Summary

Doubts about judicial impartiality

The right to an impartial judge is a legal principle. In recent years, the impartiality of judges, their extra-judicial activities and the introduction of a code of conduct or exemption are subjects of debate among the public and judiciary. The Dutch Association for the Judiciary (NVvR, the association of judges and prosecutors in the Netherlands) commissioned WODC to investigate a) the incidence of doubts about judicial impartiality; b) opinions of judges, trainee judges, public prosecutors and lawyers towards a code of exemption; and c) opinions towards the incompatibility of certain extra-judicial activities with judicial duties.

Challenge and exemption are provisions aimed at ensuring judicial impartiality. During the year studied, there were 139 challenges in the country's courtsystem. This amount is a lower limit, due to a lack of separate registration of challenges by some courts. In 7 of the 107 cases (7%) investigated, the court decided there was a legitimate reason to fear lack of impartiality. Public prosecutors and lawyers do not always challenge when they think the judge lacks impartiality. The last two years 9% of the prosecutors and 23% of the lawyers opted not to challenge, even though they felt they had a reason to do so. They did not do so, for example, because they did not want to put their relationship with the judge to the test, did not want to delay proceedings, or saw no legal reason to challenge. Compared to the total amount of judgements, more challenges occurred in criminal law than in civil and administrative law. The most frequent reasons for parties to challenge were a) earlier decisions of a judge in the same case or in a related case (e.g. a case of a co-defendant) and b) the conduct or decisions of the judge(s) during the session. Extra-judicial activities were rarely mentioned as a reason for challenge.

Exemption and withdrawal pertain to situations in which judges themselves think there may be doubts about impartiality. Over the past two years 40% of the judges withdrew before a session, 4% withdrew during a session and 2% formally requested for exemption. Unlike the reasons for challenge, the main reason for exemption and withdrawal is the personal relationship with (one of) the parties or lawyers. A code of exemption is considered to be a means to prevent situations that might give rise to doubts about judge's impartiality. More than three-quarters of the judges, trainee judges, public prosecutors and lawyers favour a code in the form of
points of reference (advisory and nonbinding rules). However, lawyers also take the view that formal rules (internally and externally binding) are advisable. Though extra-judicial activities of judges are often a topic in public debate, they seldom lead to challenges. Activities that were considered to be incompatible with judicial duties by roughly half of the respondents, were positions in the Public Prosecution Service or in politics.