Annual report

The Supreme Court, the Procurator General's Office at the Supreme Court and the Operations Directorate together constitute the joint organisation the Supreme Court. Within the Supreme Court there is a Civil Section, a Criminal Section and a Tax Section. In this annual report, the Supreme Court's various parts and sections report on their work in the year 2024.

The highest court in civil, criminal and tax law cases, the Supreme Court has an important and responsible role within the judiciary. Within the Kingdom of the Netherlands, it helps ensure that the law performs its functions for the benefit of people and organisations in our democratic state under the rule of law. The work it does can always be traced back to the core of the Supreme Court's social task: providing individual legal protection, ensuring uniformity of law and contributing to the development of law.

The people working at the joint organisation the Supreme Court again committed to fulfilling that task in 2024. In order to continue to perform its task properly in a changing society, it is important for the Supreme Court to be at the centre of society. The new section entitled "The Supreme Court and society" explains how the Supreme Court accomplished this during the reporting year.

The Supreme Court aims to administer high-quality justice in cassation in the interests of litigants and organisations. The Procurator General's Office at the Supreme Court issues independent opinions, known as advisory opinions, on the judgments to be made in cases submitted to the Supreme Court. The Procurator General at the Supreme Court can also help the Supreme Court to create unity of law without parties in litigation initiating cassation proceedings. He or she does so by instituting cassation in the interest of the law. The Office's responsibilities also include other special procedures, which implement the Procurator General's supervisory role for the judicial organisation. In 2024, the Operations Directorate staff again played a major role in facilitating the work of the members of the Supreme Court and the Procurator General's Office at the Supreme Court.

The annual report describes how the Supreme Court was able to contribute to the fulfilment of its overarching role in 2024, which is to protect the rights, obligations and interests of people and organisations in our democratic state under the rule of law.

Dineke de Groot, President

Edwin Bleichrodt, Procurator General

Luuk Aarts, Director of Operations

The Supreme Court and society

The core of the Supreme Court's social task is to safeguard uniformity of law, promote the development of law and provide legal protection to people and organisations. In order to continue to perform its task properly in a changing society, it is important that the work of the Supreme Court and the Procurator General's Office at the Supreme Court is embedded in society. How the Supreme Court's joint organisation worked towards this goal in 2024 is explained below.

Open house

Court cases are public affairs in the Netherlands, which means that the Supreme Court also has rooms open to the public. These are our courtrooms. People are welcome to register as visitors to public hearings or decisions. Sometimes the Supreme Court offers the possibility of following a hearing using an online connection. In 2024, three public hearings were streamed to provide remote access to people not physically present in The Hague. These were cases that were known to arouse great interest, namely the Supreme Court's judgment in two cases on permitting same-sex marriage in Aruba and Curaçao on 12 July 2024, its judgment in five cases on the levy of income tax in box 3 following the introduction of the Box 3 Legal Redress Act (Wet rechtsherstel box 3) on 6 June 2024, and the oral arguments in the case on the export and transfer of parts for F-35 fighter jets to Israel on 6 September 2024.

Pupils, students at colleges, universities and vocational schools, lawyers and other groups can visit the Supreme Court on appointment, and they do so regularly. The purpose of such visits is for them to obtain an understanding of our work and to generate interest in the work of the Supreme Court and the Procurator General's Office at the Supreme Court.

One Saturday every year, the Supreme Court organises an open day featuring a programme in both courtrooms in which the public engages in conversation with Advocates General, justices, the Procurator General and the President of the Supreme Court. Special cases heard by the Supreme Court are explained and the public has the opportunity to participate in roleplaying

games in chambers. Since 2023, the parties participating in the Week of the Rule of Law (Week van de Rechtsstaat) have jointly organised their open days with a guided tour (Rondje Rechtsstaat). In June 2024, the Supreme Court welcomed about 1,000 visitors.
During the Week of the Rule of Law held on 5 June 2024, it organised a public meeting entitled: "What does the rule of law mean to you?" Themes discussed included the importance of feeling in control of one's own life and how regulators, the executive branch and citizens have different perspectives on the law. The proceeds from the meeting were shared with the organisers of the Day of the Law, who dedicated a separate workshop to this.

Lastly, the Supreme Court receives many foreign visitors. Delegations of judges and members of foreign prosecutors' offices meet with their counterparts in the Netherlands to learn from each other and exchange ideas and experiences. For example, in December 2024, an Indonesian delegation visited the Supreme Court as part of the cooperation between Mahkamah Agung (the Supreme Court of Indonesia) and the Supreme Court.

Contact with other judicial authorities

As a court of cassation, the Supreme Court assesses in cassation proceedings whether an authority in a previous instance correctly applied the law, gave adequate reasons for the judgment and followed the correct procedure. A Supreme Court judgment sets out the results of that assessment and is thus also a means by which the Supreme Court performs its core tasks. If in fact-finding instances there is any ambiguity in case law as to how a rule of law must be interpreted and applied, the Supreme Court can provide clarity by using a specific case to clarify that interpretation and application. Preliminary ruling proceedings are a means for judges in fact-finding instances to ask the Supreme Court for such clarity in pending cases. The Supreme Court considers it important for its judgments to be embedded in legal practice and, for that reason too, maintains contacts with the courts in fact-finding instances. This does not apply to pending cases. The main focus is the exchange of more general information and sharing of experiences, with the aim of ensuring the quality of court decisions in a general sense.

The Supreme Court is the highest judicial body, both for the Netherlands (in Europe) and for the overseas territories of the Kingdom of the Netherlands, namely Aruba, Curaçao, Sint Maarten, and Bonaire, Sint Eustatius and Saba. The Supreme Court maintains various contacts with the courts in these territories. Every year, for example, the President of the Supreme Court or the Procurator General at the Supreme Court pay a working visit to the Caribbean part of the Kingdom. During these visits, they exchange information and experiences on the administration of justice in society. In 2024, the Procurator General paid a working visit.

The end of 2024 marked the 70th anniversary of the Charter for the Kingdom of the Netherlands. In October 2024, the Office of the Minister Plenipotentiary of Aruba organised a symposium in The Hague entitled "*Verbondenheid. 70 jaar Statuut van het Koninkrijk der Nederlanden*" ("Interconnectedness. 70th anniversary of the Charter for the Kingdom of the Netherlands"). The symposium reflected on the meaning of 70 years of the Charter for the countries within the Kingdom and discussed the future relationship between them. During the event, the President of the Supreme Court gave a speech in which she discussed the effect of the countries' interconnectedness under the Charter on the administration of justice. She spoke about the organisation of the judiciary in the Kingdom and shared some observations on how it works in practice.

European law and International Treaties are increasingly working their way into the national legal systems of the Netherlands and our neighbouring countries. The Supreme Court is in contact with the highest courts in other countries both within and outside the European Union. This provides an opportunity to share experiences on the application of European and international law and to have a dialogue on current social issues that play a role in court decisions. The President participates in international networks of the judiciary, such as the Network of Presidents of the Supreme Judicial Courts of the European Union and the Conference of European Constitutional Courts (CEEC). The picture shows a working session at the 2024 Network conference in Athens.

The Procurator General at the Supreme Court also participates in consultations at the European level, for example in the context of the NADAL Network of Procurators General at the highest courts.

Members of the Supreme Court and the Public Prosecutor's Office pay working visits to foreign judicial authorities on a regular basis. In 2024, they paid working visits to the Constitutional Court in Karlsruhe, Germany (Bundesverfassungsgericht), the Supreme Court of the United Kingdom in London and the European Court of Human Rights in Strasbourg. During such visits they enter into a dialogue on the administration of justice on specific themes, such as the democratic state under the rule of law, the protection of fundamental rights and current developments.

In 2024, the Supreme Court hosted various foreign delegations and provided hospitality to members of the Constitutional Court of Latvia on a working visit to the Supreme Court.

Ongoing cooperation with the Supreme Court of Indonesia and the High Court of Justice of Suriname

In 2024, the Supreme Court consolidated its long-term cooperation with the Supreme Court of Indonesia (Mahkamah Agung), entering into new agreements in a Memorandum of

Understanding in 2024. Both parties have long considered their mutual exchange of knowledge and experience as very valuable.
The Supreme Court and the High Court of Justice of Suriname maintain a cooperative relationship in the interest administering justice within their respective countries under the rule of law. Suriname law is part of the Dutch family of law. Dutch legal sources are used in Suriname on a regular basis. Working visits and meetings (including digital meetings) in which justices and Advocates General participate in the exchange of knowledge offer support in safeguarding and promoting the development of law, uniformity of law and legal protection in both countries. The High Court of Justice has access to the Knowledge Portal, the Supreme Court's legal digital platform where public knowledge resources can be accessed. A congress was held in Paramaribo in 2024 to mark the 155th anniversary of the judicial system in Suriname. During the event, which was organised by the High Court of Justice of Suriname, the President of the Supreme Court and the Procurator General at the Supreme Court gave speeches on the value of court rulings in society and the system of the democratic state under rule of law. The Procurator General also spoke with a group of Surinamese trainee judges. In 2024, Advocate General Lodewijk Valk was appointed Commander in the Honorary Order of the Palm (Commandeur in de Ereorde van de Palm) in Suriname for his service to Surinamese law, in particular the administration of justice in Suriname.

Clarity of expression

Advisory opinions of the Procurator General's Office at the Supreme Court and judgments of the Supreme Court can have a major impact on society. It is then magnified when people understand what such opinions and judgments actually say. However, the requirements of precision and care are sometimes at odds with the requirement of intelligibility. To work towards maximum intelligibility, the Supreme Court organises annual training courses for new employees in which they learn how to write comprehensibly for non-jurists. Furthermore, many cases are the subject of news reports whose object is to make the advisory opinion or judgment (which are published in anonymised form on www.rechtspraak.nl) more understandable to the media and the general public.

One of the Procurator General’s special tasks is to handle complaints about the conduct of judges. Every year, the Procurator General receives more than 100 letters in this regard. However, for many people it is not exactly clear which complaints can and cannot be taken into consideration. In order to make this clear, a group of employees has written an informative leaflet. It explains as clearly as possible to anyone who has or wishes to file a complaint about a judge how the arrangement works.

In 2024, the Supreme Court held what is called a reflection meeting, where a group of 'users' of our judgments was asked what they thought of their intelligibility. Consisting of judges, lawyers, public prosecutors and employees of consumer organisations, the group provided very useful feedback, which the Supreme Court will take into account in its efforts to maintain clarity of expression.

Publication of previous judgments

The Supreme Court is well aware of the social interest in making judgments from before the year 2000 available online (and in fact its social duty to do so) (free of charge). In 2019, it published the first 150 of such judgments, including any corresponding advisory opinions that were issued and are still available. In subsequent years, including in 2024, the Supreme Court continued to do so. By 2024, it had published more than 300 previous judgments on

rechtspraak.nl. In the same year, the Supreme Court issued regular news reports providing information on recent publications of such judgments.

Digital litigation in civil cases referred for preliminary rulings

On 1 May 2024, the Supreme Court started imposing mandatory digital litigation in civil cases referred for preliminary rulings. Civil cases referred for preliminary rulings are proceedings in which a District Court or Court of Appeal in a civil case decides, at the request of the parties or ex officio, to refer a question of law to the Supreme Court. They may do so if the answer to this question of law is relevant to a large number of other cases pending before them.

The digital litigation requirement applies to parties who apply to the Supreme Court in preliminary ruling proceedings through a civil cassation lawyer. In principle, once the parties have appointed a cassation lawyer, all communication takes place through the web portal. If the Supreme Court allows third parties to submit written comments, they must also do so on the web portal. The District Courts and Courts of Appeal have the option of referring questions for a preliminary ruling digitally, but this is not compulsory.

Civil actions by claim and by application before the Supreme Court were already subject to the digital litigation requirement. Making digital litigation mandatory in civil cases referred for preliminary rulings means that the method of litigation is now uniform for all civil proceedings before the Supreme Court. This simplifies things for all parties involved, including for civil cassation lawyers at the Supreme Court and the Registry. Digital litigation was also already largely mandatory in criminal and tax cases.

Information on pending civil cases available digitally

A list of cases pending before the Civil Division of the Supreme Court has been posted on the Supreme Court's website since 1 November 2024. This means that anyone can find the cases online and follow their progress. A case is listed from the time it is pending before the Supreme Court. In most cases, this is on or shortly after the date when the Initiating Document is filed. The list includes cases referred for preliminary rulings and claims for cassation in the interest of the law. In the course of proceedings, various stages of the proceedings are made visible, such as "debate between the parties", "oral arguments", "pending before the Procurator General's Office", "pending before the court" and “decision issued". The list also includes links to the judgment in the previous instance, the Procurator General's advisory opinion and the Supreme Court judgment. Cases remain on the list up to six months after the judgment.

The improved provision of information on civil proceedings is based on a Supreme Court judgment of 21 April 2023 (ECLI:NL:HR:2023:658). That judgment addresses the meaning of the principle of open justice and related legal provisions.

The Supreme Court in the media

Many cases heard by the Supreme Court have the attention of the media and/or the public. This was also the case in 2024. The Supreme Court answered many case-related and procedural questions from the media by telephone and email. A large number of news reports on cases were also published.

The following cases received particular media attention in 2024.

Box 3

On 6 June 2024, the Supreme Court ruled in five cases on the levy of income tax in box 3 after the introduction of the Box 3 Legal Redress Act (the Redress Act). The Supreme Court's earlier Box 3 judgments already attracted considerable interest from the press, the public and politicians, and the case on the Redress Act also drew much attention. The judgment was handed down orally. The hearing was livestreamed and followed by thousands of people. The press was present at the actual judgment and requested clarification from the spokesperson afterwards. A press release on the judgment was also published.

Same-sex marriage in Aruba and Curaçao

The Caribbean press also displayed great interest in the case on same-sex marriage. The Supreme Court issued its judgment on 12 July 2024. Given the time difference, it did so at 2pm rather than the standard time of 10am. It was also livestreamed. The press release regarding the judgment has been translated into Papiamento and Papiamentu.

Export of F-35 parts to Israel

In the case concerning the export and transfer of F-35 fighter jet parts to Israel, the Supreme Court received many questions from the media about whether or not the State should initiate cassation proceedings. After cassation proceedings were initiated, the request from one of the parties to hold oral arguments was granted. Due to the considerable interest both from the Netherlands and abroad, the oral arguments were livestreamed in both Dutch and English.

The advisory opinion of the Advocate General issued at the end of November 2024 has been translated into English, as has the accompanying press release (English translation). The Supreme Court is expected to hand down its judgment in the spring of 2025.

"Order button cases"

Preliminary ruling proceedings also attracted the interest of the press and the public. This was particularly true of the cases concerning the text on the online "order" button. In response to questions referred for a preliminary ruling, the Supreme Court, applying European Union law, held that a webshop's order button displaying the text "order", "place order" or "complete order" does not make it sufficiently clear that the consumer is entering into a payment obligation. As a result, the purchase agreement may be annulled wholly or in part. The cases have great practical importance, for both online shopping and court collections, and therefore received a lot of media attention. A press release was published when the judgments were issued.

Rent adjustment clause

Another case referred for a preliminary ruling that received close media attention concerned a rent adjustment clause in a lease for residential space in non-subsidised housing. The Supreme Court ruled that a rent adjustment clause providing for an annual mark-up on the rent of up to 3% on top of the consumer price index is generally not an unfair clause. It thus concurred with the opinion of the Deputy Procurator General. The case attracted the attention of the media even before the judgment. Both the deputy Procurator General's advisory opinion and the Supreme Court's judgment were therefore accompanied by a press release.

Supervision reports by the Procurator General at the Supreme Court on the performance of the Public Prosecution Service

There was also media attention for the investigations conducted by the procurator General at

the Supreme Court in the context of their supervisory role of the Public Prosecution Service (OM). In January 2024 supervision reports were published on the practice of release on probation and the way the Public Prosecution Service performs its duties in relation to witness protection. Following the presentation of the supervision reports to the Ministry of Justice and Security, the supervision reports and related press releases were published (press release 'Special conditions regarding release on probation' and press release 'Duty of care and witness protection'). In November 2024, the results of the Procurator General's investigation into the Public Prosecution Service's performance in the years leading up to the Turfmarkt stabbing incident in The Hague were published. This was the first incident investigation initiated by the Procurator General; previous supervision studies were mainly of a thematic nature. The investigation supplemented the investigation conducted by the Inspectorate of Justice and Security. The presentation and publication of the supervision report were announced in a press release. The publication of the supervision report was also accompanied by a press release. An interview with the attorney general was also published in a national daily newspaper about this case and about his supervisory role in general.

Social media and news service

The Supreme Court uses LinkedIn and Instagram. It does so for different purposes and audiences: LinkedIn for news about cases and personnel matters, Instagram for public information about events and student visits. On both platforms, the number of followers grew in 2024.

The Supreme Court further extended its reach with the introduction of a news service. Media and other interested parties can subscribe to a Supreme Court digital newsletter free of charge, indicating the categories they want to receive news about. They then receive an automatic email notification as soon as a news item in the relevant category is posted on the Supreme Court's website. Professional media, regional media and national media thus receive specific notifications.

In 2024, the Supreme Court published nearly 135 news items about cases. It also started posting legal alerts on LinkedIn in 2024. These alerts are linked to cases involving matters that are important from a legal perspective. Whilst the news items are aimed particularly at the media and the general public, the target audience of these legal alerts is mainly in the legal domain, including law students.

The Supreme Court

The Supreme Court rules on cases in three areas of law: civil law, criminal law and tax law. To illustrate the work of its various sections, this chapter highlights a number of cases it ruled on in each area in 2024. In all, the Supreme Court handed down 4,247 judgments in 2024. The judgments in which the Supreme Court referred questions to the Court of Justice of the European Union for a preliminary ruling or in which it answered questions referred for a preliminary ruling are discussed in the section on European Union Law. This is followed by explanations of the judgments of the Fourth Division of the Supreme Court as well as the complaints and other correspondence it received.

The Civil Division

In 2024, the Civil Division of the Supreme Court of the Netherlands rendered almost 335 decisions. Once again, they spanned a wide range of issues that drew on the Supreme Court's three core tasks: the development of law, uniformity of law and legal protection.

Civil Section breakdown

Civil Section	2023 actual	2024 schedule	2024 actual
incoming cases	334	405	347
cases disposed of, total	430	420	352
cases disposed of, judgments	399	--	335
cases disposed of, other	31	--	17
advisory opinions	343	400	344
final case load	314	--	309
total average processing time	381	--	372

Notable in 2024 was the number of arbitration cases (12) and other forms of alternative dispute resolution. Among other things, these addressed the meaning of an obligation agreed between the parties to first try mediation in the event of a dispute (ECLI:NL:HR:2024:1078). Mediation is means of resolving a dispute involving a neutral mediation expert, the mediator, who guides negotiations between the parties to achieve an outcome they support and which observes their interests. The Supreme Court held that the meaning of a mediation clause must be determined by interpreting it based on the intentions of the parties. That interpretation may entail that the clause requires the parties to attempt mediation before initiating court or arbitral proceedings. A significant factor in this regard could be that the clause was agreed between professional parties and relates to a business dispute. However, a mediation clause must not be applied if it

unacceptably restricts the right of access to justice. The question of when a party may subsequently terminate the mediation process also depends on the interpretation of the mediation clause. If a mediation clause requires mediation to be attempted first and the parties have not done so, the court may stay the case until they have done, but it may also refrain from doing so, for example because the case is urgent or because it is pointless to try mediation under the given circumstances.
In 2024, the Supreme Court also handled many cases on the effect of European law in the Dutch legal system. Cases regarding the occurrence of a payment obligation after using an online "order" button (ECLI:NL:HR:2024:1355 and (ECLI:NL:HR:2024:1366) and the rent adjustment clause (ECLI:NL:HR:2024:1780) drew a lot of attention. Each of them led to judgments answering questions referred for a preliminary ruling, as part of the Supreme Court's task of developing the law and ensuring the uniformity of law.

The online "order" button cases addressed the question of whether an order button with the text "place order" meets the legal requirement that it is clear to the consumer that clicking on the button leads to a *payment obligation*. According to the Supreme Court, given the text and explanation of the relevant provision in the Consumer Rights Directive and its equivalent in our Civil Code, it does not. The average consumer does not necessarily and consistently associate the term "placing an order" with the creation of a payment obligation. If a consumer entered into a transaction using an order button that did not meet the legal requirements, the court must annul that contract wholly or in part. The seller may then be entitled to compensation.

In the case regarding the rent adjustment clause (ECLI:NL:HR:2024:1780), the Supreme Court answered questions about a provision stipulating an annual mark-up of up to 3% used in the liberalised rental sector ("mark-up clause") in addition to an indexation clause based on the consumer price index. It held that, in principle, such a provision is not unfair, because the landlord has a legitimate interest in being able to adjust the rent annually, and not only for inflation. It also answered questions about the consequences of a rent adjustment clause that is indeed unfair.

The cases in which cassation in the interest of the law was sought are also relevant to the Supreme Court's task of developing 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 with the Supreme Court. The outcome of a claim for cassation in the interest of the law does not change the decision which the claim takes issue with and, therefore, it does not change the legal position of the parties to the case. However, it is of interest to the law. In 2024, questions on insolvency law were submitted to the Supreme Court with a claim for cassation in the interest of the law (ECLI:NL:HR:2024:1533). What was noteworthy in that case was that the Procurator General provided an opportunity for interested parties to submit comments relevant to answering the questions of law (ECLI:NL:PHR:2024:346). The case turned on whether a financier may be required to make unused credit available to a debtor under conditions unfavourable to them through a compulsory composition outside bankruptcy, and whether such a composition could alter the order of priority of creditors.

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. Generally, the law to be applied corresponds to the law in the European part of the Kingdom. However, that is not always the case. Also, the procedural law 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 differ from those in the

Netherlands. In 2024, the Civil Division ruled, inter alia, on the exclusion of same-sex marriage in Aruba and Curaçao (ECLI:NL:HR:2024:977 and 978). In Aruba and Curaçao, legislation in a formal sense (legislation established by the government and parliament) may be reviewed against the traditional fundamental rights (constitutional review) on the basis of the State rules in force in those countries (which have the same status as the Constitution). In these cases, the Joint Court of Justice ruled that the exclusion of same-sex marriage violated the principle of equality enshrined in the State Rules and constituted discrimination on the basis of sexual orientation. The Countries of Aruba and Curaçao did not dispute this in cassation, but raised the issue of whether the courts themselves are allowed to correct the deficiency in the law in such a case, or whether they should leave that to the legislature. The Supreme Court ruled that courts must exercise restraint when intervening in legislation in the formal sense, given the primacy of the legislature in that regard. However, according to the Supreme Court, the Joint Court of Justice was competent to decide in that case to allow marriage between partners of the same sex. In this regard, the Supreme Court also took into account the fact that the Joint Court of Justice had found that the discrimination in question had gone on for a long time (the Countries did not dispute that) and that it was clear how the discrimination had to be eliminated.

The Criminal Division

In 2024, the Criminal Division of the Supreme Court of the Netherlands handed down over 3,200 decisions. In 2,398 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 (1421) or that the complaints were manifestly incapable of leading to cassation (980). Of the 1814 cases in which grounds for cassation were filed, 375 (21%) resulted in the judgments appealed against being set aside. In around half of these, the sole reason for setting the judgments aside was that an unreasonable period of time had passed. Of the nineteen review applications, six were declared well-founded.

Criminal Section breakdown

Criminal Section	2023 actual	2024 schedule	2024 actual
incoming cases	3,454	3,250	3,618
number of cases with grounds for cassation	1,935	1,885	2,125
cases disposed of, total	3,158	3,250	3,377

cases disposed of, judgments	2,979	3,088	3,235
cases disposed of, other	179	162	142
advisory opinions	803	900	916
final case load	2,479	2,479	2,720
total average processing time	233	--	259

The following points up a number of cases in which a judgment was handed down in the reporting year.

Professional privilege

Lawyers and other professionals with legal privilege have a statutory right to refuse to give evidence (Article 218 Dutch Criminal Code). This is the right of lawyers, physicians and civil-law notaries, for example, not to answer questions about a suspect. This is because the public interest in the truth being revealed in court must be subordinate to the public interest in everyone being able to freely turn to the person with privilege for help and advice without fearing that that information will unintendedly be disclosed and end up with the investigating authorities, for example. The protection of the right to refuse to give evidence also covers data stored with a communications service provider. Police and the judicial authorities must do whatever is necessary to prevent infringements of this right as soon as there is a reasonable presumption that the requested information is also confidential, either wholly or in part. If it is, the examining judge must be brought in to filter out such information. The issue here is the extent to which police and the judicial authorities allowed to make substantive assessments about whether or not that information is confidential. After all, examining such information is itself a breach of legal privilege.

The Court of Appeal in 's-Hertogenbosch referred questions for a preliminary ruling to the Supreme Court in civil proceedings, asking what rules must be applied when filtering information of this sort. In his advisory opinion, Advocate General Harteveld considered that there is a gap in the legislation in this regard and made recommendations for a greater role for the examining judge. The Supreme Court held as follows (ECLI:NL:HR:2024:375). If filtering is possible without actually examining the information, then the Public Prosecutor is authorised to do that. He may also assign that task to investigating officers. Otherwise, the Public Prosecutor must involve the examining judge in the case to carry out the filtering (or have it carried out).

Whether there is a reasonable presumption of confidentiality before the requested information is provided or it only arises while that information is being investigated is irrelevant. The examining judge may seek the assistance of investigating officers in the filtering. In that case, it must be ensured that the information to which the legal privilege pertains does not or cannot somehow become known to those charged with the criminal investigation and the prosecution of the matter. The Supreme Court points out that this entails a significant increase in the workload of the examining judge and the associated manpower. Sufficient capacity and resources must be made available to the courts to enable the examining judge to fulfil this task. In two judgments of 17 December 2024 (ECLI:NL:HR:2024:1875 and 1876), in accordance with the advisory opinion of Advocate General Spronken, the Financial Supervision Office and the local Dean of the Netherlands Bar Association were also designated as professionals with legal privilege as regards their supervisory responsibilities for the notarial and legal professions. As supervisory authorities, they have an independent right to refuse to give evidence to police and the judicial authorities in criminal investigations. This concerns the information shared with them that has been entrusted to the civil-law notary or lawyer to whom their supervision relates as such and is thus subject to the civil-law notary or lawyer's duty of confidentiality. The independent right to refuse to give evidence also covers confidential information obtained in the course of their supervisory duties. Furthermore, it extends to any communications issued, actions carried out or advice given in the context of the supervision itself.

Traffic cases: fault and recklessness

In fatal traffic accidents, there are various forms of fault and recklessness under criminal law. In ECLI:NL:HR:2024:1398, the issue is whether the “lower threshold” of fault under criminal law has been reached. The case involved a head-on collision after the accused had veered into the left lane on a curve. In that case, the Supreme Court upheld the conviction of the Court of Appeal but, at Advocate General Frielink’s request, addressed more generally the meaning of "fault" as a component of the offence under Article 6 of the Road Traffic Act (Wegenverkeerswet, “WVW”) 1994. The term "fault" in the sense of "culpable considerable negligence" comes down to whether the accused was remiss compared to another average person in similar circumstances and of a similar capacity. The court must assess this based on the entirety of the accused's conduct. The fact that an accident has serious consequences is not sufficient to automatically assume that there is question of "fault" on the part of the accused. However, it may be the case that in certain circumstances even a brief moment of inattention may constitute a high degree of negligence. What the accused actually did in such a brief moment may, if it leads to an accident, constitute "fault" within the meaning of Section 6 of the Road Traffic Act 1994.

Another traffic case (ECLI:NL:HR:2024:1405) involved the more serious form of culpability, namely recklessness. The accused was driving at between 175 and 184 km/h along a road with a speed limit of 80 km/h and caused a serious accident. Recklessness within the meaning of Article 175(2) in conjunction with Article 6 of the Road Traffic Act 1994 is defined as exceptionally negligent conduct by the accused that created a very serious hazard, even though the accused was, or ought to have been, aware of that. For example, if on the basis of any of the offences listed in Article 5a(1) of the Road Traffic Act 1994 the accused intentionally behaves in traffic in a manner that seriously violates the traffic rules, that conduct may be regarded as reckless if it poses a hazard to life or the risk of serious bodily harm to another person. The appeal in cassation was dismissed in this case as well.

Injured party and damages resulting from death

The judgment in ECLI:NL:HR:2024:644 addresses the claim of a surviving relative of a man who was murdered by his business partner. The Court of Appeal had granted the claim for compensation for lost financial support in full. It found - briefly put - that the injured party had substantiated her claim on the basis of a calculation by a tax expert based on an accepted calculation method and customary standard amounts, and that the defence had not taken the initiative to have a counter-investigation conducted. In line with Advocate General Frielink's advisory opinion, the Supreme Court set aside the Court of Appeal's judgment.

The Supreme Court did the same in another case (ECLI:NL:HR:2024:646), in which similar claims by the injured parties were based on a report with a damage calculation by a specialised agency. By allowing injured parties to institute a claim, the legislature intended - briefly put - to provide a simple and readily available form of criminal proceedings to ensure that persons who have suffered injury as a result of a criminal offence are compensated to the extent possible. However, criminal proceedings lack a number of procedural safeguards that exist in ordinary civil proceedings. This means that a criminal court must satisfy itself that both parties have had sufficient opportunity to make their submissions and provide substantiation regarding the admissibility of the injured party's claim. Given the parties' own responsibility for putting forward and substantiating their submissions, the criminal court is of the opinion that this obligation generally does not require its independent attention. This may be different under certain circumstances, for example if the claim is substantial and complex and the extent of it cannot be easily determined. One example of this is where a surviving relative claims compensation for lost financial support as referred to in Article 6:108(1) Dutch Civil Code. The amount of the compensation must then be estimated based on a number of uncertain factors, such as expectations about the income that the victim and the surviving relatives would have enjoyed in the future. Since information about this is usually entirely in the domain of the injured party, it may be difficult for the defendant to provide its challenge with further substantive reasoning. Moreover, the injured party can seek funded specialised legal assistance in asserting the claim, whereas such assistance and an equivalent possibility of funding is often lacking for the defendant.

The Supreme Court notes that when ruling on the injured party's claim, the courts are free to make a partial substantive assessment by granting or rejecting part of the claim and declaring the rest of it inadmissible. This splitting of the claim allows the criminal courts to decide on that part of the claim that does not thereby entail a disproportionate burden on the criminal proceedings, with the injured party then being able to submit the remaining part of his claim to the civil court. Claims may also be split in cases where a criminal court finds that the injured party is entitled to compensation for lost financial support, but that the award should then be lower than the claim.

Legal assistance

An accused who had been living in a mental healthcare institution for 28 years was convicted after confessing to having stabbed a fellow resident in her back, chest and upper arm with a potato peeler. The suspect had an autism spectrum disorder and/or personality disorder. She confessed to the police and, in doing so, waived her right to legal assistance both prior to and during the interrogation. The Supreme Court, in line with deputy Advocate General Van Wees, set aside the conviction because the Court of Appeal had not demonstrated that it had investigated whether, in view of the accused's disorders, she was reasonably capable of judging the possible consequences of waiving that right (ECLI:NL:HR:2024:556).

The right to legal assistance for a suspect who has been arrested is guaranteed in Article 28c(2) of the Dutch Criminal Code. The law does not yet contain specific provisions on a waiver of this right by a suspect who has not been arrested. This does not alter the fact that the court must establish whether the accused – given the specific limitations associated with the defendant's vulnerability – was reasonably capable of judging the possible consequences of that waiver. If it does not do so, then, according to the Supreme Court, that is a breach of the procedural rules provided in n Article 359a of the Dutch Criminal Code. If that is challenged, the breach in question must generally mean that any statements made by the suspect without legal assistance during the first police interrogation are excluded as evidence. However, that legal consequence does not necessarily have to be linked to the breach of procedural rules if the exclusion from evidence is not necessary to guarantee the accused's right to a fair trial within the meaning of Article 6 of the European Convention on Human Rights.

In two other cases, the Supreme Court also granted the appeal in cassation – in line with Advocate General Harteveld's advisory opinion – on the grounds that insufficient attention had been paid to the right to legal assistance. In one case (ECLI:NL:HR:2024:412), this happened because the accused had waived that right, although she had not been told that legal assistance would be free of charge. In the other case (ECLI:NL:HR:2024:1781), the accused had been asked questions that could only be regarded as questions relating to his involvement in a criminal offence (briefly put: leaving the scene of the accident) for which he was considered a suspect. These questions constituted an interrogation. In that context, he was entitled to legal assistance.

Money laundering

Briefly put, the accused in the IJsberg case (ECLI:NL:HR:2024:887) was convicted for having exchanged 1,887.81 Bitcoins, whereas he should reasonably have suspected that they were the product of criminal activity. The Court of Appeal acquitted the accused because all it was able to infer from the evidence was that the accused had exchanged Bitcoins (valued at EUR 463,990.24) for cash. According to the Court of Appeal, there was insufficient compelling evidence that the accused had "intended" to conceal or disguise the source or provenance of the Bitcoins within the meaning of Articles 420a and 420c of the Dutch Criminal Code. The Public Prosecution Service filed an appeal in cassation against that judgment. The Supreme Court, in line with Advocate General Aben's advisory opinion, found that "concealing" and "disguising" refer to conduct intended to make it difficult to discover the provenance of items, among other things. It follows from the legislative history that the effectiveness of such conduct may be inferred from its "objective essence" (its concealing or disguising effect) and that the accused's intention to conceal or disguise does not have to be proved. According to the Supreme Court, the Court of Appeal had wrongly held the accused's intent to be decisive in determining whether he had concealed or disguised the provenance of the Bitcoins. The Supreme Court therefore set aside the acquittal.

The Tax Division

In 2024, 1,058 cases were brought before the Supreme Court's Tax Division. This was again more than expected, but many cases were later withdrawn. 1,001 cases were disposed of, including 677 by judgment (68%). The other outflow consisted of withdrawals et cetera, such as failure to pay the court fee. The case load decreased to 1,005 cases. The average processing time decreased by 1 day to 286 days compared to 2023.

An advisory opinion by the Public Prosecution Service is optional in tax cases. In 2024, the four Advocates General submitted advisory opinions in 131 cases in the Tax Section. One of them also submitted an advisory opinion in a case before the Supreme Court's Criminal Division (ECLI:NL:PHR:2024:510).

The vast majority of the cases received concerned state taxes (56%) and local government taxes (37%, 83% of which related to the Valuation of Immovable Property Act (Wet waardering onroerende zaken, WOZ). The remaining 7% of incoming cases mainly concerned appeals in cassation (limited in extent) against decisions of the Central Appeals Tribunal and cases from the Caribbean. The state tax cases mostly pertained to income tax (28% of which were state tax cases) and private motor vehicle and motorcycle tax (21%), followed by turnover tax, excise duties and customs duties (together 14%) and corporate income tax (7%). Thus, the number of incoming property tax and motor vehicle tax cases remained high in 2024, despite the entry into effect of the Reassessment of Legal Costs for the Valuation of Immovable Property and Private Motor Vehicle and Motorcycle Tax Act (Wet herwaardering proceskosten WOZ en bpm) on 1 January 2024.

Tax Section breakdown

Tax Section	2023 actual	2024 schedule	2024 actual
incoming cases	1,202	1,000	1,058
cases disposed of, total	1,038	1,000	1,001
cases disposed of, judgments	654	800	677
cases disposed of, other	384	200	324
advisory opinions	104	130	131
final case load	948	650	1,005
total average	287	--	286

processing time

A number of cases are pointed up below to illustrate the work of the Tax Section.

The case ECLI:NL:HR:2024:239 concerns the question of whether the conclusion of a prenuptial agreement upon or during marriage when one of the two spouses is already seriously ill and passes away a month and a half after the conclusion of the prenuptial agreement can constitute a (taxed) gift. According to the Supreme Court it does not, except in exceptional cases of evasion of the law. Contrary to the Court of Appeal and Advocate General IJzerman (ECLI:NL:PHR:2023:188), the Supreme Court did not find any impermissible evasion of inheritance and gift tax in the case in question, where a 50-50 community of property between spouses who had been in a relationship for 30 years was changed into a 90-10 ratio to the detriment of the ill spouse. According to the Supreme Court, the criterion is not whether the mortality probabilities are more or less equal at the time the marriage agreement is concluded, but whether it is already virtually certain at that time that the spouse who will become entitled to the smallest portion of the joint assets will be the first to pass away and that the assets will shift from one spouse to the other as a result. Only then must it be assumed that the shift in assets under the marriage agreement could have no other practical meaning than the avoidance of inheritance tax. In that case, there is acquisition under the law of inheritance on which, in principle, inheritance tax is due.

In a number of cases, including ECLI:NL:HR:2024:704 and ECLI:NL:HR:2024:705, the Supreme Court ruled in 2024 on the Box 3 Legal Redress Act (the Redress Act), which was introduced following the Supreme Court's decision of 24 December 2021 (ECLI:NL:HR:2021:1963). That Act is intended to retroactively bring the assessment of income tax in box 3 for the years 2017 to 2022 into line with that decision of 24 December 2021. However, the Redress Act also assumes a fixed return rather than the actual return. However, the legislature’s intention with the Redress Act was to get closer to the actual return than had previously been the case. The aforementioned cases examined whether the Redress Act removes the treaty infringement established by the Supreme Court in its decision of 24 December 2021. Following the advisory opinions of Advocates General Wattel (ECLI:NL:PHR:2023:655) and Pauwels (ECLI:NL:PHR:2024:133), the Supreme Court found that this was not the case. The Redress Act still violates the prohibition on discrimination under treaty law and the fundamental right to property in the cases where the fixed return is higher than the actual return. This also applies to the Box 3 Bridging Act (Overbruggingswet box 3), which entered into force on 1 January 2023. This Act is in line with the Redress Act and supersedes it to bridge the period until a new system has been implemented in box 3 based on the actual asset return. In those cases, the Supreme Court, in line with Advocate General Pauwels, provided further rules for calculating that actual return, in particular return from assets, and for the redress that must be offered in cases where treaty law has been violated.

Based on the Inheritance Tax Act (Successiewet), a child who inherits from a father with whom that child has a family relationship (the "legal father"), is subject to a lower tax rate and a higher exemption than a child who inherits from their biological father who is not their legal father. In the case ECLI:NL:HR:2024:1130, the Supreme Court held, following Advocate General Ettema (ECLI:NL:PHR:2023:1201), that this regulation discriminates against that child if the child has a family life with their biological father as referred to in Article 8 of the European Convention on Human Rights (ECHR). Contrary to the Advocate General’s recommendation, the Supreme Court leaves it up to the legislature for the time being to offer redress for this treaty violation,

because removing the difference between biological and legal children requires choices to be made that go beyond the court's tasks in the development of law. Societal developments regarding multi-parentage, multi-parenting and surrogacy require choices of a legal-political nature, including with regard to the family law position of children conceived out of wedlock. Any amendment to the tax rules regarding the definition of the term "child" must be considered with that in mind.
The case ECLI:NL:HR:2024:1135 is important for administrative law as a whole. A mixed Supreme Court panel ruled on whether a taxpayer who is examined with a view to imposing an administrative penalty on them (Article 5:10a of the Dutch General Administrative Law Act) (Algemene wet bestuursrecht, "Awb") must not only be informed of their right to remain silent prior to that examination but also of their right to legal assistance, and what consequences any failure to do so should have for the imposition of the fine. In addition to members of the Tax Division, the panel consisted of a member of the Supreme Court's Criminal Division and a justice extraordinary at the Supreme Court who is a councillor at the Administrative Jurisdiction Division of the Council of State. In line with the advisory opinion of Advocate General Wattel (ECLI:NL:PHR:2024:457), the Supreme Court held that the right to legal assistance is a fundamental part of due process in punitive cases. Any government failure to inform the party concerned off this is therefore, in principle, not legitimate. Given the fundamental interest served by this right, it cannot be limited to cases that, under national law, come under criminal law. The right to assistance by a lawyer and the right to be informed about this without any delay therefore also apply to examinations with a view to imposing an administrative fine. The party concerned must be informed of their right to legal assistance before they are examined for the first time with a view to imposing a fine. However, if they are not, that does not automatically mean they have been denied due process. Whether that is the case must be assessed based on the entire course of events based on all the circumstances of the case. One important factor in this regard is whether and to what extent the party concerned did actually receive legal assistance despite the failure to inform them. Such legal assistance need not be provided by a lawyer. Assistance given by someone who can provide it effectively in the punitive case, such as a competent tax adviser or accountant, is sufficient. Statements made by or on behalf of the party concerned during an examination must be excluded from evidence in proceedings to impose an administrative fine if it turns out that using those statements against that party during those proceedings would constitute a denial of due process.

The case ECLI:NL:HR:2024:1178 concerns the commuter tax in the Municipality of Gulpen-Wittem. Commuter tax is levied in order to have persons who reside more than 90 days of the year in a municipality but are not registered there, contribute to municipal facilities. The Municipality of Gulpen-Wittem implemented a substantial increase in commuter tax rates in 2020 in order to regulate the housing market, put first-time buyers in a better position and combat unlawful occupancy. The question was whether that tax increase, which affected only around 70 non-residents, was contrary to the principles of good governance. The Court of Appeal found that the Municipal Council had not considered the negative consequences of the tax increase for owners of second homes. Advocate General Wattel (ECLI:NL:PHR:2023:1209) found the rate increase to be unsuitable for and disproportionate to its stated objects and exceeding the municipal authority to levy commuter tax for the use of municipal facilities. He therefore considered the rate increase to be *détournement de pouvoir* and contrary to the principles of proportionality and equality as well as the principles of careful preparation and reasoning. The Supreme Court's assessment of the municipal ordinance tax rate rule was more reticent. It held that, given the Court of Appeal's findings, the ordinance that increased the commuter tax rate had not been prepared with due care and that it was inadequately reasoned. That carelessness and inadequacy were such that it could not be assessed whether the rate

provision was contrary to the principle of proportionality. Consequently, the rate increase was struck down.

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 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 2024, the Supreme Court referred questions to the Court of Justice in six cases:

- Judgment of 15 March 2024, ECLI:NL:HR:2024:390
- Judgment of 21 June 2024, ECLI:NL:HR:2024:922
- Judgment of 5 July 2024, ECLI:NL:HR:2024:1022
- Judgment of 12 July 2024, ECLI:NL:HR:2024:1074
- Judgment of 6 September 2024, ECLI:NL:HR:2024:1139
- Judgment of 8 November 2024, ECLI:NL:HR:2024:1603

In 2024, four judgments of the Court of Justice concerned cases in which the Supreme Court had referred questions for a preliminary ruling in previous years:

- Judgment of 4 October 2024, C-585/22, ECLI:EU:C:2024:822
- Judgment of 17 October 2024, C-409/23, ECLI:EU:C:2024:895
- Judgment of 24 October 2024, C-227/23, ECLI:EU:C:2024:914
- Judgment of 14 November 2024, C613/23, ECLI:EU:C:2024:961

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 termination of judicial officers who have lifelong tenure. Only the Procurator General at the Supreme Court may bring such cases before the Supreme Court. The Fourth Division also handles requests challenging a Supreme Court judge. The Fourth Division consists of the President of the Supreme Court, three Vice Presidents of the Civil Division, Criminal Division, and Tax Division, respectively, and a number of justices from those divisions. Judgments of the Fourth Division are published on www.rechtspraak.nl.

The Fourth Division handed down judgments in nine cases in 2024. One judgment concerned the partial termination and another the full termination of a judicial officer. Another one concerned the processing of personal data by courts in the context of the E-archive. Six judgments concerned requests challenging members of the Supreme Court.

Dismissal and partial dismissal

Judges are appointed for life (Article 117(1) of the Constitution). This serves to safeguard the independence of the judiciary. A judge may be terminated at their own request. In certain cases, the Supreme Court may terminate 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 26 April 2024, the Fourth Division of the Supreme Court reduced the working hours of a senior judge who was partially incapacitated for work due to illness but was otherwise fit for work. This concerned partial dismissal on account of incapacity for work (ECLI:NL:HR:2024:656). In a judgment of 13 September 2024, full dismissal was granted to a senior justice who was incapacitated for work due to illness (ECLI:NL:HR:2024:1158).

Processing of personal data by courts

On 24 May 2024, the Supreme Court ruled in a case concerning the processing of personal data in the context of the E-archive, an internal case-law database that contains non-anonymised court judgments ECLI:NL:HR:2024:741). In response to complaints he had received, the Procurator General had filed a claim asking the Supreme Court to investigate how the court administrations, as controllers within the meaning of the General Data Protection Regulation (GDPR), had processed the complainant's personal data in the context of the E-archive. The Procurator General's claim was also for the Supreme Court to investigate whether the design of the E-archive met the standards set by the GDPR.

Regarding the first part of the claim, the Supreme Court found the complainant's complaints about the inclusion of non-anonymised judgments of two District Courts in the E-archive to be well-founded. It held that the administrations of those District Courts had not acted as controllers in accordance with the transparency requirement of Article 5(1)(a) GDPR. In response to the second part of the claim, the Supreme Court investigated whether the design of the E-archive met the standards of the GDPR on the date the claim was filed. The Supreme Court could not answer that question in the affirmative. However, it did rule that the information provided on rechtspraak.nl about the E-archive had met the transparency requirement of the GDPR from the autumn of 2022.

Challenge cases

As a safeguard of judicial impartiality, the law confers the right to submit a request challenging a judge. A party that does so is asking for a particular judge to be replaced by another one. The rules on this are part of procedure in all three areas of law in which the Supreme Court handles cases. The Protocol on Participation in the Handling and Deliberations of the Supreme Court 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 concerned is not impartial. The premise underlying the assessment of a substitution 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).

In the case that led to the judgment of 9 February 2024 (ECLI:NL:HR:2024:219), the applicant had submitted a challenge request in respect of "the judges' chambers" after the applicant was informed that judgment would be rendered. In response to questioning, the applicant stated at

the oral hearing that his challenge request only pertained to one member of the court in chambers, on the grounds that that justice had ruled on a previous appeal in cassation in another case brought by him. After the President of the challenge chamber had informed the applicant at the end of the oral hearing that the challenge chamber could only rule on the challenge request, the applicant filed a request challenging the challenge chamber itself. In his request, he merely stated that one of the members of the challenge chamber was from a certain law firm, and the reason he was referring to a previous challenge case was that there were now justices in the challenge chamber who had been challenged in it. This request did not meet the requirement that challenge requests be substantiated. The request was therefore not classified as a challenge request within the meaning of Section 8:15 of the General Administrative Law Act (Algemene wet bestuursrecht) and the Supreme Court declined to consider it. At the end of the oral hearing, the applicant also filed a request challenging the President of the Supreme Court. In the judgment referred to above, the Supreme Court ruled that the applicant's request in this regard was a clear abuse of the challenge remedy. The applicant had based his request on facts and circumstances that he knew or should have known to be incorrect, and on assertions that he should have expected beforehand to have no chance of success. The Supreme Court also declined to consider that challenge request and, on the basis of Section 8:18(4) of the General Administrative Law Act, ruled that it would not consider any further challenge requests from the applicant in that particular case.
The aforementioned request against one of the members of the challenge chamber also did not meet the requirement that a challenge request be substantiated and was therefore not regarded as a challenge request within the meaning of Article 8:15 of the General Administrative Law Act and was also disregarded by judgment of 1 March 2024 (ECLI:NL:HR:2024:292).

The Supreme Court judgment of 22 March 2024 (ECLI:NL:HR:2024:481) concerned a challenge request submitted after the applicant was informed that judgment would be rendered. The applicant was invited by letter to provide oral substantiation of his challenge request. The applicant returned this letter marked "Not available". He was subsequently sent a letter informing him that his response was understood to mean that he did not wish to avail himself of the opportunity to substantiate the request orally, and that the request would continue to be considered. The letter was received by or on behalf of the applicant. He did not appear at the hearing of the challenge request. The Supreme Court dismissed the request. The announcement of the judgment had not provided any indication that the justices who were to hand it down were biased. The applicant had also raised procedural objections, but they did not justify the conclusion that the challenged justices were biased against the applicant or that there was any objectively justifiable fear of that.

In the case that led to the judgment of 5 April 2024 (ECLI:NL:HR:2024:526), a challenge request was filed on behalf of the applicant. The notice containing that request only provided unspecific information about other positions held by the justices concerned and judgments they had handed down in other cases, but no other specific facts or circumstances implying any obstruction to judicial impartiality in the handling of the appeal in cassation or showing that there was any objectively justifiable fear of that. The Supreme Court dismissed the request, ruling that a challenge request does not meet the reasoning requirement if it lacks substantiation. That is the case if it can be unequivocally established that the request does not specify any fact or circumstance from which any obstruction of the judge in question's judicial impartiality may be inferred or showing that there is an objectively justifiable fear of that. Given that such a request cannot be regarded as a challenge request within the meaning of Section 8:15 of the General Administrative Law Act, the challenge chamber may decline to consider it

without holding a hearing in that regard (on the basis of Article 2.3.2, opening words and (a) of the Protocol for the participation in the handling and deliberations of the Supreme Court of the Netherlands). This interpretation is also in line with the case law of the European Court of Human Rights, the main rule of which a challenge request must not be omitted applies solely in the event that it "does not immediately appear to be manifestly devoid of merit".
The judgment of 26 April 2024, ECLI:NL:HR:2024:666, states that the applicant's interested party had submitted a challenge request, among other things, by posting a notice in the Supreme Court's web portal. A few days later, the interested party posted an additional notice in the web portal. The interested party was subsequently invited to substantiate the challenge request at the oral hearing, but failed to appear. The Supreme Court held that what had been put forward by the interested party in the first notice posted in the web portal did not justify the conclusion drawn therefrom by the interested party that the justices concerned were biased, nor that there was an objectively justified fear thereof. The notice posted in the web portal thereafter did not lead to a different opinion, if only because, on the basis of Article 8:16(3) of the General Administrative Law Act, all facts or circumstances must be presented at the same time, so that there is no room for the submission of further grounds. The challenge request was rejected.

In the judgment of 22 November 2024, ECLI:NL:HR:2024:1717, the Supreme Court dismissed a challenge request based on objections of an organisational, procedural and general nature. According to the applicant, he had made several requests in the main case that had not been responded to and that must be decided on first, before judgment could be rendered. The Supreme Court ruled that the objections raised could not, by their nature, lead to the conclusion that the justices concerned were biased against the applicant, nor that there was an objectively justified fear thereof. Additionally, the applicant did not raise any argument specifically relating to the justices in respect of whom he filed the challenge request.

Complaints and other correspondence

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, each year an overview is published of the registered complaints and of the complaints handled and settled by the President.

Complaints were also submitted to the Procurator General in the reporting year. More information about this can be found in the chapter The Procurator General's Office at the Supreme Court.

Reporting period

In 2024, the President handled one complaint pursuant to the complaint regulation. This complaint concerned members of the Supreme Court's challenge chamber. The complainant wrote that he wished to file a complaint regarding the way he was treated by the members in question. As this complaint concerned a judicial decision, in respect of which no complaints can be filed under the complaints regulation, no further consideration was given to the complaint.

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 2024. 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 their special duties. These letters and e-mails do not fall within the scope of the complaints regulation and that is generally the gist of the responses sent 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

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. As a rule, advisory opinions are given on proposed legislation relating to the organisation of the judicial system and coordination within it, and on changes to procedural law. These advisory opinions are politically neutral.

The choices made in the advisory opinions 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 democracy governed by the rule of law, 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 2024, the President and the Procurator General published three advisory opinions on the merits of proposed legislation. These are:

- Advisory opinion on Temporary decision experiment proximity judge
- Advisory opinion on legislative proposal regarding whistleblowing policy in the judiciary
- Advisory opinion on legislative proposal regarding strengthening of the Dutch General Administrative Law Act guarantee function

Dialogue

As an institution, the Supreme Court fulfills 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 polity 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 democracy governed by the rule of law, 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 is the participation of the President of the Supreme Court in the dialogue between the branches of government that took place on 10 June 2024 upon the presentation of the report by the Government Committee on the Rule of Law established by the government. 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. In 2024, there were seven decisions (2020: 8 decisions; 2021: 10 decisions; 2022: 10 decisions; 2023: 6 decisions).

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 the three branches of government will, among other things, promote the quality of the law, as well as the rate at which bottlenecks in the law can be recognized and resolved.

As part of that interaction, the Supreme Court may decide to include signals for technical legal issues concerning the application of legislation that arise in the cases it hears. Passing on signals can help society and those involved in the administration of justice to recognise 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. If the legislature has already responded to a judgment of the Supreme Court before that judgment is included in this section, then mentioning that response to the signal can further illustrate the dialogue between the branches of government.

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. Sometimes the Supreme Court can provide a solution to an identified bottleneck in its decision, while remaining within the boundaries of its tasks. 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 Court encounters in its case load.

Judgments

Supreme Court 9 April 2024, ECLI:NL:HR:2024:566

If community service is ordered in the commission of two or more criminal acts resulting in two or more separate offences, then in addition to the hours of the community service can the hours of the substitute detention also accumulate? In the advisory opinion, the Advocate General took the position that in the commission of two or more criminal acts resulting in two or more separate offences the maximum of four months of substitute detention also applies. However, the Supreme Court has interpreted the legal system in such a way that in the event of the commission of two or more criminal acts resulting in two or more separate offences the court may exceed that maximum, as the legislation contains no restriction. The Supreme Court is of the opinion that it is up to the legislature to determine whether a scheme similar to the scheme for, inter alia, fines should be provided for community service, or a different type of scheme of capping substitute custody in the case of community service, if it concerns the commission of two or more criminal acts resulting in two or more separate offences.

Supreme Court 19 January 2024, ECLI:NL:HR:2024:49

This case involved a restriction on the possibility to set off dividend tax against corporate income tax.

If a company established in the Netherlands distributes dividends, dividend tax is withheld. A recipient of the dividend can, under certain conditions, set off the withheld dividend tax against the Dutch corporate income tax due. In that case, the law requires that the taxpayer receiving the dividend is both the direct beneficiary or the beneficiary through depositary receipts as well as the ultimate beneficial owner of the dividend on which dividend tax has been withheld. The requirement of ultimate beneficial ownership is included in the law as a measure against what is referred to as dividend stripping. Dividend stripping entails that a shareholder transfers the right to dividends to another person who has a more favourable right to a refund, reduction or tax credit with regard to the dividend tax withheld than the original shareholder. The law describes a certain situation where the taxpayer receiving the dividend is not considered the ultimate beneficial owner. The Supreme Court held that that description contains an exhaustive regulation of the cases in which the person entitled to the dividend is not the ultimate beneficial owner after all. Although the legislature wanted to leave it up to the courts to further establish the concept of ultimate beneficial owner, it cannot be inferred from the legislative history what conditions or requirements and circumstances the legislature had in mind in this regard. Cases that cannot be considered to fall under that exceptional situation defined in the law are therefore not covered.

Article 25 Corporate Income Tax Act 1969, which applies in this case, has meanwhile been

amended.

Supreme Court 22 March 2024, ECLI:NL:HR:2024:470

The District Court of Zeeland-West-Brabant referred a question to the Supreme Court for a preliminary ruling of how the part of an elderly person's tax credit to be taken into account when calculating national insurance contributions must be calculated for a non-resident taxpayer who is liable to pay contributions in the Netherlands. The Supreme Court held that, according to the statutory methodology in calculating the national insurance tax credit for a non-qualifying, non-resident taxpayer, the person's income subject to contributions is not always fully taken into account. That income (the contribution base) legally consists, even for non-resident taxpayers (i.e. taxpayers living outside the Netherlands), of the worldwide income from employment (the taxable income from work and home, determined according to the rules of Chapter 3 Income Tax Act 2001). The Supreme Court ruled that said statutory methodology, in the context of income-dependent components of the national insurance tax credit, such as the elderly person's tax credit, does not allow for also taking into account the worldwide income, even though it would be obvious to do so.

Supreme Court 12 July 2024, ECLI:NL:HR:2024:1060

In a dispute regarding the question of whether training costs could be deducted from income tax, the District Court ruled in favour of a foreign student. The Inspector was ordered to pay the costs of the appeal proceedings. Those costs were determined in accordance with the Legal Costs (Administrative Law) Decree. In that Decree, a fee of EUR 296 per point (procedural act) was assumed for tax cases in the objection phase, and a fee of EUR 597 per point for other administrative cases. In the Supreme Court's view, this distinction between the two rates was not sufficiently explained by the legislature. As a result, it is not clear that and why that lower fee is justified for all tax cases. Therefore, the administrative court cannot assess whether that Decree is to that extent discriminatory and contrary to Article 1 of the Constitution. To prevent the courts from applying the lower fee in violation of the discrimination prohibition to the detriment of an interested party in tax cases, the Supreme Court finds it appropriate for the courts to disregard that lower fee.

The Legal Costs (Administrative Law) Decree has since been amended and it no longer makes any difference for the compensation per point whether it concerns a tax case or another case under administrative law.

Supreme Court 11 October 2024, ECLI:NL:HR:2024:1422

An interested party trading in used passenger cars applied for and – wrongly – obtained refunds of private motor vehicle and motorcycle tax on the basis of Article 14a of the Car and Motorcycle Tax Act 1992. The Inspector therefore imposed an additional tax assessment and fine on him, based on Article 67f Dutch General Tax Act. The Court of Appeal upheld that fine on appeal. The Supreme Court set this judgment aside on appeal in cassation *ex officio*. The interested party had not paid the wrongly refunded amounts of private motor vehicle and motorcycle tax in their capacity as a taxpayer. As a result, it was not legally possible to impose a fine on him based on Article 67f Dutch General Tax Act, because Article 67f(6) Dutch General Tax Act lacks a reference to Article 20(2), first sentence, Dutch General Tax Act (on additional tax assessments imposed on someone other than the taxpayer).

Supreme Court 15 November 2024, ECLI:NL:HR:2024:1657

An interested party who was partially incapacitated for work received, in addition to wages from

his employer, a work resumption benefit for persons partially fit for work (WGA benefit) as referred to in Chapter 7 of the Work and Income (Capacity for Work) Act (WIA). The Employee Insurance Agency UWV paid the WGA benefit directly to the interested party. If it had been paid by the employer, the WGA benefit would have counted towards the calculation basis for the employed person's tax credit. This is not the case if the benefit was paid by the Employee Insurance Agency UWV. This distinction was caused by the applicable legal provisions. The interested party was of the opinion that the distinction was contrary to the treaty-based prohibitions on discrimination set out in Article 14 ECHR in conjunction with Article 1 of the First Protocol to the ECHR, Article 1 of the Twelfth Protocol to the ECHR and Article 26 ICCPR. The Supreme Court held that, even when taking into account the broad discretion vested in the legislature, the distinction could not be considered justified and is contrary to the prohibition on discrimination in the said treaty provisions. The Supreme Court did not offer judicial remedy to the interested party for this treaty violation, as there were several options for achieving equal treatment. A choice between the alternatives was beyond the Supreme Court's duty to develop the law in the given constitutional relations, given the court's restraint observed therein. For the time being, the Supreme Court left it to the legislature to correct this deficiency in the law. Meanwhile, the government has taken a position on the matter.
Another tax case in which the Supreme Court established the existence of a treaty violation and held that, for the time being, it is up to the legislature to correct the deficiency in the law concerns the judgment of 6 September 2024 (ECLI:NL:HR:2024:1130) on the levy of inheritance tax if extramarital children inherit. On this case, see in this annual report the section The Supreme Court, The Tax Division.

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 Procurator General's 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 1,391 opinions were issued in 2024: 344 in civil cases, 916 in criminal cases and 131 in tax cases.

In addition, the Procurator General has a number of special duties. This allows him to institute cassation in the interest of the law to obtain a decision from the Supreme Court on a question of law without affecting an already concluded case. Additionally, the Procurator General is the only person authorised to criminally prosecute government officials or Members of Parliament, but only after having been ordered to do so by the government or the House of Representatives. When charges are brought against government officials or Members of Parliament, the Procurator General first conducts an exploratory investigation to see if there are any leads for investigation. Other tasks relate to the supervision of data processing by courts and the Procurator General's Office at the Supreme Court, the supervision of the Public Prosecution Service, the internal and external complaints regulation and the review in criminal cases.

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 for cassation in the interest of the law. This extraordinary legal remedy is an instrument for obtaining the Supreme Court's decision on a question of law which must be answered in the interest of legal 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.

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.

Applications

In 2024, the Procurator General received 38 applications for cassation in the interest of the law. This is eight more than the year before.

In the reporting period, eighteen rejection letters were sent in response to applications for cassation in the interest of the law. This is eight fewer 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 in the interest of the uniformity and development of the law, for example, because there was insufficient evidence of division in the case law regarding the issue in question.

Claims and decisions

In 2024, twelve claims for cassation in the interest of the law were submitted. That is seven more than the year before. This concerned six civil cases, five criminal cases and one tax case.

WHOA composition

A case in which a claim for cassation in the interest of the law was filed concerned the Act on the approval of a private agreement for the prevention of bankruptcy (WHOA). The WHOA entered into force on 1 January 2021. This Act offers viable companies in financial difficulties the possibility of restructuring their debts through a composition. A WHOA composition is intended to induce creditors to waive some of their rights. A composition is reached only if enough creditors vote in favour of the composition. The District Court must also approve the composition. This approval requirement is intended in part to protect those who voted against the composition from unfair and unlawful arrangements. If the District Court approves the composition, the creditors who voted against it will also be bound by it. The WHOA is widely applied, including by large companies. The interests, both for the company and the creditors, are often considerable.

The claim was directed against a judgment in which the District Court approved the WHOA composition offered by IHC Merwede Holding B.V. (IHC) to some of its creditors. Under the composition, the financiers were required to continue providing new financing in the future on the basis of the existing financing agreement. However, as part of the composition, the financing agreement had been changed in a number of important respects, so that the principles and terms under which the new financing must be granted had changed. The District Court held that imposing this obligation – i.e. the obligation to provide new financing on changed terms – is possible under the WHOA. Following the judgment in this case, the

question had arisen in the professional literature whether a WHOA composition could change the terms of existing obligations, as the text of the Act only mentions the possibility of forcibly changing the rights of creditors. Given the importance of this question and the fact that the law does not allow the parties themselves to lodge an appeal or an appeal in cassation against the District Court's approval of a WHOA composition, the Procurator General decided to lodge an appeal in cassation in the interest of the law. In doing so, he chose to give stakeholders and interested parties the opportunity to comment on the said question so that the claim was based on information that was as complete as possible. Various organisations and persons made use of this opportunity. The responses have been made public and can be found on the Supreme Court's website. Following the Advocate General who filed the claim on behalf of the Procurator General, the Supreme Court ruled that it is not possible in a WHOA composition to force financiers to provide previously promised financing on changed terms. While a WHOA composition can limit the rights of creditors, it cannot change their obligations.
See ECLI:NL:PHR:2024:346 for the claim and ECLI:NL:HR:2024:1533 for the Supreme Court's decision.

"Convicted of a crime" in the National Ordinance on the Integrity of (Candidate) Ministers of the country of Curaçao

Another case in which a claim for cassation in the interest of the law was filed concerned a civil case against the country of Curaçao in which a former candidate Minister had claimed a declaratory decision that he had not been "convicted of a crime" as referred to in Article 7(1)(a) of the National Ordinance on the Integrity of (Candidate) Ministers in order to still be eligible for a ministerial post. He had previously withdrawn his candidacy after it was revealed that he had been convicted of a crime in the past without having received any sentence or non-punitive order (a judicial pardon). The Joint Court of Justice of Aruba, Curaçao, Sint Maarten and of Bonaire, Sint Eustatius and Saba (hereinafter the "Joint Court of Justice") ruled that he had not been "convicted of a crime" as referred to in the said provision. The Procurator General filed a claim for cassation in the interest of the law. In his claim, he addressed, among other things, the legislative drafting history of the judicial pardon and concluded that the judicial pardon must be regarded as a conviction. The Supreme Court agreed with this.

See ECLI:NL:PHR:2024:354 for the claim and ECLI:NL:HR:2024:917 for the Supreme Court's decision.

Challenge due to participation in professional working group

Following a recommendation by the Committee for Cassation in the Interest of the Law, a claim for cassation in the interest of the law was filed in the reporting period against a decision of the challenge chamber of the Central Disciplinary Committee for the Healthcare Sector.

If one of the parties in a court case has the impression that the judge is biased or partial, they can request that the judge be replaced by another judge. This is called a challenge request. A challenge request is examined by a challenge chamber. In this case, a woman had filed a disciplinary complaint against a radiologist. She then filed a challenge request on the grounds that a member of the Central Disciplinary Committee who was to hear the disciplinary complaint was an acquaintance of the radiologist sued by her. Both were members of the Disciplinary Law working group. They saw each other at least once a year at the annual meeting of this working group. The challenge chamber allowed the challenge. According to the challenge chamber, the participation of the two professional colleagues in the same working group with a relatively small size of ten members in which disciplinary rulings were discussed

was an objective fact that could have raised the fear on the woman's part that there was insufficient distance between the two members to assess the radiologist's professional conduct without bias. In his claim, the Advocate General who filed the claim for cassation in the interest of the law on behalf of the Procurator General pointed out that it is established case law of the European Court of Human Rights and of the Supreme Court that a judge must be presumed to be impartial by virtue of their appointment, unless exceptional circumstances arise that provide compelling indications that they have a bias that gives rise to an objective fear on the part of the party requesting challenge. Given that premise, according to the Advocate General, the mere participation in a professional working group, even if it is limited in scope, by both a member of a disciplinary board and the accused, is not in itself sufficient for a finding that there are circumstances which might create the appearance that judicial impartiality could be impaired. The challenge chamber of the Central Disciplinary Committee failed to acknowledge this, according to the Advocate General. Additional circumstances that can provide an objective basis for that fear were not established by the Challenge Chamber. The Supreme Court rendered a decision in this case in early 2025. The Supreme Court held that the Central Disciplinary Committee for the Healthcare Sector could grant the challenge request. The Central Disciplinary Committee for the Healthcare Sector had to assess whether the facts alleged by the applicant objectively justified her fear of bias. An opinion in this regard depends on the circumstances of the case. The Supreme Court finds that the challenge chamber of the Central Disciplinary Committee used the correct standard in assessing the challenge request. In deciding whether this standard has been met in a specific case, the Central Disciplinary Tribunal, as the challenge court, has broad discretion. In this case, the challenge request is based on the fact that the member-colleague, together with the accused radiologist, who is thus a party to the proceedings, is part of a small working group in which disciplinary rulings are discussed. It cannot be said that a challenge request can never be granted if it is based solely on that ground. The opinion of the Central Disciplinary Tribunal therefore does not, according to the Supreme Court, demonstrate an incorrect interpretation of the law. It follows from this that the challenge decision can be maintained.

See ECLI:NL:PHR:2024:858 for the claim and ECLI:NL:HR:2025:87 for the Supreme Court's decision.

The other cases for which claims were submitted in 2024 were:

Civil law

- The question of whether the Certified Institution is an interested party in proceedings between parents over custody and/or access. See ECLI:NL:PHR:2024:434 for the claim and ECLI:NL:HR:2024:1079 for the Supreme Court's decision.
- The question of whether the single-judge subdistrict court in civil proceedings can refer a subdistrict court case to a three- or five-judge subdistrict court. See ECLI:NL:PHR:2024:644 for the claim and ECLI:NL:HR:2024:1724 for the Supreme Court's decision.
- The question of whether the subdistrict court or the ordinary civil division of the District Court has jurisdiction to hear claims based on Articles 4:29 and 4:30 of the Dutch Civil Code regarding usufructs for support. The question of law has been brought to the attention of the Procurator General by the Committee for Cassation in the Interest of the Law. See ECLI:NL:PHR:2024:1129 for the claim. The Supreme Court has not yet rendered a decision.

Criminal law

- The question in which cases and on what conditions the costs incurred by an interested party in connection with the handling of the objection or administrative appeal against a sanction referred to in the Traffic Regulations (Administrative Enforcement) Act are eligible for reimbursement. The question of what consequences exceeding the 'reasonable time' limit for trial must have on the reimbursement of legal costs is also addressed. See ECLI:NL:PHR:2024:376 for the claim and ECLI:NL:HR:2024:1012 for the Supreme Court's decision.
- The question of whether a negative decision of the District Court on an application to suspend custody awaiting extradition can be appealed. See ECLI:NL:PHR:2024:825 for the claim and ECLI:NL:HR:2024:1735 for the Supreme Court's decision.
- The question of when it is reasonable to assume that, given the nature of the crime, the determination and processing of a DNA profile cannot be of significance for the prevention, detection, prosecution and adjudication of crimes (Article 2(1)(b) of the DNA Testing of Convicted Persons Act). This also raises the question of whether the nature of the crime must be inferred from the legal classification, from the circumstances of the case, or from both. See ECLI:NL:PHR:2024:763 for the claim and ECLI:NL:HR:2024:1694 for the Supreme Court's decision.
- Various questions of law concerning the issue regarding the conditional hospital order declared immediately enforceable. See ECLI:NL:PHR:2024:656 for the claim and ECLI:NL:HR:2024:1729 for the Supreme Court's decision.
- Whether a decision to convert community service to substitute detention as referred to in Article 6:3:3 Code of Criminal Procedure must be signed and dated. See ECLI:NL:PHR:2024:1388 for the claim. The Supreme Court has not yet rendered a decision.

Tax law

- The question of whether sound business practice allows profit recognition by revaluing assets in order to prevent loss evaporation and the question of whether there is a sufficient legal interest in objecting to and appealing against the refusal to recognise those profits if they do not reduce the assessment for the year in question and – unlike in ECLI:NL:HR:2024:265 – there is no decision to offset losses as a legal remedy. See ECLI:NL:PHR:2024:777 for the claim. The Supreme Court has not yet rendered a decision.

Review

To prepare an application for review, a convicted person may request the Procurator General at the Supreme Court to conduct a further investigation. No applications were filed in 2023, while four applications were filed in 2024.

Two applications concerned the case known as the Arnhem villa murder. Both involved a 12-year prison sentence in 2000 for co-conspiracy to commit theft with violence against two people that resulted in the death of a person. Both cases involved a second request for further investigation. After previous requests for further investigation, the Supreme Court rejected requests for review in this case in 2021. The requests were sent to the Advisory Committee on

Concluded Criminal Cases (ACAS) for its opinion during the reporting year. The ACAS has not issued its advice yet in the reporting year.
Another request concerned a sentence given in 2017 to life in prison for, among other things, two murders. In 2019, the Supreme Court rejected the appeal in cassation lodged against this. The fourth request concerned a 1993 conviction for rape to one year of imprisonment with the imposition of TBS with a hospital order with compulsory treatment. Neither application has been decided on yet in the reporting year.

Earlier applications

An application from 2018 regarding a 2011 conviction for war crimes during the armed conflict in Rwanda in 1994 carrying a life sentence was sent to the ACAS for an opinion in 2018. The ACAS issued its opinion in 2023. At the start of 2024 the request was allowed in part, following the opinion of the ACAS. More information on the decision.

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 2024 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 this duty, the Procurator General conducts – mostly thematic – investigations into how the Public Prosecution Service performs its duties. In doing so, attention is always devoted to the legal quality of the duty being investigated.

Three investigations were completed in 2024, in which final reports were published. Two investigations were thematic in nature, while the third investigation was an incident investigation. The Procurator General presented the reports to the Minister of Justice and Security during the reporting year.

Supervision report 'Duty of care and witness protection'

In the supervision report entitled 'Duty of care and witness protection', the main question 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. No indications were found in the investigation that the Public Prosecution Service, in general, fulfils its duty of care for the protection of witnesses inadequately when performing its duties. However, the investigation did show that a number of procedural requirements are not respected, that loans are granted without repayment-oriented efforts and that documentation is inadequate.

Read the supervision report here.

Supervision report 'Special conditions at V.I.'

It was investigated in the supervision report 'Special conditions at V.I.' whether the Public Prosecution Service complied with the legal requirements when imposing special conditions on a release on probation. It was found that this is the case for the most part. Occasionally, however, special conditions were found to be insufficiently clearly defined or unnecessary. Additionally, there is no clear framework as to what is meant by supervising compliance with the conditions, and what decisions the Public Prosecution Service can leave to the probation service during such supervision.

Read the supervision report here.

Supervision report 'Handled with care?'

The third supervision report presented to the Minister in 2024 concerns an incident investigation into the Public Prosecution Service's actions prior to a stabbing incident in a supermarket at Turfmarkt in The Hague on 20 June 2023. This investigation is the first incident investigation launched by the Procurator General in addition to an investigation by the Inspectorate of Justice and Security. It was concluded in the report that not all information about the suspect's judicial record was listed on the suspect's judicial documentation (criminal record). It was also noted that the exchange of information within the Public Prosecution Service could be improved and that the communication between the Public Prosecution Service and the prison system needed attention. Individual employees of the Public Prosecution Service who were involved in criminal investigations against the suspect, given the knowledge available to them at the time, did not act unreasonably.

Read the supervision report here.

Presenting the supervision report 'Handled with care?' to the minister

Ongoing investigation

The investigation launched in 2023 into the Public Prosecution Service's dismissal of criminal cases and whether the Public Prosecution Service is properly complying with applicable legal requirements in the performance of this task was continued in 2024. The results of the investigation are expected in 2025.

External complaint cases

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 regulation can be found on the Supreme Court's website.

The inflow of complaints is increasing. In 2024, the Procurator General received 136 complaints. By comparison, 121 complaints were filed in 2023, 108 in 2022 and 106 in 2021.

All but sixteen of the 136 complaints were settled in 2024. Eleven of those were settled at the start of 2025. In addition, another nine complaints from 2023 were settled in 2024.

Complaint categories

Complaints regarding a judicial decision

As in recent years, a large share of the complaints handled in 2024 concerned a judicial decision. In 73 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 types of decisions by a court cannot be complained about in the complaints regulation either. This also applies to complaints about members of the Bailiffs Division. One such complaint was that the Bailiffs Division refused to handle the complainant's notice of objection and that the complainant had been informed that she could lodge an appeal with the Court of Appeal. The deputy Procurator General wrote that the complaint regarded a procedural decision. This means that the complaint was directed against a judicial decision. The (deputy) Procurator General therefore cannot take up the complaint.

Another complaint related to a finding in a decision of the Preliminary Relief Court to the effect that there were insufficient grounds for an order to pay the costs of proceedings at that time. Citing this finding, one party to the proceedings complained that they felt demonised by the court and effectively publicly shamed. The Procurator General notes that the complaint concerns the substance of a court decision. Such complaints are excluded from the statutory complaints regulation.

The same happened with a complaint entailing that the court had dismissed a complainant's challenge request by copying another, earlier decision on a challenge request, except for the case details and a few sentences. The deputy Procurator General noted that the complaint concerns the manner in which a court decision was structured. Thus, the complaint concerns a judicial decision, which means that it cannot be handled by the Procurator General at the Supreme Court. The court that must assess (in this case) a challenge request is free to decide how this decision is recorded in writing. The deputy Procurator General notes in general terms that it is possible to structure certain types of decisions according to a certain pattern, such as one that first outlines the legal framework and then goes into the details of the case to be assessed.

One case involved a complaint about decisions allegedly rendered in the context of a request for a pardon by the justices who had rendered the judgment imposing the sentence or non-punitive order for which a pardon has now been requested. The deputy Procurator General held that this complaint is related to the statutory input of the court that imposed the sentence or non-punitive order to which the request for a pardon pertained. The court that imposed the sentence or non-punitive order is free to independently determine the purport of this opinion to the Minister. Based on a reasonable interpretation of the law, the opinion must be equated with

a court decision as referred to in Article 13a(1) of the Judiciary Organisation Act. This is, after all, a substantive opinion of the court on an issue that affects the convicted person to whom the request for a pardon retains and in respect of which the law requires the court to issue an opinion. The right to complain is not intended to bring up court decisions for discussion or to have them reassessed.

Complaints about a judge's behaviour

If no court decision is involved, it is possible to file a complaint about how a judge behaved towards the complainant. The issue is whether the judge behaved properly in the matter to which the complaint relates.

The following situation is an example. The complainant had complained to the District Court's administration about the judge who had handled a case of his. During the hearing, the judge allegedly asked the complainant, referring to the defendant, if he was afraid to appeal to the courts. The court administration had written to the complainant that enquiries had been made with the relevant judge. The latter had stated that she could not remember asking the complainant if he was afraid. The court clerk could not recall such a question either. The court record of the hearing did not show that such a question had been asked. The court administration deemed the complaint ill-founded. The Procurator General referred to the investigation conducted, from which no evidence emerged that such a question had been asked. The Procurator General was of the opinion that the complaint was handled diligently and did not find the assessment of the complaint to be incorrect. The Procurator General notified the complainant that he would not file a claim for an investigation because the complainant did not have sufficient interest in doing so.

Another case involved a complaint about a comment in the letter from the court administration in response to a complaint the complainant had about a subdistrict court judge. It concerned the last sentence of the following passage in the court administration's letter: "I can, however, inform you that when handling such requests, the subdistrict court judge must carefully weigh the property-law interests (in the context of the administration) and the non-property-law interests (in the context of mentorship). In doing so, the chairman of the Subdistrict team informs that you, or at least the family (...), could have already started providing what you consider to be the required care pending a decision by the subdistrict court judge on the possible financial compensation." The deputy Procurator General held that he interpreted this passage to mean that the administration had wanted to inform the complainant in a general sense about the considerations a subdistrict court judge has to make in certain cases. The comment that is the subject of the complaint means that the decision of the subdistrict court judge was not a condition for the exercise of the required care. The deputy Procurator General noted that he could imagine that the complainant had found the way that sentence was worded unpleasant, but assumes that it was meant to be purely informative. While he finds the comment unfortunate, he does not consider the tone as being presumptuous or otherwise inappropriate. Accordingly, the deputy Procurator General is of the opinion that the administration has handled the complaint in a diligent manner and that the complainant does not have sufficient interest in an investigation by the Supreme Court.

In one case, the complainant felt the judge had treated her unkindly. The judge had looked at her in a "catty" way and had shown "hostile" behaviour towards her. The court administration had written to the complainant that a judge must have enough leeway in their formulations at the hearing to allow them to put forward what is considered relevant to the assessment and resolution of the dispute at hand. After all, that is one of the most important duties of a judge, and it may cause judges to ask critical follow-up questions. The Procurator General wrote that

insofar as the complainant complained about the way the judge had behaved towards her, this had all been investigated by the court administration. In doing so, the court administration consulted the key sources. The conclusion was that it had not become sufficiently plausible that the judge had behaved towards the complainant in a discourteous manner. The Procurator General found that the complaint had been handled diligently and that the assessment of the complaint had not been incorrect. The Procurator General cannot find any grounds for further investigation in the general wording of the complainant's complaint about the judge's behaviour. Therefore, the Procurator General finds that the complainant does not have sufficient interest in an investigation by the Supreme Court regarding her complaint.

Other complaints

One case involved a complaint about the handling of a complainant's complaint by the court administration. The complainant had filed a complaint against the subdistrict court judge because they had rejected his request for the preliminary relief proceedings to take place in writing. The complainant had perceived this rejection as discrimination on grounds of disability/chronic illness. The court administration pointed out that the law requires preliminary relief proceedings to be oral. In addition, the court administration wrote that it understood that the complainant himself had chosen to institute the preliminary relief proceedings and was thus bound by due process of law. The complainant could also have chosen to authorise someone to come to the hearing in the preliminary relief proceedings in his place. The court administration held that there was no discrimination of any kind. The deputy Procurator General was of the opinion that the complaint had been handled diligently by the court administration and found the assessment of the complaint to be correct. Therefore, his conclusion is that the complainant does not have sufficient interest in an investigation by the Supreme Court.

Claim

In the reporting period, the Procurator General submitted a claim with the Supreme Court for conducting a further investigation into the conduct of a judge. The claim concerned the question of law on whether a complaint about the failure to publish a court decision (on time) in a tax case in which the applicant is a party to the proceedings or in which the applicant cannot be regarded as a party to the proceedings but has a legally respectable interest in publication, falls within the scope of the complaints regulation as referred to in Articles 13a to 13g of the Judiciary Organisation Act (claim of 12 July 2024, ECLI:NL:PHR:2024:976). The Procurator General arrives at the opinion that the complaint relates to a judicial decision and therefore cannot be substantively examined in the context of Article 13a of the Judiciary Organisation Act. The Supreme Court followed this advisory opinion (ECLI:NL:HR:2024:1549).

Other correspondence

Requests for application of powers under Article 121 Judiciary Organisation Act

The Procurator General received two applications in late 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. The

Procurator General replied to these two letters during the reporting year, as well as to a similar request received in early 2024.
One answer was that Article 121 of the Judiciary Organisation Act does not confer any special powers on the Procurator General in connection with this task, including to intervene in individual court cases. To the extent that specific cases arise that give rise to the involvement of the Procurator General in the context of this task, such involvement may, for example, consist of conducting consultations in order to contribute to improvements in the courts. In the cases presented, the Procurator General saw no evidence of such involvement.

Other letters

The Procurator General receives many letters in the context of his special duties, such as the external complaints regulation and instituting cassation in the interest of the law. The Procurator General receives other letters as well every year. The writers of those 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 set aside a judgment. In addition, there are requests for legal advice. Occasionally, a letter writer 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 that would enable him to be of service to the letter writer.

In 2024, the Procurator General received 35 of these letters, which is less than the previous year (44). All but two of these letters were answered in 2024. In addition, two letters from 2023 were answered in early 2024.