederland 2002) include the cases of the administrative divisions of the district courts, the Council of State, the Central Appeals Council, the Industrial Relations Appeals Courts and the tax divisions of the appeal courts. The numbers from the Council of State were derived of the annual report 2003, available via www.raadvanstate.nl. We aggregated more detailed numbers.
18 These numbers (source: CBS) include the cases of the administrative divisions of the district courts, the Council of State, the Central Appeals Council, the Industrial Relations Appeals Courts and the tax divisions of the appeal courts.
tered into force by January 1, 2002. Most practitioners from the courts and the bar were of the opinion that desired changes should be dealt with within the margins of existing legal rules, and not by redesigning the procedure. In addition the last 150 years show that changes should be supported by practitioners, and that most changes do originate in practice.\textsuperscript{19} After the recent revision in 2002, amongst scholars a debate has started aiming at a more fundamental new design of civil procedure.\textsuperscript{20} The debate is about the introduction of new forms of procedure: procedures concerning debt-collection (especially uncontested debts) should be withdrawn from the courts (according to European regulations) and small claims procedures should be dealt with either via a special procedure or via legal expenses procedure companies (European rules are in preparation).\textsuperscript{21}

The point of departure is the competence of different court sectors for criminal, civil and administrative cases at the district court level. The main rule is, that if a case is filed referring to a right under civil law, the civil court division is competent. However, a claimant may be denied access if another type of court division (administrative) is competent (rules of remittal apply). Sometimes it is difficult to decide which division is competent; the civil sector court will declare itself competent when no other sufficiently secured procedure (criminal or administrative) is available. The small claims generally are a competence of the kanton divisions of the district courts. The answer depends on what parties agreed upon.

There are two kinds of civil procedure: procedures commenced by a writ of summons and proceedings commenced by an application (or request). Proceedings commenced by a writ of summons concern disputes about property rights and are the competence of the contentious jurisdictions. Proceedings commenced by an application concerning family matters often lead to provisions (e.g. regarding parental custody of children) and are the competence of the voluntary jurisdiction. ‘Voluntary’ refers to the fact that their need not necessarily be a conflict in order to address the court. The rules for these procedures tend to converge because of changes in the code of civil procedure.

For the allocations of cases to civil courts, different rules apply to these two different types of civil procedure:

A. Summons proceedings at the district court.

\textbf{Jurisdiction: absolute competence}

The district court is competent for all disputes in civil matters. Within the district court there is a kanton -division. The kanton-division is competent for all claims up to € 5000, and in rent and labor cases. Within the kantonsector a lay court presided by a judge (the judge is assisted by non-lawyers) is competent for land-rent cases. The rules of absolute competence are of public order; they are to be applied in all cases regardless of the will of the parties. The legislative has decided for which case which kind of court (and which court division) is competent.

\textbf{Competence: relative competence}

The general rule is that the place of residence of the defendant decides the territorial jurisdiction of the district court. Exceptions exist for consumer-cases, tort, real property and rent, inheritance, corporations, bankruptcy and disputes about the choice of forum. These rules generally speaking are not of public order, but they are so in appeal. If rules are of ‘public order’,


\textsuperscript{20} W.H.D. Asser, H.A. Groen, J.B.M. Vranken m.m.v. I.N.Tzankova, Een nieuwe balans, interimrapport Fundamentele herbezinning Nederlands burgerlijk procesrecht, Den Haag 2003.

\textsuperscript{21} Ibidem.
their application is obligatory and not at the disposal of parties. In these cases the law follows the European rules laid down in the Brussel I regulation.

Summary proceedings at the district court, the appeal courts and at the Supreme Court

Jurisdiction: absolute competence
The judge for summary proceedings at the district court is competent in the same matters as the civil sector of the district court; summary proceedings can also be filed at the kanton division of the district court.

Competence: relative competence
The territorial competence of the judge for summary proceedings is assessed according to the same rules as the competence of the civil division of the district court; as an exception to that rule the judge for summary proceedings of any district court may be competent if immediate action is required.

An appeal court judges in appeal over decisions of the district courts in their territory (ressort). This includes appeals from kanton-division cases, unless the value of the lawsuit is €1750 or less. There is some specialisation: the appeal court of Amsterdam has the one and only unit (chamber) for cases relating to organisational affairs of business-concerns. The Appeal Court of The Hague is competent for lawsuits concerning onerous contractual terms. The Supreme Court (Hoge Raad = Court of Cassation) decides on cassation appeals against judgements and decisions of appeal courts and district courts.

B. Application procedures at the district courts, the appeal courts and at the Supreme Court

Jurisdiction: absolute competence
The civil division of the district court is competent for all civil lawsuits on request.

Competence: relative competence
The district court in the district where the residence of the applicant is situated is competent. There are special rules for request to change the registry of the civil registration office, for minors, guardianships and protective trusts (beschermingsbewind).

For application procedures at the appeal courts the same rules apply, but for applications for judicial decrees there are no minimum financial interests. It is the jurisdiction of the Supreme court to decide cassation appeals against judgements and decisions of appeal courts and district courts.

2.1.2 Rules of Criminal Procedure

Jurisdiction: Absolute competence
The Public Prosecutions office has the competence to investigate and prosecute all offences and misdemeanors. Once the prosecution has started, the intervention of the courts is required.

Competence: relative competence of the courts
The court of the district where the crime was committed is competent, or where the suspect lives or resides, or where the suspect had its last known place of residence, or where prosecu-

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22 Rules of public order are set in the general interest. Generally speaking, to determine if a rule of procedure is of public order is a judicial competence.

23 Official Journal C 012, 15/01/2001 P. 0001 - 0009
tion proceedings commenced against the suspect for another crime. If the code of criminal procedure does not indicate which court is competent, the Amsterdam district court is competent. For certain criminal affairs special courts are declared competent. E.g. the kanton-division of the Arnhem district court is competent for military kanton cases.

In case a criminal fact is not prosecuted, a directly interested person may file a complaint at the appeal court competent for the district where the decision not to prosecute was taken. The court may order prosecution if the complaint is right. 24

**Competence: relative competence of the public prosecutors**

Public prosecutors are competent in the district they are assigned to, but they are also competent to start inquiries in any other district, under notification of their colleagues there. No information is available about conflicts of domains; if such conflicts occur they may be solved by the national PPS.

### 2.1.3 Rules of administrative procedure

Currently there are several sets of procedures for administrative law:


**Jurisdiction: absolute competence**

Generally speaking, district courts are competent for appeals against decisions on objections of administrative bodies. In some cases, such as decisions under the Space planning Act and the Environmental Management Act, the judicial division of the Council of State should be addressed. For some decisions concerning Agriculture and Industrial relations, The Industrial relations Appeals court should be addressed. In Economic Competition cases the District court of Rotterdam is competent, and its judgements can be appealed against at the Industrial Relations Appeals Court.

In appeal one should address the Central Appeals Council for social security and pension cases, and the Judicial division of the Council of State in all other cases.

The Appeal Courts have taxation divisions. Upon notice to pay, one can file objections against the decision with the taxation inspector. From the decision on objections one can appeal at the Appeal Court.

In aliens cases the district court of The Hague is competent, but it has additional hearing locations at the 18 other district courts. Appeal against many, but not all kinds of judgements may be logged at the Council of State.

**Relative competence: territorial competences**

For district courts, the rules of relative competence are as follows.

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24 No numbers are available on how often this occurs.
The General Administrative Law Act states, that against decisions of an administrative body of a province, a municipality, a water authority or of a body under a joint scheme of two or more administrative bodies, appeal may be launched at the court of the district in which the administrative body resides. For decisions of other administrative bodies, like e.g. a minister, the place of residence of the appellant is decisive. So the court of the district in which the appellant lives, is competent.

Conflicts of competence are regulated in article 8:8. The first rule is that if a case is filed against the same decision at two competent courts, the court receiving the appeal first is competent. The second rule is, that if more than one court is addressed concerning the same decision at the same time, the court that is mentioned first in the Court Division Act will be competent. The Court Division Act mentions the Appeal courts in alphabetical order, and mentions the names of the district courts resorting under an Appeal court in alphabetical order. The administrative body that took the decision appealed against must inform the courts of such situations.

In cases where appeal at a superior administrative court is possible, disputes are to be settled by the superior administrative court (either the judicial division of the Council of State or the Social Security Appeals Court): in all other cases the Supreme Court is competent for disputes of competence according to art. 88, Judicial Organisation Act.

The rules of the Judicial Organisation Act apply also to the territorial jurisdiction of the taxation divisions of the appeal courts – which currently are the first instance courts in taxation cases.

For Aliens cases, appeals have to be sent to the Center for the registration of Aliens cases (Centraal inschrijvingsbureau Vreemdelingenzaken -CIV), at Haarlem District court. The CIV distributes the appeals over the 19 hearing locations of the Hague District Court (coinciding with the locations of the District Courts) and at 3 special hearing locations in former kanton courts. The reason to do it this way is the large amount of aliens cases during the last few years. This required the legislative to adapt the system to demands of efficiency and optimise the use of hearing capacity.

2.2 Principles of case allocation between courts and within courts

2.2.1 General landmarks

Different principles of case allocation exist, on a constitutional and on an organisational level. The constitutional aspect traditionally is given little attention. The organisational aspect is subject to quite recent policies aiming at an increased efficiency and effectiveness of the functioning of courts.

Case allocation in the Netherlands follows the division of competences according to a court or a court division’s special tasks. The continental division into criminal, civil and administrative law jurisdictions shows an inclination towards specialization in court divisions or units (chambers).

Traditionally, specialization is dominant in the administrative court system, as administrative courts/tribunals used to be courts/tribunals in the field of a certain department of government - hence, administrative courts used not to be part of the judicial organisation. They still aren’t part of the judicial organisation in the constitutional sense, but nowadays only the Judicial Division of the Council of State is beyond the managing competences of the Council of the Judiciary.

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Constitution
The Dutch constitution (grondwet – basic law) gives each citizen the right to access to the judge indicated by law (article 17) – this is the ‘ius de non evocando’. This means that the executive may not interfere with judicial trials whatsoever, and that the ad hoc institution of special courts is not allowed. So the courts, and especially the judges are responsible for the allocation of cases within their organisation. The division of labour amongst judges is – as far as not arranged by statute act – a full judicial responsibility within the protected domain of judicial independence and impartiality.

These constitutional rights and arrangements generally are not given a lot of attention in the Netherlands, but in practice, all judges are expected to be capable of handling criminal, civil and administrative cases. It has been the outspoken intention that all the courts deliver judgments that meet the same high level of juridical quality. Hence, it fits within that ideology that it shouldn’t matter which judge ‘does’ a case; if there are differences they are to remain behind the blindfold of Lady Justice. But current practices in and between Dutch courts, do not live up entirely to that standard (yet).

Another issue is that the competence to handle a case is given to a court and, by implementing court rules of internal case allocation, given to a specific judge or to some specific judges. It is a common practice in the Netherlands that judges – also over the borders of their own courts – do consult their colleagues about a certain case, especially if the case involves some creative judging. The awareness that it is unlikely that the judgement is appealed against is an incentive for consultations in administrative law, but also in other jurisdictions. A judgement of the Supreme Court may involve all the judges of a unit, but it will bear only the signature of the 5 responsible judges. Next to that, the development of guidelines for judgements in labour cases, alimony cases and sentencing guidelines – also a practice in the Netherlands - is criticized from the same perspective stating that the more principled German and less pragmatic elaboration of the ius de non evocando should be seen as an example to redress the Dutch judicial culture which allegedly is contrary to the demands of article 6 ECHR. These kinds of criticisms are very rare, however.

Accessibility
As explained in paragraph 3, the allocation of cases is dealt with in the Netherlands according to subject matter, following rules of absolute competence, and according to territory, following rules of relative competence.

The territorial element of judicial competence is based primarily on the idea of accessibility of the courts. Courts, and especially the first instance courts, should be within a reasonable travelling distance of the citizens seeking justice. But the essence of the current territorial location of courts dates back to the nineteenth century, when mechanized means of transport were rare. More recently aspects of service to the public and efficiency have entered into judicial administration, but this awareness has not yet had a great effect on the ways of allocation of cases. Measures are in the stage of development or in the early stage of implementation.

2.2.2 Civil procedure

Summons procedure
Since the recodification of 2002, the rules of civil procedure in kanton cases and ordinary cases are the same. The most important difference concerns legal representation: this is obligatory in district court cases and voluntary in kanton cases. So, for filing a lawsuit in the civil division you need an attorney; but not so for filing a civil law suit at the kanton division.

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27 U. Jesserun d’Oliveira, Rechters die afstemmen en afhouden, NJB 1999, p. 377-384
of the district court. The kanton judge should be easily accessible. This point of departure demands that the defending party should not travel too far to defend his case in person. The basic presumption of an oral hearing still is the point of departure, and therefore the system of relative competence still is relevant.

The implementation of this point of departure can be seen in consumer protection and protection of the weakest party, such as employees and tenants. For a lawsuit they may file proceedings at the district court of their residence or of their place of work. Special rules apply for real estate, tort, inheritance and legal persons, stating that also the courts are competent in whose district the real estate is situated, where the damaging act was committed, where the deceased person lived and where the legal person filed in a lawsuit resides. So, claimants may choose.

For the district courts, the location of the court buildings and the principal hearing locations follows historical principles and are related to the residence of existing governmental institutions. The choice of location of the principal hearing sites was based on the demand that these locations should be reached easily and within a reasonable amount of time with the then existing means of transport. At the district court one still can file proceedings only by using a local attorney (called ‘procureur’- procurator). This local attorney is registered at the court, and is supposed to be familiar with the habits of the local court organisation. The attorneys’ office should not be too far away from the court building. The typical tasks of this intermediary are to act as a representative in order to commit all formal organisational acts with the court. So the functions of formal intermediary between the court-organisation and the party on the one hand and of the attorney defending the case based on the content of the law and the case on the other, are separated in the Netherlands. This means that if an attorney wants to defend a case in a district court where he is not registered, e.g. an attorney in Maastricht wants to file a case in Amsterdam, his party also needs a local attorney, registered at Amsterdam district court, to deal with the court organisation, and to represent him at the courts’ cause list (hearing scheduling) session (rol-zitting), even if he does not defend the case for his party. This system gives a closed-shop position for local lawyers, but it is evident that in this time of ICT and mobility it has long passed its date of conservation. Hence, legislation is under preparation to do away with this.

Recent new rules of civil procedure in force since 2002 prescribe oral hearings in all cases. The ‘procureur’ must attend this session, even if he is not the attorney in this case. If he also has to defend a case as an attorney at another district court, this may cause problems of coordination. In district court civil cases, which demand representation by an attorney, it is possible to deviate from the rules of relative competence and choose another forum. But this is not possible in family law cases. This system will be abolished in a few years. After that, all attorneys can practice in the whole country without the services of a ‘procureur’.

This relative competence will become less important when the rules of procedure will be changed again and in some kinds of cases (bulk cases) only written proceedings are to be held, e.g. with sending files electronically to the court.

Summary proceedings
Summary proceedings have drawn attention in the Netherlands, especially because there was a huge increase of these proceedings in the eighties. Competences for judges in these proceedings give them many possibilities to handle a case swiftly, by giving provisional judgement in a case. 28

Rules of relative competence generally coincide with the rules for ordinary civil proceedings. A special competence was constructed by jurisprudence 100 years ago on grounds of effectiveness: the president in summary proceedings is also competent to give a provisional

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28 In civil proceedings this provisional judgement often is enough to settle the dispute, so that summons proceedings are not necessary.
judgement ‘where provisions are required’. This ruling has regularly led to the choosing of a certain district court as a forum. The term ‘where provisions are required’ is interpreted in such a manner that the president in summary proceedings of the court chosen is declared competent to handle the case. An example is the president in summary proceedings (nowadays called: ‘provisions judge’) of the district court of Amsterdam. In the 1980’s this president made it possible to claim money in summary proceedings. This was a major success and hence also uncontested money claims could be filed in a special hearing. Judgement would be given within a week. This possibility is lacking in most district courts, and contracting parties in the general conditions of their contracts often agree to choose the Amsterdam district court as the competent court to deal with their disputes.

Application proceedings
Rules of relative competence are based on considerations of efficiency. Originally application procedures were filed only for cases of a purely administrative nature, like guardianship, adoption etc. In most of these cases there is not an opposing party, and therefore it made no sense to choose the residence of the opposing party to determine which court is competent. As a consequence an applicant can file a case at the district court of its own residence, especially also because the judgement should be executed there. The subjects of these cases are not to be determined by the party filing the case and therefore these rules of relative competence are of public order. Courts will have to check their competence ex officio.

2.2.3 Criminal procedure
There are no other than practical reasons for the rules determining which court is competent. However, these rules do give a considerable freedom of choice to the Public Prosecutions office. From the point of view of protections of suspects this is considered undesirable by some authors. Unfortunately, we were not able to find out how public prosecutors use this possibility. What does happen sometimes is that a prosecutor files a case for a so-called police judge, in order to have it tried sooner and faster.

2.2.4 Administrative procedure
Until 15 years ago all administrative tribunals were specialized tribunals. Each ministerial department had its own specialized tribunals. Since 1989, the government has worked steadily on reducing the number of specialized administrative courts. A major improvement was the introduction of the General Administrative Law Act and the change of the judicial organisation Act that came with it, introducing administrative court divisions at the 19 district courts. The principles of case allocation for the district courts are not very different from those behind civil jurisdiction rules. When the GALA was enacted, the most rational thing to do seemed to be to construct administrative jurisdiction in the same way as the civil and criminal jurisdictions. But this would annihilate the judicial functions of specific bodies as the Council of State, the Central Appeals Council and the Industrial Relations Appeals Court and there was no political majority for that.

Next to that, the aims of GALA were a combination of more efficiency and more user-friendliness. User-friendliness was operated as in the current regulation of GALA. The accessibility of administrative courts for citizens was thus arranged. The Council of State objected, because as a consequence, public servants of national state agencies must travel to courts throughout the country in order to defend cases in court. This was considered inefficient. But for the cases the Judicial division of the Council of State functions as a first instance court under the Environment management act, and the Space Planning Act, the legislative followed

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the reasoning that in these cases huge societal and economic interests were involved. It takes the authority of the Council of State to deal adequately and swiftly with these interests.

2.3 Conflicts of Jurisdiction

Since 1989 many changes in the Dutch Judicial Organisation have been implemented. One of the major changes is a change in judicial culture, we assume. Judges are no longer working isolated at the courts or at home; they fit into an organisation in which they fulfil a recognized professional role. They are used to cooperating within the courts, but there are also contacts between different courts. Therefore if a conflict of jurisdiction in a case does occur, one may expect the courts to consult each other and make an arrangement, instead of presenting the case to a superior court. But we do not know if this actually is the case.

2.3.1 Civil procedure

In the past jurisdiction conflicts could arise between district courts and kanton courts. To date, such conflicts are prevented by the new rules of civil procedure and judicial organisation. They are reduced to problems of referral of cases within the same district court.

If, nevertheless a conflict of jurisdiction would arise between district courts, an appeal court will decide about it. Other jurisdiction conflicts are the competence of the Supreme Court. E.g. conflicts between Appeal courts, between a district court and an appeal court.

No data are available about the occurrence of such conflicts.

2.3.2 Criminal Procedure

Jurisdiction conflicts are usually non-existent. It is easy to pick up the phone and arrange the treatment of a case with another court. Courts usually do not have conflicts of competence in criminal matters.

2.3.3 Administrative procedure

Conflicts about competence between district courts are arranged for in the GALA. For conflicts between courts whose judgements may be appealed against at either the Council of State or the Central Appeals Council, the appeal instance to be addressed is to decide this conflict.

No data are available about the occurrence of such conflicts.

2.4 International dimension

In international cases the general rule is that the interest of the defendant should be protected. This is so according the EEX convention and its successor, Brussels I-Regulation. These rules also protect consumers and employees. In all cases proceedings can be filed in the land of residence of the defendant.

The international dimension is regulated by European decrees and international treaties. These treaties and decrees arrange not only for the jurisdiction of Dutch courts, but also in some cases (consumer and labour) for the relative competence.

We do not know exactly if international cases put an extra load on courts. It is clear that courts near the borders like those of Arnhem, Maastricht and Roermond handle relatively large amounts of international commercial cases and international family cases. Amsterdam and Rotterdam deal with more international cases than e.g. Utrecht. In international carriage by sea cases the civil division of Rotterdam district court is often chosen as a forum. It has a special ‘wet’ unit (chamber) for this, with specialised judges and substitute judges. In Rotter-
dam the idea was launched to offer the possibility to have hearings and judgements in English, in intellectual property cases because English and American lawyers do represent parties there often.

In administrative law one may only file a case against a decision of and administrative body. Access to these procedures is for the addressees of the decisions or for interested third parties

2.5 Allocation of cases within courts

The management board of each court holds responsibility for the allocation of cases within a court. In practice, each court division (sector) has a managing vice-president, who is also a member of the management board, and who is responsible for the organisational functioning of his/her division. Each court has the competence to set organizational rules (Bestuursreglementen, based on article 19 Judicial Organisation Act); these rules generally organize the court divisions into units (chambers); the management board of the court decides every year about the appointment of judges into divisions and units, and may change appointments according to case-load needs any time. It is formally the managing vice president who allocates cases to the units of the court.

In practice, allocation of cases within a court division may be a task of a coordinating judge helped by court staff. This process usually follows rules of randomisation (alphabetical order of the names of claimants, postal codes, etc) but known special skills of judges may also play a role in case allocation, and so does the actual workload of judges. Hence allocation of cases within courts is based on mutual trust of judges. Within the organizational culture of Dutch courts the absence of strict rules concerning internal case allocation is not seen as a jeopardy of judicial integrity. However, the current introduction of quality management in Dutch courts and the implicit obligation to make the functioning of the courts more transparent, have created an awareness amongst managing judges that internal case allocation should be done following explicit criteria not only to uphold judicial integrity, but also to keep judicial integrity untouchable of public doubt.

A special remark can be made about differentiated case management in the administrative law sectors of the courts and in the administrative courts. The General Administrative Law Act does not only know normal and provisional proceedings, but also ‘fast’ and ‘simplified’ proceedings. Fast proceedings are proceedings without or almost without preliminary investigations, for cases that need immediate final decisions by the court. Simplified proceedings are proceedings without a hearing – for clear cases, e.g when fees have not been paid in time, when the court is not competent, or when the claim is not contested at all.

The choice between normal, fast and simplified proceedings is a responsibility of the court.

2.6 Forumshopping

We couldn’t find any materials yet showing that forum shopping does occur on a large scale. But legal rules in civil and criminal procedure do not exclude it. In some cases a choice can be made between civil procedure and administrative procedure. We have no information on how litigants make that choice.

It has been argued that in the absence of rules of relative competence, some kind of competition between courts would occur: parties would try to seek not only the most competent judges but also the judge that would be most benign to their case.31 In practice attorneys try

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to influence which judge is going to deal with their clients’ case, by using their knowledge of the judges of a court and the court schedule. E.g. knowing that a judge is on vacation may be a help to do so. It has been argued that the only way to prevent these practices from happening is to file cases at a national case distribution centre – with as most critical remark that that would wipe out all adventure from judicial proceedings and make them dull.\(^{32}\)

2.6.1 Civil Procedures

As already indicated, for cases subject to the free will of the parties, and for which the intermediary services of a local attorney are required, a contractual provision for the choice of forum is permitted.

Summary proceedings are excellent for forum shopping. As far as the absolute competence is concerned, in urgent disputes one may always choose the presiding judge in summary proceedings of the civil law division to adjudicate. The kanton judge can be addressed for summary proceedings as far as the case is within his competence.

During 2002 the district court of Amsterdam announced it had to deal with a large number of money claims from a telecom company. The claims were filed by a debt collection agency that wanted to bring all its claims to the Amsterdam district court, kanton division. This was caused by a change of the rules of procedure stating that the relative competence of the kanton divisions was no longer of public order. An effect was that these cases had to be delivered to the court on CD-Rom – for debt collection cases a project has been set up to file cases electronically (called the ‘Touber’- project, carrying the name of the debt-collection firm).

In theory it is possible that the same case is filed at two different courts. Competences to combination and referral of cases enable and necessitate joint and simultaneous handling of such cases. The problem arising from filing the same case at two different courts is the possibility that these courts will give different executable judgements against a (legal) person. Doing so is considered an abuse of procedural rights.

2.6.2 Criminal Procedure

The public prosecutions service often may choose between the court in the district where the criminal act was committed and the court in the district where the suspect has its residence. In large-scale cases (organized crime) the PPO often has a choice as to where to file a case. Some courts are known to be more severe in its judgements than others. To date, the official policy concerning mega-cases is to file a case at a court where there is capacity in terms of judges, court staff and hearing rooms. But informally, given the choice, a public prosecutor may well choose the most severely punishing court.

2.6.3 Administrative Procedure

The rules of competence suggest some freedom of choice in cases where more than one applicant from different parts of the country appeals, and the decision appealed against is taken by an agency of the central government. The decisions the most likely to evoke co-ordinated action concerning space planning and environmental planning and jurisdiction for these decisions is concentrated at the judicial division of the council of state. In aliens cases the CIV (Centrum Inschrijving Vreemdelingenzaken) allocates cases centrally to the 22 locations. This may have as a consequence that appellants and lawyers have to travel further than the nearest district court. So, we have central case allocation here.

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\(^{32}\) D.J. Buijs, de inwisselbare rechter, NJB 1998, p. 449.
3. Organisational measures to reduce backlogs and enhance speed and efficiency of proceedings

3.1 Measures for all jurisdictions

3.1.1 Increased registration fees
At this time bills are treated to increase the amounts to be paid when filing a case with 15%. Hence going to court will become more expensive. This is especially so for commercial cases, which are subject to the free will of the parties. The aim is ‘to reduce state expenses on justice’. As a consequence, more claimants will try to collect their money via alternative routes, e.g. by extrajudicial collection or by arbitration. In practice claimants often drop their claims and cut their losses. This policy does not seem to regard the fact that between 1997 and 2000 the number of civil cases at the courts did not increase.

3.1.2 Merger of kanton and district courts
Originally, kanton judges feared that with the elimination of their rules of procedure their effective and efficient way of handling cases would disappear. The users of the kanton courts were quite positive about their functioning. One feared that the kanton procedure would be taken over by the slack of ordinary civil proceedings. But it did not work out that way. On the contrary, it appeared that ordinary civil cases were dealt with much more expeditiously. This was not a surprise for policymakers. They had set up experiments in 1996 with ‘fast tracks’ and they showed an increased effectiveness and shorter throughput times. On the other hand the national court rules force parties to proceed with some consequent expediency. If a case cannot be judged after the first hearing, management and organisation of the court cause lengthy delays. Therefore it is important that the said fundamental reconsideration of civil rules of procedures take the management and organisation of civil court divisions into consideration.

3.1.3 Additional hearing locations
Furthermore, an adaptation of the Order in Council for additional hearing locations should enable authorities to deal with temporary capacity problems, problems concerning a lack of specialised capacity included, by creating the competence to handle cases outside the territorial jurisdiction of the competent court. The management board of a court, dealing with such a problem can ask the Council of the Judiciary for an additional hearing location outside its own district. This is already a practice in aliens’ cases. The aim of this new legislation is to enhance efficiency and make a better use of hearing capacity of the courts. Not all cases are fit for such a treatment. Some cases with a strong local impact (e.g. fireworks disaster at Enschede, the pub fire in Volendam) will not be transferred to a different court. It is considered an advantage that the smaller courts have been enabled to deal with large scale cases as well.

The operation of this set of regulations will be monitored closely from the point of view of efficiency and from the point of view of those seeking or being brought to justice. All in all, in this manner, by creating legal bases for cooperation between courts, existing bottlenecks in the competence structure of the courts may be solved.

33 TK-EK 2002-2003, kamerstukken nrs. 28740.
34 Claims bij de rechtbanken, WODC, 4 november 2003.
36 NRC november 17, 2003
37 P.Albers, C. Boonstra, F. vander Doelen en L.Mos, De territoriale verdeling van rechtsmacht in Nederland, Trema 2004, blz. 16-23.
3.1.4 Measures under consideration

Proposals for further improvement are:

- Free capacity for the civil divisions by constraining the work of criminal judges to the large-scale cases (this may be instituted by a change of the Judicial Organisation Act and/or the Code of Criminal Procedure).
- Increase the accessibility to the efficient kanton judges by upgrading their competence from € 5000 to € 10,000. Propositions in this direction have been made in the past.
- Increase the productivity of judges by putting an end to the judicial obligation to change court divisions (civil, criminal, administrative).
- Reinforce the clerical staff with more ‘writing lawyers’ as was done with the flying squad. This would increase production against lower average costs.
- Shorter and faster lines of communication between courts and their users, such as abolishing the intermediary roles of local procurators (procureurs); attorneys would be automatically competent throughout the country.38 At this time not all courts even have a written cause list yet. If that’s the case they organise oral cause-list (hearing scheduling) sessions and the intermediary attorney – the ‘procureur’ must attend these sessions in person in order to get the case listed!39
- So, organising written cause lists would be a major improvement.
- Research should be done on the possibility to let cases be handled extra-judicially, e.g. by mediation and by letting the prosecution service handle the minor criminal cases.

3.2 Measures for civil jurisdictions

3.2.1 Changing rules of civil procedure

By January 1, 2002, two important Statute Acts entered into force. First, there is Act for revision of the Civil Code of Procedure.40 Its aim is to reduce throughput times in civil proceedings. This act is a follow up of the withdrawn bill TK nr. 24651. However this is not a fundamental revision. The point of departure of the new rules of procedure is that the state, as a consequence of the societal function of rules of procedure, may demand that all involved take responsibility for orderly, expedient and fair proceedings. It is the task of the legislative to provide judges with tools to guard fair and expedient proceedings. But parties are responsible for the speed of proceedings as well.41 This aim is to be reached by reduction of the rounds for written preparations to just one, followed by an oral hearing of the parties. For more complicated cases the possibility exists to grant a second written round and oral plea. Differences in procedure at the kanton division and at the civil division of the district courts are reduced to the possibility to present a case without legal council to the kanton-judge and the obligation to be represented at the civil court division by an attorney. Another change is that like arrangements in criminal and administrative procedure have been restated by using the same terminology.

Up to January 2002, civil procedure law consisted for a large part of local rules of procedure in the different district courts and sub-district courts. They used different terms for the delivery of written conclusions and each court had its own court rules. As a reaction, the judiciary has engaged in the production of national court rules. These court rules are not binding, but are being followed by judges as gentlemen’s agreements, and hence they have become a uni-

38 J. Ekelmans, Fundamentele herbezinning, TCR 2003, p. 110.
39 For an explanation see paragraph 2.2.2.
40 TK nr. 26855.
tary force in the ways courts treat their cases. There is e.g. a national set of cause list rules for Appeal Courts in application procedures for divorce, and there is also a set of rules for the district courts. It must be stressed that these rules were set as gentlemen’s agreements after information and negotiation rounds between the Appeal Courts and between the district courts. So, they do not bind the courts as legal rules would, but they appear to be effective.

The review of the rules of procedure did not provide for new rules for debt-collection. This will be arranged for on the European level with a European initiative.

3.2.2 The ‘flying squad’ and the national support team Appeal Courts.
When the new rules of civil procedure entered into force, judges had to handle terms for conclusions and sending files more strictly. As a consequence, they feared large backlogs of cases where judgements should be given simultaneously. The ministry of justice, then responsible for the court service, decided to institute a flying squad at the the Hague District Court. Cases demanding judgement and for which the competent district court was lagging behind were dealt with in The Hague. Under the supervision of judges, lawyers write concept judgements, which are returned to the competent district court. By reducing backlogs, throughput times of new cases can be restricted. They are expected to stay active at least until 2006.

3.3 Measures for criminal jurisdictions

3.3.1 Transformation of criminal sanctions into administrative sanctions
More than 10 years ago, the transformation of the prosecution of some offences by way of trial to administrative proceedings started.

This was done for traffic offences by means of the Administrative Enforcement of Traffic Regulations Act (Wet administratieve handhaving verkeersvoorschriften- Lex Mulder). This did relieve the then kanton courts from dealing with several hundred thousands of cases each year. Traffic-offences are fined administratively by the public prosecutions office. Only after the fine has been paid, an administrative procedure may be started, first by objecting to the fine to the public prosecutor, possibly followed by an appeal to a kanton division at the district court and with the possibility to appeal at the Appeal Court of Leeuwarden. The aim of this construction was to increase the speed of fining and execution without breaching the rights of the accused, and, of course to increase efficiency.42

Currently, efforts are under way to transform larger parts of criminal law enforcement into administrative law enforcement. The public prosecutions office will be made competent to impose sanctions without intervention of a judge. This is about the competence to give a sanction-decision, which may contain fines, compulsory duties and conditions. It is hoped that this will relieve the workloads of the criminal court divisions and enlarge the capacity of the criminal justice system as a whole.

3.3.2 Enlarging the single judge chamber competences
Recently, a change of competence was introduced. Criminal Divisions at the district courts function with full chambers (three judges) and with single judge chambers. This latter is called the ‘police court’ or the ‘police judge’. The police court was competent only to impose minor punishments up to 6 months of imprisonment. In order to increase capacity of criminal court divisions, the government proposed a bill to enlarge the competence of the police court to impose imprisonments up to one year.43

Sometimes it happens that the public prosecutor brings a criminal act before the police court, because it takes too long to have the case handled in the 3 judge panel. Apparently, the public prosecutions department sometimes prefers treatment and conviction on short term to a severe punishment. However, the Senat (the upper house of Parliament) only agreed with this proposal under the condition that the enlarged competence of the police court would be restricted to drugs related criminal acts.  

3.3.2 Institution of a national coordination centre for major criminal cases
A national centre for the coordination of large scale cases (LCM Landelijk Coördinatie centrum Megazaken) was instituted. A ‘large scale case’ is defined as a case taking more than 30 hours of hearings. A relatively large amount of such cases are handled in the western part of the country (Randstad), and this overburdens the district courts. A better spreading of these cases over the district courts could reduce the problem. However, rules of relative competence block this. Criminal cases are handled either by the court of the district where the suspect lives or where the criminal act was committed.

The LCM will coordinate and direct all the large-scale cases in the Netherlands, in consultation with the public prosecutions office. So the LCM will decide if cases will be handled by another court than the (officially) competent court. This will only work out well if Parliament agrees with the proposed Order in Council.

3.3.3 Cocaine ball swallowers
In some parts of the Netherlands, similar cases must be dealt with in large numbers, such as drugs traffickers at Schiphol airport. Their large numbers over flooded the district court of Haarlem. As a consequence a special additional location court was created at Schiphol Airport. But it took a Statute Act to enable the government to make it so. The district court of Amsterdam had indicated that from an organisational perspective, they are not able to grow any further. For that reason, the Haarlem district court was enlarged.

3.3.4 A common fraud chamber
Plans are being executed to make a common fraud chamber for three courts. Courts are very co-operative. They are willing to help each other or to take over cases if there is a peak load at another court. Such initiatives, however, intrude on restrictions of the rules of relative competence. Appointing all judges as substitute judges in all other courts at the same level (district, appeal) is a step in the right direction, but it is not enough yet. These measures can be completed by appointing all other courts as additional hearing locations for all the courts at the same level.

3.3.5 Other points to improve the treatment of cases by the courts
- increase the administrative fining of criminal offences
- handling of small crimes by the police
- more organisational support for judges
- handling of standard cases by the public prosecutions service
- increase the capacity for tele-hearing
- make the relative competence more flexible

46 TK 16940, November 5 2002
3.4 Measures for administrative jurisdictions

3.4.1 Central distribution of aliens cases
The Hague district court is the only competent court with 22 additional hearing locations. Currently cases are being distributed in accordance with distribution key, previously set by the CIV (Centrum Inschrijving Vreemdelingenzaken). Thus cases can be distributed quite flexibly.

3.4.2 Reorganising jurisdictions and competences of specialized administrative courts
As indicated in paragraph 1, the organisation of jurisdiction of administrative courts is rather complex. The government follows a general policy to reduce this complexity. An example of that is the abolition of the students’ grants and loans appeals tribunal. The agency providing these grants resides in Groningen, whereas students live all over the country. So at first, students had to go to Groningen to plea their case, later an additional hearing location of this tribunal was vested in Utrecht (and heard the majority of the cases). As a consequence of the change, the administrative divisions of the district courts became competent to handle these cases, with the Central Appeals Council as the court of appeal. According to a recent evaluation report, this system is functioning well.

But more is going on. Currently, a review of the organisation of the jurisdiction of taxation courts is underway. Until now, taxation appeal procedure starts with objections at the taxation office, followed by appeal at the tax division of the Appeal Court, with a possibility of appeal for cassation at the Supreme Court. The bill currently handled by Parliament will make the district courts of the place of residence of the Appeal Courts competent in first instance. So the first instance courts will be the new – still to be instituted - taxation divisions at the district courts at Leeuwarden, Arnhem, Den Bosch, The Hague and Amsterdam. Appeal against judgements of these first instance taxation judgements may be lodged at the Appeal Courts in the same resorts.

Furthermore, a bill is being prepared to create a common chamber of the Judicial Division of the Council of State, The Central Appeals Council, the Industrial Relations Appeals Court and the Supreme Court, called the ‘Chamber for the unity of law’. The reason is quite obvious, since there is not one highest court for the application of the general administrative law act, this common chamber should fulfil this function.

4. Responsibility for case allocation
On the level of the judicial organisation, the legislative and the minister of justice are responsible for the rules concerning case allocation and for the formal specialisation of courts. On the court level, case allocation is a responsibility of the management board of the court. However, if it comes to the management of people, e.g. transfer capacity from one court to another, the Council of the Judiciary will play a coordinating and facilitating role.

Generally, cases are distributed over the units and judges of the division of a court following the alphabetical order of the claimants and the current capacity of the chambers. In most courts there is a judge that manages the cause list. When there is a written cause list, the work is done by clerical staff, but a judge is always responsible. We do not know the

47 TK 1999-2000, 26960 nrs. 1-3
49 TK 2003-2004, 29251, nr. 1-3
principle of the ‘natural judge’ in the Netherlands. Hence, not much thought has been given yet to the consequences of increasing organisational flexibility for internal organisational judicial independence.

Sometimes there are tensions; a major nuisance for criminal divisions of the district courts is that suspects are delivered too late to the court due to traffic jams, at the cost of court hearing capacity.

New legislation on auxiliary hearing locations makes it possible to transfer capacity to another court\(^\text{50}\), e.g. the cooperation between Arnhem district Court and ‘s-Hertogenbosch district court is facilitated and controlled by the Council of the Judiciary. Three conditions apply: the transfer of cases may be organised on request of the management board of a court; the request is addressed to the Council of the Judiciary and the requesting court should prove that the reason of the request concerns peak loads.

5. Policies and subjects of debate in the Netherlands.

In the preceding paragraphs we have described several measures implemented and under development. These measures are directed at increasing efficiency and accessibility of the courts.

15 years ago, a building program started for new court buildings. This program was completed a few years ago, but it enabled the courts to function more adequately from an organisational perspective, e.g. by facilitating the cooperation amongst judges and between judges and court staff.

We do see a mixed tendency if it comes to questions of specialization of courts and judges. Specialization is not the general rule in the Netherlands, but sometimes specialization is inevitable. When possible, courts and judges should handle cases with their general competences. So, specialization other than the traditional division of competences in family, trade, criminal and administrative (taxation), is still an exception. Within the administrative jurisdiction, specialization is the most evident.

Furthermore, personnel policies aim at increasing the capacity of the courts by increasing the support staff of the courts in quantity and quality. Next, the number of judges was slightly enlarged. This trend has stopped due to cut backs in government expenses.

Differences in throughput time and productivity do exist between courts. It is unclear what causes these differences, and hence the Council of the Judiciary tries to find out what causes these differences. Currently a proposal was launched to find the best practices and introduce them to the less efficient courts.

Next, a general policy can be seen to enhance flexibility if it comes to making available capacity in terms of judges’ time and court staffs’ time where needed. Thus, by statute act, judges are substitute judges in all the other courts. Judges can be obliged to work in a different sector of the same court by the management board of the court, but they cannot be obliged to work in a different court. There are ‘cultural’ differences between district courts. Some courts are more directive than others; judges don’t like to be directed too much and so they apply for functions at the less directive courts.

A different kind of measure is the institution of the central distribution centre for aliens cases and the coordination centre for large scale criminal cases. Furthermore, together with the integration of the kanton courts into the district courts, where they now function as division of these courts, a number of ‘auxiliary’ hearing locations were instituted. These are the former locations of the kanton court organisations, but nowadays they fulfil the function of extra

\(^{50}\)See paragraph 3.3.3 on criminal cases and auxiliary hearing locations. The same order in council is subject to change in order to regulate the facilitating role of the Council of the Judiciary.
hearing location of the District Courts. Next to that, the hearing rooms of the district courts also fulfil the function of extra hearing location of the Ordinary Appeal Courts. Furthermore, all Appeal Courts can use the auxiliary hearing locations at ‘Rotterdam’ and ‘Amsterdam’ in more complicated criminal cases. This enables the courts to make more efficient use of hearing capacity.

Curiously enough, ICT does not play a major role in case management yet. There are different systems to manage case flow in civil, criminal and administrative cases, but they cannot be used to manage cases interactively with parties. The Council of the Judiciary wants to follow the English example of Money claim online, but it has not been realised yet.

In criminal cases, a tendency is to ‘dejudicialize’ the judging of criminal acts. So, only the worst incidents are to be judged by the criminal divisions of the courts, and the others are to be dealt with the public prosecutions’ offices or other administrative authorities.

Policies for ‘dejudicialization’ can also be seen in civil and administrative cases as far as mediation projects have been implemented to offer parties a ‘way out’ of (costly) court proceedings.

Last, but not least, the idea of proximity of a court as a precondition for accessibility is subject to debate. For some cases (if the interests are large enough) distance between a party and a court is no problem at all. So in such cases rules of relative competence may differ from rules of relative competence in small claims.

6. Conclusion

The Dutch judicial system has gone through a great number of changes during the last 15 years. These changes were directed at the enhancing of efficiency of the courts and the criminal justice system, but also at increasing the service quality of the courts for the general public. To date the major changes seem to be implemented. In the near future policies are directed at a fine tuning of the judicial organisation and the courts to the societal demand for justice. This may imply further flexibilisation of the capacity in the courts.

One of the step-by-step changes of the last 20 years has been an increasing ‘dejudicialization’ of law enforcement, especially in criminal cases, but also in civil cases, where experiments have been implemented to use mediation. A question for the near future is if this tendency should be carried further than it is now, to further relieve the courts of caseloads. The answer to this question depends on available public funds for the judicial system and the kind of societal role one wants courts to play in conflicts concerning trade, family, criminal, administrative and taxation cases. The answer may also differ according to jurisdiction.

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