Annual report

With this annual report, the Supreme Court of the Netherlands publicly accounts for its work performed and use of resources for that purpose in the reporting year. The Supreme Court consists of three parts: the Supreme Court itself, the Procurator General's Office at the Supreme Court, and the Operations Directorate. The Supreme Court can also be divided according to field of law: the Civil Section, the Criminal Section and the Tax Section. Naturally, the various parts and sections of the Supreme Court report on their own work in the past year.

In 2022 the Supreme Court, just as other organisations, was able to leave behind it the lockdowns due to the measures against the spread of the coronavirus and to resume working together – cautiously – in the same building.

In 2022 new people have joined us and we bade farewell to others. It often happens that colleagues who leave the Supreme Court have devoted many years of their careers to the Supreme Court. Continuity and change go hand in hand at the Supreme Court. One change that we were especially looking forward to was the arrival of justices extraordinary whose primary task is to act as State Councillors in the Administrative Jurisdiction Division of the Council of State. With regard to questions of law that straddle multiple fields of law, it is valuable that the Supreme Court is also able to benefit from their expertise.

This year's annual report contains a new section: a case from beginning to end. What happens as from the moment an appeal in cassation is initiated until the moment it is decided upon and published? How are the parties informed about the judgment and how does it end up on our website at hogeraad.nl? Through interviews with employees, we demonstrate how this "primary process" runs here at the Supreme Court.

The people we interviewed, and all the other people who work in and at the Supreme Court, made it possible this past year, as well, to provide high-quality judgments in cassation, in the interest of the uniformity of the law, development of the law and protecting the rights of those seeking justice.

Dineke de Groot, President

Edwin Bleichrodt, Procurator General

Vera de Witte, Director of Operations

The Supreme Court

The Supreme Court rules on cases in three areas of law: civil law, criminal law and tax law. This chapter discusses the cases handled in these areas of law, also devoting attention to the role of the Procurator General's Office and the decisions rendered by the Supreme Court. Afterwards, this chapter discusses the interpretation and application of European Union law, the duties assigned to the fourth division of the Supreme Court and the Supreme Court's composition in

2022.

The Civil Division

In 2022, the Civil Division of the Supreme Court rendered over 400 decisions. Besides a wide array of general property law cases, again a great number of cases relating to family law, juvenile law, matrimonial property law and the law of inheritance (about 80) were presented to the Supreme Court. In addition, again, cases on employment law (about 50) and cases on compulsory mental healthcare (some 40) were submitted to the Supreme Court. Many of these cases concerned legal protection, but a number of cases revolved around development and uniformity of the law.

Civil Law Division

	2021 Actual	2022 Schedule	2022 Actual
Incoming cases	401	440	376
Cases decided upon of, total	402	440	427
Cases decided upon of, judgments	372	--	403
Cases decided upon of, other	30	--	24
Advisory opinions	412	450	382
Final case load	459	461	410
Total average turnaround time	402	--	422

In the field of family law, the Supreme Court, with a view to uniformity of law, adjudicated a claim for cassation in the interest of the law. The claim concerned the question of whether it can be legally agreed upon conclusion of a marriage that the right to spousal maintenance will

be waived upon termination of the marriage, i.e. divorce (ECLI:NL:HR:2022:1724).
In answering questions referred for a preliminary ruling on gender-neutral registration and surrogacy, respectively, the Supreme Court observed restraint because these topics are the subject of an ongoing legislative process and therefore do not lend themselves to judicial development of the law at this time (ECLI:NL:HR:2022:336 and ECLI:NL:HR:2022:685). An overarching theme of the claim for cassation in the interest of the law and the questions referred for a preliminary ruling is the question of how social developments and views can be incorporated into our legal system. Sometimes the Supreme Court can provide clarity without taking the legislator's place, and sometimes restraint is more suitable.

In the field of employment law, legal development decisions have been rendered on matters including the phenomenon of dormant employment contracts (ECLI:NL:HR:2022:1575 and 1576), the obligation to give notice when terminating fixed-term employment contracts (ECLI:NL:HR:2022:1374) and the prohibition on termination of employment during an employee's illness (ECLI:NL:HR:2022:276). These concern questions of interpretation concerning the Work and Security Act introduced on 1 July 2015 (and to a lesser extent the Balanced Labour Market Act introduced on 1 January 2020), through which in particular employment termination law has been modified significantly. Since then, the Civil Division has answered many questions of interpretation, referred for a preliminary ruling or otherwise. More generally speaking, it can be concluded that in the first few years after larger system changes the Supreme Court is frequently called upon to provide clarity and uniformity of law.

This is also evident with the now three-year-old Compulsory Mental Healthcare Act and the Care and Compulsion (Psychogeriatric and Intellectually Disabled Persons) Act, which replaced the Psychiatric Hospitals (Compulsory Admissions) Act with effect from 1 January 2020. Also in 2022, these laws frequently raised questions of interpretation. Oftentimes, this comes down a balancing act in which the fundamental rights of those involved must be reconciled with the legislator's intentions and the needs of actual practice. This is not always easy; see, for example, the evaluation report on these acts presented to the Minister on 21 October 2022. One case involved a matter of medical ethics that has divided opinion for many years: compulsory contraception (ECLI:NL:HR:2022:1850).

"Only" six questions were referred for a preliminary ruling in 2022 (compared to 20 in 2021). In view of the still erratic development in terms of the numbers of questions referred for a preliminary ruling in a given year, the question is whether this can be said to be a trend. One trend does seem to be the increase in the numbers of complex cases on the interface between civil law on the one hand and administrative law on the other, and on the interface with criminal law. One case that in 2022 proved to have a legal development effect is the decision on sales of immovable property by governments (ECLI:NL:HR:2021:1778, *Didam*). A circumstance that is helpful in the context of this trend is that in 2022 three State councillors of the Administrative Jurisdiction Division of the Council of State were appointed to the Supreme Court as justices extraordinary. At the intersection of tax law, reference can be made to the case law on the right to refuse to give evidence and to ECLI:NL:HR:2022:1579 on liability for cooperating in tax evasion. In the field of criminal law, there is an increasing number of cases on damages for injured parties. This was the subject of a joint opinion by advocates general from the Criminal Division and the Civil Division (ECLI:NL:PHR:2022:166) in 2022 for the sake of uniformity and development of the law. Mixed panels from different divisions are assembled to adjudicate such cases more frequently (e.g. ECLI:NL:HR:2022:958 on "nervous shock damages").

Although the number of cases decreased slightly in 2022 (to 95% compared to 2021) and the Civil Division's cases on hand also decreased slightly in number, case processing time has

increased. This can be explained by the ever-increasing complexity and laboriousness of cases. This applies not only to the aforementioned cases on the interfaces between certain areas of law, but also to the often-laborious cases on financial services (investment insurance, interest rate swaps and the like), directors and officers liability and pension law. The year 2022 also saw a number of complex cases about the Healthcare Insurance Act. Invariably, the Supreme Court must be mindful of the aspects of such cases that transcend the case in question and try to asses as best as possible what the social impact of the Supreme Court's decisions will be. That requires time and attention.

The Criminal Division

In 2022, the Criminal Division of the Supreme Court rendered over 3,000 decisions. In 2099 of those cases, the appeal in cassation was declared inadmissible. The most common grounds for this are that no objections to the contested judgment were raised (1279) or that the complaints were manifestly incapable of leading to cassation (734). Since 1 October 2022, District Courts and Courts of Appeal have been able to refer questions to the Supreme Court for a preliminary ruling in criminal cases as well. The first questions were received at the close of 2022.

Criminal Law Division

	2021 Actual	2022 Schedule	2022 Actual
Incoming cases	3.346	3.300	3.174
Cases involving grounds for cassation	1.722	1.815	1.716
Cases decided upon of, total	3.649	3.300	3.007
Cases decided upon of, judgments	3.417	3.150	2.849
Cases decided upon of, other	232	150	158

Advisory opinions	954	950	809
Final case load	2.015	2.015	2.183
Total average turnaround time	248	--	223

Questions referred for a preliminary ruling and digital investigation

The first questions were received at the close of 2022. These concern information about users of, among other things, the Encrochat messaging service, who became the subject of an international investigation into organised crime. Earlier this year, the Supreme Court rendered a decision on the transfer of encrypted conversations (the so-called Ennetcom data, ECLI:NL:HR:2022:900) by Canadian authorities. Another form of digital investigation was at the heart of the questions that the Supreme Court itself referred to the Court of Justice for a preliminary ruling following a claim for cassation in the interest of the law lodged by Advocate General Keulen (ECLI:NL:HR:2022:475). These concerned, among other things, the conditions for application under which the Public Prosecutor can demand a communications service to provide traffic and location data of a user, if in the specific case the granting of access to such data causes only minor interference with the user's right to private life.

Litigation agreements

Following a claim for cassation in the interest of the law by the Procurator General, the Supreme Court handed down a judgment on "litigation agreements" in criminal cases (ECLI:NL:HR:2022:1252). This involves agreements between the Public Prosecution and the defence regarding the course of the criminal proceedings and/or the manner in which the criminal case is disposed of. For example, a litigation agreement could involve the defence waiving requests to call and examine witnesses or to present certain defences and the Public Prosecution delineating the scope of the charges against the defendant in some way, there being consensus between the Public Prosecution and the defence on what would be an appropriate outcome of the criminal case. According to the Supreme Court, litigation agreements can be allowed even in the absence of a general statutory regulation. In the judgment, the Supreme Court formulates focus areas for assessing the litigation agreements.

Chain evidence and untrue statements by suspects

A number of homicide cases involved special evidence constructions. In trying a case involving the voluntary manslaughter of three women in 2003, 2004 and 2017, the Court of Appeal availed itself of what is known as chain evidence. This type of evidence relies on the circumstance that the suspect was involved in one or more other similar offences. The Supreme Court accepted in this case that the Court of Appeal had factored into its judgment that a pattern was apparent by which the evidence of the individual facts strengthened the evidence of facts collectively (ECLI:NL:HR:2022:1902). Following a voluntary manslaughter on

Saba, the Supreme Court provided more general reflections on the inclusion of an implausible or untrue statement by the suspect in the judgment on the proven facts (ECLI:NL:HR:2022:1864). The Supreme Court distinguishes cases in which the court considers the making of an untrue statement to be a circumstance relevant to the significance that can be attributed to other evidence used and cases in which the court uses an untrue statement made by the suspect as independent evidence *against* the suspect. The latter evidence construction (the "manifestly untruthful statement") is of a special nature and is admitted only if the conditions referred to in the judgment are met, in particular the condition that such untruthfulness must be evident from other evidence. An example is ECLI:NL:HR:2022:1190. However, there was no such special evidence construction in a case in which a woman was convicted of co-perpetrating the voluntary manslaughter of her husband, in which the Court of Appeal, in its finding that the suspect's interpretation of the facts was not credible, merely attributed significance to the untruths she had put forward (ECLI:NL:HR:2022:1250).

Nervous shock damages

The same case involved the award of nervous shock damages, in which regard a mixed panel of members from the Criminal Division and Civil Division had clarified the case law on this issue at an earlier stage already (ECLI:NL:HR:2022:958; see also the joint advisory opinion by Advocates General Spronken and Lindenbergh of the civil and criminal section at the Procurator General's Office in a previous case, ECLI:NL:PHR:2022:166). Nervous shock damages may be awarded in cases in which the unlawful conduct towards a primary victim has caused intense emotional shock to the secondary victim. This may be caused by the confrontation with the victim's mortal remains, for example. Damages are awarded for harm resulting from mental injury that is serious in terms of nature, duration and/or ramifications and is adequately objectifiable on the basis of a report by an authorised and competent expert, such as a psychiatrist, general practitioner or psychologist. If mental injury is present (this need not be a syndrome recognised in psychiatry), both tangible and intangible loss or harm resulting therefrom are eligible for compensation. In addition to being entitled to claim nervous shock damages, the secondary victim, if they are also a close relative of the primary victim, may be entitled to claim fixed damages under Article 6:107(1), opening words and (b), and Article 6:108(1) in conjunction with Article 6:108(3) of the Civil Code ("emotional damage").

Special conditions in the event of a suspended sentence

With some regularity, complaints are raised in cassation about the application of Article 14c(2), opening words and (14°), of the Criminal Code. This article allows the court to impose certain conditions on conduct in the event of a suspended sentence. These may include conditions aimed at preventing criminal conduct by the convicted person and conditions relating to conduct by the convicted person to which they are bound, as a result of the fact declared proved, from the point of view of social decency, for example towards victims of the fact declared proved (ECLI:NL:HR:2022:807). Such conditions must adequately state the rules of conduct they are meant to embody. They must not amount in effect to having to cooperate with extensive and intrusive coercive measures to be exercised by the police (ECLI:NL:HR:2022:1196). The imposition of such a condition must also ensure that the monitoring thereof does not result in more than a limited invasion of the convicted person's privacy. Following convictions for possession of child pornography, for example, this may involve the frequency with which and the manner in which the convicted person's computer and/or telephone may be monitored and which (police) officials may be involved therein (ECLI:NL:HR:2022:1763).

Accelerated disposal and cases that matter

In 2022, the Criminal Division of the Supreme Court rendered over 3,000 decisions. In 2099 of those cases, the appeal in cassation was declared inadmissible. The most common grounds for this are that no objections to the contested judgment were raised (1279) or that the complaints were manifestly incapable of leading to cassation (734). In response to the view expressed by the UN Human Rights Committee on 26 July 2022 in *Jaddoe v. the Netherlands*, the Supreme Court explained that even in case of accelerated disposal according to Article 80a or Article 81 of the Judiciary (Organisation) Act the substantive assessment by the Criminal Division is identical to the assessment in case the reasoning were not "accelerated" (ECLI:NL:HR:2023:40). According to a WODC (Research and Documentation Centre) report published this year, it appears that this ability to opt for the accelerated disposal of cases certain to fail enables the Supreme Court to provide direction for legal development in cases that matter. These may include cases involving major social issues in the context of downright complex legal issues. An example of this is a case on the money laundering of funds fraudulently obtained through the childcare allowance (ECLI:NL:HR:2022:1822). A special case, with both international and substantive legal aspects, concerns the prosecution of a natural healer arrested in Germany under a European arrest warrant and surrendered to the Netherlands. She has been convicted of voluntary manslaughter of a victim she had administered ibogaine. The Supreme Court subscribed to the view that the case involved the conscious acceptance of the substantial likelihood that the outcome would be death, because the real risk of complications had also become apparent in two specific incidents in which the woman was involved as well, after which she had not changed her practices (ECLI:NL:HR:2022:982).

The Tax Division

In 2022, 970 cases were brought before the Supreme Court's Tax Division. The Division disposed of 1,135 cases, including 363 withdrawals and dismissals by the court clerk (32%) and 161 declarations of inadmissibility (14%). As a result, the cases on hand dropped to just under 800, which is equivalent to about three-quarters of a year of production for the Tax Division. The average case processing time decreased to 274 days. In tax cases, an advisory opinion by the Office of the Procurator General is optional. In 2022, advisory opinions by one of the four advocates general of the tax law sector were provided in 113 cases. In addition, members of the tax division of the Office of the Procurator General submitted advisory opinions at the request of the chairman of the Administrative Jurisdiction Division of the Council of State and the president of the Central Appeals Tribunal on questions of law presented to those bodies.

Tax Division

	2021 Actual	2022 Schedule	2022 Actual

Incoming cases	1.220	900	970
Cases decided upon of, total	1.089	900	1.135
Cases decided upon of, judgments	835	825	772
Cases decided upon of, other	254	75	363
Advisory opinions	103	140	113
Final case load	948	650	783
Total average turnaround time	291	--	274

The tax law sector also saw increasing legal complexity and a growing influence of European and international law in 2022. Disputes on income tax (20.5% of the total case load) and on local government taxes (including, in particular, matters relating to property tax (OZB/WOZ)) (38%) constituted the largest workflows in terms of number. Those two workflows also saw the most withdrawals, dismissals by the court clerk and declarations of inadmissibility. Corporate income tax cases made up 7% of the total case load, and value added tax and customs cases together made up 14%. The number of incoming cases regarding private motor vehicle and motorcycle tax (11.3%) and (within the workflow of local government taxes) property tax (OZB/WOZ) (11.7%) remained high in 2022.

In 2022, there were three cases in which the Tax Division rendered decisions on questions of law that courts that decide on the facts (District Courts and Courts of Appeal) referred to it for a preliminary ruling. These questions concerned (i) the calculation of interest to be reimbursed on refunds of tax levied in violation with EU law (ECLI:NL:HR:2022:89), (ii) the concurrence of value added tax and real estate transfer tax when converting a property to such an extent that the question arises as to whether the conversion constitutes “essentially new construction” (ECLI:NL:HR:2022:1577) and (iii) the levying of corporate income tax on the surrender of interest rate swaps associated with floating rate loans (ECLI:NL:HR:2022:312).

In addition to a claim for cassation in the interest of the law concerning incorrectly sworn in justices at the ‘s Hertogenbosch Court of Appeal (ECLI:NL:HR:2022:1438), a claim for cassation in the interest of the law was filed in one tax case in 2022 (ECLI:NL:HR:2022:1787). The issue at hand was whether there was a legal basis for the obligation imposed on business owners to

purchase *eHerkenning* (eRecognition) software from a commercial party for EUR 20-EUR 25 a year in order to file their payroll tax returns, which they are obliged to do digitally. The District Court found no such legal basis. However, the Tax Division concurred with the Advocate General and ruled that this obligation can be imposed on business owners based on the State Taxes Act and that the limited cost of purchasing the software does not violate the principle of proportionality. The Tax Division held that there is no legal rule that dictates that compliance with statutory administrative obligations must be possible free of charge.
In 2022, the Tax Division rendered several landmark decisions on the degree of legal protection for taxpayers and withholding agents. In ECLI:NL:HR:2022:767, the Tax Division, on the one hand, relied on a broad interpretation of the statutory duty to answer the questions in a tax return, but, on the other hand, adhered to a narrow interpretation of the sanction of shifting the burden of proof in the event of a failure to provide answers or a failure to provide correct answers, by limiting that sanction to the points in dispute for which the answer may be relevant. For example, the failure to answer the question on involvement in a trust therefore cannot lead to a shift of the burden of proof in a dispute concerning the turnover of a sole trader without employees.

Both legal protection and uniformity of law were at issue in ECLI:NL:HR:2022:526. The Tax Division achieved uniformity in administrative law by requiring, as do the other highest administrative courts (the Administrative Jurisdiction Division of the Council of State, the Central Appeals Tribunal and the Trade and Industry Appeals Tribunal), that the facts and circumstances required for proving a finable offence be “established beyond a reasonable doubt”. It equated that standard with the phrase “to give evidence of”. That means that the administrative body that has imposed an administrative fine (the inspector of state taxes, the local tax officer of a municipality, etc.) must convincingly demonstrate the facts and circumstances on which it bases that fine. “To make a plausible case” is not sufficient.

Legal protection and uniformity of law were also at issue in case ECLI:NL:HR:2022:1673 that has occupied legal practice for quite some time, namely the calculation of tax interest for periods when no tax liability exists because the amount in tax is already in the tax authority’s bank account. This can occur in cases in which a number of successive provisional tax assessments for the same year have been imposed that vary in amount. No tax interest is charged on interim refunds, in order to prevent “saving at the tax authorities”, but tax interest is charged for the entire period on subsequent additional taxation. Although the text of the law leads to that outcome, the Tax Division, concurring with the Advocate General, ruled that the legislative history and the legislator’s desire to align with the default interest regimes in the General Administrative Law Act and the Civil Code lead to the assumption that it cannot have been the legislator’s intention to charge interest for a period in which no principal is due.

In 2022, taxpayers continued to rely on the prohibition of discrimination as a fundamental right in the event of different tax treatment of cases they consider to be similar, which reliance was often in vain because the legislator has a wide margin in assessing whether cases are similar and, if so, whether there is a good reason to nevertheless treat them differently. For instance, the Tax Division ruled in ECLI:NL:HR:2022:273 that the legislator could exclude the deduction of relatively small remunerations for co-working paid by one spouse to the other because the legislator could reasonably opine that more control and enforcement problems arise in the case of spouses than in the case of other persons. One of the reasons for this is that it is difficult to determine whether the work for which the remuneration is paid involves more than the mutual aid and assistance customary between spouses. In ECLI:NL:HR:2022:752, on the other hand, the reliance on the prohibition of discrimination under Article 1 of the Constitution did indeed lead to the opinion that the exclusion of cases regarding private motor vehicle and

motorcycle tax and property tax (OZB/WOZ) from a higher compensation for litigation costs constituted unjustifiable discrimination because no objective and reasonable justification was provided.
Overall, the numbers and subject matter of cases brought and decided upon in 2022 did not differ much from those in 2021.

Law of the European Union

In the interpretation and application of EU law, the Supreme Court assesses whether Union law can be applied in a case right away, or whether a question for a preliminary ruling about that law must first be referred to the Court of Justice of the European Union in Luxembourg pursuant to Article 267 of the Treaty on the Functioning of the European Union.

In 2022, there were two cases in which the Supreme Court referred questions to the ECJ:

- Supreme Court 5 April 2022, ECLI:NL:HR:2022:475; see also Supreme Court 5 April 2022, ECLI:NL:HR:2022:477;
- Supreme Court 2 September 2022, ECLI:NL:HR:2022:1121.

In 2022, three ECJ decisions (of the 22 decisions in cases from the Netherlands) concerned cases in which the Supreme Court had referred questions for a preliminary ruling in previous years:

- ECJ 28 April 2022, C-237/20, ECLI:EU:C:2022:321 (*Federatie Nederlandse Vakbeweging/Heiploeg Seafood International BV and Heitrans International BV*); the case is still pending before the Supreme Court;
- ECJ 2 June 2022, C-112/21, ECLI:EU:C:2022:428 (*X BV/Classic Coach Company vofand others*); the case is still pending before the Supreme Court;
- ECJ 7 July 2002, C-194/21, ECLI:EU:C:2022:535 (*Staatssecretaris van Financiën/X*); final decision: Supreme Court 16 September 2022, ECLI:NL:HR:2022:1116.

The Fourth Division

In addition to the Civil Division, Criminal Division, and Tax Division, the Supreme Court has a fourth division. The fourth division handles complaints against judicial officers and cases regarding the suspension and dismissal of judicial officers who are appointed for life. Only the Procurator General at the Supreme Court can initiate such cases with the Supreme Court. Furthermore, the fourth division handles applications dealing with the challenge of a Supreme Court justice. The fourth division consists of the President of the Supreme Court, three Vice Presidents of the Civil Division, Criminal Division, and Tax Division, and a number of justices from those divisions.

The fourth division rendered decisions in five cases in 2023. One case concerned the dismissal of a judge, while the other four related to requests to challenge members of the Supreme Court.

Dismissal case

Judges are appointed for life (Article 117(1) of the Constitution). This serves to safeguard the independence of the judiciary. A judge can be dismissed at their own request. In certain cases,

the Supreme Court may dismiss a judge in response to a claim submitted by the Procurator General at the Supreme Court. The rules governing these actions are laid down in the Judicial Officers (Legal Status) Act. On 23 September 2022 (ECLI:NL:HR:2022:1310), the fourth division of the Supreme Court, in response to a claim submitted by the Procurator General, granted the request to dismiss a judge on the basis of the judge's (complete) incapacity for work due to illness.

Challenge cases

To safeguard judicial impartiality in a case, the law provides for the possibility to submit a request to challenge a judge. Challenge requests aimed at a member of the Supreme Court are dealt with by the fourth division of the Supreme Court. If a challenge request is granted, the judge in question will be replaced by a different judge. If a challenge request is rejected, the judge challenged will continue to hear the case. The right to challenge a judge is legally enshrined in the procedural law governing all three fields of law in which the Supreme Court handles cases.

In cases which require legal representation by an attorney, the request to challenge a judge must come from the attorney. In other cases, a party or an interested party can file the challenge request themselves.

On 23 December 2022 (ECLI:NL:HR:2022:1939), the Supreme Court held that an application by the applicant themselves to challenge a member of the Criminal Division was inadmissible. In appeals in cassation in criminal cases, a suspect must be represented by an attorney, and the law provides for no exception to this mandatory representation when it comes to the submission of a challenge request.

A request to challenge a judge may only regard the judges that hear the case. On 1 April 2022 (ECLI:NL:HR:2022:492), the Supreme Court held that a request to challenge a cause-list judge who only pronounced the decision but did not adjudicate the case itself was inadmissible.

The premise underlying the assessment of a challenge request, is that a judge must be presumed to be impartial by virtue of their appointment, unless exceptional circumstances arise that provide compelling indications that they harbour a bias against the person filing the request or that the applicant has objective grounds for suspecting such bias.[1]

The challenge request that led to the decision of 1 April 2022 (ECLI:NL:HR:2022:492) not only regarded the cause-list judge, but also the members of the Tax Division that had handled the case. The Supreme Court rejected the request to challenge those members because the substantiation for the challenge request did not cite any circumstances that amounted to a compelling indication of bias or any objectively justified fear of such bias. The challenge request stated, among other things, that the members of the Tax Division who were challenged based themselves exclusively on the taxpayer's name, but the request did not cite any factors that would justify such a statement.

The Protocol for the participation in the handling and deliberations of the Supreme Court of the Netherlands provides additional rules for handling a challenge request pertaining to one of the members of the Supreme Court. On the basis of this protocol, among other things, the fourth division need not hold a hearing in order to render a decision to refuse to take a challenge request into consideration, for example if the request is unsubstantiated. This was the case in the decision of 11 February 2022 (ECLI:NL:HR:2022:213), in which the challenge request only referred to the fact that the deciding judges had rendered a decision in previous proceedings before the Supreme Court which was unfavourable to the applicant. This was not an

explanation on the applicant's part as to why this would impair judicial impartiality in the present case. The request did not satisfy the rules on substantiation.
In the case of repeated challenge requests or some other form of abuse of the power to submit such requests, the Supreme Court may determine that a subsequent challenge request will not be taken into consideration. That determination must be stated in the decision. This was the case in the decision of 9 December 2022 (ECLI:NL:HR:2022:1847) in which the applicant had submitted two challenge requests in a single tax case.

[1] Supreme Court 25 September 2018, ECLI:NL:HR:2018:1770, para. 4.2.1.

Internal complaint cases

The Supreme Court's internal complaints regulation entitles everyone to submit a complaint to the President of the Supreme Court regarding the manner in which the Supreme Court, a member of the Supreme Court or the clerk of the Supreme Court has conducted themselves towards the complainant on a given occasion. Complaints cannot be filed in respect of conduct regarding which proceedings before a judicial instance are or were possible. Complaints also cannot be filed in respect of a judicial decision or the manner in which said decision came about, including the procedural decisions taken in this context. Complaints directed against the conduct of acting clerks will be attributed to the clerk of the Supreme Court in cases involving the exercise of powers conferred upon the clerk of the Supreme Court by law. These complaints will also be handled in the context of this complaint regulation.

Pursuant to the complaint regulation, an annual overview will be published of the registered and by the President addressed and concluded complaints.

Reporting period

In 2022, the President handled one complaint pursuant to the complaint regulation. The complaint was directed at a Vice-President of the Supreme Court. The complainant wrote to have been treated with contempt as his case at the Supreme Court had been decided through the application of Article 81(1) of the Judiciary (Organisation) Act. This complaint related to the reasoning underlying the judgment and thus the judicial decision itself. According to the complaint regulation, this cannot serve as the basis for a complaint, meaning that the complaint was manifestly ill-founded.

Other correspondence

The Supreme Court and the President of the Supreme Court also received letters and e-mails covering a wide range of topics in 2022. For example, some complained to the Supreme Court or the President because they were displeased with a judgment rendered by the Supreme Court or decisions rendered by other judicial bodies. Complaints were also received about a decision or a response from the Procurator General at the Supreme Court in the context of one of his particular tasks. These letters and e-mails do not fall within the scope of the complaint regulation and are generally responded to in that sense by the clerk of the Supreme Court.

Others drew the attention of the Supreme Court and/or the President to more general societal issues and their dissatisfaction with those issues, or to their own personal problems and issues. The clerk of the Supreme Court also handles this correspondence. In most cases, there was nothing the Supreme Court and/or the President could do for these individuals. Where

possible, they were referred to other authorities or sources of legal assistance.

Contacts with the legislator

The tax law sector also saw increasing legal complexity and a growing influence of European and international law in 2022. Disputes on income tax (20.5% of the total case load) and on local government taxes (including, in particular, matters relating to property tax (OZB/WOZ)) (38%) constituted the largest workflows in terms of number. Those two workflows also saw the most withdrawals, dismissals by the court clerk and declarations of inadmissibility. Corporate income tax cases made up 7% of the total case load, and value added tax and customs cases together made up 14%. The number of incoming cases regarding private motor vehicle and motorcycle tax (11.3%) and (within the workflow of local government taxes) property tax (OZB/WOZ) (11.7%) remained high in 2022.

In 2022, there were three cases in which the Tax Division rendered decisions on questions of law that courts that decide on the facts (District Courts and Courts of Appeal) referred to it for a preliminary ruling. These questions concerned (i) the calculation of interest to be reimbursed on refunds of tax levied in violation with EU law (ECLI:NL:HR:2022:89), (ii) the concurrence of value added tax and real estate transfer tax when converting a property to such an extent that the question arises as to whether the conversion constitutes "essentially new construction" (ECLI:NL:HR:2022:1577) and (iii) the levying of corporate income tax on the surrender of interest rate swaps associated with floating rate loans (ECLI:NL:HR:2022:312).

In addition to a claim for cassation in the interest of the law concerning incorrectly sworn in justices at the 's Hertogenbosch Court of Appeal (ECLI:NL:HR:2022:1438), a claim for cassation in the interest of the law was filed in one tax case in 2022 (ECLI:NL:HR:2022:1787). The issue at hand was whether there was a legal basis for the obligation imposed on business owners to purchase *eHerkenning* (eRecognition) software from a commercial party for EUR 20-EUR 25 a year in order to file their payroll tax returns, which they are obliged to do digitally. The District Court found no such legal basis. However, the Tax Division concurred with the Advocate General and ruled that this obligation can be imposed on business owners based on the State Taxes Act and that the limited cost of purchasing the software does not violate the principle of proportionality. The Tax Division held that there is no legal rule that dictates that compliance with statutory administrative obligations must be possible free of charge.

In 2022, the Tax Division rendered several landmark decisions on the degree of legal protection for taxpayers and withholding agents. In ECLI:NL:HR:2022:767, the Tax Division, on the one hand, relied on a broad interpretation of the statutory duty to answer the questions in a tax return, but, on the other hand, adhered to a narrow interpretation of the sanction of shifting the burden of proof in the event of a failure to provide answers or a failure to provide correct answers, by limiting that sanction to the points in dispute for which the answer may be relevant. For example, the failure to answer the question on involvement in a trust therefore cannot lead to a shift of the burden of proof in a dispute concerning the turnover of a sole trader without employees.

Both legal protection and uniformity of law were at issue in ECLI:NL:HR:2022:526. The Tax Division achieved uniformity in administrative law by requiring, as do the other highest administrative courts (the Administrative Jurisdiction Division of the Council of State, the Central Appeals Tribunal and the Trade and Industry Appeals Tribunal), that the facts and circumstances required for proving a finable offence be "established beyond a reasonable

doubt". It equated that standard with the phrase "to give evidence of". That means that the administrative body that has imposed an administrative fine (the inspector of state taxes, the local tax officer of a municipality, etc.) must convincingly demonstrate the facts and circumstances on which it bases that fine. "To make a plausible case" is not sufficient.
Legal protection and uniformity of law were also at issue in case ECLI:NL:HR:2022:1673 that has occupied legal practice for quite some time, namely the calculation of tax interest for periods when no tax liability exists because the amount in tax is already in the tax authority's bank account. This can occur in cases in which a number of successive provisional tax assessments for the same year have been imposed that vary in amount. No tax interest is charged on interim refunds, in order to prevent "saving at the tax authorities", but tax interest is charged for the entire period on subsequent additional taxation. Although the text of the law leads to that outcome, the Tax Division, concurring with the Advocate General, ruled that the legislative history and the legislator's desire to align with the default interest regimes in the General Administrative Law Act and the Civil Code lead to the assumption that it cannot have been the legislator's intention to charge interest for a period in which no principal is due.

In 2022, taxpayers continued to rely on the prohibition of discrimination as a fundamental right in the event of different tax treatment of cases they consider to be similar, which reliance was often in vain because the legislator has a wide margin in assessing whether cases are similar and, if so, whether there is a good reason to nevertheless treat them differently. For instance, the Tax Division ruled in ECLI:NL:HR:2022:273 that the legislator could exclude the deduction of relatively small remunerations for co-working paid by one spouse to the other because the legislator could reasonably opine that more control and enforcement problems arise in the case of spouses than in the case of other persons. One of the reasons for this is that it is difficult to determine whether the work for which the remuneration is paid involves more than the mutual aid and assistance customary between spouses. In ECLI:NL:HR:2022:752, on the other hand, the reliance on the prohibition of discrimination under Article 1 of the Constitution did indeed lead to the opinion that the exclusion of cases regarding private motor vehicle and motorcycle tax and property tax (OZB/WOZ) from a higher compensation for litigation costs constituted unjustifiable discrimination because no objective and reasonable justification was provided.

Overall, the numbers and subject matter of cases brought and decided upon in 2022 did not differ much from those in 2021.

The Procurator General's Office at the Supreme Court

The Procurator General's Office is an independent part of the Supreme Court and is headed by the Procurator General. The Procurator General's Office comprises the Procurator General, the Acting Procurator General and Advocates General (AGs). The Procurator General's Office is independent and is not part of the Public Prosecution Service. The Procurator General's Office is divided into three divisions: civil, criminal and tax. The most important duty of the Office is to provide the Supreme Court with legal advice, known as advisory opinions, regarding cases before the Court. These are issued independently by the members of the Procurator General's Office of that office. A total of 1,304 opinions were issued in 2022: 382 in civil cases, 809 in criminal cases and 113 in tax cases. The Procurator General also has special duties which are discussed in this section.

Cassation in the interest of the law

One of the special duties of the Procurator General is to initiate claims in cassation in the interest of the law. This is an instrument for obtaining the Supreme Court's decision on a question of law which must be answered in the interest of the uniformity or development of the law and which cannot be put before the Supreme Court, or at least not soon enough, via an ordinary appeal in cassation.

Requests

In 2022, the Procurator General received 38 requests to initiate claims in cassation in the interest of the law, 6 fewer than the year before.

In the reporting period, 35 rejection letters were sent in response to requests to initiate claims in cassation in the interest of the law, 7 more than the year before. The most common reason for rejecting a request was that the request did not raise an issue of law that needed clarification with a view to promoting the uniformity and development of the law, for example, because there was not sufficient proof that the issue in question was leading to divergent court decisions.

In 2022, twelve claims for cassation in the interest of the law were submitted, two of which were in related cases, five more than the year before. Three of these cases were tax cases, four were criminal cases and five were civil cases.

Swearing-in of justices

Two claims regarded the swearing-in of several justices and acting justices for the Court of Appeal of 's-Hertogenbosch which had involved the use of a form that was intended for a civil servant instead of the form intended for the swearing-in of a member of the judiciary. The Procurator General decided to submit claims for cassation in the interest of the law in a criminal-law case and in a tax-law case in order to obtain clarification as quickly as possible regarding the potential impact this mistake could have for the cases that had been handled by those justices. The Supreme Court rendered judgment within six weeks, ruling that the use of the wrong text during a swearing-in ceremony did not require the setting aside of the decisions those justices had rendered in the cases they had handled and adjudicated.

(See ECLI:NL:PHR:2022:819 and ECLI:NL:PHR:2022:820 for the claims and ECLI:NL:HR:2022:1438 and ECLI:NL:HR:2022:1509 for the Supreme Court's decisions.)

Agreements for the sake of judicial economy

An issue relevant to the practice of criminal law regarding which a claim for cassation in the interest of the law was submitted this year involved the making of agreements for the sake of judicial economy in criminal cases. There are no specific statutory rules governing the making of agreements for the sake of judicial economy between the Public Prosecution Service and the suspect's defence counsel. It was therefore unclear whether, and if so under which conditions, agreements for the sake of judicial economy could be made. In order to obtain clarification of this issue in the short term, the Procurator General submitted a claim for cassation in the interest of the law. The Supreme Court ruled that the lack of specific statutory rules did not mean that agreements for the sake of judicial economy could not be made. The Supreme Court formulated the factors which the court adjudicating a criminal case must take into account

when assessing such agreements, including to ensure that the right to a fair trial is not impaired and the court's independent responsibility for the outcome of the criminal case is not neglected. (See ECLI:NL:PHR:2022:566 for the claim and ECLI:NL:HR:2022:1252 for the Supreme Court's decision.)

eHerkenning

A discussion arose in tax practice about the obligation to file payroll tax returns using eHerkenning. The issues raised in the claim for cassation in the interest of the law that was submitted were whether there was a statutory basis for that obligation and whether it was permissible for costs to be incurred in order to satisfy that obligation. The Supreme Court answers these questions in the affirmative. (See ECLI:NL:PHR:2022:553 for the claim and ECLI:NL:HR:2022:1787 for the Supreme Court's decision.)

Providing information to third parties

An important issue in the practice of civil law is whether, in connection with the admistration of justice being public, judicial authorities are required to provide third parties with information about ongoing civil proceedings. This issue was brought to the attention of the Committee for Cassation in the Interest of the Law, which advised the Procurator General to submit a claim. The Advocate General who submitted the claim believes that this question must be answered in the affirmative. She makes several recommendations in her claim.

(See ECLI:NL:PHR:2022:533 for the claim. The Supreme Court has not yet rendered a decision.)

Exclusion of partner alimony

Another civil case in which a claim was submitted regarded the question of whether intending spouses could stipulate, prior to their marriage in their pre-nuptial agreement, that they were excluding the right to partner alimony in light of the provisions of Articles 1:158 and 1:400(2) of the Dutch Civil Code. This issue had been debated in the literature. The Advocate General who submitted the claim answered the question in the affirmative. Consistently with previous Supreme Court case law dating to 1980 and 1996, the Supreme Court answered in the negative, holding that it was up to the legislature – if it found such to be desirable – to provide for an option to waive the right to partner alimony prior to a marriage. (See ECLI:NL:PHR:2022:457 for the claim and ECLI:NL:HR:2022:1724 for the Supreme Court's decision.)

The other cases in which claims were submitted were as follows.

Criminal law

-The question of whether a power of attorney within the meaning of Article 2:3 of the Forensic Care Act was a measure that resulted in the deprivation of freedom within the meaning of Article 67a(3) of the Code of Criminal Procedure. (See ECLI:NL:PHR:2022:302 for the claim and ECLI:NL:HR:2022:983 for the Supreme Court's decision.)

- The question of whether a court that is not holding a hearing on an appeal can also render a decision in chambers on an application to lift or suspend an order issued in the first instance regarding the actual enforceability of a conditional sanction. (See ECLI:NL:PHR:2022:635 for the claim and ECLI:NL:HR:2022:1319 for the Supreme Court's decision.)

Civil law

- The question of whether a patient is entitled to review the findings of a physician who

assessed – on the instruction of the hospital or its liability insurer and based on the patient's medical file but without actually seeing the patient – whether that patient was treated in accordance with the rules. (See ECLI:NL:PHR:2022:762 for the claim. The Supreme Court has not yet rendered a decision.)
- The question of whether an application of the debt restructuring scheme can be terminated early and/or whether the clean slate can be revoked if it becomes known after the judgment referred to in Article 354 of the Bankruptcy Act but before the formal end of the debt restructuring scheme that the creditors were prejudiced or that there was an attempt to prejudice the creditors. (See ECLI:NL:PHR:2022:977 for the claim. The Supreme Court has not yet rendered a decision.)

- The question of whether a claim for the erasure of personal data can be granted by a civil judge in a summary proceeding after the term referred to in Article 25(2) of the General Data Protection Regulation Implementation Act has elapsed. (See ECLI:NL:PHR:2022:1154 for the claim. The Supreme Court has not yet rendered a decision.)

Tax law

- The question of whether the penalty scheme that applies to the tardy rendering of a decision on an application also applies to a request for an *ex officio* reduction of tax assessments. (See ECLI:NL:PHR:2022:690 for the claim. The Supreme Court has not yet rendered a decision.)

Review

Over the past six years, the number of requests for further investigation filed each year has been decreasing slightly compared to previous years. Following the introduction of the Reform of Criminal Case Review Rules for the Benefit of Former Suspects Act on 1 October 2012, two requests for further investigation were received in 2012. In the years thereafter, the numbers were as follows: eleven in 2013, nine in 2014, eight in 2015, seven in 2016, three in 2017 and two in 2018. No requests were received in 2019. Four requests were submitted in 2020 and two in 2021.

In 2022, three requests for further investigation were received in related cases.

In each case, the requests concern a 1995 conviction to a 10-year prison sentence for co-perpetration of voluntary manslaughter. Following granted requests for review by the Supreme Court, the Court of Appeal, put succinctly, affirmed the 1995 convictions in 2015, after which, in 2017, the Supreme Court dismissed the appeals in cassation that were lodged against those affirmations. The requests were sent to the ACAS for its opinion during the reporting year. The ACAS had not issued its advice yet in the reporting year.

In 2022, five requests from previous years were still being handled.

The ACAS recommended in 2022 that two requests from 2021 and one request from 2020 be rejected. With regard to a request from 2020 and a request from 2021, the convict's attorney requested an additional period for responding to the opinion. As regards the other request from 2021, the ACAS issued its opinion in November 2022. This request had not been decided on yet in the reporting year.
A request from 2018 regarding a 2011 conviction for war crimes during the armed conflict in Rwanda in 1994 carrying a life sentence in prison was sent to the ACAS for an opinion in 2018. The ACAS had not issued its opinion in this case yet in the reporting year.

In the “Deventer murder case” – involving a 2000 murder conviction which carried a twelve-year prison sentence and which had been the subject of multiple requests for review – the Advocate General decided as early as in 2014 to order a further investigation. The further investigation was completed in the reporting year. During the reporting year, the convict’s

Review to the detriment of the former suspect

The law also provides for the special option of reviewing, at the request of the Board of the Public Prosecution Service, an irrevocable final decision by a Dutch court which resulted in the acquittal or dismissal of all criminal charges against the former suspect. Such a request has never led to a review that worked to the detriment of the former suspect. There were no reviews in 2022 that were detrimental to the former suspect.

Supervision of the Public Prosecution Service (OM)

The Procurator General at the Supreme Court can inform the Minister if they believe that the Public Prosecution Service is not properly enforcing or implementing the legal requirements when performing its duties. In the context of these duties, the Procurator General conducted various thematic investigations into how the Public Prosecution Service performs its duties, always with the focus on the legal quality of the duty being investigated.

Investigations in the context of supervising the Public Prosecution Service

Two investigations were completed during the reporting year, in which final reports were published. The Procurator General presented both reports to the Minister of Justice and Security during the reporting year.

- Supervision report on investigating in a computerised work environment (Dutch: “*Onderzoek in een geautomatiseerd werk*”)

The main question of the investigation is whether the way in which the Public Prosecution Service implements the power to conduct an investigation in a computerised work environment complies with the applicable legal requirements and the principles of proportionality, subsidiarity and propriety and whether the supervision of its implementation is adequate.

- Supervision report on the Public Prosecution Service’s compliance with the law in issuing penalty orders (Dutch: “*Buiten de rechter OM*”)

The main question of the investigation is whether the Public Prosecution Service properly complies with the applicable legal requirements when issuing penalty orders.
The Procurator General had already investigated the penalty order issued by the Public Prosecution Service at an earlier stage.

An investigation was also launched in 2022, the main question being whether, when imposing special conditions on a release on probation, the Public Prosecution Service complies with the legal requirements and acts in accordance with the applicable legal principles. The results of the investigation are expected in 2023.

Right of complaint (external authority)

Anyone who has a complaint about the way in which a judicial officer charged with the administration of justice has comported themselves towards him or her in the performance of

their duties may submit this complaint to the Procurator General at the Supreme Court. Such a complaint must regard the conduct of a judge; the substance of a judicial decision is expressly excluded.
The influx of complaints remains high in comparison to the years prior to 2021. Not only are there more complainants, more individual complainants are complaining about multiple judges and proceedings.

In 2022, the Procurator General received 108 complaints. By comparison: 106 complaints were submitted in 2021. All but 7 of the 108 complaints were settled in 2022. Three of those were settled at the start of 2023. In addition, another 20 complaints from 2021 were settled in 2022.

Complaint categories

As in recent years, a large share of the complaints handled in 2022 concerned a judicial decision. In 68 of the complaint cases settled in the reporting period it was argued, among other things, that the complainant did not agree with a judicial decision.

Judicial decisions sometimes regard the order at a hearing. In one case, for example, an attorney had a coughing fit during a hearing held at the start of the COVID-19 pandemic. The attorney stated that the coughing fit had nothing to do with a COVID-19 infection. Given the coughing fit, the judge nevertheless requested the attorney to take a seat at the back of the courtroom. The attorney did not wish to do so, arguing that it would render him unable to provide his client with adequate representation. The judge decided that the attorney could participate in the hearing by telephone from another courtroom, while his client remained in the original courtroom. The Procurator General – as well as the governing board of the District Court – concluded that the complaints were directed at the judge's decisions, which regarded the order at the hearing. In so concluding, the Procurator General noted that the complainant's discomfort with the course of events was understandable.

Another case involved a complaint about the lack of a decision on a claim in a criminal case seeking damages on behalf of two injured parties. The Procurator General was also requested to render decisions on the claims that had been submitted. The Procurator General concluded that the complaints concerned a judicial decision, or rather the lack thereof. After all, the complaint was about the District Court's decision which had been laid down in a judgment. With regard to the request for the Procurator General to render decisions on the claims, the Procurator General concluded that he does not have any responsibilities or authority regarding specific disputes or proceedings that would permit him to intervene in the proceedings or to revise or otherwise change their outcome. The Procurator General did note, however, that the lack of a decision on the complaints of the injured parties was unfortunate and that those parties' dissatisfaction was understandable.

One complaint centred on the court's declining to consider all the information that the complainant submitted and that the complainant considered relevant to the formation of the decision. In this context, as well, the Procurator General concluded that the complaint regarded the formation of a judicial decision.

Another complaint regarded the course of the oral arguments in a case that was handled digitally. The complainant – who was acting as an attorney in that case – submitted a complaint in their own name regarding the way they had been treated by the relevant judge. During the oral arguments, the judge remarked that there was not much to the case and that it was essentially taking up judicial resources that would be better utilised otherwise. That remark prompted the attorney to challenge the judge. This challenge was rejected by the challenge

chamber. The Procurator General concluded – as did the governing board of the Court of Appeal – that the complaints regarding the treatment by the judge were the same as those put forward as grounds for the challenge request, regarding which the court rendered a decision. For that reason, the Procurator General concluded that the complaint regarded a judicial decision. The complaint about the lack of judicial impartiality was not handled because the law provides the separate provision to challenge a judge in connection with such complaints. Pursuant to the provisions of Article 13b(1)(f) of the Judiciary (Organisation) Act, the Procurator General is not obliged to grant the request in such cases. The Procurator General superfluously remarked that there was also the option of initiating an appeal or an appeal in cassation arguing that the contested judgment could not be allowed to stand due to the violation of the fundamental right to have proceedings heard by an impartial court.
Another category of complaints includes those regarding how a court conducts itself towards a complainant, and specifically whether any boundaries of what is considered to be proper behavior have been exceeded. In one case, the complainant complained to the management board of the Court of Appeal about the way in which a justice conducted themselves and their attitude towards the complainant. The complainant asserted that the justice had laughed at him when the complainant expressed his intention to challenge the justice. The justice denied that this had occurred. The management board of the Court of Appeal held that there was an insufficient basis for further investigating whether the justice's conduct towards the complainant was unprofessional. In light of the circumstances of the case, the Procurator General also concluded that there was an insufficient basis for further investigation.

In another case, the complainant submitted a complaint to the management board that a justice had been hostile and had coerced a settlement of the case. The management board sought a response from the justice. The justice did not consider her conduct as having been hostile and indicated that she had issued a preliminary ruling, with all the reservations inherent therein, with the consent of the parties' attorneys. The management board wrote that it was customary for a preliminary ruling to be issued and that, in that context, sometimes opinions were expressed that are more favourable to one party than to the other. There was nothing indicating that the preliminary ruling constituted unreasonable pressure to settle the case. Given this, the management board concluded that there was an insufficient basis for concluding that the complainant had been mistreated. In light of the circumstances of the case, the Procurator General concluded that there was no basis for him to investigate the complaint further.

Another application involved a complaint from a litigant regarding the manner in which the judge had requested him to wear a face mask after the hearing concluded, which manner he perceived to be unnecessarily cutting. The application argued that, at the time, wearing a face mask was not mandatory, but it was only urgently recommended. One impediment in the case was that the complaint was submitted to the management board eleven months after the hearing, as a result of which the judge, when asked, could no longer specifically recall how they had requested the complainant to wear a face mask. The Procurator General concluded that it was not reasonable to assume that any further investigation would lead to a different outcome. The complainant's letter to the management board indicates that the complainant advised the judge about the advisory nature of the COVID-19 measures in force at that time, that the prosecutor seconded that advice and that the judge did not repeat the request. When settling the complaint, the management board expressed that the mere fact that the judge advised the complainant to wear a face mask – in accordance with the measures that applied to the judiciary at that time – did not lead to the conclusion that the judge's conduct was improper. The Procurator General concluded that the complaint had been handled and settled properly by

the management board and that there was no reason to initiate a new investigation into the complaint.
Another case involved a complaint about the course of a hearing that was held digitally, during which the judge interrupted the complainant and disconnected the complainant from the digital hearing environment. The acting Procurator General – as well as the management board – concluded that denying someone the right to be heard involves a judicial decision concerning procedure. The acting Procurator General also found that there was no factual basis for the second part of the complaint. Upon being asked, the judge informed the management board that the image of him painted by the complaint was inaccurate. According to the judge, the complainant had continued to speak even after the judge had repeatedly stated that he had been sufficiently informed. At a certain point, the judge indicated that he would mute the audio if the complainant continued to speak. Given that the complainant continued to speak, the judge attempted to mute the audio and mistakenly disconnected the complainant from the hearing environment. The judge then attempted to reconnect the complainant to the digital hearing environment by asking the attorney to ring the complainant. That attempt was unsuccessful. In any case, the judge emphasised that he did not refuse to allow the complainant to rejoin the digital hearing environment. The acting Procurator General concluded that this part of the complaint had been properly handled and settled and that the decision was not incorrect. For this reason, the acting Procurator General concluded that there was no reason to pursue the investigation.

A complainant must also have a sufficient interest in a complaint. A complainant complained about an opinion piece authored by a judge that was published in a daily newspaper. The complainant argued that this piece harmed the credibility of the judge as a juvenile court judge and the credibility of their case law and that the judge undermined the judicial impartiality of all juvenile court judges and the credibility of the judiciary. From what the complainant wrote, the acting Procurator General could not see that the publication involved any connection between the complainant and the conduct of the judge or that the complainant had a sufficient interest in complaining about the publication. The acting Procurator General also concluded that there was an insufficient basis for the *ex officio* submission of a claim to the Supreme Court requesting an investigation within the meaning of Article 13c of the Judiciary (Organisation) Act. He pointed out that, outside the courtroom, a judge was free to express his or her opinion on societal phenomena, although this freedom was not without boundaries (see ECLI:NL:HR:2014:510). The opinion piece was written by the judge in her capacity as a private citizen. The judge explained why they wrote the piece, stating that it should be considered as a contribution to a societal debate. The judge primarily discussed the statutory grounds for removing a child from their home, but did not address any individual cases. It was unmistakably an opinion piece. That mere fact is generally insufficient to give rise to reasonable doubt about the fair and impartial adjudication of a case.

Claims

No complaints in the reporting period prompted the submission of a claim with the Supreme Court for conducting a further investigation into the conduct of a judge.

Other correspondence

In addition to letters the Procurator General receives in the context of special duties, such as the external complaints procedure and cassation in the interest of the law, the Procurator

General also receives other letters every year. The writers of the letters present various questions and problems to the Procurator General in the hope that he has an answer or a solution. The letters regard, among other things, reports of criminal offences against persons or agencies and/or requests for prosecution, requests to intervene in a case or to assume responsibility for adjudicating a case and requests for legal advice.
In 2022, the Procurator General received 45 of those letters. All but one of these letters were answered in 2022. In addition, two letters from 2021 were answered in early 2022.