Annual report

The Supreme Court of the Netherlands consists of three components: the Supreme Court itself, the Procurator General's Office at the Supreme Court, and the Operations Directorate. In addition, the Supreme Court has three divisions classified by field of law: the civil division, the criminal division and the tax division. In this annual report, the Supreme Court's various components and divisions account for their work in the past year.

At its core, the work of the Supreme Court is based on the fact that the rights, obligations and interests of people and organisations in our democratic state under the rule of law are protected by the law. Everyone working at the Supreme Court is committed to fulfilling that role of the Supreme Court in the legal system and in society, where legal issues arise in a changing national and international environment. The values of the judiciary, such as integrity, expertise and diligence, are not only essential to the work performed in the past year, but they must also inform the Supreme Court's work in the future and ensure the quality thereof. In a changing society, this requires orientation towards the environment and protection of the function of justice for people and organisations in a democratic state under the rule of law.

This includes, for example, the availability of historical information about the importance of the Supreme Court's function to people and organisations. For example, more and more information becomes available today on older court cases that affect the role of the law in society. In 2023, the thousandth "landmark judgment" was published: a pre-2000 judgment that constitutes a landmark in the development and formation of law. Furthermore, the Supreme Court opened its doors to the public in 2023 – as it did in previous years. Unlike in previous years, however, in 2023 the Supreme Court did so as part of a guided tour [*Rondje Rechtsstaat*], the closing day of the Week of the Rule of Law [*Week van de Rechtsstaat*]. During this week, which was co-organised by the Supreme Court, the important message of the rule of law was conveyed to the public.

Being mindful of what is going on in the national and international context of the Supreme Court is a dynamic process that requires and receives constant attention by the Supreme Court in the performance of its duties. In 2023, this dynamic was given central stage at the "EUnited in Diversity II" conference, which took place at the Supreme Court building on 31 August and 1 September 2023. Presidents and members of the constitutional and supreme courts of the Member States of the European Union, of the Court of Justice of the European Union and of the European Court of Human Rights met in The Hague to discuss the core values on which the European Union is founded, such as the democratic rule of law and the protection of human rights.

Safeguarding the values of the Supreme Court's case law now and in the future means that there will always be a need for people to work together from their extensive knowledge and work experience. The Supreme Court celebrated the 45th anniversary of its Research Department in 2023. Employees of the Research Department – talented, often young lawyers – play an essential role in supporting the court and the Procurator General’s Office. To mark this 45th anniversary, the Supreme Court podcast was launched. In this podcast, lawyers from the

Research Department talk about their work at the Supreme Court.
All in all, the annual report shows that in 2023, too, the Supreme Court has been able to perform its duties in the interest of uniformity of law, legal development and the legal protection of people and organisations, thanks in part to the efforts of the people working at the Supreme Court.

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 section 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, the interpretation and application of European Union law, the duties assigned to the fourth division of the Supreme Court and the internal complaint cases are discussed.

The Civil Division

In 2023, the Civil Division of the Supreme Court of the Netherlands rendered almost 400 decisions. Those decisions in 2023 again concerned a wide range of issues, relying on the Supreme Court's three core tasks: development of the law, uniformity of law and legal protection.

Total overview of the Civil Division

Civil Division	2022 actual	2023 schedule	2023 actual
incoming cases	376	440	334
cases disposed of, total	427	440	430

cases disposed of, judgments	403	--	399
cases disposed of, other	24	--	31
advisory opinions	382	400	343
final case load	410	--	314
total average turnaround time	422	--	381

These involved classic issues of property law, including on the standard of interpretation of a will (ECLI:NL:HR:2023:1531) or the qualification of a contract such as an employment contract (ECLI:NL:HR:2023:443, *Deliveroo*), but also issues strongly influenced by European law, such as questions referred for a preliminary ruling regarding the termination of a childcare contract (ECLI:NL:HR:2023:198) and questions referred for a preliminary ruling regarding payment in arrears (ECLI:NL:HR:2023:778).

Remarkable in 2023 was the number of cases in the area of private international law (fifteen decisions in fourteen cases). These cases involved cross-border disputes. Such disputes may give rise to the question of which national court has jurisdiction or under which legal system the dispute must be heard. Such questions arose, for example, in the proceedings on whether the art treasures lent by four Crimean museums to a museum in the Netherlands in 2013 needed to be returned to the Crimean museums or to the State of Ukraine (ECLI:NL:HR:2023:865). Other cases concerned international disputes under employment law, family law and competition law. In a case involving the question of which court has jurisdiction to hear a cross-border dispute regarding competition law, the Supreme Court in turn referred questions for a preliminary ruling to the European Court of Justice of the European Union. This development is in line with the trend of further internationalisation of civil litigation, which also increases its complexity.

The year 2023 was further characterised by a relatively large number of claims for cassation in the interest of the law (eight), an instrument which – like the preliminary ruling proceedings – is pre-eminently intended to contribute to the development of the law and uniformity of law. A claim for cassation in the interest of the law relates to a decision that has become final and is instituted by the Procurator General at the Supreme Court. The outcome of a claim for cassation in the interest of the law does not change the decision against which the claim is directed and therefore does not change the legal position of the parties to the case, but it is of interest to the law. This also involved a wide range of issues, such as regulations on public access to civil proceedings (ECLI:NL:HR:2023:658), judicial review of a perspective or childcare

decision in the context of a minor's out-of-home placement (ECLI:NL:HR:2023:1148), and a patient's right to inspect legal opinions on liability for medical error (ECLI:NL:HR:2023:1670). The latter issue is relevant to proceedings on medical liability, in which regard questions referred for a preliminary ruling were also answered in 2023 (ECLI:NL:HR:2023:1682).
In 2023, there were seven cases in which the Civil Division answered questions referred for a preliminary ruling (there were thirteen cases in 2022 and sixteen in 2021). These concerned, among other things, the relationship between the regulation in the Dutch Civil Code and the European Consumer Credit Directive in the case of subsequent payment for purchases in an online store (ECLI:NL:HR:2023:1006), the requirement of the written form in case a consumer buys a building plot (ECLI:NL:HR:2023:1755), and the contribution obligation of joint and several debtors in a group relationship (ECLI:NL:HR:2023:295).

The Supreme Court is also the highest court in Caribbean cases. This means that an appeal in cassation against decisions of the Joint Court of Justice of Aruba, Curaçao, Sint Maarten and of Bonaire, Sint Eustatius and Saba can be submitted to the Supreme Court. In 2023, the Civil Division rendered judgement in ten Caribbean cases, on a variety of issues. See, for example, ECLI:NL:HR:2023:773, on law relating to property held in common ownership and ECLI:NL:HR:2023:1057, on timeshare agreements. Generally, the law to be applied corresponds to the law in the European part of the Kingdom, but that is not always the case. Also, legal procedure is not identical in every respect. In addition, when interpreting and applying rules of law, the Supreme Court must take into account the possibility that societal views in the Caribbean part of the Kingdom may deviate from those in the European part of the Kingdom.

The Criminal Division

In 2023, the Criminal Division of the Supreme Court of the Netherlands rendered close to 3,000 decisions. In 2,256 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 (1,333) or that the complaints were manifestly incapable of leading to cassation (857). Of the 1,646 cases in which grounds for cassation were filed, 297 (18%) resulted in setting aside. Of the eleven review applications, four were declared well-founded.

Total overview of the Criminal Division

Criminal Division	2022 actual	2023 schedule	2023 actual
incoming cases	3,174	3,100	3,454
cases involving grounds for cassation	1,716	1,800	1,935

cases disposed of, total	3,007	3,100	3,158
cases disposed of, judgments	2,849	2,950	2,979
cases disposed of, other	158	150	179
advisory opinions	809	900	803
final case load	2,183	2,183	2,479
total average turnaround time	223	--	233

Questions referred for a preliminary ruling and digital investigation

For the first time, the Supreme Court has answered questions referred for a preliminary ruling in a criminal case. In its judgment of 13 June 2023 (ECLI:NL:HR:2023:913) the Supreme Court, following an opinion issued by Advocate General Paridaens, addressed the requirements for questions referred for a preliminary ruling.

In this case, the questions referred for a preliminary ruling concern the legality of investigative operations in respect of encrypted messaging services EncroChat and/or SkyECC and their users. These operations involved cooperation with foreign investigative agencies and the use of new investigative techniques and powers (hacking) to intercept considerable amounts of data. Proceedings about this are pending in several countries as well as before the European Court of Human Rights and the Court of Justice of the European Union. Many Dutch criminal cases are based on evidence derived from crypto phones hacked abroad. So the first time questions were asked, the questions concerned a very important issue right away. This should not deter courts from referring questions for a preliminary ruling even in "smaller" cases.

During the discussion, the Supreme Court held that decisions of foreign authorities underlying foreign investigations must be respected and it is, in principle, assumed that the investigation was conducted lawfully. The court needs to consider how the results of the investigation conducted abroad were obtained only if that is of interest to the assessment of whether the use as evidence of those results is in line with the right to a fair trial.

Freedom of expression and freedom of assembly

The judgment of 19 December 2023 (ECLI:NL:HR:2023:1742) concerns an accused who was part of a group of around 25 to 30 activists who demonstrated at a Shell office building. The accused poured a black oil-like liquid over the stairs in front of that building as a "symbolic action and to lend force to the demonstration". She was convicted for vandalism.

The Supreme Court rejected the ground for cassation entailing that the accused should be released from all prosecution due to the criminal proceedings being incompatible with the freedom of expression and the freedom of assembly (Articles 10 and 11 ECHR). The Supreme Court noted, among other things, that the reason for the accused's prosecution was not her participation in the protest against Shell, but her committing a criminal offence during that protest.

In this regard, the Supreme Court referred to a decision of the European Court of Human Rights rendered shortly before, on 21 November 2023, No. 56896/17 et al. (*Laurijsen and others v. the Netherlands*). That judgment emphasises that what matters in the assessment of whether taking criminal action at a protest is a permissible restriction on the exercise of the right to freedom of expression and the right to freedom of assembly is whether the accused themselves committed a "reprehensible act" (engaged in objectionable conduct).

In the *Shell* case, the Supreme Court also took into account the fact that the Court of Appeal sufficed with imposing a wholly conditional fine of EUR 350, thereby ensuring that the punishment was proportionate and not so drastic as to have a "chilling effect" on persons who, by participating in a protest, wish to exercise their right to freedom of expression and their right to freedom of assembly.

Absence of criminal responsibility on account of mental disorder

The case of Thijs H. concerned a man who stabbed three people to death with a knife at Brunsummerheide and the Scheveningse Bosjes during a psychosis. The Court of Appeal sentenced Thijs H. to a prison term of 22 years and detention under a hospital order with compulsory treatment. In doing so, the Court of Appeal did not follow the opinions in two expert reports issued stating that the offences not be attributed to the accused. According to the Court of Appeal, at the time the proven offences were committed, the accused was to some extent capable of making an assessment and was sufficiently capable of understanding the unlawfulness of his conduct and acting in accordance with that understanding.

In the judgment of 17 October 2023 (ECLI:NL:HR:2023:1295) the Supreme Court, following an opinion by Procurator General F.W. Bleichrodt, provided a framework for ruling on the absence of criminal responsibility on account of mental disorder. It is up to the fact-finding court to decide that the charges cannot be attributed to the accused on the basis of Article 39 Dutch Criminal Code. The criterion is then whether, at the time of the offence, the accused was suffering from a disorder within the meaning of this provision and, as a result of that disorder, was incapable of understanding that the fact was unlawful or incapable of acting in accordance with his understanding of the unlawfulness of that offence. The court has a responsibility of its own in this regard and is not bound by expert opinions. The Supreme Court therefore dismissed the appeal in cassation, in part because the Court of Appeal explained in detail why it had deviated from the substance of the expert reports.

Review

Extensive proceedings preceded the latest review application with regard to the "Deventer murder case". Following a review application previously declared well-founded, the accused was sentenced again in 2005. Following a review application previously rejected, however, the applicant asked the Procurator General to order further investigation as described in Article 463 Dutch Criminal Code. That request was granted following an opinion rendered by the Advisory Committee on Concluded Criminal Cases (ACAS, *Adviescommissie afgesloten strafzaken*). Subsequently, another review application was filed.

The application was again rejected in the judgment of 19 December 2023 (ECLI:NL:HR:2023:1772). In this judgment, the Supreme Court set forth the legal framework regarding the substantiation and assessment of a review application and the requirements that apply when the application is based on a new and/or changed expert opinion. Contrary to the applicant's contention, the Procurator General, in conducting a further investigation, has the freedom "to make all such additional inquiries as he deems necessary", in which regard he may also perform investigative acts against the applicant's will. Subsequently, the Supreme Court may consider those findings in assessing the review application, regardless of whether the applicant relied on them in the application.

In Supreme Court, 21 November 2023 (ECLI:NL:HR:2023:1602), the review application was granted because after the conviction for stalking and threat, among other things, further investigation revealed that the person making the report had most likely sent the text messages for which the applicant was convicted herself by, among other things, using a paid service that allowed text messages to be sent in another person's name, with another person's phone number or anonymously.

Hacking

A company's accountant was convicted for making information on the company's server available to another employee in connection with his dismissal proceedings against that company. This is a criminal offence if the information was obtained through unlawful intrusion with a false key (hacking, Article 138ab Dutch Criminal Code). The case is special because it involves someone who was actually authorised to access the system for his regular duties. The question then is whether unlawful intrusion is at hand. After all, it cannot be that the mere violation of the employer's policy, for example, should already qualify as a criminal offence.

In its judgment of 18 April 2023 (ECLI:NL:HR:2023:610) the Supreme Court ruled that "intrusion" occurs when access to all or part of an automated work is obtained against the clear will of the rightholder. The accountant did have login credentials to access the company's secure server, but had used them to access a large amount of data that was in no way related to the work agreed between him and the company. He copied this data in order to make it available to the other employee and his attorney. In doing so, he acted "against the clear will" of the company.

The Tax Division

In 2023, 1,201 cases were brought before the Supreme Court’s Tax Division. This was more than expected, but many cases were later withdrawn. 1,038 cases were disposed of, of which 654 by judgment (63%). The other cases disposed of were withdrawn or handled by the court clerk. The case load increased to 948 cases. The average processing time for cases increased by 13 days to 287 days compared to 2022.

An advisory opinion by the Office of the Procurator General is optional in tax cases. In 2023, opinions by one of the four Advocates General in the tax law sector were submitted in 104 cases. Due to personnel changes, that number is lower than usual. At the request of the chairman of the Administrative Jurisdiction Division of the Council of State, the Office of the Procurator General for tax cases also submitted an opinion in a case pending before that body about the relationship between the concept of being an administrative offender and the concept of being a criminal offender or author in an organisation context (ECLI:NL:RVS:2023:579).

The vast majority of cases received concerned state taxes (55%) and local government taxes (41%, of which 86% property tax). The remaining 4% of incoming cases mainly concerned – limited – appeals in cassation against decisions of the Central Appeals Tribunal. The state tax cases mostly pertained to income tax (31% of state tax cases) and private motor vehicle and motorcycle tax (26%), followed by turnover tax and customs duties (together 14%), dividend tax (7%) and corporate income tax (6%). Thus, the number of incoming property tax and motor vehicle tax cases remained high in 2023, too.

Total overview of the Tax Division

Tax Division	2022 actual	2023 schedule	2023 actual
incoming cases	970	900	1,202
cases disposed of, total	1,135	900	1,038
cases disposed of, judgments	772	825	654
cases disposed of, other	363	75	384
advisory opinions	113	140	104
final case load	783	650	948
total average	274	--	287

turnaround time

A number of cases are highlighted below to illustrate the work of the tax division in the interest of the uniformity, protection and development of the law in 2023.

Judgments

Questions may be referred for a preliminary ruling both by and to the Supreme Court. In 2023, the Tax Division answered questions from the Court of First Instance of Aruba on the increase of the Aruban land tax rate from 0.4% to 0.6% halfway through a five-year assessment period (ECLI:NL:HR:2023:488). It ruled that the five-year period serves to provide legal certainty on the value of immovable property, but not to fix the rate for five years. Therefore, an early change in the rate does not violate the principle of legitimate expectations or the principle of legal certainty, nor that of a legitimate expectation that can be considered a possession within the meaning of Article 1 Protocol I ECHR (protection of property). The Aruban legislature was free to change the rate with immediate effect as part of its tax reforms for a more balanced tax distribution. It stayed within its wide margin of discretion in doing so.

In ECLI:NL:HR:2023:1371, the Tax Division itself referred a question to the Court of Justice of the European Union for a preliminary ruling. This question concerned the compatibility with EU law of the statutory liability of company directors for the turnover tax owed by that company. The Supreme Court wanted to know whether the far-reaching consequence of the company failing to notify the tax collector in time of its inability to pay is consistent with the proportionality principle of EU law, given that a failure to notify entails that the non-payment of tax is deemed to be due to mismanagement and the director is not allowed to provide evidence to the contrary if he does not first prove that it was not his fault that the company failed to correctly notify the tax collector of its inability to pay, and given that neither the court nor the tax collector is authorised to mitigate that liability.

In response to Advocate General IJzerman's claim for cassation in the interest of the law, a mixed panel (members of different divisions of the Supreme Court and a justice extraordinary of the Supreme Court who is a Councillor of the Administrative Jurisdiction Division of the Council of State) ruled that the regulation concerning the penalty to be paid by an administrative body if it does not decide on an application in time (Article 4:17 Dutch General Administrative Law Act) also applies to applications for an ex officio reduction of tax assessments (ECLI:NL:HR:2023:134).

The case ECLI:NL:HR:2023:1568 is important for administrative law as a whole. The Tax Division, which also included a justice extraordinary who is a Councillor of the Administrative Jurisdiction Division of the Council of State for this case, ruled, following the opinion of Advocate General Pauwels, that when the administrative body acknowledges the incorrectness of an assessment it has imposed before the statutory period for objection or appeal against that assessment expires without being used, the fact that the taxpayer did not object to or appeal against that assessment within that period cannot be held against him. After all, such acknowledgement creates the expectation that an objection or appeal is no longer necessary. Conversely, if the interested party fails to object or appeal in time and the administrative body only acknowledges the incorrectness of the assessment after the statutory period for objection or appeal expires, then the assessment will be irrevocable on account of the period expiring without being used.

The case ECLI:NL:HR:2023:1053 concerned the EU-law principle of defence. The tax collector had obtained court approval to impose pre-judgment attachment on a company's bank balances on account of suspicions of fraud and fear of the disappearance of assets for recourse, on the condition that any additional turnover tax assessments would be imposed within six weeks. The company only received the audit report and the immediately due additional tax assessments from the tax inspector on the last day of those six weeks. This prevented it from defending itself before the assessments were imposed. Because the tax inspector already had the intention to impose additional assessments at the start of the six weeks, the Supreme Court did not see why the company could not be given the opportunity to present its views before the assessments were imposed. As a defence by the company could have led to a different outcome, the Supreme Court reversed the additional tax assessments.

Advisory opinions

The Office of the Procurator General issued advisory opinions in several important tax cases in 2023, which did not lead to a judgment in that same year.

Advocate General Ettema recommended that the Supreme Court, on the basis of the European Convention on Human Rights, grant the exemption for children and the low inheritance tax rate also to the child of a deceased biological father if that child legally became the child of another man through recognition by that other man, even if national law does not allow this (ECLI:NL:PHR:2023:1201).

Advocate General Wattel delivered an advisory opinion to the effect that the Box 3 Legal Redress Act (*Wet rechtsherstel box 3*), which was supposed to eliminate the incompatibility of the levy of box 3 taxes with the prohibition on discrimination and the fundamental right to property, still violates those fundamental rights. After all, the Box 3 Legal Redress Act does not change the fact that an averaged tax by definition discriminates against all taxpayers with below-average returns and privileges all taxpayers with above-average returns, given that the dispersion around a return on average capital is very large (ECLI:NL:PHR:2023:655).

Advocate General Wattel also delivered advisory opinions in two cases on abuse and improper use of the right to bring proceedings. In ECLI:NL:PHR:2023:1044, he opined that the right to bring proceedings was abused by a citizen who, in collusion with a no-cure-no-pay attorney, initiated substantively hopeless proceedings concerning parking tax assessments elicited by that citizen for the sole purpose of obtaining fixed payments for the costs of proceedings and missed deadlines. He recommended that the Supreme Court order the abuser to pay the costs of the proceedings. The appeal in cassation was withdrawn immediately after the appellant took note of the opinion, so no further ruling by the Supreme Court will follow. The case ECLI:NL:PHR:2023:1042 concerns an interested party seeking EUR 1,500 in non-pecuniary damages because he had to wait a long time for a judgment on his – unfounded – claim for a rounding difference of EUR 0.80. The Advocate General recommended that the Supreme Court, in property tax and motor vehicle tax cases, (i) cap the compensation to be paid for excessive duration of proceedings involving a professional representative at the financial interest in the proceedings that can be argued to exist, in fact and at law, (ii) set the lower limit, below which tension and frustration due to the length of proceedings cannot be presupposed, considerably higher than EUR 15, and (iii) concur with the case law of the District Courts and Courts of Appeal and the Revaluation of the Compensation for Legal Costs in Property and Motor Vehicles Tax Cases Act (*Wet herwaardering proceskostenvergoedingen WOZ en BPM*), which came into effect on 1 January 2024, resulting in lower compensations and more alignment with the circumstances of the case.

With the exception of the case in which the appeal in cassation was withdrawn, these cases are still pending before the Supreme Court.

Law of the European Union

In the interpretaion 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 the 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 2023, there were five cases in which the Supreme Court referred questions to the Court of Justice:

- Judgment of 10 February 2023, ECLI:NL:HR:2023:187
- Judgment of 31 March 2023, ECLI:NL:HR:2023:508
- Judgment of 23 June 2023, ECLI:NL:HR:2023:965
- Judgment of 30 June 2023, ECLI:NL:HR:2023:1006
- Judgment of 6 October 2023, ECLI:NL:HR:2023:1371

In 2023, one judgment of the Court of Justice concerned cases in which the Supreme Court had referred questions for a preliminary ruling in previous years:

- Judgment of 2 February 2023, C-806/21, ECLI:EU:C:2023:61
  (final decisions: Supreme Court, 30 May 2023, ECLI:NL:HR:2023:766; Supreme Court, 30 May 2023, ECLI:NL:HR:2023:767; Supreme Court, 30 May 2023, ECLI:NL:HR:2023:768; Supreme Court, 30 May 2023, ECLI:NL:HR:2023:769)

"EUnited in Diversity II" conference at the Supreme Court building on 31 August and 1 September 2023

The Fourth Division

In addition to the Civil Division, the Criminal Division and the Tax Division, the Supreme Court of the Netherlands 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 bring such cases before the Supreme Court. Furthermore, the Fourth Division handles applications dealing with the challenge of Supreme Court justices. 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.

Judgments of the Fourth Division are published at www.rechtspraak.nl.
The Fourth Division rendered judgment in thirteen cases in 2023. One judgment related to a dismissal and one related to the imposition of a disciplinary measure. Eleven judgments related to requests to challenge members of the Supreme Court. These challenge requests came from four applicants. They submitted five, three, two and one challenge request(s), respectively.

Dismissal

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 his or her own request. In certain situations, 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 (*Wet rechtspositie rechterlijke ambtenaren*).

On 24 February 2023, the Fourth Division of the Supreme Court dismissed a deputy judge (ECLI:NL:HR:2023:328). The individual in question had been appointed deputy judge in the context of a judge traineeship. She had not been deployed as a deputy judge for more than two years. Her judge traineeship had ended in a negative assessment. No other reason to stop deploying the individual as a deputy judge had emerged. With reference to its 2021 judgment (ECLI:NL:HR:2021:1996), the Supreme Court held that there was a sufficiently compelling reason to dismiss the individual in question.

Disciplinary measure

In 2023, the Procurator General filed a claim with the Supreme Court for the written warning of a justice . The rules governing this action are also laid down in the Judicial Officers (Legal Status) Act. On 7 July 2023, the Supreme Court issued the written warning (ECLI:NL:HR:2023:1019). The individual in question was a justice at a Court of Appeal. With regard to a criminal case with great social impact pending before the District Court of the relevant district, she had acted in a way that undermined confidence in the authority and impartiality of the judiciary. The Supreme Court ruled that, by her actions, she had caused serious harm to the proper administration of justice and public confidence in the legal system.

Challenge cases

As a safeguard of judicial impartiality, the law provides for the possibility to submit a request to challenge a judge in a case. The party submitting a challenge request is requesting the replacement of a specific judge by another judge. The rules on challenge are part of the procedural law of all areas of law in which the Supreme Court handles cases. The Protocol on Participation in the Handling and Deliberations of the Supreme Court of the Netherlands provides additional rules for the handling of a challenge request pertaining to one of the members of the Supreme Court.

A challenge request must state why the applicant believes that the judge in the case is not impartial. 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 evidence that the judge harbours a bias against the person filing the request or that the applicant has objective grounds to fear such bias (ECLI:NL:HR:2018:1770).

The judgment of 14 April 2023 (ECLI:NL:HR:2023:575) states that the challenge request came from an applicant who frequently submits unsubstantiated challenge requests in tax cases and ventilates general complaints. The Supreme Court ruled that the applicant was clearly abusing the remedy of challenge and that the unsubstantiated request could not reasonably be understood as anything other than the use of the right to request challenge for purposes other than its intended purpose. The Supreme Court disregarded the challenge request and ruled, on the basis of Article 8:18(4) of the General Administrative Law Act (*Algemene wet bestuursrecht*), that further challenge requests from the applicant in the same case would not be considered.

In the case that led to the judgment of 7 July 2023 (ECLI:NL:HR:2023:1029), the applicant requested challenge after the applicant had been informed that judgment would be rendered, from which the applicant inferred that his request to be allowed to explain the case orally had been rejected. The applicant concluded that he was denied the opportunity to realise his right to a fair and impartial hearing of the case. The challenge request was rejected. The announcement that judgment would be rendered did not justify the conclusion drawn by the applicant.

Following the rejection, the applicant was again informed when judgment would be rendered in his case. In response, the applicant submitted a second challenge request. During the hearing of this challenge request, the applicant submitted a request to challenge the justices hearing the challenge request. This request did not meet the requirement that challenge requests be substantiated. It was not classified as a challenge request within the meaning of Article 8:15 of the General Administrative Law Act. The judgment of 17 November 2023 (ECLI:NL:HR:2023:1577) disregarded the request to challenge the justices hearing the challenge request. It also stipulated that further challenge requests from the applicant in the same case would not be considered.

Subsequently, it was found in the judgment of 22 December 2023 (ECLI:NL:HR:2023:1801) that the announcement of the judgment did not constitute evidence that the justices assigned to render judgment harboured a bias against the applicant. The second challenge request was therefore also rejected.

The judgment of 22 September 2023 (ECLI:NL:HR:2023:1289) concerned a challenge request submitted after judgment was announced. One of the reasons given for the challenge request was that it was unclear who had been responsible for the procedural decisions in the case until that communication.

During the hearing of this challenge request, the applicant submitted a request to challenge the justices hearing the challenge request. One of the reasons given for this challenge request was that the summons to the hearing had not been sent by registered post and had not reached the applicant in time. As this was not evidence that the justices involved harboured a bias against the applicant nor an objective justification to fear such bias, the request to challenge the justices hearing the challenge request was rejected in the judgment of 19 May 2023 (ECLI:NL:HR:2023:734).

Subsequently, the challenge request pertaining to the justices assigned to render judgment in the applicant's case was rejected in the judgment of 22 September 2023 (ECLI:NL:HR:2023:1289). The challenge request did not mention any circumstances that would justify the conclusion that the justices involved were biased or that the fear thereof was objectively justified.

In five judgments of 29 August 2023 (ECLI:NL:HR:2023:1139, ECLI:NL:HR:2023:1140, ECLI:NL:HR:2023:1141, ECLI:NL:HR:2023:1142 and ECLI:NL:HR:2023:1143), the Supreme Court disregarded unsubstantiated challenge requests and ruled that further challenge requests in the case would not be considered.

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 are or have been pending before a court. Complaints also cannot be filed in respect of a judicial decision or the manner in which said decision was arrived at, including the procedural decisions taken in that context. In cases involving the exercise of powers conferred upon the clerk of the Supreme Court by law, complaints directed against acting clerks will be attributed to the clerk of the Supreme Court. These complaints will also be handled in the context of this complaints regulation.

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

Reporting period

In 2023, the President handled four complaints pursuant to the complaints regulation.

The first complaint concerned the actions of an employee of the administrative department of the Supreme Court's Criminal Division. The complainant wrote that the employee refused to tell him which members of the Supreme Court would pass judgment on his appeal in cassation. This complaint was found justified. Pursuant to the Protocol on Participation in the Handling and Deliberations of the Supreme Court of the Netherlands, the complainant was allowed to request a statement of the names of the members charged with handling his case. If the manner in which the complainant made the request was incorrect, then the complainant should have been informed of this and of the proper manner to make such request. If the manner in which the request was made was correct, then the requested information should have been provided to the complainant.

The second complaint was directed against an employee of the Registry of the Supreme Court. The complainant had submitted a missing page in addition to a notice of appeal in cassation he had filed earlier. The employee subsequently informed him that the addition had been designated as additional substantiation and had been received after the appeal period had expired. The complainant disagreed. As this complaint pertained to a pending judicial decision, the complaint was not heard further.

The third case concerned a complainant who wrote various messages to the President and the acting clerk and repeatedly used the replies to his messages as an excuse to submit a complaint against whoever devoted attention to his messages. In compliance with Article 7.2 of the complaints regulation, these complaints were not heard because the weight of the conduct complained of – devoting attention to and answering the complainant's messages – was clearly insufficient.

The fourth complaint pertained to a letter from an acting clerk. In this letter, the complainant was informed on behalf of the chairman of the Tax Division about a decision of the Tax Division on the complainant's application for review. This complaint pertained to a judicial decision. The complaint was declared to be 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 2023. For example, some complained to the Supreme Court or the President because they were displeased about 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 special duties. These letters and e-mails do not fall within the scope of the complaints regulation and are generally answered by the clerk of the Supreme Court to that effect.

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.

In 2023, a statement was posted on the Supreme Court's website (on the page: Contact en bezoek) in response to the circumstance that some people are sending forms to the Supreme Court to inform it that they wish to decide for themselves whether to accept obligations to the government. As these documents are not sent in connection with cases pending before the Supreme Court, the Supreme Court cannot do anything with these documents. It is administratively impossible to inform the senders of this individually. These documents will not be considered or responded to.

Contacts with the legislator

Advisory opinions on legislative proposals

The President of the Supreme Court and the Procurator General at the Supreme Court may provide advisory opinions on draft legislative proposals at the request of the Minister of Justice and Security. Generally, advisory opinions are given on proposed legislation relating to the judicial organisation and coordination within it, and on changes to procedural law. Political aspects and choices are excluded from the advisory opinions.

The choices made in the advisory role take into account that the President and the Procurator General cannot anticipate future proceedings before the Supreme Court regarding the interpretation and application of provisions that have been proposed and may become law. The joint responsibility of the three branches of government for human freedom and dignity, the principles of the rule of law based democracy, and the values of the European Union are also taken into account.

The advisory opinions issued are published on the Supreme Court's website. In 2023, the President and the Procurator General provided two advisory opinions on proposed legislation (in 2022: three). These were:

- Opinion on the proposal for the General Administrative Law Guarantee Function Act (*wetsvoorstelWet waarborgfunctie Awb*)
- Opinion on the proposal for the Political Parties Act (*wetsvoorstelWet op de politieke partijen*)

Dialogue

As an institution, the Supreme Court fulfils an autonomous role in the good relations between representatives of the three branches of government. The President of the Supreme Court and the Procurator General at the Supreme Court perform a linking figurehead function that manifests itself mainly in contacts and conversations. Good relations contribute to mutual respect and an understanding of one another's responsibilities in the state and society. A direct dialogue between representatives of the branches of government allows for an exchange of views on the shared underlying responsibility for the function of the law in upholding human freedom and dignity, the principles of the rule of law based democracy, and the values of the European Union.

Such a dialogue does not concern pending or future cases, but concerns topics that promote the understanding of and insight into one another's work. What information does one need about the nature of the other's work in order to do one's work as effectively as possible? An example of the contacts in 2023 is the working visit by Senators to the Supreme Court on 7 November 2023. During interactive sessions, members of the Senate, the Supreme Court and the Supreme Court's Procurator General's Office asked each other questions and exchanged experiences. The use of the annual report provides another example. Over the course of the year, the content of the Supreme Court's annual report was regularly used as a tool in the dialogue with representatives of the legislative branch.

Signals to the legislature

Since 2017, the Supreme Court’s annual report has included an overview of decisions that draw the legislature’s attention to a specific problem, also referred to as signals to the legislature. There were six such decisions in 2023, compared to ten in 2022, ten in 2021, eight in 2020, four in 2019, ten in 2018 and fourteen in 2017.

This 2023 overview briefly specifies judgments containing a signal to the legislature, presenting them in chronological order. They deal with the interpretation and application of legislation in light of the Supreme Court’s duties to promote uniformity and development of the law and offer legal protection at the level of individual cases and the level that transcends individual cases.

The selection of such decisions is not based on a systematic approach. The overview is provided in light of the Supreme Court’s duties of promoting the uniformity and the development of the law and offering legal protection. The executive, legislative and judicial branches of government each have their own responsibilities under law when legislation is drafted. They all share an interest in effective legislation that offers legal certainty to those seeking justice and to society as a whole. In serving this interest they also interact with each other. Effective interaction between representatives of the three branches will, among other things, enhance the quality of justice. Over the years, the inclusion in the Supreme Court’s annual report of signals to the legislature has become a signal in itself of the importance of helping to ensure, with a view to judicial decisions in case law, that problem areas in the law can be recognised and resolved in a timely manner.

For example, decisions in this overview may include a problem area encountered by the Supreme Court while applying legislation to a case. Giving signals can help society and those involved in the administration of justice understand what legal and technical problems the Supreme Court encounters in practice. Signals are intended as an aid, alongside the weekly publication of Supreme Court decisions on rechtspraak.nl. It is up to the legislature to decide

whether it wants to respond to a signal from the Supreme Court, for example with a legislative procedure or through a dialogue between co-legislators.
The signals to the legislature in the Supreme Court's annual reports are of a variable nature. This may include, for example, the indication of legal problem areas, but it may also concern the identification of deficiencies in the law. Examples of points meriting attention that are of a technical legal nature include gaps in statutory law, rules that contravene higher-ranking rules, unclear regulations, or regulations that are not sufficiently harmonised with one another. Addressing a shortcoming in the law stems from the Supreme Court's duty to provide legal protection and promote the development of the law.

Signals from the Supreme Court to the legislature are unrelated to choices that are not up to the court, such as political choices. In some cases, the Supreme Court may, within the scope of its duties, offer a solution to an identified problem area in its decision on the case. In other cases, the decision will indicate that this is in fact impossible or undesirable under the applicable law. Signals from the Supreme Court to the legislature are confined to questions that the Supreme Court encounters in its case load.

Judgments

Two decisions rendered on 31 January 2023 (ECLI:NL:HR:2023:128 and ECLI:NL:HR:2023:81) by the Criminal Division of the Supreme Court dealt with the assessment framework in complaint procedures regarding seizures. The Supreme Court devoted some of the findings in these decisions (para. 2.6 in both decisions) to drawbacks of the current system of remedies in complaint procedures regarding seizures. In its findings, it took into consideration the criminal investigation, passage of time, application of law, nature of decisions in complaint procedures and procedural requirements arising from ECtHR case law. The Supreme Court held that it is up to the legislature whether to provide for a different system of remedies for complaint procedures.

In a decision of 18 August 2023 (ECLI:NL:HR:2023:1094) on turnover tax and private use of a passenger car provided by the employer to the employee, the Tax Division observed that the fourth paragraph of Article 25e of the State Taxes Act (*Algemene wet inzake rijksbelastingen*) makes no mention of taxes paid via tax return, which include turnover tax. That provision regulates cases in which the Inspector is wholly or partially ruled against in an irrevocable judgment in the test case referred to in the first or second paragraph of Article 25e of the State Taxes Act. It follows from the second sentence of Article 25e(4) of the State Taxes Act that, in such a case, the Inspector must issue a refund within six months of the notification of the collective decision if the objection relates to tax withheld or tax remitted via tax return. The provision does not mention taxes paid via tax return, such as turnover tax. The Supreme Court found that the legislature apparently overlooked this and, by analogy with Article 65(2) State Taxes Act, also considered this provision applicable to taxes paid via tax return.

In a decision rendered on 25 August 2023 (ECLI:NL:HR:2023:1130) by the Civil Division of the Supreme Court on the law of inheritance (objection to a distribution list, Article 4:218(3) of the Civil Code (*Burgerlijk Wetboek*)), the Supreme Court ruled on an appeal in cassation filed against a decision of a first instance Court. That decision was not open to appeal. Pursuant to Article 80(1) of the Judiciary Organisation Act (*Wet op de rechterlijke organisatie*), the appeal in cassation was admissible, but the decision of the first instance Court was not open to appeals on issues of law. However, it could be argued that the decision did not contain the grounds on which it was based (Article 80a(1), opening words and (a), Judiciary Organisation Act). The Supreme Court found that the justification of this restriction was questionable in such

procedure, which may involve substantial financial interests, while the same restriction does not apply when following a different procedure, namely the appointment of a supervisory judge for liquidation pursuant to Article 4:208(1) of the Civil Code. The Supreme Court stated that the legislative history does not show that the legislature recognised that Article 80(1) of the Judiciary Organisation Act applies if no supervisory judge is appointed. However, this was insufficient reason to disapply Article 80(1) of the Judiciary Organisation Act in this case.
A decision of 1 September 2023 (ECLI:NL:HR:2023:1148) by the Civil Division of the Supreme Court pertained to a question of juvenile law, namely whether a perspective decision of a certified institution can be submitted to the juvenile court via the dispute resolution procedure of Article 1:262b of the Civil Code. The Supreme Court ruled that the law does not allow this on its own. A perspective decision contains a certified institution's opinion on whether a child placed in care can still be returned to the parental home.
The decision followed a claim for cassation in the interest of the law by the Procurator General at the Supreme Court. In the decision, the Supreme Court stated that it is up to the legislature to provide for a judicial process within the system of Book 1 of the Civil Code if the legislature finds it desirable to allow the perspective decision as such to be reviewed in court. The issue has the attention of the legislature (see, for example, Parliamentary Papers II 2023/24, 31839, no. 985, pp. 4-5).

A decision of 3 November 2023 of the Civil Division (ECLI:NL:HR:2023:1502) pertained to mandatory mental healthcare. The case concerned the question of whether an emergency measure, or an authorisation to continue such measure (Article 7:1 and Article 7:7 of the Mandatory Mental Healthcare Act (*Wet verplichte geestelijke gezondheidszorg*)), could provide that the individual in question be admitted to a forensic psychiatric centre (FPC), an institution as referred to in Article 3.1(1) or Article 3.3(1) of the Forensic Care Act (*Wet forensische zorg*). In its affirmative reply, the Supreme Court called attention to a difference between the legislation on emergency measures and the legislation on care authorisations.

When a court grants a care authorisation, the law explicitly provides for the option to stipulate whether the individual in question can or must be admitted to an FPC (Article 6:4, (3) to (5), Mandatory Mental Healthcare Act). The law does not provide for that option in that manner in the case of an emergency measure or continuation thereof (Articles 7:1 and 7:7 Mandatory Mental Healthcare Act). There is no explanation for this in the legislative history. The considerations underlying Article 6:4, (3) to (5), Mandatory Mental Healthcare Act also apply to admission under an emergency measure (or continuation thereof). It is possible to stipulate in an emergency measure or an authorisation for the continuation thereof whether the individual in question can or must be admitted to an FPC. The terms 'healthcare provider' and 'accommodation' (Article 1:1, (b) and (w), Mandatory Mental Healthcare Act) are defined broadly. This includes the provision of care in an FPC. However, there is no statutory provision that – like Article 6:4(5) of the Mandatory Mental Healthcare Act – explicitly provides for the application of powers of administration when someone is placed in an FPC under an emergency measure (or continuation thereof). It is clear that the legislature considers placement in an FPC possible only if powers of administration are declared to apply to it. The mayor or the court will have to arrange for this where appropriate.

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

Deputy 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 law, criminal law and tax law. 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. A total of 1,250 opinions were issued in 2023: 343 in civil cases, 803 in criminal cases and 104 in tax cases.
In addition, the Procurator General has a number of special duties. The special duties of the Procurator General 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 extraordinary legal remedy is an instrument for obtaining the Supreme Court's decision on a legal question which must be answered in the interest of legal uniformity and which cannot be put before the Supreme Court, or at least not soon enough, via an ordinary appeal in cassation.

Since February 2023, overviews of the claims for cassation in the interest of the law that have been submitted and are expected to be submitted can be found on the Supreme Court website. These overviews include short descriptions of the legal questions adressed in these cases. The purpose of uploading these overviews is to increase the efficiency of this special legal remedy by making the proceedings more transparent.

More information about cassation in the interest of the law and the overviews of the claims submitted and to be expected can be found on the website of the Supreme Court.

Requests

In 2023, the Procurator General received 30 requests to initiate claims in cassation in the interest of the law, eight fewer than the year before.

In the reporting period, 26 rejection letters were sent in response to requests to initiate claims in cassation in the interest of the law, nine fewer than the year before. The most common reason for rejecting a request was that it did not concern a legal question which required clarification in view of uniformity of law or legal development. This may be because insufficient evidence was provided for the existence of divergent court decisions regarding the issue in question.

Claims and decisions

In 2023, five claims for cassation in the interest of the law were submitted. This is seven fewer than the year before. These claims concerned four civil cases and one criminal case.

In 2023, the Supreme Court also rendered a judgment in five cases for which a claim for cassation in the interest of the law was filed in 2022. These claims concerned four civil cases and one tax case.

Publication of court decisions

One of the cases in which a claim was filed in 2022 regarded the question of whether, in connection with the publication of court decisions, judicial authorities have an obligation to provide information on ongoing civil proceedings to third parties.

In its decision, the Supreme Court stated first and foremost that, besides the publication of court decisions, the right to protection of personal data is also important when answering the question of which information about civil proceedings must be disclosed to third parties. Furthermore, the Supreme Court stated that there are differences between the courts regarding how and to what extent information about ongoing civil proceedings is disclosed to third parties. In its decision, the Supreme Court provided a number of main rules for the disclosure of information on public hearings, the disclosure of decisions and the disclosure of information about the proceedings and their status. The Supreme Court also stressed that the overview of ongoing cases used by the courts must be accessible to everyone. Within the framework set out by the Supreme Court, the courts have room to further determine how all this applies in practice. In order to ensure that this rule will be applied equally, according to the Supreme Court it is up to the courts to reach a nationally uniform arrangement.

(See for the claim ECLI:NL:PHR:2022:533 and for the decision, ECLI:NL:HR:2023:658.)

Patients' right to inspection of a medical opinion

The Supreme Court also rendered a decision in 2023 in a case that was submitted in 2022 which regarded the question of whether a patient has the right to review the findings of a physician who, working at the instruction of the hospital or its liability insurance, assessed whether the treatment of the patient took place in accordance with the generally accepted rules. The patient held the hospital liable because she was of the opinion that medical malpractice had occurred in her treatment. At the instruction of the liability insurer of the hospital, a doctor of a different hospital assessed the patient's medical file. The patient wanted to inspect this doctor's opinion, but her request was refused. The patient then filed a disciplinary complaint against this doctor.

The Central Disciplinary Committee for the Healthcare Sector (CTG) found the complaint to be unfounded. The CTG ruled that the patient could not rely on the right to inspection from the section of the Dutch Civil Code that relates to medical treatment contracts, because the "nature of the legal relationship" opposes such in this case. The hospital and the liability insurer have the right to prepare their defence against the liability claim "freely and privately" and must also be able to engage a different doctor to assess the course of action without the patient being able to inspect the opinion, according to the CTG.

According to the Advocate General that submitted the claim, the CTG's conclusion was correct. However, the Advocate General deemed the legal reasoning for the CTG's ruling incorrect, because the CTG incorrectly applied several provisions from the Dutch Civil Code. The Supreme Court agreed with this.

(See for the claim ECLI:NL:PHR:2022:762 and for the decision, ECLI:NL:HR:2023:1670.)

Possibility to assess a perspective decision

In March 2023, a claim for cassation in the interest of the law was submitted regarding the question of whether a perspective decision of a certified institution (GI) can be submitted to juvenile court via the dispute resolution procedure of Article 1:262b of the Dutch Civil Code. The question was brought to the attention of the Procurator General by *Expertisecentrum Partners voor Jeugd* and the Minister for Legal Protection.

If a child is placed out of their home in the context of a placement under supervision by the juvenile court, the GI – as the institution responsible for the implemantation of the measure of placement under supervision and placement out of the home – may decide that returning the child to the parents is no longer in order and that the perspective of the child lies elsewhere. This decision is referred to as a perspective decision. The case law was divided on the question of whether the perspective decision could be submitted to the court, or submitted at an earlier stage, in the context of a dispute resolution procedure in the Dutch Civil Code.

The Supreme Court ruled that a perspective decision cannot be independently submitted to the juvenile court through the dispute resolution procedure. This does not affect the fact that a perspective decision may be subjected to a judicial decision if this is necessary in the context of procedures regarding decisions, measures and applications that arise from or relate to that perspective decision in whole or in part.

(See ECLI:NL:PHR:2023:310 for the claim and ECLI:NL:HR:2023:1148 for the Supreme Court's decision.)

Costs of counsel

In the reporting year, the Procurator General submitted a claim in a criminal case in order to obtain clarity on the definition and scope of the legal term "counsel" within the meaning of Article 530(2) of the Dutch Criminal Code of Procedure. The Court of Appeal ruled in this case that "counsel's fees" must also be understood to include the costs of a third person who is not a lawyer, providing professional assistance in proceedings before the Subdistrict Court. The Procurator General is of the opinion that this ruling is incorrect.

The Supreme Court ruled in line with the Procurator General's claim that counsel's fees referred to under Article 530(2) of the Dutch Criminal Code of Procedure can only refer to costs incurred by a lawyer. The lawyer must be entered in the register of The Netherlands Bar or must have been admitted as counsel in accordance with Article 37(2) of the Dutch Criminal Code of Procedure (a foreign lawyer collaborating with a lawyer registered in the Netherlands).

(See ECLI:NL:PHR:2023:78 for the claim and ECLI:NL:HR:2023:344 for the Supreme Court's decision.)

The other cases for which claims were submitted in 2023 were:

Civil Law

- The question of whether an amount of extrajudicial collection costs can be awarded in collection proceedings under Article 38(4) of the Dutch Legal Aid Act. (See ECLI:NL:PHR:2023:656 for the claim and ECLI:NL:HR:2023:1532 for the Supreme Court's decision.)
- The question of whether a judge in summary proceedings can order the sale and transfer of a community property (in this case a residence) with the intention of dividing the community of which this property is part. (See ECLI:NL:PHR:2023:106 for the claim and ECLI:NL:HR:2023:499 for the Supreme Court's decision.)
- The question of whether a court can ex officio impose a penalty in the event that visitation arrangements within the meaning of Article 1:377a of the Dutch Civil Code are not honoured. (See ECLI:NL:PHR:2023:470 for the claim and ECLI:NL:HR:2023:1459 for the Supreme Court's decision.)

Last, the Supreme Court rendered decisions in the following cases for which claims were filed in 2022:

Civil Law

- 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 harmed or that there was an attempt to harm the creditors. (See ECLI:NL:PHR:2022:977 for the claim and ECLI:NL:HR:2023:455 for the Supreme Court's decision.)
- The question of whether a claim for the erasure of personal data can be granted by a civil judge in summary proceedings 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 and ECLI:NL:HR:2023:1216 for the Supreme Court's 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 and ECLI:NL:HR:2023:134 for the Supreme Court's decision.)

Review

Over the past seven 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, two in 2018, none in 2019, four in 2020, two in 2021 and three in 2022.

No requests for further investigation were received in 2023.

Earlier requests

In 2023, seven requests from previous years were still being handled.

The ACAS (Advisory Committee on Concluded Criminal Cases) recommended in 2022 that two requests from 2021 and one request from 2020 be rejected. With regard to the 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. Following the opinion of the ACAS, the requests were denied during the reporting year.

In three requests from 2022, the ACAS issued its opinion on interrelated cases. These requests were allowed in the reporting year following the opinion of the ACAS. In each case, the requests

concern a 1995 conviction to a 10-year prison sentence for co-perpetration of voluntary manslaughter. Following review applications granted by the Supreme Court, the Court of Appeal – briefly put – maintained the convictions. In 2017, the Supreme Court rejected the appeals in cassation lodged against those convictions.
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 issued its opinion in the reporting year. At the start of 2024 the request was allowed in part, following the opinion of the ACAS. Read more here.

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 2023 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 of Justice and Security 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. In doing so, attention was always devoted to the legal quality of the duty being investigated.

An investigation was 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. A report was drafted in the reporting year, which was presented to the Minister of Justice and Security in early 2024.

Presenting the supervision report to the minister

Investigations launched in 2023

An investigation was launched in 2023, the main focus of which was whether the Public Prosecution Service was properly enforcing and implementing the legal requirements when performing its duties in the protection of witnesses and their relatives which may or may not be covered by the witness protection system. Legal requirements are also understood to include treaty regulations, general principles of law, general orders in council, directives and (other) instructions. The supervision report was finalised in the reporting year and presented to the Minister of Justice and Security in early 2024.

Read more on this subject here.

The supervisory task can be fulfilled not only through thematic investigations, but also through incident investigations into actual events. In 2023, an incident investigation was launched in relation to the stabbing incident at a supermarket on the Turfmarkt in The Hague on 20 June 2023. The investigation is being conducted in addition to the investigation by the Inspectorate of Justice and Security. Among other things, the investigation is aimed at gaining more insight into the information on the physical health of the suspect that was known to the Public Prosecution Service in the years prior to the stabbing incident and insight into how the Public Prosecution Service used this knowledge in carrying out its legal duties. The results of the investigation are expected in 2024.

Read more on this subject here.

Lastly, an investigation was started in 2023, the main focus of which was whether the Public Prosecution Service properly complies with the applicable legal provisions when dismissing criminal cases. The results of the investigation are expected in 2024.

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; complaints regarding a judicial decision are expressly excluded. Information about the complaints procedure can be found on the Supreme Court's website.

The influx of complaints remains high in comparison to the years prior to 2023. Not only are there more complainants, more individual complainants are complaining about multiple judges and proceedings.

In 2023, the Procurator General received 121 complaints. By comparison: 108 complaints were submitted in 2022. All but 9 of the 121 complaints were settled in 2023. Six of those were settled at the start of 2024. In addition, another 10 complaints from 2022 were settled in 2023.

Two complainants raised the same legal question in their complaints. The Procurator General informed these complainants that he intends to submit the relevant legal question to the Supreme Court in one of the complaint cases.

Complaint categories

Complaints regarding a judicial decision

As in recent years, a large share of the complaints handled in 2023 concerned a judicial decision. In 67 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.

The term "judicial decision" does not pertain solely to the final decision in a case. Other decisions by a court cannot be complained about in the complaints procedure either. For example, one complaint pertained to the fact that the Court of Appeal had not relied on the

correct data, as determined by the District Court in its judgment. Supposedly, the Court of Appeal also violated due process by not ordering the parties to appear at the hearing after the statement of defence. In addition, the Court of Appeal wrongly classified the defendant in the first instance as the appellant, allegedly. The (deputy) Procurator General reminded the complainant that the determination of the facts, the decision to hold an oral hearing and the designation of the procedural roles of the parties are considered judicial decisions or are based on judicial decisions. The statutory complaints procedure is not intended to reassess or change the decisions of a court. The (deputy) Procurator General therefore could not take up the complaints.
Another complaint regarded the District Court's rejection of the complainant's request to have the investigation take place at a closed hearing. The Procurator General explained that the general legal principle dictates that hearings must be held in open court. The law provides that a court can determine that an investigation will take place behind closed doors either in full or in part. This means that the complaint was directed against a judicial decision. The Procurator General therefore could not take up the complaint. In addition, this complainant complained on behalf of another person whose cases were also being heard at that hearing. The Procurator General remarked that in accordance with the statutory complaints procedure, a complaint must be related to an action by the court in respect of the complainant. Even in the event that there were an action by a court in the performance of its judicial function, this cannot be considered an action in respect of the complainant. For that reason alone, the Procurator General cannot take up that complaint either.

In a different case, a complaint was lodged with regard to a court that had rendered a decision granting a care authorisation on the basis of the Compulsory Mental Healthcare Act (Wvggz). The complainant was of the opinion that the course of action violated the principles of due process and that all this was intertwined with the provisions of Article 6 ECHR on the one hand and related to the judge's treatment of the complainant on the other hand. The (deputy) Procurator General provided an explanation on how the Wvggz operates. He remarked that the Wvggz gives the court authority to hear the person involved at the accommodation where the person involved resides and that the judge is not obliged to wear a gown at such hearings. Further, the judge determines the order at the hearing. This includes determining how the hearing is conducted and the extent to which a person is given the opportunity to express their thoughts on a care authorisation. The court also has an obligation to determine ex officio whether other, less radical alternatives than a care authorisation are available. The (deputy) Procurator General remarked that this means that the complaints by the complainant on the proceedings and the decision relate to decisions made by the court. Such complaints cannot be taken up by the (deputy) Procurator General.

Another complaint pertained to the fact that the judge allegedly denied in two judicial substitution proceedings that certain notices to the complainant were made by, on behalf of or in consultation with her. The first notice was allegedly made to the complainant when he asked for a postponement shortly before the hearing because he had tested positive for COVID-19. The complainant stated that the court clerk informed him that the hearing would still take place and that the judge had allegedly said: "Enough is enough". The second notice followed the complainant's request for an order to assign a lawyer under the legal aid arrangements. The court clerk informed the complainant that the judge did not want to issue this order. The complainant challenged the judge after both notices. The complainant alleged that the judge lied in the judicial substitution proceedings by stating that the court clerk's statements were not made by her, on behalf of her or in consultation with her. Both judicial substitution requests were denied by the chamber hearing the judicial substitution request. The (deputy) Procurator

General noted that the complainant and the judge evidently have different opinions on what actually occurred. In both cases, the chamber hearing the judicial substitution request concurred with the judge and rejected the complainant's requests. If a decision by a judicial body was rendered against which there are no legal remedies with regard to the complaint, the (deputy) Procurator General has no obligation to take up the complaint. The (deputy) Procurator General saw no reason to deviate from that rule and did not take up the complaint.

Complaints about a court's actions

Another category of complaints includes those regarding a court's actions in respect of a complainant, and specifically whether any boundaries have been exceeded.

In a case complaining about the court's conduct, the complainant thought the judge uninterested, intimidating and disparaging. The complainant also felt that the judge had not prepared well enough for the hearing and examination of the witness and the complainant. This complaint was in part the result of the complainant's belief that the other party was guilty of perjury, forgery of documents and lying, which allegations the court did not address. In addition, at the start of the examination of the complainant and the witness the judge stated that he did not prepare any questions. The Procurator General ruled that the complaint regarding the judge's failure to address the statements that the other party was guilty of perjury, forgery of documents and lying was a complaint about a judicial decision. No complaints can be lodged about that. The only way to challenge a decision by a court is to appeal it. In addition, the Procurator General ruled that the judge's mere notice at the beginning of the witness examination that he did not prepare any questions does not mean that the judge was not interested or prepared with regard to the hearing of the case. Furthermore, the Procurator General did not see further evidence to support the correctness of the complainant's claim that the judge was uninterested, intimidating or disparaging, or that he was unprepared.

In a different case, the complaint was that the justice had not looked at the entire case file and that she allegedly forced the complainant to settle with the other party. Another complaint alleged that the justice shouted at the complainant and that the justice was biased. The complainant had first submitted the complaint with the Court of Appeal. The court administration sought a response from the justice. The justice indicated that after hearing the case, an attempt to settle between the parties and a second adjournment of the hearing, the Court of Appeal rendered a preliminary judgment. Both parties wanted this. Furthermore, the justice did not identify with the picture painted of her and of the hearing. She further explained this. The court administration wrote to the complainant that the proper treatment of the parties is considered of great importance within the Court of Appeal. The court administration found that the complainant's experience does not match the justice's experience. This does not detract from the fact that the court administration was genuinely sorry that the complainant perceived the justice's actions as unpleasant. Within the organisation, the complainant's letter has prompted reflection and feedback. The Procurator General considered that the court administration apparently expressed with this that the complaint was insufficiently supported by evidence to further investigate the complainant's statement about improper treatment. The Procurator General was of the opinion that the court administration properly handled and resolved the complaint, so there was no need for them to open a new investigation.

One complaint case regarded a complaint about a judge who did not wear a face mask in the indoor public area of the court building, despite the fact that wearing a face mask was mandatory in such spaces at the time. In response to the complaint, the court administration wrote to the complainant that it found that the complaint was justified on the basis of internal information. The court administration wrote that the judge deeply regretted going into the

public space without a face mask and that she was aware that she had therefore failed in her exemplary role. The court administration concurred with this and wrote that the issue had been properly dealt with internally. However, the court administration did not decide on any disciplinary measure. The court administration further wrote that this expressly did not mean that it did not sympathise with the fact that the complainant – given his medical condition – was concerned about his health and that the court administration underestimated his condition. The court administration apologised for the course of events, also on behalf of the judge. The Procurator General was of the opinion that the complaint regarding the judge's failure to wear a face mask was handled diligently and he did not consider the assessment of the complaint to be incorrect. The complainant therefore had insufficient interest in the Supreme Court investigating his complaint.
The statutory complaints procedure provides that complaints may be lodged only on the conduct of a judge when they are exercising their judicial function. In one complaint case a complaint was lodged against the president of a district court. The complainant had received two letters from the court clerk on behalf of the administrative judge hearing the case. These letters stated that due to an abuse of rights the court would in principle no longer institute proceedings if the complainant relied on inability to pay with regard to the court fee owed. The court subsequently did not take the appeal he wanted to lodge into consideration. The complainant felt this violated the right of access to justice and lodged a complaint with the court administration. The court administration informed the complainant that he effectively asked the court administration to assess whether these letters, the content of which was based on a judicial decision, were lawfully sent to the complainant. This was not possible, because that would mean the court administration entering the judicial domain. The Procurator General informed the complainant that in so far as the complaint is about the president's conduct in her role as president of the court and chair of the court administration, the complaint does not concern behaviour by the president in her capacity as a judge. That is why the Procurator General cannot take up the complaint. In so far as the complaint was aimed against the decision of the administrative judge hearing the case to not initiate proceedings, the complainant is essentially complaining about a judicial decision. No complaints can be lodged about that.

A complainant must also have a sufficient interest in a complaint. One complaint case included a complaint about the fact that the court administration refused to appoint a judge in administrative law proceedings. This allegedly involved a refusal of a court to hear a case. The complainant had complained to the court administration before, stating that no judge had been appointed to hear his case yet. The court administration then informed the complainant that in the preliminary phase the course of the proceedings is shaped by a general team including judges. Which judge will hear the substance of the case is decided only after the preliminary phase is completed. The court administration wrote that this decision had not yet been made in the complainant's proceedings. In response to the complaint that the court administration refused to appoint a judge, the Procurator General remarked that this did not happen in this case. He referred to the court administration's response, which stated that the judge that will be hearing the complainant's case will be appointed after the preliminary phase is completed. Since that case was still in the preliminary phase, that decision had not yet been made. The Procurator General stated that in view of this response, the complainant reasonably did not have sufficient interest in an investigation within the meaning of Article 13a of the Judiciary (Organisation) Act. In so far as the complainant complained about the court's refusal to hear the case, the Procurator General remarked that no such thing happened in this case. A court refuses to hear a case if the court refuses to render a decision on a case before it. This regards a situation wherein no decision is rendered at all or the decision is constantly postponed. This

situation did not occur in this case.
In another case, a complaint was lodged regarding the course of events in a subdistrict court hearing. The complainant complained that the judge refused to explain why an earlier decision rendered by a different judge was incorrect, that the judge did not allow him to explain his views and that the judge had stated that he would not be engaging in an argument with the complainant. The Procurator General found that these complaints regarded judicial decisions, on which no complaints can be lodged. In addition, the complainant complained that the judge had said "Goodbye (name complainant)" on several occasions when he wanted to make another comment. That complaint did regard the judge's behaviour towards the complainant in the performance of his duties. The court administration's response to that complaint included that the judge had asked the complainant to leave the room after the ruling, because the judge had to hear the next case. The complainant made little effort to leave and continued to comment on what he felt was a wrong decision. The judge then once again urged the complainant to leave. The complainant eventually complied with this request. In an effort to interrupt the complainant's persistent objections against the ruling, the judge had indeed clearly said "Goodbye sir" once or twice. The court administration wrote that it sympathised with the fact that this course of events had been unpleasant for both the complainant and the judge, but did not think that the complainant had been treated unfairly in these circumstances. The Procurator General found the court administration's handling of the case to be diligent and did not think its assessment was incorrect. Therefore, there was no reason for the Procurator General to open a new investigation into the case.

Claims

Two complaints in the reporting period prompted the submission of a claim with the Supreme Court for launching a further investigation into the conduct of a judge. The Procurator General intends to submit the legal question at the heart of these two complaint cases to the Supreme Court in 2024.

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 include reports of criminal offences against persons or agencies and/or requests for prosecution. There are also letters with requests to intervene in a case or to assume responsibility for adjudicating it, or to overturn a ruling. In addition, there are requests for legal advice. Occasionally, the writer of a letter wants to have a discussion with the Procurator General about the interpretation of specific legal terminology used in a judgment. Most of these letters concern matters in which the Procurator General has no duties or powers under which he could do anything for the writer of the letter.

In 2023, the Procurator General received 44 of these letters. All but three of these letters were answered in 2023. In addition, four letters from 2022 were answered in early 2023.

Lastly, the Procurator General received two applications in 2023 requesting that he exercise his

powers under Article 121 of the Judiciary Organisation Act. Pursuant to that provision, the Procurator General in particular ensures the enforcement and implementation of legal requirements at the Supreme Court, the Courts of Appeal and the District Courts.