

- **Page 9, I.A. (*Appointment and selection of judges, prosecutors and court presidents (incl. judicial review)*)**

As written in earlier contributions, Dutch government announced plans to amend the appointment procedure for Supreme Court judges, following recommendations by an independent State Commission in 2018. This would require amending the Constitution. On 18 December 2020, government submitted a legislative proposal on the constitutional revision to the Advisory Division of the Dutch Council of State. The advice from the Advisory Division (dated 7 April 2021 and published on 16 June 2022) recommended government to reconsider or amend the proposal. Please refer to the advice on the website of the Council of State: [Verandering in de Grondwet van de bepaling inzake de benoeming van de leden van de Hoge Raad der Nederlanden. - Raad van State](#).

- **Page 9, I.A. (*Irremovability of judges, including transfers, (incl. as part of judicial map reform), dismissal and retirement regime of judges, court presidents and prosecutors (incl. judicial review)*)**

On 24 December 2021, the Dutch Supreme Court decided on two claims (submitted by the Procurator General at the Dutch Supreme Court) for the dismissal of a deputy judge, on the basis of law. Please refer to a description of the cases in the Dutch Supreme Court 2021 Annual Report, published in 2022: [Vierde kamer - Hoge Raad der Nederlanden \(jaarverslaghogeraad.nl\)](#), as well as the decisions themselves: HR 24 December 2021, [ECLI:NL:HR:2021:1995](#) and HR 24 December 2021, [ECLI:NL:HR:2021:1996](#).

- **Page 10, I.A. (*Independence (including composition and nomination and dismissal of its members), and powers of the body tasked with safeguarding the independence of the judiciary (e.g. Council for the Judiciary)*)**

As written in last year's contribution, following recommendations from a [GRECO evaluation report dated 21 June 2013](#), Dutch government drafted a legislative proposal to change several laws (such as the Law on the judicial organization and the Law on the legal status of civil servants in the judiciary), to safeguard the independence and integrity of judges and judicial officers. The president of the Dutch Supreme Court and procurator-general at the Dutch Supreme Court upon request provided an advice to government regarding the proposal: https://www.hogeraad.nl/publish/pages/805/scanned_from_a_xerox_multifunction_printer_8_pdf_-_bijlage-_advies_concept-wetsvoorstel_tot_wijzigin.pdf. On 8 November 2022, the proposal had been submitted to parliament. The proposal still needs to be debated and voted upon. The status can be viewed on the website of parliament: [Wijziging van de Wet op de rechterlijke organisatie, de Wet rechtspositie rechterlijke ambtenaren, de Wet op de Raad van State en enige andere wetten in verband met enkele wijzigingen in het belang van integere, onafhankelijke en onpartijdige rechtspraak, alsmede de regeling van enige andere onderwerpen | Tweede Kamer der Staten-Generaal](#).

- **Page 11, I.B. (*Digitalisation (e.g. use of digital technology, particularly electronic communication tools, within the justice system and with court users, including resilience of justice systems in COVID-19 pandemic)*)**

As of 1 January 2023, digital proceedings are required at the Dutch Supreme Court in criminal cases, on the basis of law (with the exception of Caribbean cases). As of then, digital proceedings are available in almost all cases handled by the three chambers (civil, criminal, tax) of the Dutch Supreme Court. Please refer to the following news item on the website of the Dutch Supreme Court: [Digitaal procederen in strafzaken per 1 januari 2023 verplicht - Hoge Raad](#).

Input Dutch Supreme Court (*Hoge Raad der Nederlanden*)

In addition, the Dutch Supreme Court publishes nearly all of its judgment on the website of the Dutch judiciary (www.rechtspraak.nl, open access), and every few months publishes (important or otherwise relevant) judgments that were decided before the internet was used. Since the start of this project in December 2019, about 800 'older' judgments have been published. Please refer to the following news item on the website of the Dutch Supreme Court: [Hoge Raad publiceert weer aantal 'oude' \(mijlpaal\) arresten - Hoge Raad](#). The two above developments may relate to the first recommendation from the 2022 Rule of Law Report (*Continue efforts to improve the level of digitalisation of the justice system, in particular as regards publication of judgments and digital solutions for court proceedings.*) to the Netherlands.

- **Page 11, I.C. (Other)**

As of 1 October 2022, it is possible for courts of first instance and courts of appeal to ask preliminary questions on points of law to the Hoge Raad in criminal cases. This was already possible in civil (as of 2012) and tax (as of 2016) cases. Please refer to the following news item on the website of the Dutch Supreme Court: [Prejudiciële vragen nu ook mogelijk in strafzaken - Hoge Raad](#).

- **Page 16, IV.A. (Regime for constitutional review of laws)**

In the Netherlands, article 120 of the Constitution prohibits judges from reviewing the constitutionality of most laws (i.e. acts of parliament). Government is currently exploring a change in the Constitution, to let go of this prohibition. Amongst other concerned institutions, government requested the president of the Dutch Supreme Court and procurator-general at the Dutch Supreme Court to provide their thoughts on the matter. Please refer to their view, as included in a letter dated 14 April 2022:

https://www.hogeraad.nl/publish/pages/805/reactie_20220414.pdf.

On 1 July 2022, government sent a letter to parliament, including several matters regarding constitutional review and scenarios to organize constitutional review in the Netherlands: [kamerbrief-over-hoofddijnen-constitutionele-toetsing.pdf \(overheid.nl\)](#). The letter also mentions the viewpoint of the president and procurator-general on behalf of the Dutch Supreme Court, as well as that of other concerned institutions.

- **Page 16, IV.A (judicial review (including constitutional review) of emergency regimes and measures in the context of Covid-19 pandemic)**

In 2022, the Dutch Supreme Court has issued various rulings that make a reference to Covid-19. Rulings that might be of relevance to the Rule of Law Report are the following:

Civil chamber

[HR 18 March 2022, ECLI:NL:HR:2022:380](#)

In this case, the question is at stake whether Dutch government was able to rightfully impose an evening curfew in the Netherlands, to avoid the spread of the Covid-19 virus.

[HR 22 April 2022, ECLI:NL:HR:2022:628](#)

One of the matters at stake in this case is whether a court of appeal was able to hold a digital (through skype) court session, due to measures against Covid-19, while the applicant preferred a physical session.

Criminal chamber

[HR 11 January 2022, ECLI:NL:HR:2022:3](#)

One of the matters at stake in this case is whether a notice to appear before a court of appeal had been rightly provided to a suspect, as the suspect did not sign the notice upon receipt, due to measures against Covid-19.

- **Page 16, IV.C. (*Judicial review of administrative decisions - short description of the general regime (in particular competent court, scope, suspensive effect, interim measures, and any applicable specific rules or derogations from the general regime of judicial review))*;
Follow-up by the public administration and State institutions to final (national/supranational) court decisions, as well as available remedies in case of non-implementation)**

The Dutch Supreme Court functions as a court of cassation in civil, criminal and tax cases in the Netherlands. There are also three specialized administrative courts of appeal: the Central Appeals Tribunal (for social security cases), Administrative High Court for Trade and Industry (for economic administrative cases), and the Administrative Jurisdiction Division of the Council of State (for all other administrative cases). There is no third instance on top of these three specialized administrative courts of appeal, and they therefore also function as a highest court within their jurisdiction. This results in a total of four highest courts that rule in administrative matters in the Netherlands.

The Dutch Supreme Court reviews administrative decisions in tax cases (and in some social security cases) in cassation. In its decisions, the Dutch Supreme Court may settle a case itself and/or refer the case to a court of appeal to decide one or more factual matters. Procedural administrative law in the Netherlands is regulated by the so-called General Administrative Law Act (in Dutch: *Algemene Wet Bestuursrecht*), and supplemented by a number of specialized acts. In tax law procedures these acts are applicable, together with specialized procedural tax law acts. Please refer to the General Administrative Law Act on the website of Dutch government: [wetten.nl - Regeling - Algemene wet bestuursrecht - BWBR0005537 \(overheid.nl\)](https://wetten.nl/Regeling-AL-1994-00537). This act contains rules on amongst others court proceedings, interim measures, and competent courts in administrative matters.

There are several mechanisms to promote legal unity between the four highest administrative courts, such as meetings between representatives of these courts, as well as the appointment of a member of one administrative court as an extraordinary member to another administrative court (so-called cross-appointments). The Dutch Supreme Court is able to appoint extraordinary members from the other highest administrative courts on the basis of legislative changes which became valid on 1 July 2021. Please refer to the changes in the law gazette: [Staatsblad 2020, 416 | Overheid.nl > Officiële bekendmakingen \(officielebekendmakingen.nl\)](https://staatsblad.247.nl/2020/416/Overheid.nl%20Officiële%20bekendmakingen).¹ Vice versa, at the three specialized administrative courts of appeal, it was already possible for members of the Dutch Supreme Court to be appointed as an extraordinary member. On 29 June 2022, three members of the Administrative Jurisdiction Division of the Council of State have been appointed as an extraordinary member to each of the respective chambers of the Dutch Supreme Court. Please refer to the news item on the website of the Dutch Supreme Court: [Drie nieuwe raadsheren in buitengewone dienst geïnstalleerd bij Hoge Raad - Hoge Raad](https://www.hogeraad.nl/nieuws/drie-nieuwe-raadsheren-in-buitengewone-dienst-geïnstalleerd-bij-hoge-raad).

- **Page 17, IV.E. (*Measures to foster a rule of law culture (e.g. debates in national parliaments on the rule of law, public information campaigns on rule of law issues, contributions from civil society etc.)*)**

Dutch government has established a State Commission on the rule of law (in Dutch: *Staatscommissie Rechtsstaat*) on 15 November 2022. The task of the Commission is to

¹ Note that these changes also regulate the procedures around so-called amicus curiae, on the basis of which third parties are able to provide input on administrative court cases.

analyse the current functioning of the rule of law in the Netherlands, and to suggest proposals to strengthen the rule of law. In carrying out this task, the Commission will pay close attention to legal protection of citizens against unforeseen and undesired consequences of government measures. The Commission will review the legislative, executive, and judicial branch, both separately and in connection with each other. Representatives from the three state branches (in a so-called tripartite-meeting) were able to provide input on the purpose of the State Commission, as well as on the profile of the chairperson and members thereof, before the Commission was established.

The establishment of the State Commission was triggered by the 2020 Report of the Dutch Childcare Allowance Parliamentary Inquiry Committee 'Unprecedented injustice' (in Dutch: *Ongekend onrecht*). Establishing the State Commission therefore also relates to the last recommendation from the previous Rule of Law Report (*Continue efforts to ensure a comprehensive follow-up to the childcare allowances affair to address the potential structural issues, involving all relevant state authorities.*) Please refer to the news item on the website of Dutch government: [Kabinet stelt Staatscommissie Rechtsstaat in | Nieuwsbericht | Rijksoverheid.nl](#).

Dutch parliament (both the Senate and the House of Representatives) organizes regular debates on the rule of law. Dineke de Groot, the current president of the Dutch Supreme Court, took part in a public meeting as an expert within a panel of experts, to prepare for a debate on the 'State of the Rule of Law' in the Netherlands. The public meeting was recorded and may be viewed on the website of the Dutch Senate: [Deskundigenbijeenkomst Justitie en Veiligheid \(J&V\) - Eerste Kamer der Staten-Generaal](#).