

## **Appointment and selection of judges, prosecutors and court presidents (p. 139 survey)**

The appointment and selection of judges for the Dutch Supreme Court is split in two procedures; a recruitment and selection procedure at the Supreme Court, and an appointment procedure by the Dutch House of Representatives and government.

### *Internal procedure at Dutch Supreme Court*

Representatives of the Supreme Court might connect with lower courts, organizations of lawyers and tax advisors, and researchers at law faculties, to find potential candidates. In addition, recurrent public announcements are made to request potential candidates to make their interest known, and to provide others with the ability to come up with potential candidates. The Supreme Court aspires to obtain a balanced composition of judges in all chambers, with a view to judges' age, gender, expertise (more generic versus more specific), and professional background.

Potential candidates will first be assessed by the members of the particular chamber in which they might serve. When the chamber finds the candidate to be suitable, the candidate will be interviewed by a selection committee (with six members; one from each chamber of the Supreme Court, two from outside the Supreme Court, and an independent chair from the Supreme Court). The selection committee of the Supreme Court advises about the suitability of the candidate. They will send this advice to the president of the Supreme Court.

The Supreme Court composes a list of six candidates to be recommended. The recruitment and selection protocol of Supreme Court judges can be found [here](#) (in Dutch: *Protocol werving en selectie raadsheren in de Hoge Raad*).

### *Procedure at Dutch House of Representatives*

In case of a vacancy at the Supreme Court, the president will send a list with six recommended candidates to the chairman of the Dutch House of Representatives, with an explanation. If requested, the president, Procurator General, and/or registrar of the Supreme Court will further elaborate upon the list to the permanent committee of Justice and Security at the House of Representatives. In addition, the committee of Justice and Security will invite all new candidates on the list and the recommended candidate for an interview. The House of Representatives almost always agrees to the recommendation of the Supreme Court and will propose a shortlist of the three top candidates to government (but would in theory be able to deviate from the list). After reviewing formal requirements, the Dutch Council of Ministers will recommend the top candidate to be appointed by the King. The Council almost always agrees to the recommendation of the House of Representatives (but would in theory be able to deviate from the order on the list). Both the King and the Minister of Justice and Security then sign the Royal Decree, to appoint the candidate as a Supreme Court judge.

### *Changes to the procedure at Dutch House of Representatives*

On page 3 of the 2020 Rule of Law Report - Country Chapter on the Netherlands, it is mentioned that Dutch government announced plans to amend the appointment procedure for Supreme Court judges, following recommendations by an independent State Commission in 2018. One of the recommendations of the State Commission was to let a special committee provide government with the shortlist of three Supreme Court judge candidates, instead of the House of Representatives. The committee would be composed of a member of Parliament assigned by the House of Representatives, a member of the Supreme Court assigned by its President, and an expert appointed jointly by the House of Representatives and the Supreme Court. As mentioned in the 2020 report, this change would require a constitutional revision. The recommendation was adapted to a proposal, and published for an open consultation in 2020. It has not been made public whether the open consultation has led to any modifications of the initial proposal. On 11 December 2020, the

Council of Ministers decided to send a proposal about the constitutional revision to the Advisory Division of the Dutch Council of State, who will review and provide government with their advice. Thereafter, the proposal might be sent to the House of Representatives. As mentioned, the content of the current proposal has not been published.

**Digitalization (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)** (p. 141 survey)

#### *Dutch judiciary in general*

Dutch government and parliament adopted several temporary acts with regard to COVID-19. The temporary Dutch COVID-19 Justice and Security Act; can be found [here](#) (in Dutch: *Tijdelijke wet COVID-19 Justitie en Veiligheid*) and entered into force on 17 December 2020. The act serves to continue the processes of legislation, judiciary, and public administration, during the pandemic. It for instance contains a possibility to hold distance hearings in certain cases.

Dutch judiciary also needed to implement general measures issued by (local) government to prevent the spread of COVID-19. However, the judiciary has been designated as a so-called process of vital importance by Dutch government, which needs to continue during the pandemic, while taking into account necessary measures. In addition, the Supreme Court and other courts issued internal measures, to adapt the judiciary's procedures to COVID-19. Amendments to ordinary procedures concern general hygiene and safety measures, such as wearing face masks, no/less audience at hearings, and a possibility to hold hearings remotely.

#### *Lower courts*

At the courts of first instance and courts of appeal, hearings are part of most procedures. Cases scheduled between 17 March and 11 May 2020 which were not considered urgent, have often been postponed. To catch up with the backlog on (mostly criminal) cases that was hence created, additional temporary measures were put in place, such as evening-hearings, letting cases decide by a single judge instead of a chamber of three judges, allowing retired judges to temporarily assist, and letting public prosecution handle lighter cases.

#### *Supreme Court*

At the Supreme Court, the COVID-19-pandemic had limited impact. There has been little or no delay in dealing with cases. In general, sessions (pleadings) at the Supreme Court only take place occasionally (also before COVID-19) and most cases are decided without litigants present. Cases in which an oral pleading does take place were not postponed, but government rules on the maximum number of attendees have been observed. A limited number of journalists were welcome. When it was anticipated that a case might generate a lot of (media) attention, pleadings and pronunciations were broadcasted through a livestream (already introduced before COVID-19). As of 16 March 2020, all members and employees who are able to work from home have been urged to do so.

In addition, the Supreme Court has issued various rulings with regard to COVID-19, on for instance holding a court session without all parties physically present, the impact of the measures (such as no audience at hearings) on the 'public' character of a public hearing, and whether a judge in isolation is allowed to take part in a court session remotely (while being part of a chamber of three judges). The COVID-19 cases have been given preferential treatment, to provide the judiciary with clarity in these unforeseen circumstances.

During most of 2020 and in most cases, it was possible for litigants to submit documents online and

to conduct their Supreme Court proceedings digitally.

Also, the Supreme Court publishes the very vast majority of its decisions (and also the advisory opinions of advocates-general) on the website of the Dutch judiciary ([www.rechtspraak.nl](http://www.rechtspraak.nl)). All of the three chambers at the Supreme Court decide cases every week, except during recess periods. Their decisions are normally published the same day. Finally, the Supreme Court publishes an online annual report each year, to publicly account for its work and use of resources (the 2019 report can be found [here](#)).