

# The evaluation and development of the quality of justice in The Netherlands

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## 1. Introduction

Judicial quality in the Netherlands has given rise to substantial debate and over the years judges, court boards, policy makers and the Dutch Council for the Judiciary have undertaken various actions to safeguard and improve this quality. Similar developments can be detected in other Member States of the European Union and within EU policy. One of the main questions concerning judicial quality is to what extent this quality should be evaluated and how this relates to political, professional and organizational aspects of the judiciary. After all, the judiciary consists of professionals with a constitutionally guaranteed independent position – the judges, in an organization that receives its main funding from Dutch Government (taxes). Hence, despite the independent nature of the professionals the current organizational features require public and political accountabilities.

The report before you discusses the Netherlands's institutional context (chapter 2); classical judicial evaluation arrangements and resource allocations) (chapter 3); and finishes with a discussion on innovative practices regarding judicial evaluation (chapter 4).

## 2. The institutional context

### 2.1. Judicial structure overview

During the last two decades, the Dutch judiciary has undergone fundamental reforms. Figure 1 shows the Judicial Map of the Netherlands before and after the reform.<sup>1</sup> These changes include the introduction of an output financing system and an alteration of the judicial map that has resulted in a reduction of the total number of courts from 24 to 16.<sup>2</sup>

The Council for the Judiciary (*Raad voor de Rechtspraak*) functions as the central management board of the judiciary and is part of the judicial system but has no competences regarding the content of judicial rulings.<sup>3</sup> The Council for the Judiciary administers the courts and has organized the judicial system into three major types of jurisdictions: civil, criminal and administrative.<sup>4</sup> The first two jurisdictions comprise three types of ordinary courts (paragraph 1.2) and the last one three

<sup>1</sup> Council for the Judiciary, 'Judicial Reform In The Netherlands: change in broad outline', (Sdu Publishers The Hague 2014) 33.

<sup>2</sup> Philip Langbroek & Mirjam Westenberg, 'Quality Indicators in the Courts of the Netherlands' in: Philip M. Langbroek and Mirjam R.M. Westenberg, *Court Administration and Quality Work in Four European Judiciaries: Empirical Exploration and Constitutional Implications*, Justizforschung series, Stämpfli Verlag, Bern, Chapter 4. (Expected February 2018).

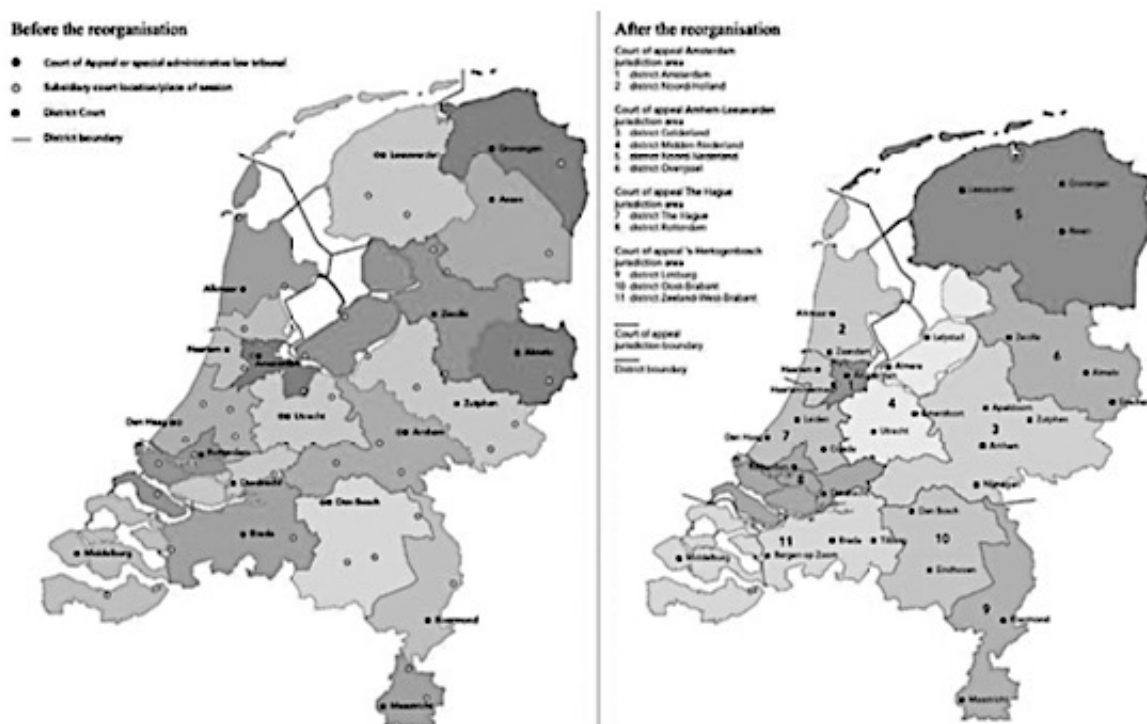
<sup>3</sup> Council for the Judiciary, 'Judicial Reform In The Netherlands: change in broad outline', (Sdu Publishers The Hague 2014) 13, 14.

<sup>4</sup> More information can be found on the government website: [www.government.nl](http://www.government.nl) (Search for: The Dutch court system: Administration of justice and dispute settlement).

F. Contini (ed.) *Handle with Care: assessing and designing methods for evaluation and development of the quality of justice*. IRSIG-CNR. Bologna Available at [www.lut.fi/hwc](http://www.lut.fi/hwc)

types of special courts (paragraph 1.3). The Judicial Organization Act (*Wet op de Rechterlijke Organisatie* or '*Wet RO*') institutes the courts and determines their competences.<sup>5</sup> The total of ordinary and specialized courts, have a systematic division in three instances.<sup>6</sup> The courts of first instance include all district courts (*arrondissementsrechtbanken*). The courts of second instance, the appeal courts (*gerechtshoven*), have specialized divisions for administrative (tax), civil and criminal cases. Based on the Act on the Judicial Map (*Wet op de Rechterlijke Indeling*), there are eleven district courts, four appeal courts and one Supreme Court. Each court has its own board.<sup>7</sup> The Netherlands does not have a Constitutional court.

Figure 1: Judicial map of the Netherlands



The composition of the courts is different in each instance. Usually, district court judges hear cases on their own but a panel consisting of three judges must hear the most important or serious cases – this is decided by the court.<sup>8</sup> The judges in the Courts of Appeal hear cases with a panel of three,<sup>9</sup> unless one judge can hear such a case. Only the Supreme Court hears every case with five judges.<sup>9</sup> According to the codes for civil and criminal procedures, judges can refer a case to a plural judge panel or to a single judge panel, if they think this is necessary content wise; the same holds for administrative court proceedings according to the General Administrative Law Act. Below, we discuss the different types of courts. A schematic overview of the current redress structure of the courts in the Netherlands is presented below.<sup>10</sup> In paragraphs 1.2 we describe the

<sup>5</sup> Act on the composition of the judiciary and the organisation of the justice system 'Judiciary Organisation Act' > <http://www.dutchcivillaw.com/judiciaryact.htm>.

<sup>6</sup> C.A.J.M. Kortmann, *Constitutioneel Recht* (Wolters Kluwer 2016) 252-254.

<sup>7</sup> Ibid 253.

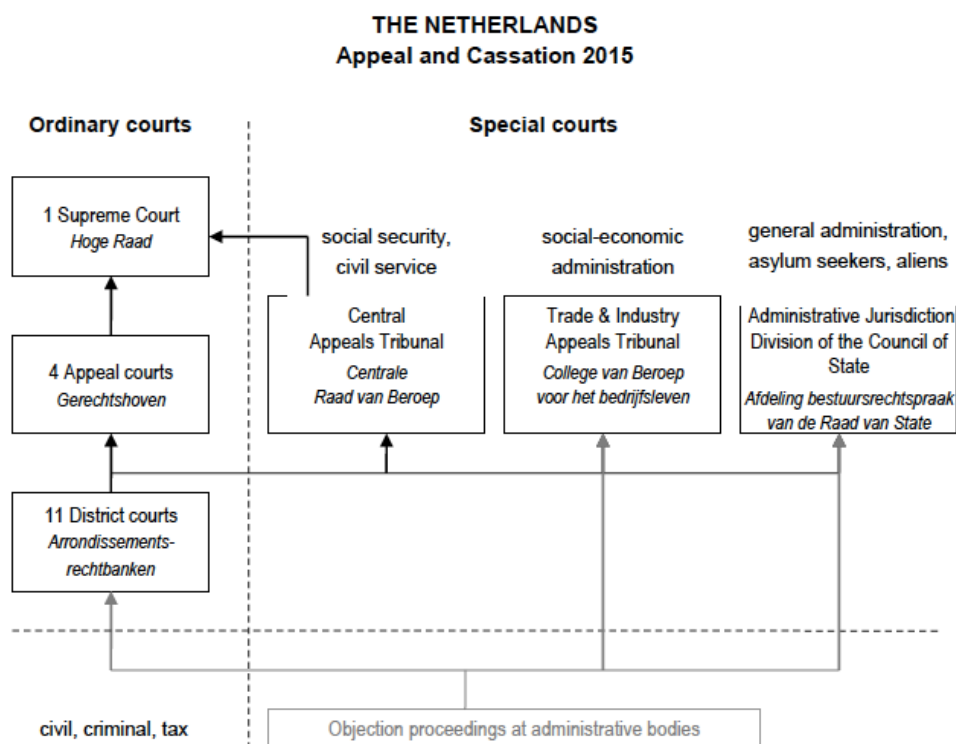
<sup>8</sup> Article 45 paragraph 1 Judicial Organisation Act.

<sup>9</sup> Article 75 paragraph 2 Judicial Organisation Act.

<sup>10</sup> Derived from Philip Langbroek & Mirjam Westenberg, 'Quality Indicators in the Courts of the Netherlands' in: Philip M. Langbroek and Mirjam R.M. Westenberg, *Court Administration and Quality Work in Four European Judiciaries: Empirical Exploration and Constitutional Implications*, Justizforschung series, Stämpfli Verlag, Bern, Chapter 4, paragraph 4.2.1 Organisation of the courts (expected February 2018).

infrastructure of the administration of the courts, and in paragraph 1.3 we discuss the major issues that are a current concern in the administration of justice.

Figure 2: Overview of courts in the Netherlands



### 2.2.1. Ordinary courts

The Judicial Organization Act institutes the district courts and stipulates their competence for civil, administrative, taxation and criminal cases. The different jurisdictions are accommodated in different departments within a district court and each specific district court has specialized chambers, for example for cases regarding small crimes or military servant cases.<sup>11</sup> In first instance, the eleven district courts hear almost all cases. Most cases start at a district court. Every district court also administers small claims, and small crimes cases (referred to as kanton-cases). The kanton-judge hears cases such as employment or rent disputes, and other civil cases involving claims of up to €25,000.<sup>12</sup> Kanton judges also hear cases involving minor criminal offences (misdemeanors).<sup>13</sup>

The internal organization of the appeal courts, being courts of second instance, is the same as for the district courts. The Netherlands has four appeal courts, which are territorially divided based on the four geographical judicial areas (*ressorts*). Appeals against judgments passed by a district court in civil, criminal and taxation cases can be lodged at the competent court of appeal. This court re-examines the facts of the case and reaches its own conclusion. Against the decision by the court of appeal there is the option of appeal for cassation at the Supreme Court.

The Supreme Court (*Hoge Raad der Nederlanden*) hears appeals in the field of civil, criminal and tax law. The aim of cassation is to promote consistency in the implementation and development of

<sup>11</sup> Ibid paragraph 4.2.1.1 Ordinary courts

<sup>12</sup> Council for the Judiciary, 'The Judiciary System in the Netherlands' (Report) (20 August 2010) 11.

<sup>13</sup> Government of the Netherlands, The Dutch Court system, <<https://www.government.nl>> accessed 18 December 2016.

the law. In doing so, the Supreme Court examines whether a lower court observed proper application of the law in reaching its decision.

The ordinary jurisdiction applies, if no administrative court has jurisdiction. As will be explained below, administrative law cases don't have an appeal at the Court of Appeal but go directly to one of the administrative law tribunals.

### 2.2.2. Special courts

In the Netherlands, three specialized administrative tribunals provide administrative legal protection to citizens that are appealing against administrative legal acts.<sup>14</sup> The General Administrative Law Act (GALA)<sup>15</sup> and the Judicial Organization Act arrange this type of legal protection. The specialized administrative tribunals are appeal courts in administrative cases. The administrative body itself hears the initial complaint in objection proceedings. The decision can be appealed at the administrative law section of a first instance court. The decision of the first instance court can be appealed at one of three specialized courts. Each of these courts decides on different types of cases.

First, the Administrative Jurisdiction Division (AJD) of the Council of State has the general jurisdiction in appeal cases, insofar as the other courts are not competent. The Council also has an advisory division to advise the government on new legislation.<sup>16</sup> Their competence falls outside the remit of the Council for the Judiciary, since the courts are administered by the Council of the Judiciary, except the Supreme Court and the AJD of the Council of State. Second, the Central Appeals Tribunal (CAT) deals mainly with proceedings regarding social security, social assistance and civil-servants law and constitutes the highest judicial authority. Third, the Trade and Industry Appeals Tribunal is the highest court specialized in the area of social-economic administrative law. Recently a bill to merge the several specialized courts was repealed by the government due to a lack of support in Parliament.<sup>17</sup>

## 2.2. Key functions in the administration of justice

This paragraph discusses various bodies dealing with the administration of justice. The Dutch Council for the Judiciary and the Minister of Security and Justice have central roles and act in close interplay with the management boards of the courts. Another body engaged in the administration of justice is the Dutch Bar Association.<sup>18</sup> The following discusses each of these entities.

### 2.2.1 The Dutch Council for Judiciary (*Raad voor de Rechtspraak*)

The Dutch Council for the Judiciary (hereafter called: Council) acts as an independent intermediary between the judiciary and the government. The Council has a minimum of three and a maximum of five members that can be part of the Council for a maximum of nine years, and they cannot also be part of a court board or the legislature among other things.<sup>19</sup> The creation of the Council aimed at increasing the independence of the judiciary and was part of a far-reaching reform of the judiciary system that took effect in 2002.<sup>20</sup> The main tasks of the Council consist of controlling the financing

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<sup>14</sup> Sometimes these courts also constitute the Court of First Instance for legal acts regarding specific laws. In such situations, the court is the final judicial stage: there is no possibility for appeal.

<sup>15</sup> The most important of these rules are laid down in the General Administrative Law Act (*Algemene wet bestuursrecht*).

<sup>16</sup> The Council also has an advisory division to advise the government on new legislation. A debate is going on about whether such different divisions should be part of the same entity; T. Barkhuysen, 'Het vereiste van rechterlijke onpartijdigheid en de voorgestelde nieuwe Wet op de Raad van State: mag het een onsje meer zijn?' *RegelMaat* afl. 2007/3, p. 119-127; Ben Schueler, 'Een overzichtelijke, onafhankelijke eenheid? Over integratie van de bestuursrechtspraak', NTB 2014/20.

<sup>17</sup> TK 2016-2017, 34 389, nr. 23, 17 November 2016.

<sup>18</sup> The Netherlands Judges Association (*NVvR*) acts both as a trade union for judges and prosecutors and as the defender of both judicial and rule of law interests. This entity is left out of the discussion because they do not administer justice.

<sup>19</sup> Art. 84 Judicial Organisation Act.

<sup>20</sup> This reform took place to guarantee the quality of justice and to be able to fulfil the justified future demands and needs of society; René Verschuur, *Independence of the Judiciary*, Belgrade, 2<sup>nd</sup> June 2007, p. 4; Council for the Judiciary, Seminar on Court Reform "Economic value of judicial infrastructure: court Reform and Court budgeting", 3 April 2012 in Portugal.

of the judiciary, supporting the operational management of the courts and monitoring these activities.<sup>21</sup> In addition, the Council contributes to the recruitment, selection, appointment and removal of judicial officers and court officials including judges.<sup>22</sup> These tasks are not listed exhaustively in the law. Currently article 91 of the Judicial Organisation Act (*Wet op de Rechterlijke Organisatie*) emphasized the operational management. However, if need be the law could be changed to include other tasks or elements that need the attention of the Council.<sup>23</sup> So far the formal tasks of the Council did not change.

Currently two of the main tasks of the Council constitute the financial management of the judiciary and the monitoring of the judiciary's quality. The Council prepares an annual budget proposal for the courts and distributes the allocated budget within the judiciary (more on this in chapter 2.5 resource allocation).<sup>24</sup> Second, the Council is responsible for the quality of the services of courts and judges, together with the management boards of the courts.<sup>25</sup> According to the explanatory memorandum there is a distinction to be made between the legal quality and the administrative-organizational quality.<sup>26</sup> The Judicial Organization Act stipulates that the Council should particularly focus on the quality of the administrative and organizational processes within the courts. However, when it comes to the legal quality of the judiciary, the responsibility lies primarily with the courts themselves.<sup>27</sup>

### 2.2.2 The Ministry of Security and Justice (*Ministerie van Veiligheid en Justitie*)

Another relevant entity to the administration of justice is the Ministry of Security and Justice. The Ministry of Justice as co-legislator is responsible for the (delegated) regulations in the judicial field. These regulations comprise the court map, the legal position of judges, rules of procedure, the administration of justice, legal aid, court fees and so on. Changes in the Judicial Organization Act, or in the Order in Council on the Financing of the court are to be initiated by the Ministry of Justice and Security. The Minister also has certain administrative competences based on article 91 of the Judicial Organization Act. The Minister can give general directions to the Council to the extent necessary to safeguard a proper management of the courts.<sup>28</sup> As far as we know, this has never happened. Furthermore, the Minister recommends people to the Government that could become members of the Judicial Council<sup>29</sup> and he is also empowered to propose the members of the Council for dismissal or suspension in case of unsuitability.<sup>30</sup> With regard to the financing of the judiciary, the Minister has an exclusive competence to submit a budget proposal for the entire justice and security domain to Parliament (2.5 resource allocation). The proposed budget for the judiciary is a part of the budget bill for the entire justice and security department.

### 2.2.3 The Dutch Bar Association (*De Nederlandse Orde van Advocaten*)

The Dutch Bar Association (the Bar) is the public-law professional body for all lawyers in the Netherlands and consists of all lawyers registered in the Netherlands. The statutorily regulated core activity of the Bar is to oversee the quality of services provided by lawyers. The Bar is responsible for the procedures regarding admission to the legal profession, the regulation of professional practice and the monitoring of these activities.<sup>31</sup> The Dutch Bar Association has a General Board that constitutes the head of the association.<sup>32</sup> In addition, there are local associations in the various

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<sup>21</sup> Art 91 Judicial Organisation Act.

<sup>22</sup> Art. 91 lid 1 sub f Judicial Organisation Act.

<sup>23</sup> *Kamerstukken II* 1999/00, 27 182, nr. 3, p. 20.

<sup>24</sup> Art. 98 jo. artt. 100 en 101 Judicial Organisation Act.

<sup>25</sup> *Kamerstukken II* 1999/00, 27 182, nr. 3, p. 62.

<sup>26</sup> *Kamerstukken II* 1999/00, 27 182, nr. 3, p. 62.

<sup>27</sup> *Kamerstukken II* 1999/00, 27 182, nr. 3, p. ??.

<sup>28</sup> Art. 93 Judicial Organisation Act.

<sup>29</sup> Art. 84 Judicial Organisation Act; Article 15 Judicial Organisation Act.

<sup>30</sup> Art. 107 Judicial Organisation Act.

<sup>31</sup> Bovend'Eert 2013, p. 133; *Advocatenwet* (Lawyers Act).

<sup>32</sup> Art. 18 *Lawyers Act*.



districts. The General Board and the various district associations ensure the proper practice of the legal profession. The Bar defends the rights and interests of lawyers; monitors their compliance with obligations; and fulfils the responsibilities entrusted to them by regulation.<sup>33</sup> The disciplinary control is entrusted to the Boards of Discipline in each jurisdiction, and – on appeal – to the Court of Discipline.<sup>34</sup> Therefore the main function of the Bar for the quality of justice relates to its influence on lawyers that safeguard good defense in court rooms and proper litigation.<sup>35</sup>

### 2.3. Current issues in the administration of justice

The Dutch administration of justice has had to deal with several issues and changes over the years. First, an alteration of the judicial map resulted in a reduction of the total number of courts from 24 to 16.<sup>36</sup> Second, the judiciary criticized the complex financing system of the judiciary and budgetary reductions applied over the years.<sup>37</sup> A courts' financial position is determined by its output: the annual budget for the judiciary is basically established by a calculation that takes the number of cases decided as point of departure. The budgeting and accounting process of the judiciary system therefore follows the production of court decisions alongside with a workload-measurement system. This system of funding is now included in the Act on the Judicial Organization and the Order in Council on financing of the judiciary of 2005.<sup>38</sup> The budget for the courts and the Council for the Judiciary in 2014, 2015 and 2016 was about one billion euros.<sup>39</sup> The new public management ideal is at the basis of the budgeting and accounting process of the Dutch judiciary.<sup>40</sup> Lastly, the judiciary saw Rechtspraak decline. Rechtspraak is the common quality management system for the judiciary and is discussed in depth in the next chapter. The main issue with the system is the fact that judges do not consider Rechtspraak as a living and functioning thing, but rather refer to it as a 'dead letter'. In fact, many judges we interviewed did not know the system.

At the end of 2012 many Dutch judges signed the so-called *Leeuwarder Manifest* to protest against the aforementioned financing system.<sup>41</sup> The main critique was the overly focus on production and targets.<sup>42</sup> Especially the criminal law judges seconded this manifest. The judges felt like they did not have sufficient time to prepare their cases and that there was an overly focus on targets instead of quality. After the *Leeuwarder Manifest* the Council of the Judiciary sought to take into account the judges' needs in order for these to provide better quality work. They asked the judges what they needed to provide high quality judgments.<sup>43</sup> The judges responded with the drafting of professional standards. These standards are discussed in the next chapter.

In addition to these professional standards, the Dutch judiciary has developed a new institutional approach towards knowledge and is in the process of implementing legislation to digitalize proceedings. The system is also appointing a more directive role to judges and courts organize so called mirror-meetings between judges and the general public, or lawyers for example, to reflect on the judiciary and specific judges. The third chapter discusses these innovative practices.

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<sup>33</sup> Art. 26 Lawyers Act.

<sup>34</sup> Art. 46 Lawyers Act.

<sup>35</sup> More info on <advocatenorde.nl>

<sup>36</sup> Wet herziening gerechtelijke kaart (HGK) of 12 July 2012; entry into force 1 January 2013. Staatsblad 2012 nr. 313.

<sup>37</sup> Paul Bovend'Eert, 'Wat is er mis met de rechterlijke organisatie?', *Ars aequi* (May 2016).

<sup>38</sup> Besluit financiering rechtspraak 28 January 2005, Stb 2005, 55, based on Articles 97, sections 1, 98 and 4 Judicial Organization Act.

<sup>39</sup> Year Report Judiciary (The Netherlands 2014) 91. Year Report Judiciary (The Netherlands 2015) 72.

<sup>40</sup> Wouter van Dooren et al., 'Performance management in the public sector, Routledge 2015. "The NPM doctrine has all the characteristics of a performance movement. It prescribes that public agencies should be subdivided into small policy oversight boards and larger performance-based managed organizations for service delivery"' (pages 48, 49).

<sup>41</sup> 'Manifest' published in *Tijdschrift voor de Rechterlijke Macht* 2013, afl. 2, p. 40.

<sup>42</sup> Interview with Esther de Rooij, Member of the Board, Court of First Instance Amsterdam (Amsterdam, 31 January 2017).

<sup>43</sup> Interview with Hester Brouwer, Member of the Board, Court of First Instance Midden-Nederland (Utrecht, 23 March 2017).

### 3. Classical judicial evaluation arrangements

#### 3.1. Introduction

The Netherlands safeguard the quality of the judiciary at several levels and in different stages. First, the judiciary manages the recruitment of new judges and their initial evaluation – as part of the selection process – thoroughly. Second, to ensure equal and overall quality of the judicial system the Dutch Council for the Judiciary has developed a common quality management system referred to as ‘Rechtspraak’.<sup>44</sup> Rechtspraak is a national quality system that consists of multiple elements and applies nationwide. It is the general framework for evaluation of the judiciary on both the *organizational* and *professional* level. It does not correspond to the recruitment of judges.

The following first discusses the recruitment and initial evaluation of judges (2.2). Then the research touches on the evaluation system Rechtspraak. After a general introduction of Rechtspraak the research discusses the evaluation of the judiciary on both the *organizational* (2.3) and *professional* level (2.4).

#### 3.2. Recruitment and initial evaluation of judges

Judges in the Netherlands are appointed for life (until the age of 70) under the authority of the Minister of Security and Justice<sup>45</sup> and they are recruited and selected based on pre-set selection criteria. The appointment for life safeguards judicial independence, particularly their personal legal position.<sup>46</sup> Nevertheless, judges can be dismissed, but only by the Dutch Supreme Court at the demand of the Procurator-General at this Court.<sup>47</sup> The Netherlands do not have lay judges or jury trials and there are currently no proposals to introduce these. Nevertheless, scholars seem to agree that the use of lay judges or juries could improve awareness about the judiciary among the population.<sup>48</sup> The next paragraphs describe the selection bodies that choose the new judges, the selection process, the selected candidates and the subsequent training that applies to future judges.

##### 3.2.1. Selection bodies

The Council for the Judiciary has the authority to recruit and select judges and other court officials, as long as the management boards of the respective courts are consulted. But, overall the Minister of Justice is responsible for the recruitment and training of judges, because judges are appointed by royal decree. The Council has instituted a national judicial selection commission (*Landelijke selectiecommissie rechters*) in order to select and recruit new judges. The national judicial selection commission consists of mostly judges, lawyers and some scholars.<sup>49</sup> The national judicial selection commission manages the selection of candidates for judicial training, the ‘*Rechter In Opleiding*’ or ‘Judge In Training’, which encompasses several material requirements.<sup>50</sup> Following selection and training, judges are appointed by the government, following a shortlist of candidates for the court with a vacancy, as submitted to the Ministry of Justice via the Council for the Judiciary.

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<sup>44</sup> Council for the Judiciary, ‘Quality of the judicial system in the Netherlands’ (2008) The Netherlands.

<sup>45</sup> Article 117 Dutch Constitution; Philip Langbroek, ‘Organisatieontwikkeling en kwaliteitszorg in de rechterlijke organisatie’ in ER Muller and CPM Cleiren, *Rechterlijke Macht* (Kluwer 2013) 85.

<sup>46</sup> C.A.J.M. Kortmann, *Constitutioneel Recht* (Wolters Kluwer 2016) 245-247.

<sup>47</sup> The procedure for dismissal is arranged in chapter 6A Wet Rechtspositie Rechterlijke Ambtenaren (Law on the Legal Status of Judicial Officers).

<sup>48</sup> Taru Spronken, ‘Leken rechtspraak in strafzaken?’ (2002) NJB p. 1703; De Roos, Th. A. (2006), Is de invoering van lekenrechtspraak in de Nederlandse strafrechtspleging gewenst? Universiteit Tilburg; P.J.P. Tak, P.J.P. (2006) Rechters zonder toga, Nijmegen: Wolf Legal Publishers; Marijke Malsch (2009); Democracy in the Courts: Lay Participation in European Criminal Justice Systems. London: Ashgate Publishing; . De Roos, Theo (2007). Lekenrechtspraak: een hot issue inmiddels al weer afgekoeld? In B. J. Eerdmans, & et al. (Eds.), Leken en rechtspraak: moet, mag en wil de burger .meedoen?. (Rechtstreeks; No. 1). Den Haag: Raad voor de Rechtspraak. pp. 29-42.

<sup>49</sup> Raad voor de Rechtspraak, Regeling Landelijke selectiecommissie rechters (LSR), Staatscourant Nr. 8498, 27 maart 2014.

<sup>50</sup> This paragraph draws from the selection procedure document developed by the Council for the Judiciary; Raad voor de Rechtspraak, ‘Selectieprocedure. Recht in opleiding’ (2016) The Netherlands.

### 3.2.2. Selection process

The national judicial selection commission emphasizes the need for candidates to show public engagement, intellectual and analytical capacities and elements such as persuasiveness and empathy. The Council and the national judicial selection commission, in consultation with the courts, have developed new professional profiles in April 2012 for judges at the lower and higher courts. These profiles lie at the basis of the whole selection procedure. The following list stems from the work of Simone Roos and Elske van Amelsfort-Van Der Kam and entails and outline the criteria underlying the professional profiles.<sup>51</sup>

- Adopt a more **directing role towards legal proceedings** – before, during and after the actual hearing. This directing role mostly corresponds with transparency about the capacities of a judge and with managing expectations of the parties.
- Pay attention to the **societal relevance and effects of their decisions**.
- Work together with other courts and with legal staff to **increase and exchange knowledge**.
- Learn how to **deal with feedback from colleagues and external parties** and balance contradictions.
- Be **creative and innovative**.
- Be **sensitive and listen well**.
- Develop **learning capacity**.
- Realize the importance of **speediness**.
- Be able to properly **communicate findings** to external parties.

Hence, these criteria are at the basis of the selection procedure. The selection procedure for the initial judicial training takes about three months and there are two moments per year in which candidates can apply. There are some preconditions in order to even start the application process. One must have the Dutch nationality and a law degree from a Dutch university to become a judge in the Netherlands.<sup>52</sup> Candidates with a criminal record are excluded from initial training unless one of the exceptions applies.<sup>53</sup> Applicants need at least two years of legal experience outside the judiciary but there is no limit to years of experience.<sup>54</sup> In principle the same selection procedure applies to all applicants, regardless of their previous experience.<sup>55</sup> The subsequent initial judicial training differs, though.

If a candidate is eligible for the initial judicial training he or she can send in their application for a position at one or more specific courts. After the first ‘letter and resume’ selection, candidates participate in an analytical test concerning verbal, language and abstraction skills. After successfully completing these analytical tests, candidates have a conversation with a member of the national judicial selection commission, someone from human resources and a representative of the judicial organ a candidate is applying for. Candidates apply for a specific court but can apply for several courts. The next step entails an assessment including several personality tests that focus on intelligence, decisiveness and integrity among other things and a conversation about these tests. The selection procedure ends with three conversations with different members of the selection commission in order to gain insight in personal capacities, societal involvement and societal vision. Legal competence and capacity to work are supposedly evaluated through the use of references and

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<sup>51</sup> Roos, Simone/Van Amelsfort-van der Kam, Elske (2015). A new process for the recruitment, selection and training of judges. *Rechtstreeks*. Series Judicial Reform.

<sup>52</sup> Article 5(1) Wet rechtspositie rechterlijk ambtenaren.

<sup>53</sup> Raad voor de Rechtspraak, ‘Selectieprocedure. Recht in opleiding’ (2016 The Netherlands), p. 7.

<sup>54</sup> Raad voor de Rechtspraak, ‘Juristen met een brede maatschappelijke blik’ (Raad voor de Rechtspraak) , <https://www.werkenbijderechtspraak.nl/rechter-of-raadsheer-worden/> accessed 9 December 2016.

<sup>55</sup> Raad voor de Rechtspraak, ‘Rechterlijke vacatures’ (Raad voor de Rechtspraak) < <https://www.werkenbijderechtspraak.nl/rechter-of-raadsheer-worden/rechterlijke-vacatures/> > accessed 16 December 2016.



the several analytical tests and assessments. Neither the list of criteria nor the selection procedure mentions diversity as a desirable feature of new recruits. Diversity is understood here to entail gender, religion, ethnic descent and so forth. Nevertheless, some judges emphasize their attention for recruiting judges from minorities to establish a more representative judicial body.

If the judicial selection commission reaches a positive conclusion after the foregoing steps – so both quantitative and qualitative elements, they forward prospective judges to the respective courts. The courts make the final decision on whether to hire a new recruit, they are also free to only choose candidates that they consider eligible, depending on the administrative structure and policy goals of each court. The courts pay specific attention to potential for teamwork and collegiality.<sup>56</sup> In principle, if a candidate is rejected he or she has to wait two years to re-apply.<sup>57</sup> So far there is no mentioning of any evaluation of the selection procedure by candidates. Despite the transparent description of the process, Rutten-van Deurzen still refers to some aspects of the process as a ‘black box’, for example the lack of transparency regarding the criteria that determine who is selected as member of the judicial selection commission.<sup>58</sup> The regulation on the national judicial selection commission, however, make certain that the performance of its members is evaluated.<sup>59</sup>

### 3.2.3. Selected candidates

At the end of 2015 the majority – 56 percent – of the judges on the level of lower and higher courts were female.<sup>60</sup> Apparently, the selection procedure provides for a ‘proper’ gender-balance. In terms of age most judges are between 46 and 60.<sup>61</sup> There are tables on the national scale detailing the average age of most judges. Other information is not publicly available regarding distinctions, apart from a division between judges with little legal experience (2-5 years) or substantial legal experience (more than 5 years). In 2016 46 new judges started the initial judicial training program (RIO-training), of which 22 had substantial legal experience.<sup>62</sup> In 2015 30 out of 67 selected judges had substantial experience.<sup>63</sup>

From the interviews with some of the court’s board members arose the view that currently the recruitment of judges leads to an excess of female (successful) applicants.<sup>64</sup> One judge mentioned concerns that the overflow of female judges could lead to a rather feminine judiciary that is out of balance.<sup>65</sup> Some even mentioned that men are preferred by recruiting courts to gender-balance the courts. In terms of diversity several judges acknowledge the lack of judges with diverse (ethnic) backgrounds. In the support staff there can be more diversity, for example in the court in Rotterdam.<sup>66</sup> One of the judges we interviewed mentioned that the current judiciary could lose legitimacy because of this shortcoming, especially given the inability of the courts to deal with

<sup>56</sup> Council for the Judiciary, ‘Selectieprocedure. Recht in opleiding’ (2016 The Netherlands) p. 13-14.

<sup>57</sup> Council for the Judiciary, ‘Selectieprocedure. Recht in opleiding’ (2016 The Netherlands), p. 17; Exceptions apply in specific situations.

<sup>58</sup> W.M.C.J. Rutten-van Deurzen, *Kwaliteit van rechtspleging* (Wolf Legal Publishers 2010), p. 163.

<sup>59</sup> Regeling Landelijke selectiecommissie rechters (LSR), Staatscourant Nr. 8498, 27 maart 2014, Art. 6.

<sup>60</sup> Council for the Judiciary, ‘Factsheet Personeel 2015’ (January 2016) Netherlands.

<sup>61</sup> Council for the Judiciary, ‘Factsheet Personeel 2015’ (January 2016) Netherlands.

<sup>62</sup> Council for the Judiciary, ‘Jaarverslag 2016’ (Raad voor de Rechtspraak) <<http://www.jaarverslagrechtspraak.nl/verslag/personeel>> accessed 16 December 2016, table 29.

<sup>63</sup> Council for the Judiciary, ‘Jaarverslag 2015’ (Raad voor de Rechtspraak) <<http://2015.jaarverslagrechtspraak.nl/verslag/personeel>> accessed 16 December 2016, table 28.

<sup>64</sup> Interview with Ward Messer, Judge, Court of First Instance Midden-Nederland (Utrecht, 22 February 2017); Interview with Esther de Rooij, Member of the Board, Court of First Instance Amsterdam (Amsterdam, 31 January 2017); Interview with Jasper van den Beld and Antoinette Opstelten, Judicial Board Member and Secretary of the Board, Court of First Instance Rotterdam (Rotterdam, 9 May 2017).

<sup>65</sup> Interview with Esther de Rooij, Member of the Board, Court of First Instance Amsterdam (Amsterdam, 31 January 2017).

<sup>66</sup> Interview with Jasper van den Beld and Antoinette Opstelten, Judicial Board Member and Secretary of the Board, Court of First Instance Rotterdam (Rotterdam, 9 May 2017).

ethnic diversity in selection of judges.<sup>67</sup> A major reason for the lack of diversity, according to some of the judges, stems from the emphasis in the selection procedure on Dutch verbal and written skills.<sup>68</sup> For applicants with a non-Dutch background this can be problematic. At the Court of First Instance in Amsterdam we heard of a new research, conducted by an external partner who works with diversity groups within the court to look at diversity issues and how to actively tackle them—especially in the selection of candidates for a judicial position.<sup>69</sup>

Lastly, because of the professional standards – which are discussed later – the several courts need to recruit many new judges and support staff because the professional standards imply an increase in the numbers of judges and legal support staff. Several judges mentioned this to be incredibly difficult to realize this short-term, because of the time it takes to train judges.<sup>70</sup>

### 3.2.4. Training and internship of apprentice judges

After prospective judges are accepted they enroll in initial judicial training mentioned above, and become fully-trained judges after completion of the training.<sup>71</sup> The duration of this training depends on the amount of previous legal experience. If a prospective judge has two to five years of the aforementioned legal experience, the initial judicial training takes four years.<sup>72</sup> If you have five or more years of legal experience you can enroll in a different and shorter track. These applicants usually come from legal practice (lawyers) according to some judges, but there are no publicly available statistics.<sup>73</sup> The additional training then takes generally between fifteen months and three years and can link to previous experience.<sup>74</sup> The judges do also start working as a judge, but under supervision. In any regard, the initial judicial training contains internal, theoretical trainings on legal matters provided for by the Judicial Training Institute (Studiecentrum Rechtspleging), the training and study center for the judiciary.<sup>75</sup> The Judicial Training Institute is a service, formally organized within the judiciary (formally comprising both judges and prosecutors).<sup>76</sup> In co-operation with their clients (the Public Prosecutor's Office and the Council for the Judiciary – and the courts), the Judicial Training Institute designs the training program and the training offer of the Judicial Organization. The Judicial Training Institute is managed by an executive board of a judge and prosecutor.<sup>77</sup>

The Judicial Training Institute offers a wide range of courses in all areas of law based on a vision on learning and development.<sup>78</sup> The Judicial Training Institute focuses on professional education and specialized courses. It tries to provide courses based on educational standards that are manageable for the courts in terms of the courts' budgets. Effectiveness and efficiency are

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<sup>67</sup> Interview with Jasper van den Beld and Antoinette Opstelten, Judicial Board Member and Secretary of the Board, Court of First Instance Rotterdam (Rotterdam, 9 May 2017).

<sup>68</sup> Interview with Ward Messer, Judge, Court of First Instance Midden-Nederland (Utrecht, 22 februari 2017); Interview with Esther de Rooij, Member of the Board, Court of First Instance Amsterdam (Amsterdam, 31 January 2017); Interview with Jasper van den Beld and Antoinette Opstelten, Judicial Board Member and Secretary of the Board, Court of First Instance Rotterdam (Rotterdam, 9 May 2017).

<sup>69</sup> Interview with Esther de Rooij, Member of the Board, Court of First Instance Amsterdam (Amsterdam, 31 January 2017).

<sup>70</sup> Interview with Jasper van den Beld and Antoinette Opstelten, Judicial Board Member and Secretary of the Board, Court of First Instance Rotterdam (Rotterdam, 9 May 2017).

<sup>71</sup> Since 2014 the training of judges has significantly altered.

<sup>72</sup> Council for the Judiciary, 'Juristen met een brede maatschappelijke blik' (Raad voor de Rechtspraak), <https://www.werkenbijderechtspraak.nl/rechter-of-raadsheer-worden/> accessed 9 December 2016.

<sup>73</sup> Interview with Jasper van den Beld and Antoinette Opstelten, Judicial Board Member and Secretary of the Board, Court of First Instance Rotterdam (Rotterdam, 9 May 2017).

<sup>74</sup> Council for the Judiciary, 'Juristen met een brede maatschappelijke blik' (Raad voor de Rechtspraak), <https://www.werkenbijderechtspraak.nl/rechter-of-raadsheer-worden/> accessed 9 December 2016.

<sup>75</sup> Besluit opleiding rechterlijke ambtenaren (Order in Council of education of judicial officers).

<sup>76</sup> In the sense of art. 40 Besluit financiering Rechtspraak.

<sup>77</sup> SSR, 'Governance structuur' (SSR) <[https://ssr.nl/index.php?page=governance-structuur&hl=nl\\_NL](https://ssr.nl/index.php?page=governance-structuur&hl=nl_NL)> accessed 16 December 2016.

<sup>78</sup> SSR, 'Opleidingen' (SSR) <[https://ssr.nl/index.php?page=opleidingen&hl=nl\\_NL](https://ssr.nl/index.php?page=opleidingen&hl=nl_NL)> accessed 16 December 2016.

considered very relevant, also in a training context.<sup>79</sup> Courses taught by other judges, professors and other legal experts, include leadership tracks and coaching and peer review tracks. The court where the judge works (usually the team-manager) discusses the need and value of specific courses for the judge to take and together they develop learning objectives. The courts' boards pay special attention to planning sessions of peer review where the judges discuss the aims of learning, consultation, reflection, control and collegiality.<sup>80</sup> At Rotterdam district court, these sessions take place once every six weeks and give room to judges to refresh their knowledge on specific subject-matters concerning their working field.<sup>81</sup>

### 3.3. Continuous evaluation of judges

#### 3.3.1 Introduction: the evaluation system RechtspraakQ

As explained above, RechtspraakQ is a national quality management system that consists of multiple elements and applies nationwide. Once judges are a member of the Dutch judiciary, they automatically are subjected to the overarching quality system RechtspraakQ. Each court is also subject to evaluation. The information generated by RechtspraakQ is used by the boards of the courts and eventually the Council for the Judiciary to maintain and improve the quality of the judiciary. On a national scale, the information is not used for the systematic and individual evaluation of individual judges, but only for the whole of the court and as aggregated information on the level of court divisions and teams.

This sub-paragraph discusses the development and methodological structure of RechtspraakQ. It starts with a brief assessment on why RechtspraakQ came into existence, after which the several norms and assessment instruments are addressed (2.3.2). The paragraph then focuses on the evaluation of individual judges. The next paragraph (2.4) will constitute a discussion on the evaluation of the judiciary as an organization.

#### ***RechtspraakQ in the making***

Quality of the judiciary in the Netherlands is a concept that has been debated widely over the years and led to the formation of several committees to reevaluate the judicial organization.<sup>82</sup> The changing society developed new ideas and goals for the judiciary, for example speed, effectiveness, accessibility and quality.<sup>83</sup> The idea arose to develop quality management as a vivid element of organization development.<sup>84</sup> In 1998 a committee acting upon instructions of the government published a report outlining ideas to modernize the judiciary. The report pleaded for a hierarchical structure of the judiciary, including management boards and a national, overarching Council for the Judiciary.<sup>85</sup> Moreover, the commission introduced the concept of quality in connection to the judiciary. The report embodied the idea that the judiciary needed to safeguard high quality in terms of classic judicial values, such as independence, but also high quality in terms of management and the organization as a whole.<sup>86</sup>

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<sup>79</sup> SSR, 'Visie op leren en ontwikkelen' (2016) The Netherlands.

<sup>80</sup> SSR, 'Intervisiebijeenkomsten' (SSR) <[https://ssr.nl/index.php?page=intervisiebijeenkomsten-nieuw&hl=nl\\_NL](https://ssr.nl/index.php?page=intervisiebijeenkomsten-nieuw&hl=nl_NL)> accessed 19 June 2017.

<sup>81</sup> Interview with Liesbeth van Walree, Monique Fiege and Jaap de Wildt, Judicial Quality Coordinators, Court of First Instance Rotterdam (Rotterdam, 11 May 2017).

<sup>82</sup> W.M.C.J. Rutten-van Deurzen, *Kwaliteit van rechtspleging* (Wolf Legal Publishers 2010), pp. 6-8.

<sup>83</sup> W.M.C.J. Rutten-van Deurzen, *Kwaliteit van rechtspleging* (Wolf Legal Publishers 2010), p. 12.

<sup>84</sup> Frans van der Doelen, 'Over de kwaliteit van rechtspreken, rechters en gerechten' (1999) 28 NJB p. 1301, 1302. P.M. Langbroek, *De publieke verantwoordelijkheid voor rechtspraak*, Trema 1994.

<sup>85</sup> Peter Ingelse, 'Onafhankelijkheid van rechters moet buiten kijf staan' *NRC Handelsblad* (5 February 1997) <<https://ingel.home.xs4all.nl/publications/leem-nrc.html>> accessed 17 February 2017

<sup>86</sup> Ruth de Bock, 'Voorbij vrijblijvendheid. Leidraden voor het versterken van de inhoudelijke kwaliteit van rechterlijke beslissingen' (2015) *Rechtstreeks* 1, 12

The judiciary itself also started inquiries into the future potential and form of the judiciary. To this end a project started in 1996, *Toekomstverkenning ZM*, to formulate ideas to safeguard the quality of the judiciary.<sup>87</sup> As a follow up the Presidents of the several courts of first and second instance and the State Secretary of Security and Justice started the Covenant Program Strengthening Judicial Organization (*Convenant Programma Versterking Rechterlijke Organisatie*) or PVRO.<sup>88</sup> This temporary program aimed at strengthening the organization in terms of working processes, external orientation and staff policy and developed a program planning to this end. In 2002 the Judicial Organization Act – article 91 – allocated the responsibility for the quality of the management of the judiciary and organizational processes to the Council for the Judiciary.<sup>89</sup> The Explanatory Memorandum states that this also contains aspects of strict judicial quality, such as impartiality, consistency and speed and promptness.<sup>90</sup> The Minister of Security and Justice is entitled to give instructions to the Council concerning its tasks in Article 91 JOA to the extent necessary for good operational management.<sup>91</sup> This way, the Minister can interfere with the courts' quality management. The JOA allocates the care for legal quality to the respective boards of the several courts.<sup>92</sup> The Council has a legal obligation to support the activities of the courts with regard to consistency in the application of the law and the promotion of legal quality.<sup>93</sup> In 2006 another commission (*Commissie-Deetman*) evaluated the instituted changes of the Judicial Organization Act.<sup>94</sup> The main recommendations concerned the need for more enhanced legal quality and ways of quality improvement.<sup>95</sup> Other focus areas concerned the external focus of the judiciary and human resource management.<sup>96</sup> In 2005 the several courts started the implementation of RechtspraakQ.<sup>97</sup> The next paragraph focuses on the functioning of RechtspraakQ.

### ***RechtspraakQ as a quality system***

RechtspraakQ is based on the INK quality management model (*Instituut Nederlandse Kwaliteit*), which in turn is based on the EFQM model, the European Foundation for Quality Management.<sup>98</sup> The INK model provides the methodological framework for RechtspraakQ and incorporates existing practices in the Netherlands to measure quality in the Dutch judiciary.<sup>99</sup> The INK model has nine main criteria<sup>100</sup> from which RechtspraakQ has developed (a) an overarching normative framework and (b) systems to measure the quality of the judicial system. Many of these quality norms and measuring instruments apply to judges, or groups of judges, and to the judicial organization as a whole.

#### ***(a) an overarching normative framework***

The normative framework (a) of RechtspraakQ has two pillars: quality regulations and the judicial performance measurement system. The first normative pillar, quality regulations, is at the basis of

<sup>87</sup> Albert W Koers *et al*, 'Toekomstverkenning ZM: Wat beweegt de ZM? *Tweede fase*.' Utrecht 1997, p. 7

<sup>88</sup> Regeling mandaat en volmacht Kernteam PVRO, *Stcrt.* 1999, nr. 171.

<sup>89</sup> *Kamerstukken II*, 1999-2000, 27182, 3 (*MvT*), p. 62

<sup>90</sup> *Kamerstukken II* 1999/00, 27 182, nr. 3, p. 62

<sup>91</sup> Article 93 JOA

<sup>92</sup> *Kamerstukken II*, 1999-2000, 27182, 3 (*MvT*), p. 62

<sup>93</sup> Art. 91 lid 1 sub c and art. 94 JOA

<sup>94</sup> Miranda Boone (UU), Philip Langbroek, Petra Kramer, Steven Olthof en Joost van Ravesteijn (KPMG) *Financieren en verantwoordend, het functioneren van de rechterlijke organisatie in beeld*, BJU, Den Haag 2007.

<sup>95</sup> Ruth de Bock, 'Voorbij vrijblijvendheid. Leidraden voor het versterken van de inhoudelijke kwaliteit van rechterlijke beslissingen' (2015) *Rechtstreeks* 1, 13

<sup>96</sup> Ruth de Bock, 'Voorbij vrijblijvendheid. Leidraden voor het versterken van de inhoudelijke kwaliteit van rechterlijke beslissingen' (2015) *Rechtstreeks* 1, 13

<sup>97</sup> W.M.C.J. Rутten-van Deurzen, *Kwaliteit van rechtspleging* (Wolf Legal Publishers 2010), p. 170

<sup>98</sup> Philip Langbroek, *Organisatieontwikkeling en kwaliteitszorg in de rechterlijke organisatie*. In E.R. Muller & C.P.M. Cleiren (Eds.), *Rechterlijke Macht* (pp. 115-142). Deventer: Kluwer. 2013.

<sup>99</sup> Raad voor de Rechtspraak, 'Quality of the judicial system in the Netherlands' (2008) *The Netherlands*, p. 6

<sup>100</sup> (1) leadership, (2) strategy and policy, (3) management of staff, (4) management of resources, (5) management of processes, (6) customers and suppliers, (7) staff, (8) society and (9) management and financiers. Also a tenth item has been added: improvement and innovation. (Raad voor de Rechtspraak, 'Quality of the judicial system in the Netherlands' (2008) *The Netherlands*, p. 6).

RechtspraakQ. On the national level the Council for the Judiciary has articulated five quality norms: permanent education, reflection, clear and comprehensible judgments, speed and promptness of case flow and a minimum proportion of cases with a three judge panel.<sup>101</sup> In addition, each court and all sectors within the court have developed a set of quality regulations to program their activities in the context of RechtspraakQ. The quality regulations contain quality standards for the court's management board and the management of each sector. The Council for the Judiciary has developed an example to model the regulations on. Over the years the quality regulations can change to emphasize different aims.<sup>102</sup> The courts have also developed norms for their service quality.<sup>103</sup>

The second normative pillar of RechtspraakQ is the system for measurement of judicial performance. This system incorporates indicators that enable courts and the Council for the Judiciary to measure the quality of judicial performance at the individual and court level.<sup>104</sup> They are based on values that are considered essential for the judiciary. The system reasons from five core areas in which quality is measured: impartiality and integrity, expertise, treatment of litigants and defendants, the consistency of case-law, and speed and promptness.<sup>105</sup> Each of these areas has diverse indicators. For example, the complaints procedure relates to the area of impartiality and integrity whereas permanent education relates to the goal of expertise. The indicators enable court management boards and the Council for the Judiciary to measure quality in one of the five areas. The values correspond to identified factors of moral legal quality, for example accessibility of proceedings, fairness, consistency; but also more practical factors such as timeliness and cost efficiency.<sup>106</sup>

#### **(b) instruments**

In addition to measuring these indicators, RechtspraakQ has developed instruments. These instruments include peer review visits, audits, staff satisfaction surveys, customer satisfaction surveys and court-wide position studies.<sup>107</sup>

The next paragraph briefly provides an overview on how the normative framework and (measuring) instruments relate to and reflect on individual judges and the judiciary as a whole.

Figure 3: 'Quality of the judicial system in the Netherlands' (2008) The Netherlands (Council for the Judiciary).

### **3.3.2 RechtspraakQ: application to individual judges and the judiciary as a whole**

At the level of the judge, RechtspraakQ focuses on both impartiality & integrity and expertise (two out of five values identified in the previous paragraph<sup>108</sup>). There are several indicators – from the system for measurement of judicial performance – in place to measure these values. Courts and the Council for the Judiciary assess the quality of these values in regard of judges. For example, there are specific norms for the required permanent education of judges. Courts measure and keep score on whether their judges comply with these requirements, which essentially lead or at least is

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<sup>101</sup> Council for the Judiciary, 'Kwaliteit rechtspraak verbeteren' (Raad voor de Rechtspraak) <<https://www.rechtspraak.nl/Organisatie-en-contact/Organisatie/Raad-voor-de-rechtspraak/Kwaliteit-van-de-rechtspraak/Paginas/Kwaliteit-rechtspraak-verbeteren.aspx>> accessed 13 December 2015

<sup>102</sup> Council for the Judiciary, 'Quality of the judicial system in the Netherlands' (2008) The Netherlands, pp. 6-7

<sup>103</sup> Rapport evaluatie kwaliteitsnormen 2011, The Hague; O.A. Tempelman, Eindrapport Kwaliteitsnormen 2012, Council for the Judiciary, Den Haag.

<sup>104</sup> Council for the Judiciary, 'Quality of the judicial system in the Netherlands' (2008) The Netherlands, p. 8

<sup>105</sup> Philip Langbroek, 'Organisatieontwikkeling en kwaliteitszorg in de rechterlijke organisatie' in ER Muller and CPM Cleiren, *Rechterlijke Macht* (Kluwer 2013)

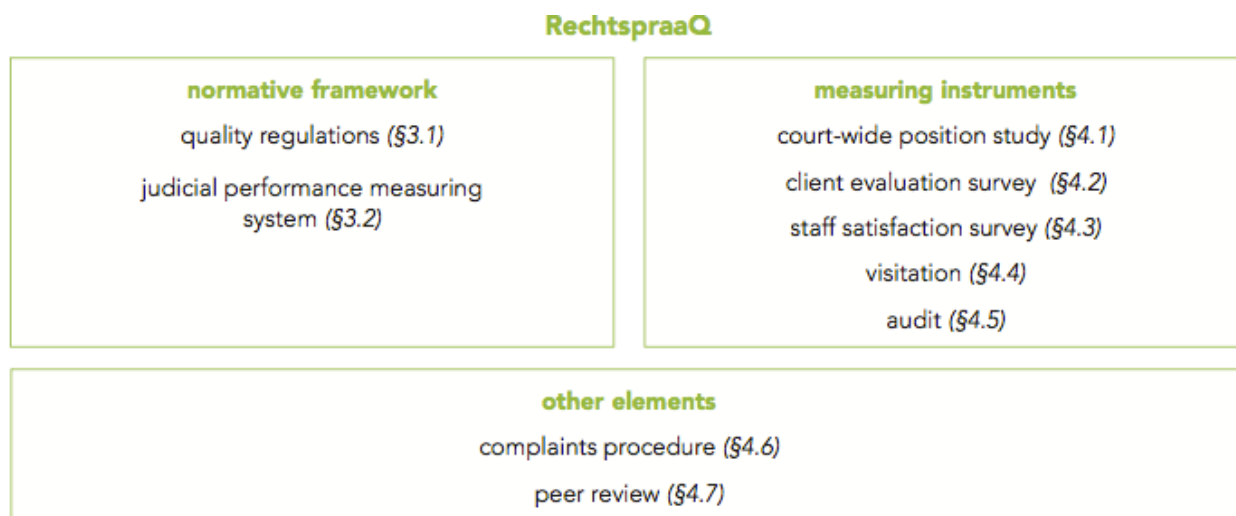
<sup>106</sup> Article 6 ECHR

<sup>107</sup> Council for the Judiciary, 'Quality of the judicial system in the Netherlands' (2008) The Netherlands, pp. 9-10

<sup>108</sup> The system reasons from five core areas in which quality is measured: impartiality and integrity, expertise, treatment of litigants and defendants, the consistency of jurisprudence, and speed and promptness.



supposed to lead to legal consistency and expertise of individual judges. Despite the fact that these measurements are individualized, courts are only held accountable for the overall level of the judges, for example the standard that 80 percent of the judges in a specific court have met the permanent education threshold.



At the level of the court as an organization there is a more substantial role for the remaining three values: the treatment of litigants and defendants, the consistency of case-law, and speed and promptness. These three quality norms correspond to the measuring instruments at the court level and not at the level of individual judges. For example, the customer satisfaction survey corresponds to quality of the treatment of litigants and defendants.

Generally speaking the measuring instruments reflect mostly on the performance of the judiciary as an organization, whereas the normative framework incorporates values and indicators to measure quality on the level of (individual) judges. The following highlights the two core values that relate to the evaluation of judges and the legal quality of judgments.

### 3.3.3 Evaluation bodies & evaluation process for individual judges

The core values for judges are impartiality, independence, integrity, expertise and professionalism,<sup>109</sup> which relate to the first and second core value of the system for measurement of judicial performance. Each core value corresponds to several indicators that enable measuring the quality in the specific area. The following discusses each value and the corresponding evaluation systems.

The management boards of the courts are responsible for enhancing “the quality and the uniform implementation of the law”<sup>110</sup> Since the recent revision of the judicial map in 2013, every management board is provided with a member, who has “quality” in his or her portfolio, which means that he or she is responsible for the development of quality on the individual and court level. Their task is not to be understood as a top-down activity, but as an assignment to create the conditions under which judges and court staff can perform on a high level both on content and on service provision.

Apart from the quality officers, there are several employees within the courts appointed with the goal to strengthen the general quality of individual judges and the court as a whole. These often

<sup>109</sup> Council for the Judiciary, ‘Versterken kernwaarden’ (Raad voor de Rechtspraak) < <https://www.rechtspraak.nl/Organisatie-en-contact/Organisatie/Raad-voor-de-rechtspraak/Kwaliteit-van-de-rechtspraak/Paginas/Kwaliteit-rechtszaak-en-vonnis.aspx>> accessed 16 December 2016

<sup>110</sup> Art. 23, sub 3 Judicial Organisation Act

experienced judges are called “training coordinators” and “quality coordinators” and are dedicated to a specific legal area. According to one judge we interviewed, the difference between the two coordinators is that training coordinators manage the training of new judges and make sure they “reach the proper quality level”, whereas quality coordinators focus on the ongoing quality and make sure “the proper quality level is maintained”.<sup>111</sup> The quality coordinators organize trainings on current issues, organize soft mechanisms for quality feedback such as peer-to-peer review, but do not partake in the individual evaluation of judges or the conversations regarding their functioning (between judicial team managers and judges). In their quality related work, they are dependent on the cooperation and authority of the court board since they don’t have any formal powers for this purpose.<sup>112</sup> The current sentiment among some judges, according to a quality coordinator, is that: “There is a strong pro-quality vibe, everyone wants us to work on quality and everyone wants to join”.<sup>113</sup>

### ***Impartiality, independence and integrity***

First, judges need to be impartial and independent according to article 6 ECHR, which has direct binding according to article 93 and 94 of the Dutch Constitution. These values safeguard citizens against state powers.<sup>114</sup> These values are mainly secured by procedural safeguards and relate less to judicial evaluation. Nevertheless, some of these measurements do constitute a part of RechtspraakQ and therefore form part of the evaluation of the courts.

The clearest procedural safeguard for independence and impartiality lies with the appointment for life of all judges.<sup>115</sup> The Dutch law provides for the option to challenge a judge in case there are doubts concerning his or her impartiality. Each legal field has its own articles to provide for these measures.<sup>116</sup> If a danger exists of even a gleam of partiality, either one of the parties can ask the judge to step down from the specific case or the judge can choose to abstain from a specific case. In 2015 parties challenged a judge in 713 cases. The total number of cases is about 1.7 million. Only 32 out of the 713 requests were honored, which adds up to 4-5 percent.<sup>117</sup> The requests are subdivided to courts and higher courts, but not specified per individual court.<sup>118</sup> Furthermore, each legal area in principle provides the option to appeal against a judgment at a higher court. RechtspraakQ does not provide an individualized record of all judges concerning their changed or quashed judgments. On the court level the Council for the Judiciary does provide such an overview by using RechtspraakQ, but this is not publicly available.

RechtspraakQ also assesses the use of the so-called complaints procedure. Parties can file a complaint regarding the behavior of a person working at the court.<sup>119</sup> The complaint can relate to neglect of the court regarding documents, timeliness and the treatment of parties. Courts have taken action to make improvements following a complaint, whether or not the complaint had merit.<sup>120</sup> If there are too many complaints regarding one element, for example improper treatment, some

<sup>111</sup> Interview with Jasper van den Beld and Antoinette Opstelten, Judicial Board Member and Secretary of the Board, Court of First Instance Rotterdam (Rotterdam, 9 May 2017)

<sup>112</sup> Langbroek, *Quality indicators*, p. 37

<sup>113</sup> Interview with Kim Oldekamp and Tanya Chub, Senior Chief Judge and Consultant Business Management, Court of First Instance Amsterdam (Amsterdam, 31 January 2017)

<sup>114</sup> E. Mak, *De rechtspraak in balans* (Wolf Legal Publishers 2007), p. 29.

<sup>115</sup> Philip Langbroek, ‘Organisatieontwikkeling en kwaliteitszorg in de rechterlijke organisatie’ in ER Muller and CPM Cleiren, *Rechterlijke Macht* (Kluwer 2013) p. 85 ; Article 117 of the Dutch Constitution.

<sup>116</sup> Article 36-41 of the Dutch Civil Code; Article 512-518 of the Dutch Code of Criminal Procedure; Article 8:15-8:20 of the Dutch Code of Administrative Procedure.

<sup>117</sup> Council for the Judiciary, ‘Jaarverslag 2015’ (Raad voor de Rechtspraak) <<http://www.jaarverslagrechtspraak.nl/verslag/klachten>> accessed 17 December 2016

<sup>118</sup> Ivo Giesen a.o. ‘Op weg naar een nieuwe Wrakingsprocedure’ (2013) NJB, 384

<sup>119</sup> Council for the Judiciary, ‘Jaarverslag 2015’ (Raad voor de Rechtspraak) <<http://www.jaarverslagrechtspraak.nl/verslag/wrakingsverzoeken-en-gehonoreerde-wrakingen>> accessed 16 December 2016

<sup>120</sup> Council for the Judiciary, ‘Jaarverslag 2015’ (Raad voor de Rechtspraak) <<http://www.jaarverslagrechtspraak.nl/verslag/klachten>> accessed 17 December 2016

quality coordinators try to organize a course on this topic or discuss other approaches to deal with it.<sup>121</sup>

### **Expertise**

Second, professionalism is highly valued in judges. The indicators for professionalism or expertise as a desired quality of judicial performance can be roughly divided into peer review and reflection, permanent education and centers of expertise. The following discusses each of these indicators to measure the quality of expertise in judges.

#### **(1) Peer review**

Peer review involves reflection and feedback between colleagues, for example judges, to discuss their work. RechtspraakQ incorporates peer review and aims primarily at the performance of individual judges.<sup>122</sup> Peer review between judges can include different actions. Courts can promote activities such as co-reading specific judgments, peer-to-peer coaching, discussing judgments among bigger groups of colleagues, dialogue between lower and higher courts, and reflection. Courts try to conduct this as respectfully as possible, but judges did mention the difficulty that sometimes colleagues can be afraid or insecure to show their work. On the team level the coordinator tries to deal with such issues informally. Peer review can also include media training, such as in the court in Utrecht.<sup>123</sup> Media training is about how to deal with the press, for example for interviews or otherwise. Courts have so called “Press Judges”. Many Courts of First Instance have weekly or biweekly lunches to discuss new and relevant case law.<sup>124</sup> The Court of Noord Holland, which has multiple locations, also has face-to-face meetings and sometimes communicates by forwarding the results of their meetings for example.<sup>125</sup>

The national norm, part of RechtspraakQ and the newly emerged professional standards, requires judges to participate at least once a year in peer-to-peer coaching or let a colleague judge co-read at least twelve judgments.<sup>126</sup> Co-reading generally occurs at the lower courts, because higher courts already have a panel of more judges per case.<sup>127</sup> Co-reading focuses on legal quality, hence legal writing, whereas peer-to-peer coaching emphasizes the conduct of judges. Peer-to-peer coaching can be done by a colleague-judge, but also by an external party such as a psychologist. One of our interviewees mentioned that co-reading “is very useful, because you always see all sorts of crazy things”.<sup>128</sup> Another approach incorporates the use of camera’s to reflect on the behavior of a judge. According to a Judge it depends on the external company that organizes these recordings which elements are discussed most thoroughly afterwards, for example with a focus on legal or psychological aspects.<sup>129</sup> Other activities, such as the dialogue and other types of feedback, are not as apparent or differ strongly per court.<sup>130</sup>

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<sup>121</sup> Interview with Kim Oldekamp and Tanya Chub, Senior Judge and Consultant Business Management, Court of First Instance Amsterdam (Amsterdam, 31 January 2017)

<sup>122</sup> Council for the Judiciary, ‘Quality of the judicial system in the Netherlands’ (2008) The Netherlands, p. 11

<sup>123</sup> Interview with Ward Messer, Judge, Court of First Instance Midden-Nederland (Utrecht, 22 February 2017)

<sup>124</sup> Interview with Aafke Klippel and Anneke de Graag, Judges, Court of First Instance Noord-Holland (Haarlem, 23 February 2017); Interview with Mirjam van Walraven, Unitmanager Civil Law, Court of First Instance Amsterdam (Amsterdam, 31 January 2017)

<sup>125</sup> Interview with Andre Dekker, Consultant Quality and Planning, Court of First Instance Noord-Holland (Haarlem, 23 February 2017)

<sup>126</sup> Council for the Judiciary, ‘Kwaliteit rechtspraak verbeteren’ (Raad voor de Rechtspraak) <<https://www.rechtspraak.nl/Organisatie-en-contact/Organisatie/Raad-voor-de-rechtspraak/Kwaliteit-van-de-rechtspraak/Paginas/Kwaliteit-rechtspraak-verbeteren.asp>> accessed 16 December 2016

<sup>127</sup> Council for the Judiciary, ‘Rapport visitatie gerechten 2014’ 2014, p. 41

<sup>128</sup> Interview with Liesbeth van Walree, Monique Fiege and Jaap de Wildt, Judicial Quality Coördinators (KC), Court of First Instance Rotterdam (Rotterdam, 11 May 2017)

<sup>129</sup> Interview with Jules Loyson, Judge, Court of Appeal Amsterdam (Amsterdam, 9 February 2017)

<sup>130</sup> Council for the Judiciary, ‘Rapport visitatie gerechten 2014’ 2014, pp. 44, 48, 51-52

Judges are expected to participate in peer review. The team coordinators, at least in the Court of Rotterdam, see to it that their judges partake in these peer review sessions.<sup>131</sup> Judges mentioned that usually judges will go to a court session of their colleague, and this colleague will return the favor.<sup>132</sup> In terms of the value of such feedback, one judge emphasized: “You must feel safe, and the feedback, peer-to-peer review or discussion should not lead to sadness or fear to dare something. It must be supportive and not only include negative critiques.”<sup>133</sup>

Despite the apparent different focus between co-reading and peer-to-peer coaching, the Council for the Judiciary requires measurement of the norms together. Therefore the norm is ambiguous and difficult to measure.<sup>134</sup> The Council only reflects on these results on the court level. The individual assessments are done by the team coordinators – these are the judges who ‘manage’ smaller teams of judges in a specific legal field. Moreover, each court has autonomy in setting the norm for additional – required – peer review. The number of courts and higher courts that met the required norm for peer review was 50-70 percent of the courts in 2015.<sup>135</sup> Judges do consistently read judgments of judges that are doing the initial judicial training as part of their training.<sup>136</sup> The results regarding content of peer review are not publicly available.<sup>137</sup> The consequence of not fulfilling the required peer-to-peer review usually leads to conversations with the team coordinator on why someone has not managed to participate in such activities.

## **(2) Permanent education**

Another indicator for expertise is permanent education of judges, which was developed in 2006.<sup>138</sup> The Council for the Judiciary requires each judge to spend 30 hours a year on personal education or 90 hours in three years. Each court registers the efforts of their judges concerning permanent education.<sup>139</sup> Therefore each court can independently decide on which activities to accredit for permanent education. Generally permanent education includes courses on the legal content, conferences and trainings focused on skills, such as legal writing.<sup>140</sup>

According to one member of a court board judges do generally need to explain why they want to take specific courses and how these courses strengthen their knowledge or skills.<sup>141</sup> Such a check to a certain extent guarantees useful courses. Many courts use in-company teaching days during which many judges follow courses and participate in other activities that contribute to Permanent Education (PE) points. Such days are valuable in supporting knowledge but also networking and teambuilding.<sup>142</sup> As one judge explained: “It is really nice to do this together during an afternoon or evening. So it also has a networking function”.<sup>143</sup> Court boards also like such days because they tend to be cheaper than separate courses.

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<sup>131</sup> Interview with Liesbeth van Walree, Monique Fiege and Jaap de Wildt, Judicial Quality Coördinators (KC), Court of First Instance Rotterdam (Rotterdam, 11 May 2017)

<sup>132</sup> Interview with Ward Messer, Judge, Court of First Instance Midden-Nederland (Utrecht, 22 February 2017); Interview with Jaqueline Frima and Jennifer Willemsen, Unitmanager Insolventie and Unitmanager Canton, Court of First Instance Rotterdam (Rotterdam, 9 May 2017)

<sup>133</sup> Interview with Jules Loyson, Judge, Court of Appeal Amsterdam (Amsterdam, 9 February 2017)

<sup>134</sup> Council for the Judiciary, ‘Rapport visitatie gerechten 2014’ 2014, p. 50

<sup>135</sup> Council for the Judiciary, ‘Jaarverslag 2015’ (Raad voor de Rechtspraak) < <http://www.jaarverslagrechtspraak.nl/verslag/reflectie-monitornorm> > accessed 16 December 2016

<sup>136</sup> Council for the Judiciary, ‘Rapport visitatie gerechten 2014’ 2014, p. 41

<sup>137</sup> Council for the Judiciary, ‘Quality of the judicial system in the Netherlands’ (2008) The Netherlands, p. 11

<sup>138</sup> Kim van der Kraats, ‘PE Revisited’ (2015) 6 *Trema* 172, 172

<sup>139</sup> W.M.C.J. Rutten-van Deurzen, *Kwaliteit van rechtspleging* (Wolf Legal Publishers 2010), p. 128

<sup>140</sup> Kim van der Kraats, ‘PE Revisited’ (2015) 6 *Trema* 172, 174

<sup>141</sup> Interview with Hester Brouwer, Member of the Board, Court of First Instance Midden-Nederland (Utrecht, 23 March 2017)

<sup>142</sup> Interview with Jasper van den Beld and Antoinette Opstelten, Judicial Board Member and Secretary of the Board, Court of First Instance Rotterdam (Rotterdam, 9 May 2017); Interview with Jaqueline Frima and Jennifer Willemsen, Unitmanager Insolventie and Unitmanager Canton, Court of First Instance Rotterdam (Rotterdam, 9 May 2017)

<sup>143</sup> Interview with Jasper van den Beld and Antoinette Opstelten, Judicial Board Member and Secretary of the Board, Court of First Instance Rotterdam (Rotterdam, 9 May 2017)

Nationally, the Council for the Judiciary only registers the efforts by lower and higher courts and the extent to which these entities have fulfilled the required permanent education norm. The annual reports of the Council for the Judiciary show a national consistency of not achieving the norm for permanent education.<sup>144</sup> Critics of the PE system suggest a national accreditation and registration system for the fulfillment of the educational standards. Although such an approach could mean an overly bureaucratic approach, critics argue that the current situation has proved to be incapable of safeguarding the educational norm.<sup>145</sup>

The main focus seems to be the respect of the norm in a formal sense, with an additional informal check on quality. All PE points are filled in digitally and can be used as management information.<sup>146</sup> One concern controller mentioned that the registration of these points is not yet fully digitalized because not all variables – such as teaching days as PE points – are incorporated in the system.<sup>147</sup> The Court Board also uses this information when reporting to the Council. If a judge does not meet the required PE norm this leads to a conversation with the team coordinator about the underlying reasons. There are no formal consequences apart from the reporting of all PE results to the Council. However, our interviewee pointed out that the team coordinators in the court actively monitor how many PE points each judge has and actively suggest specific courses for every individual judge and stimulates judges to live up to the standard.<sup>148</sup>

A point of criticism includes the focus on measurement as opposed to actual quality that stems from measuring permanent education. Some judges emphasize the value of real individual guidance on how to become a better professional and what courses and other activities could support that.<sup>149</sup> As a judge stated: “You have to think about it and see where someone has something to gain in terms of permanent education and use it”.<sup>150</sup> The controller in Amsterdam did mention that there is a shift going on towards more “trust in the sense that measuring PE points is fading in importance, whereas trust in the capacity of judges thrives to make sure they are up to date with their knowledge”.<sup>151</sup>

### *(3) Centers of expertise*

In addition to the permanent education of judges, the Dutch court system runs six centers of expertise. Different higher courts host these centers. The areas of expertise range between fraud, cybercrime, financial law, environmental and healthcare law, insurance law and fiscal law.<sup>152</sup> The several centers of expertise have a specific task description. Each center collects and distributes knowledge on the specific area of expertise and communicates its knowledge with educational centers such as universities but also the Judicial Training Institute, the training and study center for

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<sup>144</sup> Council for the Judiciary, ‘Jaarverslag 2015’ (Raad voor de Rechtspraak) <<http://www.jaarverslagrechtspraak.nl/verslag/permanente-educatie>> accessed 16 December 2016

<sup>145</sup> Kim van der Kraats, ‘PE Revisited’ (2015) 6 *Trema* 172, 175

<sup>146</sup> Interview with Kim Oldekamp and Tanya Chub, Senior Chief Judge and Consultant Business Management, Court of First Instance Amsterdam (Amsterdam, 31 January 2017)

<sup>147</sup> Interview with Frans de Boer, Chief Planning and Control, Amsterdam (Amsterdam, 31 January 2017)

<sup>148</sup> Interview with Hester Brouwer, Member of the Board, Court of First Instance Midden-Nederland (Utrecht, 23 March 2017); Interview with Ward Messer, Judge, Court of First Instance Midden-Nederland (Utrecht, 22 February 2017); Interview with Jasper van den Beld and Antoinette Opstelten, Judicial Board Member and Secretary of the Board, Court of First Instance Rotterdam (Rotterdam, 9 May 2017); Interview with Kim Oldekamp and Tanya Chub, Senior Chief Judge and Consultant Business Management, Court of First Instance Amsterdam (Amsterdam, 31 January 2017)

<sup>149</sup> Interview with Kim Oldekamp and Tanya Chub, Senior Chief Judge and Consultant Business Management, Court of First Instance Amsterdam (Amsterdam, 31 January 2017); Interview with Jules Loyson, Judge, Court of Appeal Amsterdam (Amsterdam, 9 February 2017)

<sup>150</sup> Interview with Jules Loyson, Judge, Court of Appeal Amsterdam (Amsterdam, 9 February 2017)

<sup>151</sup> Interview with Frans de Boer, Chief Planning and Control, Amsterdam (Amsterdam, 31 January 2017)

<sup>152</sup> Council for the Judiciary, ‘Kenniscentra’ (Raad voor de Rechtspraak) <<https://www.rechtspraak.nl/Organisatie-en-contact/Organisatie/Raad-voor-de-rechtspraak/Kwaliteit-van-de-rechtspraak/Paginas/Kenniscentra.aspx>> accessed 15 December 2016



the judiciary.<sup>153</sup> Furthermore, in some very specialized legal areas cases are concentrated in one court.<sup>154</sup> According to some judges, if needed, judges from a specific court assist in a specific case in a different court when asked to do so by a judge or the board of the other court.<sup>155</sup> In addition, some centers of expertise run websites and organize conferences on their field of knowledge.<sup>156</sup>

The next chapter discusses the other assessment instruments and their link to the core values of judicial performance. The following paragraph considers the evaluation of judgments and legal writings, which could also fall under the expertise pillar.

### 3.3.4 Focus on the evaluation of judgments and legal writings

In terms of legal writing the Council for the Judiciary has made several attempts in streamlining some of the Dutch judgments. The most apparent example is the so-called ‘PROMIS’ method that applies to criminal judgments on a national scale. But in the field of civil judgments the Council for the Judiciary has instructed several committees to develop a standard to check the expertise and skill of these judgments. The following first discusses PROMIS and then the initiatives regarding civil law judgments.

#### **PROMIS**

PROMIS stands for the project to improve the explanation of the grounds of criminal judgments in better readable language and has been adopted in 2004 as a uniform working method.<sup>157</sup> Officially fifty percent of all criminal judgments in the Netherlands must conform the PROMIS-requirements.<sup>158</sup> PROMIS aspires to provide the parties in criminal cases and society with a more thorough understanding of the arguments of the court, with specific regard to arguments concerning evidence and sanctions.<sup>159</sup> PROMIS also facilitates peer review between judges and invites judges to make their decisions as clear and detailed as possible, both in convictions and acquittals.<sup>160</sup> Generally PROMIS requires judgments to follow a specific order of issues to discuss, for example facts, so a judgment template.<sup>161</sup>

Currently the PROMIS judgments are effective in the sense that parties consider the arguments underlying the evidence as more than satisfactory.<sup>162</sup> However, this level of satisfaction does not go for the arguments underlying sentencing. These arguments of the PROMIS judgments have not been subject to substantial change.<sup>163</sup> This relates to the underlying legal norms, namely article 348 and 350 of the Dutch Code of Criminal Procedure, and the more complex questions connected to

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<sup>153</sup> Council for the Judiciary, ‘Kenniscentra’ (Raad voor de Rechtspraak) <<https://www.rechtspraak.nl/Organisatie-en-contact/Organisatie/Raad-voor-de-rechtspraak/Kwaliteit-van-de-rechtspraak/Paginas/Kenniscentra.aspx>> accessed 15 December 2016

<sup>154</sup> Council for the Judiciary, ‘Specialisatie en Kennisdeling’ (Raad voor de Rechtspraak) <<https://www.rechtspraak.nl/Organisatie-en-contact/Organisatie/Raad-voor-de-rechtspraak/Kwaliteit-van-de-rechtspraak/Visitatie/Best-practices/Paginas/Specialisatie-en-kennisdeling.aspx>> accessed 16 December 2016; Raad voor de Rechtspraak, ‘Rapport visitatie gerechten 2014’ 2014, p. 35

<sup>155</sup> Interview with Aafke Klippel and Anneke de Graag, Judges, Court of First Instance Noord-Holland (Haarlem, 23 February 2017)

<sup>156</sup> Interview with Jaqueline Frima and Jennifer Willemsen, Unitmanager Insolvency and Unitmanager Canton, Court of First Instance Rotterdam (Rotterdam, 9 May 2017)

<sup>157</sup> Wilma HB Dreissen, ‘Promis. Over de nieuwe wijze van bewijsmotivering en de rol van de Hoge Raad’ (2008) 26 Delikt Delinquent 1; Interview with Aafke Klippel and Anneke de Graag, Judges, Court of First Instance Noord-Holland (Haarlem, 23 February 2017)

<sup>158</sup> Council for the Judiciary, ‘Kwaliteit rechtspraak verbeteren’ (Raad voor de Rechtspraak) <<https://www.rechtspraak.nl/Organisatie-en-contact/Organisatie/Raad-voor-de-rechtspraak/Kwaliteit-van-de-rechtspraak/Paginas/Kwaliteit-rechtspraak-verbeteren.aspx>> accessed 9 December 2016

<sup>159</sup> Council for the Judiciary, ‘Quality of the judicial system in the Netherlands’ (2008) The Netherlands, p. 12; Wilma HB Dreissen, ‘Promis. Over de nieuwe wijze van bewijsmotivering en de rol van de Hoge Raad’ (2008) 26 Delikt Delinquent 1

<sup>160</sup> Raad voor de Rechtspraak, ‘Quality of the judicial system in the Netherlands’ (2008) The Netherlands, p. 12

<sup>161</sup> Wilma HB Dreissen, ‘Promis. Over de nieuwe wijze van bewijsmotivering en de rol van de Hoge Raad’ (2008) 26 Delikt Delinquent 5

<sup>162</sup> Frank van Tulder, ‘Straftoemeting: intuïtie of overweging?’ (2016) 4 Trema 4

<sup>163</sup> Frank van Tulder, ‘Straftoemeting: intuïtie of overweging?’ (2016) 4 Trema 4

punishment and sentencing.<sup>164</sup> However, judges from both a Court of First Instance and a Court of Appeal mentioned that PROMIS-judgments get quashed in appeal fairly easy, often because of small mistakes and the PROMIS-format.<sup>165</sup> It seems that the appeal courts almost ten years after the introduction of PROMIS still do not seem to appreciate it.

### **Pilots regarding civil judgments**

In addition to PROMIS the Council for the Judiciary since 2010 has three times commissioned a pilot project regarding the quality of civil law judgments. The first pilot project aimed at developing a framework to measure the quality of civil law judgments, which it did to a certain extent.<sup>166</sup> However, the developed framework required too much time to be invested by judges.<sup>167</sup> The quality of civil judgments should embody legal thoroughness, readability, and clearness, consistency and procedural and material correctness, together leading to an acceptable judgment.<sup>168</sup> In 2012 a new pilot ensued that had adapted the framework a bit, but only covered a very limited number of cases (42).<sup>169</sup>

In 2014 a new pilot project started that aimed at enabling permanent assessments of material quality of civil judgments.<sup>170</sup> The assessment should include giving feedback to lower judges.<sup>171</sup> The assessment form includes 25 questions that relate to seven elements. These elements include proper fact-finding, collecting evidence, asking for appearance, legal content and application, presentation of the argument, layout and final analysis of the overall quality.<sup>172</sup> In this project 158 judges in higher courts have assessed 632 lower civil judgments.<sup>173</sup> Hence, providing feedback to lower judges is possible.

During the interviews judges identify the difficulty in assessing what it is that constitutes legal quality.<sup>174</sup> There are many different styles and formats that each has advantages and disadvantages.<sup>175</sup> Many judges emphasize the usefulness of exchanging judgments and learning from each other in that regard.<sup>176</sup> As one Judge emphasized: “The more people look at a specific judgment, the better the outcome and learning potential”.<sup>177</sup> However, in regard of the pilots on civil judgments, some judges stress that such feedback or double-reading should go both ways: from the lower to the higher court and from the higher to the lower court.<sup>178</sup> There did emerge resistance towards such a double check by a higher court. Despite the learning capacities of reading each other’s judgments, some judges indicate that it is hard to use such reflection to formulate specific criteria for a “sound legal judgment.”<sup>179</sup> They consider the co-reading as a soft mechanism rather than as criteria for legal quality.

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<sup>164</sup> Henk Abbink, ‘Naar een model van strafmotivering’ (2016) 4 *Trema* 14

<sup>165</sup> Interview with Aafke Klippel and Anneke de Graag, Judges, Court of First Instance Noord-Holland (Haarlem, 23 February 2017); Interview with Jules Loyson, Judge, Court of Appeal Amsterdam (Amsterdam, 9 February 2017)

<sup>166</sup> Council for the Judiciary, ‘Toetsingscommissie Civiele Vonnissen’ (2010) The Netherlands

<sup>167</sup> Council for the Judiciary, ‘Toetsingscommissie Civiele Vonnissen’ (2010) The Netherlands, p. 27

<sup>168</sup> Council for the Judiciary, ‘Pilot Kwaliteitstoetsing Civiele Vonnissen’ (2012) The Netherlands, p. 3

<sup>169</sup> Council for the Judiciary, ‘Pilot Kwaliteitstoetsing Civiele Vonnissen’ (2012) The Netherlands, p. 28

<sup>170</sup> Council for the Judiciary, ‘Rechtspraakbrede toetsing van civiele vonnissen’ (2014) The Netherlands, p. 5

<sup>171</sup> Council for the Judiciary, ‘Rechtspraakbrede toetsing van civiele vonnissen’ (2014) The Netherlands, p. 5

<sup>172</sup> Council for the Judiciary, ‘Rechtspraakbrede toetsing van civiele vonnissen’ (2014) The Netherlands, pp. 8-9

<sup>173</sup> Council for the Judiciary, ‘Rechtspraakbrede toetsing van civiele vonnissen’ (2014) The Netherlands, p. 14

<sup>174</sup> Interview with Hester Brouwer, Member of the Board, Court of First Instance Midden-Nederland (Utrecht, 23 March 2017)

<sup>175</sup> Interview with Ward Messer, Judge, Court of First Instance Midden-Nederland (Utrecht, 22 February 2017)

<sup>176</sup> Interview with Hester Brouwer, Member of the Board, Court of First Instance Midden-Nederland (Utrecht, 23 March 2017); Interview with Esther de Rooij, Member of the Board, Court of First Instance Amsterdam (Amsterdam, 31 January 2017); Interview with Kim Oldekamp and Tanya Chub, Senior Chief Judge and Consultant Business Management, Court of First Instance Amsterdam (Amsterdam, 31 January 2017)

<sup>177</sup> Interview with Kim Oldekamp and Tanya Chub, Senior Chief Judge and Consultant Business Management, Court of First Instance Amsterdam (Amsterdam, 31 January 2017)

<sup>178</sup> Interview with Liesbeth van Walree, Monique Fiege and Jaap de Wildt, Judicial Quality Coördinators (KC), Court of First Instance Rotterdam (Rotterdam, 11 May 2017); Interview with Jaqueline Frima and Jennifer Willemsen, Unitmanager Insolvency and Unit manager Canton, Court of First Instance Rotterdam (Rotterdam, 9 May 2017)

<sup>179</sup> Interview with Hester Brouwer, Member of the Board, Court of First Instance Midden-Nederland (Utrecht, 23 March 2017)

In addition to co-reading and these pilots a Judge from one court mentioned organizing workshops about language in a judgment. Trainers of such a workshop emphasize the difficult and outdated language used and how it does not correspond to the recipient of the judgment.<sup>180</sup> Which forms the bridge to another difficulty: for whom do you write a specific judgment? And how should that translate to the language being used? In Amsterdam in the administrative department they phrased the working goal of writing from the premise “What I am Actually Trying to Say” as a guideline on how to structure and phrase your judgment.<sup>181</sup> Other courts, for example Rotterdam, use specific electronic “building blocks” to identify steps to be taken when judging. For example regarding child alimony to make sure all elements are discussed and legal unity is safeguarded.<sup>182</sup> Nevertheless, some quality coordinators and judges acknowledged that it remains very hard to reformulate legal jargon to readable texts.<sup>183</sup>

### 3.3.5 Consequences of the judicial evaluation for the quality of justice

The system for measurement of judicial performance together with the court quality regulations provide a solid body of quality norms that the Council for the Judiciary and courts consider worth pursuing. Alongside the discussed normative framework that is activated through the use and measurement of indicators, the Council for the Judiciary has published the so-called ‘Calendar of the Judiciary 2015-2018’ that highlights faster judicial procedures – with a 40 percent decrease in average timeliness of judicial decisions – accessibility of legal procedures and expertise.<sup>184</sup> Hence, the aforementioned framework is the direction the courts and the Council steer the judges towards. In addition, each court constitutes quality plans that incorporate elements of quality that the court should focus on in the next year.<sup>185</sup>

The specific effects of measuring the different indicators in light of the linked core value are not entirely clear. If judges do not meet the required norm for peer-to-peer coaching and co-reading, the courts hardly ever address this issue.<sup>186</sup> However, on the level of human resource management – which stands separately from RechtspraakQ – there are soft consequences concerning the level of quality work of a specific judge. Teamleaders are increasingly aware of the qualitative efforts of their team members, and engage more and more in conversations with them about quality work. Sometimes, if need be, such conversations may also focus on how improvements can be made. Such an approach in the Court of First Instance in Rotterdam is very individualized and takes a positive approach towards the issue.<sup>187</sup> If a judge does not improve it is almost impossible to dismiss this person from their judicial position. Only the Dutch Supreme Court (*Hoge Raad*) can dismiss a Judge because of insurmountable deficiencies regarding ill-functioning or illness.<sup>188</sup> Some team coordinators “try to get someone to improve his or her quality by surrounding him or her by people who have such quality”.<sup>189</sup> Judges also emphasize how important it is to discuss the functioning of judges with them, despite the fact that judges have a lifelong position. Not discussing such elements

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<sup>180</sup> Interview with Jasper van den Beld and Antoinette Opstelten, Judicial Board Member and Secretary of the Board, Court of First Instance Rotterdam (Rotterdam, 9 May 2017)

<sup>181</sup> Interview with Kim Oldekamp and Tanya Chub, Senior Chief Judge and Consultant Business Management, Court of First Instance Amsterdam (Amsterdam, 31 January 2017)

<sup>182</sup> Interview with Liesbeth van Walree, Monique Fiege and Jaap de Wildt, Judicial Quality Coördinators (KC), Court of First Instance Rotterdam (Rotterdam, 11 May 2017)

<sup>183</sup> Interview with Liesbeth van Walree, Monique Fiege and Jaap de Wildt, Judicial Quality Coördinators (KC), Court of First Instance Rotterdam (Rotterdam, 11 May 2017)

<sup>184</sup> Raad voor de Rechtspraak, ‘Agenda van de Rechtspraak 2015-2018’ (2014) The Netherlands

<sup>185</sup> Interview with Esther de Rooij, Member of the Board, Court of First Instance Amsterdam (Amsterdam, 31 January 2017); Interview with Andre Dekker, Consultant Quality and Planning, Court of First Instance Noord-Holland (Haarlem, 23 February 2017)

<sup>186</sup> Council for the Judiciary, ‘Rapport visitatie gerechten 2014’ 2014, p. 50

<sup>187</sup> Interview with Jasper van den Beld and Antoinette Opstelten, Judicial Board Member and Secretary of the Board, Court of First Instance Rotterdam (Rotterdam, 9 May 2017)

<sup>188</sup> Wet rechtspositie rechterlijke ambtenaren

<sup>189</sup> Interview with Jaqueline Frima and Jennifer Willemsen, Unitmanager Insolventie and Unitmanager Canton, Court of First Instance Rotterdam (Rotterdam, 9 May 2017)

is thought of by some as neglect.<sup>190</sup> In any regard, such situations are according to one member of the court board usually dealt with by the team coordinators and court boards by having conversations with the judge that underperforms.<sup>191</sup> Nevertheless, legal support staff can be demoted to a different position when they do not function properly.

### 3.3.6 Consequences of the judicial evaluation for the appointment to managerial positions & judicial career

Within Courts of First Instance the career ladder for judges goes from judge, to senior judge to senior judge A.<sup>192</sup> They can also apply for a position in a higher court. Each rank corresponds to a higher salary scale. For the promotion to senior judge the courts use internal rotation guidelines because of the sensitivity of the issue – many judges want to be promoted. These guidelines are available for all judges who want to apply for a position as senior judge, and the guidelines include selection criteria. In the Court of First Instance in Rotterdam each judge who wants to become senior judge can apply once every two years and their application is judged by a selection committee that is comprised of judges from all legal areas of the specific court.<sup>193</sup> After the committee's advice the court board interviews all candidates and decides on the promotion.<sup>194</sup>

The promotion in Rotterdam entails a quality factor because it requires judges to “participate above average in the jurisdiction” and have an “exemplary role”.<sup>195</sup> Both have a subjective element. This means judges are eligible for example if they are actively involved in training new judges or have a position as quality coordinator. Also, if judges are consistently behind with their permanent education or caseload the court board can take this into consideration as a negative factor.

The information on elements such as permanent education (part of RechtspraakQ) is comprised by team coordinators. Some of them conduct conversations with their team members every three months to check and see how everything is going.<sup>196</sup> In addition team coordinators put together personnel files to have insight in the development of a specific employee. These files can also be used by courts boards to decide on who qualifies as a senior judge. According to one judge it depends on the team coordinator how much he or she focuses and emphasizes elements such as permanent education both in conversations and the personnel file.<sup>197</sup>

Senior judges can be promoted to senior judge A. Only very few of the judges become senior judge A. One member of a court board identified specific elements that play a role in this regard: “They have to participate in activities such as publishing, teaching, and have national prominence”.<sup>198</sup> Only then do you potentially qualify for the rank of senior judge A. In terms of promotion to management positions within the court, one Judge mentioned that some courts have introduced a management training program since around 2004 to provide courts with managers from their own

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<sup>190</sup> Interview with Ingrid Corbeij, Member of the Board, Court of First Instance Noord-Holland (Utrecht, 3 March 2017)

<sup>191</sup> Interview with Esther de Rooij, Member of the Board, Court of First Instance Amsterdam (Amsterdam, 31 January 2017)

<sup>192</sup> Interview with Jasper van den Beld and Antoinette Opstelten, Judicial Board Member and Secretary of the Board, Court of First Instance Rotterdam (Rotterdam, 9 May 2017)

<sup>193</sup> Interview with Liesbeth van Walree, Monique Fiege and Jaap de Wildt, Judicial Quality Coördinators (KC), Court of First Instance Rotterdam (Rotterdam, 11 May 2017)

<sup>194</sup> Interview with Jasper van den Beld and Antoinette Opstelten, Judicial Board Member and Secretary of the Board, Court of First Instance Rotterdam (Rotterdam, 9 May 2017)

<sup>195</sup> Interview with Jasper van den Beld and Antoinette Opstelten, Judicial Board Member and Secretary of the Board, Court of First Instance Rotterdam (Rotterdam, 9 May 2017)

<sup>196</sup> Interview with Jaqueline Frima and Jennifer Willemsen, Unitmanager Insolventie and Unitmanager Canton, Court of First Instance Rotterdam (Rotterdam, 9 May 2017)

<sup>197</sup> Interview with Hester Brouwer, Member of the Board, Court of First Instance Midden-Nederland (Utrecht, 23 March 2017)

<sup>198</sup> Interview with Jasper van den Beld and Antoinette Opstelten, Judicial Board Member and Secretary of the Board, Court of First Instance Rotterdam (Rotterdam, 9 May 2017)

employees.<sup>199</sup> The judges emphasize that managing is a whole different field of expertise from being a judge, so such programs have positively influenced such transitions.

### 3.3.7 Debate on possible reforms and the adoption of innovative practices

Despite the enthusiasm and quality driven aims of RechtspraakQ, it is debatable whether it has led to the goals envisaged. Many judges have never heard of either RechtspraakQ or RechtspraakQ being implemented in their court, but they have experienced pressure to meet production targets.<sup>200</sup> Judges mention that RechtspraakQ was developed bottom up but then implemented and used as a measuring instruments top down, just to generate management information, which has led to judges considering it a ‘management tool’.<sup>201</sup>

Especially the system for measurement of judicial performance never really evolved, which could be because it relates to the judicial functioning and that is the most tricky part.<sup>202</sup> It is hard to measure effectiveness and quality in the judicial system. Nevertheless, some judges emphasize the value of RechtspraakQ to have played a catalytic role in the debate on judicial quality.<sup>203</sup> As one Judge said: “I really think it [...] had a function to make us all aware that with some things it is a good to have goals and to explicate them”.<sup>204</sup> However, according to the same Judge the set-up of RechtspraakQ was too big and it evolved to be a “paper tiger”.<sup>205</sup>

One of our interviewees explicitly stated that evaluation of judges is primarily linked to improve judicial and organization performance and is not intended to evaluate the independence of the judges.<sup>206</sup>

## 3.4. The evaluation of activities of the courts

This section provides a focused analysis on how the Council for the Judiciary and courts evaluate court performance and court quality. The chapter describes the assessment systems, the used data and the consequences of such evaluation.

### 3.4.1 Actors involved

The main actors in court evaluation are the Council for the Judiciary and the management boards of the respective courts. As mentioned before, RechtspraakQ is the main evaluation framework. The previous chapter involved a discussion of these instruments on measuring judicial individual performance. The current chapter deals with the measurement instruments specifically aimed at the evaluation of courts. At the court level the emphasis lies with the core values of the treatment of litigants and defendants, the consistency of case-law and speed and promptness.<sup>207</sup> This follows from the year plans that each court needs to adopt and the calendar with goals formulated by the Council.

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<sup>199</sup> Interview with Esther de Rooij, Member of the Board, Court of First Instance Amsterdam (Amsterdam, 31 January 2017)

<sup>200</sup> Interview with Esther de Rooij, Member of the Board, Court of First Instance Amsterdam (Amsterdam, 31 January 2017); Interview with Ward Messer, Judge, Court of First Instance Midden-Nederland (Utrecht, 22 February 2017); Interview with Hester Brouwer, Member of the Board, Court of First Instance Midden-Nederland (Utrecht, 23 March 2017); Interview with Jules Loyson, Judge, Court of Appeal Amsterdam (Amsterdam, 9 February 2017).

<sup>201</sup> Interview with Hester Brouwer, Member of the Board, Court of First Instance Midden-Nederland (Utrecht, 23 March 2017); Interview with Jasper van den Beld and Antoinette Opstelten, Judicial Board Member and Secretary of the Board, Court of First Instance Rotterdam (Rotterdam, 9 May 2017); Interview with Liesbeth van Walree, Monique Fiege and Jaap de Wildt, Judicial Quality Coördinators (KC), Court of First Instance Rotterdam (Rotterdam, 11 May 2017).

<sup>202</sup> Interview with Esther de Rooij, Member of the Board, Court of First Instance Amsterdam (Amsterdam, 31 January 2017).

<sup>203</sup> Interview with Ingrid Corbeij, Member of the Board, Court of First Instance Noord-Holland (Utrecht, 3 March 2017)

<sup>204</sup> Interview with Ingrid Corbeij, Member of the Board, Court of First Instance Noord-Holland (Utrecht, 3 March 2017)

<sup>205</sup> Interview with Ingrid Corbeij, Member of the Board, Court of First Instance Noord-Holland (Utrecht, 3 March 2017)

<sup>206</sup> Esther de Rooij, expert meeting 10 november 2017.

<sup>207</sup> Philip Langbroek, ‘Organisatieontwikkeling en kwaliteitszorg in de rechterlijke organisatie’ in ER Muller and CPM Cleiren, *Rechterlijke Macht* (Kluwer 2013); For individual judges the emphasis lies with integrity, independence and expertise.



The instruments to measure these core values include a court wide position study every other year, audits, a customer evaluation survey, a staff satisfaction survey and visitations.<sup>208</sup> The court wide position study is an internal affair and therefore done by the management board of each court, focusing on the elements emphasized in the applicable court quality regulations.<sup>209</sup> Each board then ideally proceeds with a strategy to improve the results. Another mechanism in place is the audits. Members of the court staff do the audit.<sup>210</sup> Auditing is a critical research on the management of the courts.<sup>211</sup> The next paragraphs discuss in more depth the court user satisfaction surveys, the staff appreciation survey and the visitations.

### 3.4.2 Evaluation process: functioning of the system

The courts administer a customer satisfaction survey and staff satisfaction survey respectively every three and four years.<sup>212</sup> Every four years a committee also carries out a visitation of all courts.<sup>213</sup> Each court also has strict throughput times, which relate to the financial system of the judiciary. The following discusses these measuring instruments in depth.

#### (a) Court user satisfaction surveys

RechtspraakQ involves a court user satisfaction survey held among all customers of the judiciary.<sup>214</sup> Lawyers and other users of the courts are therefore involved in quality evaluation. This survey is repeated every three years. The most recent, completed survey was held in 2014 and resulted in a report. Currently the third survey is underway and runs until June 2017.<sup>215</sup> Before the national surveys, courts also held court user satisfaction surveys individually before 2011. The courts have done surveys individually since 2001, and published combined reports in 2002, 2004 and 2008.<sup>216</sup> Unfortunately, these reports are not publicly available and could therefore not be analyzed. The following discusses the aims of the court user satisfaction survey (further: CUS), the methodological design of the survey, the type of results and the consequences of these results for the courts.

#### *Reasoning behind the court user satisfaction survey*

The main goal of the national court user satisfaction survey in 2011 was to explain and justify the quality of the Dutch judiciary to Dutch society and to establish elements for improvement.<sup>217</sup> Literature has endorsed this function.<sup>218</sup> The emphasis of the survey lies with the justification of the judiciary to the outside world, with a smaller dedication to internal improvements.<sup>219</sup> This main goal relates to some of the core values identified earlier, namely treatment of litigants and defendants and speed and promptness. Nevertheless, the judiciary considers the ‘external world’ as crucial to obtain information regarding the quality of courts.<sup>220</sup> Moreover, societal legitimation is a key

<sup>208</sup> Council for the Judiciary, ‘Quality of the judicial system in the Netherlands’ (2008) The Netherlands, p. 5

<sup>209</sup> Council for the Judiciary, ‘Quality of the judicial system in the Netherlands’ (2008) The Netherlands, p. 9

<sup>210</sup> Council for the Judiciary, ‘Quality of the judicial system in the Netherlands’ (2008) The Netherlands, p. 9.

<sup>211</sup> Council for the Judiciary, ‘Audit’ (Council for the Judiciary) <<https://www.rechtspraak.nl/Organisatie-en-contact/Organisatie/Raad-voor-de-rechtspraak/Kwaliteit-van-de-rechtspraak/Paginas/Meten-van-kwaliteit-rechtspraak.aspx>> accessed 15 February 2017

<sup>212</sup> Council for the Judiciary, ‘Quality of the judicial system in the Netherlands’ (2008) The Netherlands, pp. 9-10.

<sup>213</sup> Council for the Judiciary, ‘Quality of the judicial system in the Netherlands’ (2008) The Netherlands, p. 10.

<sup>214</sup> Council for the Judiciary, ‘Rapport visitatie gerechten 2014’ (2014) The Netherlands, p. 36

<sup>215</sup> Council for the Judiciary, ‘Klantwaarderingsonderzoek (KWO)’ (Council for the Judiciary) <<https://www.rechtspraak.nl/klantwaarderingsonderzoek#8abb5565-c456-4f17-a7ea-287be5c695470>> accessed 2 March 2017

<sup>216</sup> Council for the Judiciary, ‘Klantwaardering Rechtspraak 2011. Onderzoek onder professionals en justitiabelen bij gerechten’ (2011) The Netherlands, p. 1

<sup>217</sup> Council for the Judiciary, ‘Klantwaardering Rechtspraak 2011. Onderzoek onder professionals en justitiabelen bij gerechten’ (2011) The Netherlands, p. 2

<sup>218</sup> Casper van der Waerden, ‘Financiering van de strafrechtspraak’ (2013) 9 *Trema* 296, 300

<sup>219</sup> Interview Ingrid Corbeij, Judge and Member of the Management Board, Court of First Instance of North Holland (Utrecht 3 March 2017)

<sup>220</sup> Council for the Judiciary, ‘Rapport. Visitatie Gerechten 2010’ (2010) The Netherlands, p. 39.

element for improving judicial quality.<sup>221</sup> Therefore, both elements, justification and improvement, determine the court user satisfaction surveys.

### ***Methodological design of the court user satisfaction survey***

Methodologically the CUS distinguishes between several ‘types’ of customers that have dealings with the judiciary: professionals on the one hand and litigants on the other hand. This distinction is done because of the different perspectives of both parties on the judiciary.<sup>222</sup> The CUS therefore collects data from two different target groups. The professionals include people working in the judicial field, such as lawyers, prosecutors, advocate-generals and bailiffs, but also legal representatives of administrative bodies and for example child protective services.<sup>223</sup> Litigants are citizens seeking justice but also company representatives.<sup>224</sup> The litigants exclude some parties such as detainees, children and witnesses.<sup>225</sup> The method of asking the questions differs per target group. The survey in 2011 and 2014 sent questionnaires by e-mail to professionals and held face-to-face interviews with litigants.<sup>226</sup> The face-to-face interviews were held right after the ending of a court hearing with the use of a tablet.<sup>227</sup>

The CUS uses questions to obtain a sense of the overall appreciation of both target groups for the judiciary. The original questions could all be traced back to the appreciation of having contacts with the judiciary, which could be linked to several separate components.<sup>228</sup> The questions are conceptualized at the national level.<sup>229</sup> However, individual courts are allowed to add a few questions on issues that they would like to get feedback on, although some judges mentioned that this did not happen in the latest CUS.<sup>230</sup> The questions asked have an internal consistency and are ‘bundled’ together in specific themes.<sup>231</sup> The bundling is due to the broadness of customer appreciation, which makes it hard to account for all the several aspects, and enables measurement on core themes.<sup>232</sup> For example, the appreciation of judicial performance is measured by the extent to which the judge left room to hear your story, the extent to which the judge listened to your arguments, the impartiality and expertise of the judge and a couple more questions.<sup>233</sup> Therefore the survey did not only focus on measurable elements, such as throughput times, which relates to procedural justice and less to the outcome of the case.<sup>234</sup>

### ***Results of the court user satisfaction survey***

CUS provide an overview of so-called *significant differences*, meaning that the differences do not simply stem from pure coincidence.<sup>235</sup> Significance implies a strong statistical connection between

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<sup>221</sup> Council for the Judiciary, ‘Rapport. Visitatie Gerechten 2010’ (2010) The Netherlands, p. 39.

<sup>222</sup> Council for the Judiciary, ‘Klantwaardering Rechtspraak 2011. Onderzoek onder professionals en justitiabelen bij gerechten’ (2011) The Netherlands, p. 13; This distinction does not embody a further justification.

<sup>223</sup> Council for the Judiciary, ‘Klantwaarderingsonderzoek (KWO)’ (Council for the Judiciary) <<https://www.rechtspraak.nl/klantwaarderingsonderzoek#8abb5565-c456-4f17-a7ea-287be5c695470>> accessed 10 February 2017

<sup>224</sup> Council for the Judiciary, ‘Landelijk klantwaarderingsonderzoek rechtspraak 2014’ (2014) The Netherlands, p. 70

<sup>225</sup> Council for the Judiciary, ‘Landelijk klantwaarderingsonderzoek rechtspraak 2014’ (2014) The Netherlands, p. 70

<sup>226</sup> Council for the Judiciary, ‘Landelijk klantwaarderingsonderzoek rechtspraak 2014’ (2014) The Netherlands, p. 69; Council for the Judiciary, ‘Klantwaardering Rechtspraak 2011. Onderzoek onder professionals en justitiabelen bij gerechten’ (2011) The Netherlands, p. I

<sup>227</sup> Council for the Judiciary, ‘Landelijk klantwaarderingsonderzoek rechtspraak 2014’ (2014) The Netherlands, p. 69

<sup>228</sup> Council for the Judiciary, ‘Klantwaardering Rechtspraak 2011. Onderzoek onder professionals en justitiabelen bij gerechten’ (2011) The Netherlands, p. 3

<sup>229</sup> Interview Frans de Boer, Controller, Court of First Instance in Amsterdam (Amsterdam 31 January 2017)

<sup>230</sup> Interview Ingrid Corbeij, Judge and Member of the Management Board, Court of First Instance of North Holland (Utrecht 3 March 2017)

<sup>231</sup> Council for the Judiciary, ‘Landelijk klantwaarderingsonderzoek rechtspraak 2014’ (2014) The Netherlands, p. 83

<sup>232</sup> Council for the Judiciary, ‘Landelijk klantwaarderingsonderzoek rechtspraak 2014’ (2014) The Netherlands, p. 83

<sup>233</sup> Council for the Judiciary, ‘Klantwaardering Rechtspraak 2011. Onderzoek onder professionals en justitiabelen bij gerechten’ (2011) The Netherlands, p. 144;

<sup>234</sup> Evert-Jan Govaers, ‘Feedback’ (2015) 4 Trema 115, 115

<sup>235</sup> Council for the Judiciary, ‘Rapport visitatie gerechten 2014’ (2014) The Netherlands, p. 25

a specific satisfaction theme and the general satisfaction.<sup>236</sup> To establish such significance the CUS uses the Single Classification Square Test to determine whether customer appreciation for a specific subgroup differs significantly from the general appreciation.<sup>237</sup>

From the analysis follows so-called strong points and points for improvement. A more than average level of satisfaction among professionals, which strongly connects to general satisfaction, characterizes a strong point. A score below average satisfaction among professionals, which strongly connects to general dissatisfaction, characterizes an element as one for improvement.<sup>238</sup> The scores are built up from an average of the individual items, hence the scores from 0-5 (dissatisfied to satisfied) together for all the questions relating to one theme, subdivided by the number of answered questions.<sup>239</sup> The strong points and points for improvement exist alongside secondary points and secondary points for improvement. The last category differs from the first because they have a lower impact: there is a weak statistical connection between a specific satisfaction theme and the general satisfaction.<sup>240</sup> Hence, all results are only displayed if they have statistical significance.

Figure 4: Strong points and points for improvement

	<b>Big influence on general appreciation</b>	<b>Little influence on general appreciation</b>
<b>Satisfied</b>	Strong point	Secondary strong point
<b>Less satisfied</b>	Point for improvement	Secondary point for improvement

### *Consequences for courts*

The role of the CUS is to provide insight in the current stance of customer appreciation towards the whole judiciary. The results provide suggestions and ideas on how a specific court can improve its operational performance.<sup>241</sup> The results are not subdivided to provide results to each individual court. The differentiation per type of court in 2014<sup>242</sup> does distinguish between the clusters of several Courts of First Instance – eleven in total, the Courts of Appeal – four in total, the Trade and Industry Appeals Tribunal and the Central Appeals Tribunal.<sup>243</sup> Nevertheless, courts can – and do – request an individualized report on their court user satisfaction surveys, also subdivided to courts with more than one location.<sup>244</sup> This sometimes does cost some extra money.

Each court actively uses the CUS results. The court boards discuss the results amongst themselves and then they discuss them with the team-managers to come up with plans for improvement.<sup>245</sup> Each team-manager in turn discusses the results with his or her team.<sup>246</sup> They can use the findings

<sup>236</sup> Council for the Judiciary, ‘Klantwaardering Rechtspraak 2011. Onderzoek onder professionals en justitiabelen bij gerechten’ (2011) The Netherlands, p. VI

<sup>237</sup> Council for the Judiciary, ‘Klantwaardering Rechtspraak 2011. Onderzoek onder professionals en justitiabelen bij gerechten’ (2011) The Netherlands, p. 137; Council for the Judiciary, ‘Rapport visitatie gerechten 2014’ (2014) The Netherlands, p. 78

<sup>238</sup> Council for the Judiciary, ‘Landelijk klantwaarderingsonderzoek rechtspraak 2014’ (2014) The Netherlands, pp. 78-79

<sup>239</sup> Council for the Judiciary, ‘Landelijk klantwaarderingsonderzoek rechtspraak 2014’ (2014) The Netherlands, pp. 79-80

<sup>240</sup> Council for the Judiciary, ‘Landelijk klantwaarderingsonderzoek rechtspraak 2014’ (2014) The Netherlands, pp. 86-87

<sup>241</sup> Council for the Judiciary, ‘Rapport visitatie gerechten 2014’ (2014) The Netherlands, p. 8

<sup>242</sup> In 2011 the judicial structures were different.

<sup>243</sup> See Annex C; The Dutch Supreme Court and the Administrative Jurisdiction Division of the Council of State are exempted from the CUS because they fall outside of the constitutional scope of the judiciary.

<sup>244</sup> Interview André Dekker, Senior Advisor on Quality and Planning, Court of First Instance North Holland (23 February 2017)

<sup>245</sup> Interview with Andre Dekker, Consultant Quality and Planning, Court of First Instance Noord-Holland (Haarlem, 23 February 2017); Interview Ingrid Corbeij, Judge and Member of the Management Board, Court of First Instance of North Holland (Utrecht 3 March 2017)

<sup>246</sup> Interview with Aafke Klippel and Anneke de Graag, Judges, Court of First Instance Noord-Holland (Haarlem, 23 February 2017)

to formulate a plan of action regarding the elements that got a low score in the survey.<sup>247</sup> Both the court board and the teams try to improve the elements that received negative feedback. The quality officers are not involved in translating and discussing the CUS results with either the board or the team-managers.<sup>248</sup>

The judges do identify the difficulty that it is not possible to ask the court users for their motivation, which makes it harder to fully understand the (anonymous) feedback given as opposed to staff satisfaction surveys that can be traced to specific teams.<sup>249</sup> One of the main points of feedback is usually throughput times and digitalized procedures.<sup>250</sup> As one Judge emphasized: “One of the most important parameters, when you look at societal contexts, is the question [...] about throughput times and how long or short those are.”<sup>251</sup>

### **(b) Staff satisfaction survey**

Another mechanism used is the staff satisfaction survey. The staff satisfaction survey is an inquiry on the motivation and satisfaction of staff members. The survey comprises questions on personal development, elements of management and the variety of work offered.<sup>252</sup> These elements are considered crucial.<sup>253</sup> Nationally the survey was held for the first time in 2014.<sup>254</sup> Before that each court was free to undertake their own staff satisfaction surveys. In general employees of the judiciary tend to be loyal to the organization and characterized by a sense of responsibility.<sup>255</sup>

Once the results of the survey become available all teams discuss the results amongst themselves and consider what they as a team could do to change difficult elements.<sup>256</sup> Such an approach also facilitates managers and the court board to ask where specific results are coming from and what the underlying ideas of dissatisfaction are. That in turn eases the way for a joint approach and plans of action.<sup>257</sup> Regardless, these plans of action keep a certain level of informality.

### **(c) Inspection visits**

Every four years a committee also carries out Inspection visits of all courts. The committee comprises members from outside the judiciary, such as academics and legal practitioners, such as lawyers.<sup>258</sup> The reports that are formulated on the basis of these visitations contain information on many RechtspraakQ evaluation elements.

### **(d) Throughput times: speed and promptness**

The allocation of cases in the Netherlands to individual judges is a responsibility of the several Boards of the Courts. These boards develop administrative regulations on this allocation, but they

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<sup>247</sup> Interview Ingrid Corbeij, Judge and Member of the Management Board, Court of First Instance of North Holland (Utrecht 3 March 2017); Interview with Jules Loyson, Judge, Court of Appeal Amsterdam (Amsterdam, 9 February 2017); Interview with Frans de Boer, Chief Planning and Control, Amsterdam (Amsterdam, 31 January 2017)

<sup>248</sup> Interview with Kim Oldekamp and Tanya Chub, Senior Chief Judge and Consultant Business Management, Court of First Instance Amsterdam (Amsterdam, 31 January 2017)

<sup>249</sup> Interview with Ingrid Corbeij, Member of the Board, Court of First Instance Noord-Holland (Utrecht, 3 March 2017)

<sup>250</sup> Interview with Jasper van den Beld and Antoinette Opstelten, Judicial Board Member and Secretary of the Board, Court of First Instance Rotterdam (Rotterdam, 9 May 2017)

<sup>251</sup> Interview with Jasper van den Beld and Antoinette Opstelten, Judicial Board Member and Secretary of the Board, Court of First Instance Rotterdam (Rotterdam, 9 May 2017)

<sup>252</sup> Council for the Judiciary, ‘Quality of the judicial system in the Netherlands’ (2008) The Netherlands, p. 10.

<sup>253</sup> Interview with Esther de Rooij, Member of the Board, Court of First Instance Amsterdam (Amsterdam, 31 January 2017)

<sup>254</sup> Council for the Judiciary, ‘Waardering door medewerkers’ (Council for the Judiciary) <<https://www.rechtspraak.nl/Organisatie-en-contact/Organisatie/Raad-voor-de-rechtspraak/Kwaliteit-van-de-rechtspraak/Paginas/Meten-van-kwaliteit-rechtspraak.aspx>> accessed 15 February 2017

<sup>255</sup> Council for the Judiciary, ‘Rapport visitatie gerechten 2014’ 2014, p. 84.

<sup>256</sup> Interview with Jasper van den Beld and Antoinette Opstelten, Judicial Board Member and Secretary of the Board, Court of First Instance Rotterdam (Rotterdam, 9 May 2017)

<sup>257</sup> Interview with Ingrid Corbeij, Member of the Board, Court of First Instance Noord-Holland (Utrecht, 3 March 2017)

<sup>258</sup> Council for the Judiciary, ‘Quality of the judicial system in the Netherlands’ (2008) The Netherlands, p. 10.

have complete autonomy.<sup>259</sup> The allocation can be subject to factors such as expertise, experience and practical circumstances, but the regulations leave room to compose a panel of judges or appoint a single judge at random. Some scholars identify the risk of non-transparency regarding the allocation of cases and advocate for a real at random allocation of cases, such as in Denmark that features electronic allocation of cases depending on the number of points the case has.<sup>260</sup> Other scholars also subscribe the value of transparency regarding which judge sits on a case, mostly regarding their societal position.<sup>261</sup> Nevertheless, in the Netherlands cases are allocated depending on the attached workload minutes, which allows for a certain level of clear objectivity.<sup>262</sup>

In terms of speed and promptness the Dutch courts have national guidelines, or regulations on processes, that govern the moment of inflow and outflow of cases with the use of specific criteria. The speed and promptness of completing cases is a major topic given its societal relevance.<sup>263</sup> The in- and outflow determines the financial reward of each completed case. These criteria are very strict although they do try to incorporate unforeseen elements, such as an extra witness interrogation. A major issue with throughput times is the fact that some elements, such as illness of judges, are not reflected in the process descriptions.<sup>264</sup> Therefore the measured throughput time can be higher than is expected. Another unforeseen element are the prejudicial questions to be asked to the European Court of Justice, which can increase the throughput times considerably.<sup>265</sup>

In general it is very difficult to get cases registered properly, in terms of procedural steps, and this is a focal point for most courts.<sup>266</sup> Each legal field has a different registration system and there is no overarching system. All cases get registered manually. For example, the case is received (*1. Ontvangen zaak*) and then assessed within one day after receipt (*2. Beoordelen zaak*). After the court session is planned (*3. Zittingsplanning*) the administrative preparations for the case begins within one day after receipt (*4. Administratief voorbereiden zaak*). This process goes on in identifying steps and linking them to a specific timeframe. As the arrows indicate in the following figure, a case can go back to earlier steps, for example because a case is kept on to hear more witnesses. In general a case is finished after all steps have been taken. The current digitalization legislation aims at minimizing differences and risks of wrong case registration. Controllers do conduct random checks on the timeliness and correctness of the registrations.<sup>267</sup> In doing so they link to recorded registration process guidelines. As one controller mentioned: “At the moment, of course, all of the business is in principle manually introduced. We do all sorts of measurements whether this happens timely and correctly. And I daresay that it goes well for 99.99% of the cases.”

Figure 5: Business process of summary proceedings

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<sup>259</sup> Article 41 Wet Rechtspositie Rechterlijke Ambtenaren

<sup>260</sup> Michiel van Emmerik, Jan-Peter Loof & Ymre Schuurmans, ‘Rechtspraak anno 2014’ (2014) 32 NJB 2228, 2233-2234

<sup>261</sup> Wibo van Rossum en Jet Tigchelaar, ‘Een empirisch gefundeerde bespreking van mogelijke wijzigingen van de wrakingsprocedure’ (2014) NJB 1345; P.M. Langbroek and Marco Fabri (editors and research directors) *The Right Judge for each Case, a comparative study of case assignment and impartiality in 6 European countries*, Metro, Intersentia, Antwerp 2007, p 17-23.

<sup>262</sup> Interview with Jaqueline Frima and Jennifer Willemsen, Unitmanager Insolventie and Unitmanager Canton, Court of First Instance Rotterdam (Rotterdam, 9 May 2017)

<sup>263</sup> Interview with Jasper van den Beld and Antoinette Opstelten, Judicial Board Member and Secretary of the Board, Court of First Instance Rotterdam (Rotterdam, 9 May 2017)

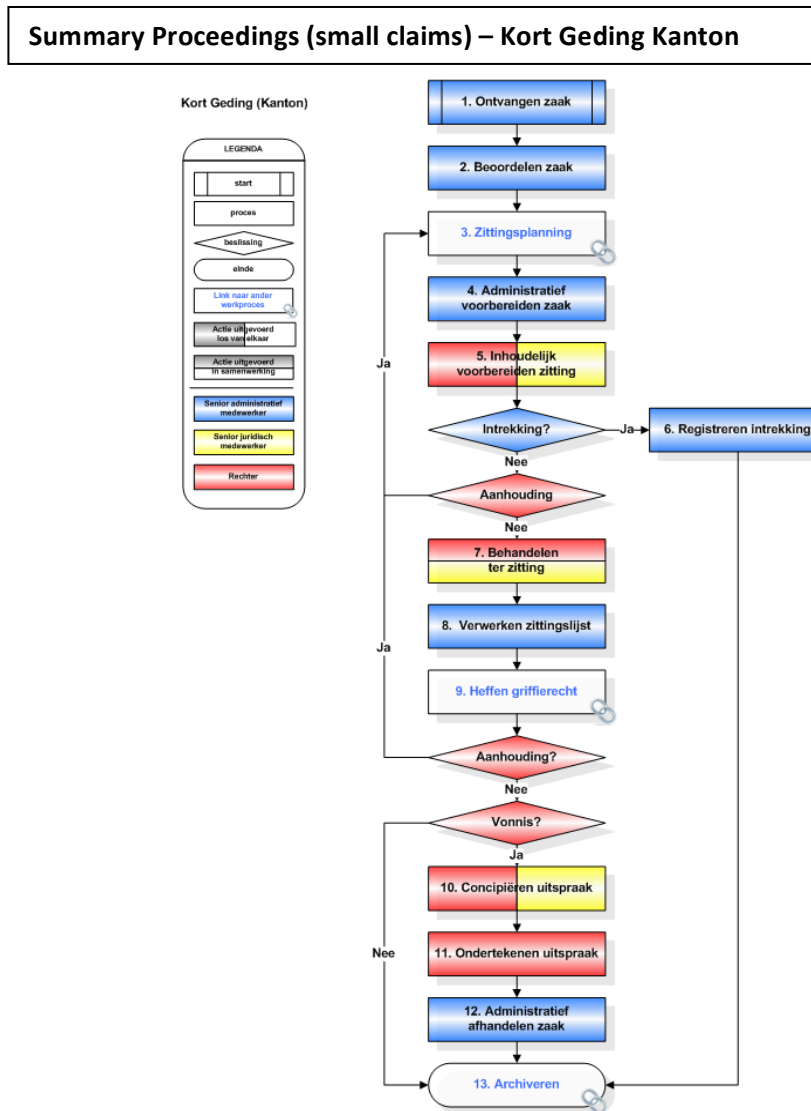
<sup>264</sup> Interview with Ward Messer, Judge, Court of First Instance Midden-Nederland (Utrecht, 22 February 2017)

<sup>265</sup> Interview with Frans de Boer, Chief Planning and Control, Amsterdam (Amsterdam, 31 January 2017)

<sup>266</sup> Interview with Jasper van den Beld and Antoinette Opstelten, Judicial Board Member and Secretary of the Board, Court of First Instance Rotterdam (Rotterdam, 9 May 2017)

<sup>267</sup> Interview with Frans de Boer, Chief Planning and Control, Amsterdam (Amsterdam, 31 January 2017); Interview with Andre Dekker, Consultant Quality and Planning, Court of First Instance Noord-Holland (Haarlem, 23 February 2017)





### 3.4.3 Consequences of the evaluation of justice at court level

The results of the evaluation system are presented to the public through reports. Most of these reports can be found at the website of the Council for the Judiciary, [www.rechtspraak.nl](http://www.rechtspraak.nl). In the report of the most recent visitation commission, the commission decided to share specific results regarding the courts only with the courts in case. Hence, these data were exclusively shared with these courts. But the Council for the Judiciary does usually make a part of the data available to the general public.<sup>268</sup> The focus areas of the court user satisfaction surveys for example interlink with the national policy plans of the Dutch judiciary.<sup>269</sup>

The financing of the judiciary is in its core an output based system. Ninety five percent of the budget is calculated by the multiplication of the estimated number of cases for one year and the price per case category. As the financing system of the judiciary will be explained in more detail in the next chapter, we will suffice to mention that eventually the budget assigned to the judiciary depends on the number of cases completed. The more estimated cases finalized, the more budget will be assigned to the judiciary. If they produce more than expected, they receive 70% of the

<sup>268</sup> These reports are the Visitation reports: Council for the Judiciary, 'Visitatierapporten en visitatieprotocollen rechtspraak' <<https://www.rechtspraak.nl/Organisatie-en-contact/Organisatie/Raad-voor-de-rechtspraak/Kwaliteit-van-de-rechtspraak/Visitatie>> accessed 11 September 2017

<sup>269</sup> Council for the Judiciary, 'Agenda van de Rechtspraak. 2015-2018' (2015) The Netherlands, p. 29

agreed price per product group from the equalization account. When producing less than agreed, they must deposit 70% of the agreed prices of the cases not finalized in the equalization account.<sup>270</sup>

The law provides that considerations of quality (results from RechtspraakQ – for example more time needed to spend on permanent education or extra legal staff needed to improve quality) should play a role in determining the price of the case categories.<sup>271</sup> These prices are determined by the Minister of Security and Justice after negotiating with the Council for the Judiciary and eventually incorporated in a joint price agreement. The outcomes of the quality measurement are reported to the Council for the Judiciary four times per year.<sup>272</sup> Little is known however about whether these outcomes actually influence the financing of the judiciary. The idea of quality playing a role in determining the height of the price is ideally included in the law, but couldn't be realized until now. The Court of Accounts concluded in a recent report on the judiciary that when negotiating about the case category prices, often the budget of the Minister is the point of departure. Due to this reason, considerations of quality have been pushed to the background.<sup>273</sup>

### 3.5. Resource allocation to courts

After the discussion of RechtspraakQ as the Dutch evaluation system, the next part deals with the allocation of resources to the respective courts. In The Netherlands the Minister of Security and Justice (hereafter called: Minister) funds the judiciary<sup>274</sup> as a whole, by means of a financial contribution to the Council for the Judiciary (hereafter called: Council). The Council has its own separate heading in the justice budget law alongside the central Ministry and the administration agencies, which reflects its special position.

The Ministry of Security and Justice annually determines the budget for the judiciary, based on the financial budget of the Government. The Judiciary currently receives an annual contribution of around 1 billion euro's.<sup>275</sup> Negotiations about the budget for the courts are part of the negotiations with the Ministry of Finance, also based on the Government Accounts Act (GAA).<sup>276</sup> The Council distributes the financial resources among the courts based on the number of cases and time spent on these cases in a year. The Council then transfers the budgets to each of the sixteen courts.

The following discusses the general actors involved in resource allocation (paragraph 2.5.1). Second, it discusses the allocation process (paragraph 2.5.2). Third, the paragraph touches on the consequences of resource allocation for the quality of justice (paragraph 2.5.3). Fourth, it discusses existing debates on possible reforms (paragraph 2.5.4) and ends with an assessment of existing evaluation methods (paragraph 2.6).

#### 3.5.1. Actors involved

The most prominent actors involved in resource allocation are the individual courts, the Council, the Ministry of Security and Justice and Parliament. The following considers each of these actors separately. It starts from the bottom up, so with the individual courts. The production of cases is measured at the individual courts by the courts themselves and the Council. Then these production

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<sup>270</sup> Court of Audit, 'Funding the Judiciary System: consequences for efficiency' (Report) (21 April 2016) 22. Accessible through [www.courtsofaudit.nl](http://www.courtsofaudit.nl).

<sup>271</sup> Artikel 12 lid 2 sub d Besluit Financiering Rechtspraak 2005 (Court Sector (Funding) Decree 2005 or Order in Council on the financing on court budgets 2005).

<sup>272</sup> Philip Langbroek & Mirjam Westenberg, 'Quality Indicators in the Courts of the Netherlands' in: Philip M. Langbroek and Mirjam R.M. Westenberg, *Court Administration and Quality Work in Four European Judiciaries: Empirical Exploration and Constitutional Implications*, Justizforschung series, Stämpfli Verlag, Bern, Chapter 4. (Expected February 2018).p. 173

<sup>273</sup> Algemene Rekenkamer). Rapport Bekostiging Rechtspraak, Gevolgen voor de doelmatigheid. Den Haag, 19 April 2016. footnote 9, p.14.

<sup>274</sup> The Judiciary is defined as the Judicial System, not the Judiciary as only one of the three *Trias Politica* powers.

<sup>275</sup> Council for the Judiciary, 'Judicial Reform In The Netherlands: change in broad outline', (Sdu Publishers The Hague 2014) 22.

<sup>276</sup> Comptabiliteitswet 2016

results lead to a budgetary proposal from the Council to the Ministry, after which the Minister proposes the budget as part of the budget for the Justice department to Parliament. Hence, the budget is an earmarked part of the budget of the Ministry.

**(a) *The role of individual courts***

Each court has a board that oversees the general management and day-to-day running of the court, including its finances.<sup>277</sup> This integral management of the courts is an important feature of the Judicial Organization Act. The court's budget consists of the own funds of the courts (financial business reserve) and the contribution by the Council.<sup>278</sup> The Council makes financial contributions to each of the sixteen courts. Then each court autonomously determines how to allocate and divide its budget between staff – including staff to be recruited if needed, equipment and the various specialized departments (civil, criminal, administrative, family, small claims/small crime) to achieve the agreed output. Their financial administration is subject to the review of an external auditor.<sup>279</sup> The contribution, which the court receives from the Council to implement the administrative agreements, is an integral budget.<sup>280</sup>

The courts must account for their use of resources to the Council, but not for the content of the actual judicial decision-making. Subsequently, the Council reports to the Minister on the use of resources by the courts. The increased autonomy of the judiciary means that the Minister is not directly involved in the expenditures by the courts and the Council for the Judiciary. He does however hold final political responsibility for the functioning of the judiciary system as a whole. This corresponds to the fact that taxpayers are the ones who provide the funds for the judiciary. Also, court fees do exist but they are not meant for the judiciary, but destined to provide income for the Ministry.<sup>281</sup>

**(b) *The role of the Council for the Judiciary***

The Council is accountable to the Ministry for providing information on production and quality of services, and for money received and spent.<sup>282</sup> It prepares the annual plan and budget proposal and is responsible for preparing, implementing and accounting for the judiciary's budget, and allocates the budgets to the courts in close cooperation with the management boards of the courts.<sup>283</sup> The Council encourages and supervises the development of operational procedures in the day-to-day running of the courts<sup>284</sup> and is responsible for a general annual plan and an annual report for the judiciary in the Netherlands.<sup>285</sup>

As described earlier, the Council is part of the judiciary, but does not administer justice itself. In addition to making the budget proposal, the Council also has an advisory task. It advises the government on draft legislative proposals, which have implications for the judiciary system. This process takes place in on-going consultation with the court boards.<sup>286</sup> It has taken over several tasks from the Minister. These tasks include supervision of financial management, human resource policy and the allocation of budgets to the courts. The Council supports the courts in executing their tasks

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<sup>277</sup> Council for the Judiciary, 'The Judiciary System in the Netherlands' (Report) (20 August 2010) 9.

<sup>278</sup> Order in Council on the financing on court budgets, Article 17 paragraph 1.

<sup>279</sup> Bert Maan, 'Past and Future For Management Of Courts', International Journal for Court Administration (August 2009) 22.

<sup>280</sup> The line manager at every level is responsible for the running of the part of the organization under his leadership and is given the necessary responsibilities and powers to carry out this task in practice within the boundaries of the law on the policy of the Council.

<sup>281</sup> European Network of Councils for the Judiciary (ENCJ), 'Funding of the Judiciary: preparatory works, questionnaire and replies' (Annex II to the ENCJ Report) (2015-2016) 89.

<sup>282</sup> Philip M. Langbroek, 'Organization development of the Dutch Judiciary, between Accountability and Judicial Independence', International Journal for Court Administration (April 2010) 6.

<sup>283</sup> Article 91 (subsections a and b) of the Judicial Organization Act (Wet op de rechterlijke organisatie).

<sup>284</sup> Council for the Judiciary, 'The Judiciary System in the Netherlands' (Report) (20 August 2010) 16.

<sup>285</sup> Council for the Judiciary, 'The Financing System of the Netherlands Judiciary' (Report) (20 August 2010) 4. (<https://www.rechtspraak.nl/SiteCollectionDocuments/The-Financing-System-of-the-Netherlands-Judiciary.pdf>).

<sup>286</sup> Council for the Judiciary, 'The Judiciary System in the Netherlands' (Report) (20 August 2010) 15.

in these areas.<sup>287</sup> One of the objectives of the position of the Council and the financing system in relation with RechtspraakQ is to enable the Council to have a stronger position towards the negotiations with the government compared to individual courts (the situation before 2002). They counteract more, give more pressure and stand up against the Minister, in favor of the financial position of the courts.<sup>288</sup>

### ***(c) The role of the Ministry of Security and Justice***

The Ministry is responsible for reviewing the plan and the budget proposal put forward by the Council. The Minister of the Ministry has the competences to oversee and enforce the well-functioning of the Council, especially concerning financial and production reports.<sup>289</sup> He also fixes the prices after negotiations with the Council. After acceptance of the budget proposal and annual plan by the Minister, the budget proposal of the judiciary is integrated in the budget proposal of the Ministry. The budget proposal of the Ministry – and the other departments – is presented in September each year for approval by the Parliament.<sup>290</sup>

The salaries of judges are negotiated between the Ministry and the ‘trade union’ of the judges<sup>291</sup> and therefore the Council has no role in this regard. An increase in salaries should lead to higher prices of the cases in the negotiations between the Council and the Ministry.<sup>292</sup>

### ***(d) The role of Parliament***

The governmental departments present budget bills and both House of Representatives and the Senate discuss these budget bills, proposed by each Ministry.<sup>293</sup> In late October or early November Parliament also discusses the proposal of the Ministry, having knowledge of the proposal of the Council.<sup>294</sup> The proposal requires Parliament’s approval, whether amended or not. Some proposals are amended and adapted, some proposals are rejected and others are adopted immediately without any changes.<sup>295</sup> With the adoption of the budget Bills, Parliament authorizes the Minister to carry out the expenditures that are allocated among the various items in the budget Act.<sup>296</sup> However, the system for resource allocation does not entail specific safeguards to avoid violation of key judicial values.<sup>297</sup> The calculation of the budget follows standard formulas, and thus are not directly related to the salary of judges, since the allocated budget is meant for all costs<sup>298</sup> (including housing, salary and so forth) and no standard percentage of the public expenditure is dedicated to the quality of the judicial system. Apart from judicial salaries, during the negotiations between the Minister and the Council, effects and outcomes of the RechtspraakQ quality system are to be taken into account in determining the prices.<sup>299</sup>

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<sup>287</sup> Council for the Judiciary, ‘The Judiciary System in the Netherlands’ (Report) (20 August 2010) 9.

<sup>288</sup> Interview with Jasper van den Beld and Antoinette Opstelten, Judicial Board Member and Secretary of the Board, Court of First Instance Rotterdam (Rotterdam, 9 May 2017); Interview with Ingrid Corbeij, Member of the Board, Court of First Instance Noord-Holland (Utrecht, 3 March 2017)

<sup>289</sup> Council for the Judiciary, ‘The Judiciary System in the Netherlands’ (Report) (20 August 2010).

<sup>290</sup> Pim Albers, Ministry of Justice, ‘Changes in the Dutch judicial system; Accessed [www.worldbank.org](http://www.worldbank.org) on 16 December 2016.

<sup>291</sup> Nederlandse Vereniging voor Rechtspraak, The Dutch Association for the Judiciary ([www.nvvr.org](http://www.nvvr.org))

<sup>292</sup> European Network of Councils for the Judiciary (ENCJ), ‘Funding of the Judiciary: preparatory works, questionnaire and replies’ (Annex II to the ENCJ Report) (2015-2016) 83.

<sup>293</sup> See also M. Diamant, M.L. van Emmerik, G.J.A. Geertjes, ‘Dutch report for the 19<sup>th</sup> International Congress of Comparative Law: *Limitations on government debt and deficits in the Netherlands* (Vienna 20-26 July 2014) 2.

<sup>294</sup> European Network of Councils for the Judiciary (ENCJ), ‘Funding of the Judiciary: preparatory works, questionnaire and replies’ (Annex II to the ENCJ Report) (2015-2016) 47.

<sup>295</sup> In Parliament (States General), only the House of Representatives has the right of amendment and can make changes to budgets bills. The Senate does not have the right of amendment.

<sup>296</sup> The presentation of the National Budget and the Budget Memorandum, [www.houseofrepresentatives.nl/presentation-national-budget-and-budget-memorandum](http://www.houseofrepresentatives.nl/presentation-national-budget-and-budget-memorandum) (accessed at 16 december 2016).

<sup>297</sup> Council for the Judiciary, ‘The Financing System of the Netherlands Judiciary’ (Report) (20 August 2010) 25. (<https://www.rechtspraak.nl/SiteCollectionDocuments/The-Financing-System-of-the-Netherlands-Judiciary.pdf>).

<sup>298</sup> Council for the Judiciary, ‘The Judiciary System in the Netherlands’ (Report) (20 August 2010)

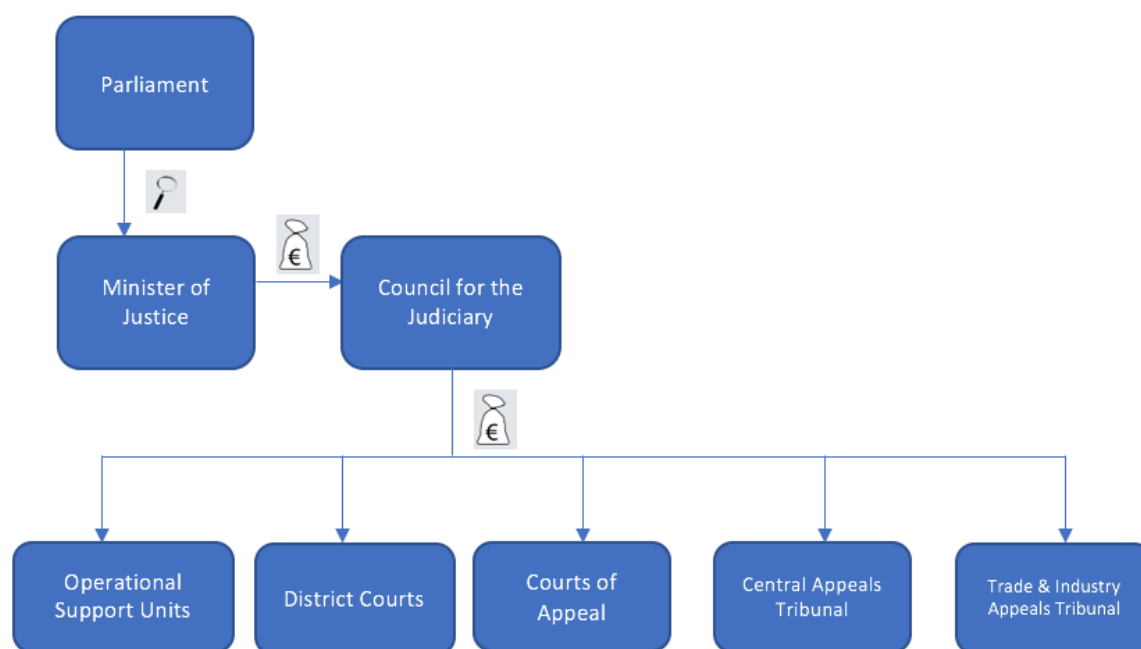
<sup>299</sup> Court of Audit, ‘Funding the Judiciary System: consequences for efficiency’ (Report) (21 April 2016) p. 22. Accessible through [www.courtsofaudit.nl](http://www.courtsofaudit.nl). Also see Court Sector (Funding) Decree 2005 or Order in Council on the financing on court budgets 2005 (Besluit Financiering Rechtspraak 2005).

The previous part has discussed the several actors involved in resource allocation to courts. The following paragraph details the actual process of resource allocation.

### 3.5.2. Resource allocation process

The Council and local courts decide how to spend the budget.<sup>300</sup> The components for budget allocation are not distinguished. As mentioned before, the Minister does not have a direct link with the sixteen independent courts. Figure 6 shows the resource allocation process systematically. Resources are basically allocated in two flows: from the Ministry to the Council, and from the Council to the individual courts. Both flows of allocation are based on objective criteria, meaning that resources are allocated on the basis of an objective measurement of the courts performances done beforehand.<sup>301</sup>

Figure 6: The financing of the judiciary



**Table 1. The financing of the Judiciary**

Very recently, while discussing the bill for a new Accounts Act, an amendment was proposed to create a separate budget chapter for the judiciary. The Minister of Finance recommended rejecting this amendment, but the outcome is not known yet. The president of the Council started this debate in the annual report 2015, supported by an article in the Dutch lawyers' journal NJB<sup>302</sup>, by another Council member and by the Council's research director.

#### ***(a) Resources flow 1: by the Ministry to the Council for the Judiciary***

The Minister allocates the total budget of the judiciary to the Council and is responsible for the management of the budget, the effectiveness and efficiency of the policy that underlies the budget, and the efficiency of the business operations of the Ministry.<sup>303</sup> Although the Minister of Finance

<sup>300</sup> Idem p. 22

<sup>301</sup> Council for the Judiciary, 'Judicial Reform In The Netherlands: change in broad outline', (Sdu Publishers The Hague 2014).

<sup>302</sup> 'Year Report Judiciary 2015' published 13 May 2016. Accessed at: <http://njb.nl/nieuws/jaarverslag-rechtspraak-2015.19763.lynkx>.

<sup>303</sup> Court of Audit, 'Funding the Judiciary System: consequences for efficiency' (Report) (21 April 2016). Accessible through [www.courtsofaudit.nl](http://www.courtsofaudit.nl).

carries the responsibility for the budget of national debt and the – management of the – State's finances, the sector Minister fully accounts to Parliament on the budget he administers.<sup>304</sup> Basically, the Minister of Finance agrees on the system and the budget, while the Minister of Security and Justice is responsible for the actual allocation of resources for the judiciary.

When the Council submits its prognosis to the Minister for the number of cases to be disposed in the following year, the Council bases this on inflow and output forecasts drawn up by the Council, together with the Minister and partners in the various administration agencies that fall under the responsibility of the Ministry.<sup>305</sup> After the Minister submits the budget for the Ministry to Parliament, he indicates how many court cases he proposes to fund.<sup>306</sup> If these numbers differ from the number in the Council's budget proposal, this must be explained in the Ministry's budget. Then the Parliament can form an opinion on the Minister's decision. After that, the Minister of Finance can exert pressure on the Minister of Justice and try to influence the change of the draft budget as proposed by the Council.<sup>307</sup> Though the Minister of Justice is obliged to report to Parliament if, why and to what extent he changed the Council's proposal, he also must submit to Parliament the original draft budget by the Council.<sup>308</sup>

### ***Criteria for resource allocation***

The allocation of resources to the courts is mainly performance-based.<sup>309</sup> This is regulated by Order in Council.<sup>310</sup> Budgets for year x are calculated by allocating minutes to different categories of cases, and then by calculating the number of cases decided multiplied by the numbers of minutes (per category of cases) – p x q (price x quantity). The 'Q' is (annually) proposed by the Council based on (1) the expected inflow from the forecast model; (2) the work stock at the beginning of the year; (3) The desired work stock at the end of the year. If the minister deviates from the Council's proposal, he must argue this deviation in the draft budget of the Ministry going to parliament.

'P' is determined by the Minister every three years after negotiation with the Council (price agreement). These prices based on (1) the past cost price per product group; (2) Changes in the ratio of the number of cases per category of business (3) The product group (the assortment mix); (4) Results of periodic workload measurements at the level of business categories and additional investigations; (5) Quality considerations based on information from the quality system; and (6) Considerations of efficiency.

The criteria for national resource allocation mostly relate to 11 product groups<sup>311</sup> (a number of case categories that fit together) that determine the final allocation. These product groups are used in the negotiations between the Minister and the Council. The product groups are defined by objective criteria that allocate specific prices to specific groups. The cash flow from the Council to the courts is of the same product groups as the flow between the Ministry to the Council. There are six categories at the district courts, three categories at the courts of appeal and one at the Central Appeals Tribunal. Fields of law, for example civil, criminal, and administrative law characterize the categories. Figure 8 shows the average realized prices per product group versus the average prices agreed upon in the last year.<sup>312</sup> So the table shows the difference between the planned average costs per case category and the average realized cost per case category.

<sup>304</sup> Chapter 3 GAA (*Comptabiliteitswet 2016*).

<sup>305</sup> For instance, the Public Prosecution Service and the Immigration and Naturalization Service.

<sup>306</sup> Council for the Judiciary, *The Financing System of the Netherlands Judiciary*' (Report) (20 August 2010).

<sup>307</sup> Council for the Judiciary, *The Financing System of the Netherlands Judiciary*' (Report) (20 August 2010).

<sup>308</sup> ENCJ, 'Final report working group on Courts Funding and Accountability' (2006-2007) 9.

<sup>309</sup> Council for the Judiciary, *The Financing System of the Netherlands Judiciary*' (Report) (20 August 2010) 3. (<https://www.rechtspraak.nl/SiteCollectionDocuments/The-Financing-System-of-the-Netherlands-Judiciary.pdf>)

<sup>310</sup> Court Sector (Funding) Decree 2005 or Order in Council on the financing on court budgets 2005 (*Besluit Financiering Rechtspraak 2005*).

<sup>311</sup> A number of related case categories: article 1g Order in council 2005.

<sup>312</sup> Judiciary Year Report (2016) 59.



Figure 7: Realized product group prices versus prices agreed upon 2016 (euro)

	Realized	Agreed upon	Difference	2016	2015
<b>District courts</b>					
Civil	860,12	813,78	46,34	-5,69%	-1,43%
Administrative (excl. Immigration and Asylum Chamber)	2.034,28	2.248,08	213,80	9,51%	11,16%
Criminal	1.177,82	1.050,22	127,60	-12,15%	-3,12%
Canton	177,63	159,52	18,11	-11,35%	1,79%
Administrative (+ Immigration and Asylum Chamber)	1.426,76	1.313,85	112,91	-8,59%	-7,77%
Tax	857,66	1.153,88	296,22	25,67%	15,41%
<b>Courts of Appeal</b>					
Civil	5.028,86	3.937,86	1.091,00	-27,71%	-22,70%
Criminal	2.072,40	1.586,72	485,68	-30,61%	-27,86%
Tax	2.084,67	3.711,67	1.627,00	43,83%	18,58%
<b>Central Appeals Tribunal</b>					
Dutch Administrative High Court	3.975,96	3.509,22	466,74	-13,30%	-7,39%

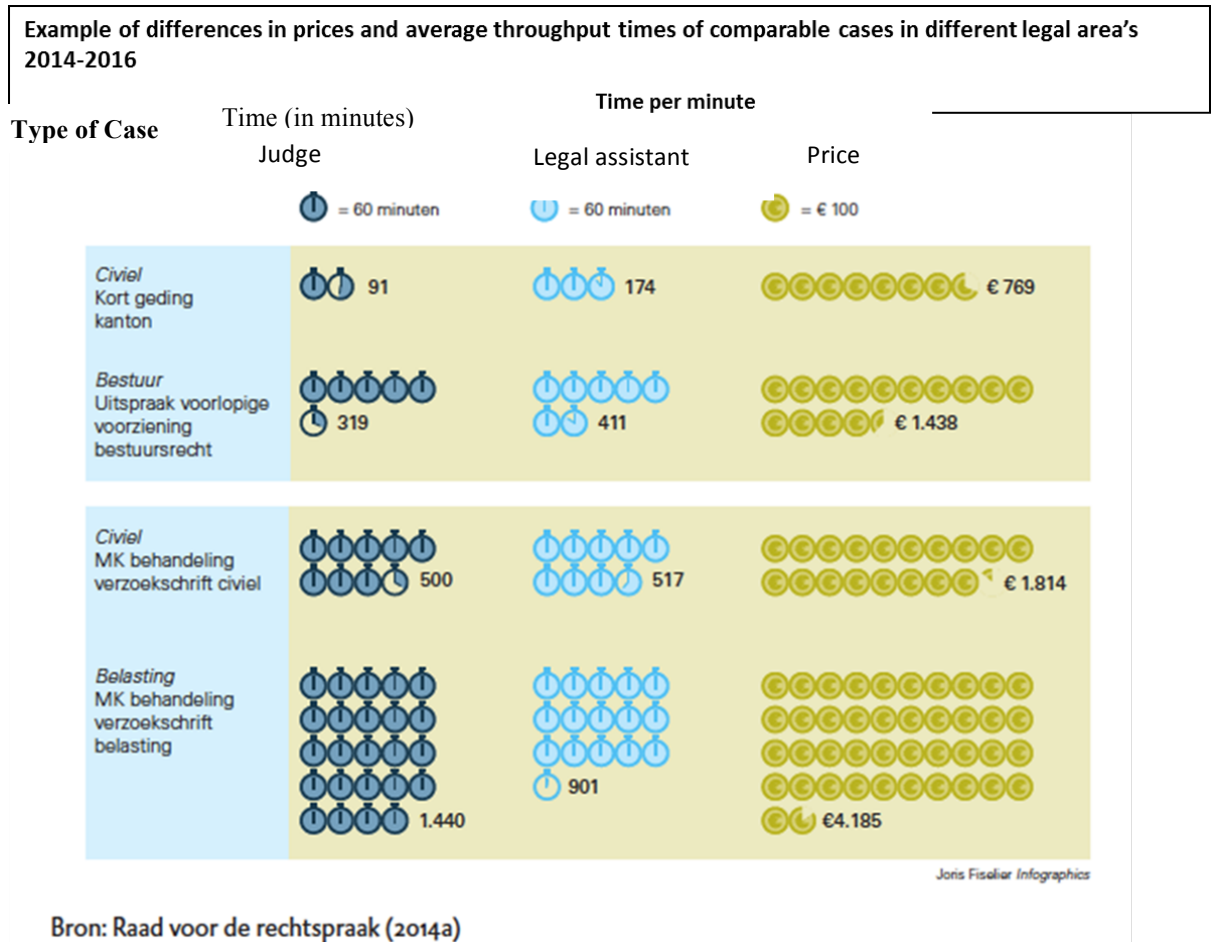
The average costs per product group (a number of case categories that fit together) in previous years form the starting point for the negotiations. These kinds of data and information used in the process are based on the time it takes to complete a case, in terms of proceedings for a specific court (This is measured on a regular basis). It also depends on whether the case is completed by a judge sitting alone or by a panel of three judges or appeal court justices.<sup>313</sup>

Figure 8 is an example of prices from different case categories, depending on time per case.<sup>314</sup> It shows that in civil cases (canton summary proceedings) a judge needs on average 91 minutes and the legal assistant 174 minutes and the costs are €769 euros. The same data is given in administrative cases (also summary proceedings), civil cases with a multiple chamber (three judges), and tax law cases.

<sup>313</sup> Council for the Judiciary, 'The Financing System of the Netherlands Judiciary' (Report) (20 August 2010).

<sup>314</sup> Court of Audit, 'Funding the Judiciary System: consequences for efficiency' (Report) (21 April 2016) 24.

Figure 8: Examples of different prices and average time of a case in comparable court cases in different jurisdictions



The State budget details the outcome of these negotiations and the agreed upon price.<sup>315</sup> If the Council and the Minister fail to reach an agreement, the Parliament has a final say in the budget – as Parliament has the final say anyway.<sup>316</sup> The price agreements are made every three years for various categories of cases, based on average disposal time multiplied by the tariff per minute for each staff category (p x q).

Figure 9 shows the liquidated prices per minute in the year of 2016 per product group.<sup>317</sup> The first column shows the prices per minutes for judges and the second column that of legal assistants.

<sup>315</sup> Council for the Judiciary, The Financing System of the Netherlands Judiciary' (Report) (20 August 2010).

<sup>316</sup> René Verschuur, 'Independence of the Judiciary', (Belgrade June 2007) 4.

<sup>317</sup> Judiciary Year Report 2016 <<http://www.jaarverslagrechtspraak.nl/verslag/kostenspecificatie>> accessed 11 September 2017

Figure 9: Realized prizes per minute 2016 (in euro's)

**Tabel 35. Gerealiseerde minutentarieven 2016\***

	minutentarief (euro)			
	RA	JO	2015	
<b>Rechtbanken</b>				
Civiel	2,29	4,48	2,16	4,03
Bestuur (excl. VK)	1,68	2,83	1,67	2,78
Straf	2,80	4,31	2,52	3,82
Kanton	2,86	5,50	2,69	4,98
Bestuur VK	3,24	4,01	2,91	3,52
Belasting	1,06	2,03	1,76	2,77
<b>Gerechtshoven</b>				
Civiel	2,63	3,50	2,43	3,45
Straf	2,70	3,65	2,71	3,78
Belasting	1,00	1,09	1,56	1,89
<b>Bijzonder college</b>				
Centrale Raad van Beroep	3,28	2,05	2,99	2,08

\* Een aflossing egalisatieschuld RVB is niet in de berekende minutentarieven meegenomen.

At the end of the year it shows how many cases the courts have handled and the actual excess or shortfall is visible. The Council has an equalization account that is intended to offset differences between the agreed and realized production.<sup>318</sup> The equalization account is settled at a rate of 70% of the price applicable to the case.<sup>319</sup> This means that only 70% of the real price is paid for extra production beyond the estimated production. In the years of austerity policies following the recent economic crisis, the Ministry would only agree to a lower estimated production for the coming year, in order to reduce costs. As a consequence, this ministerial policy has been detrimental to the budget of the Council. An important conclusion of the Court of Audit goes even further, as they clearly say:

*“...negotiations about pricing are about budgetary consequences of the total production related contribution based on existing prices and expected cases. Prices are not being re-gauged based on objective information about realized costs, workload, efficiency and quality. By taking the available ministerial budget as a point of departure, the financing method was largely uncoupled from the question what court practice needed to handle court cases timely and carefully”*

In other words, outcomes of quality measurement were not taken into account when establishing the budget for the judiciary. Amazingly this has led only to a few proposals by the Council to change the budgeting process, but did not lead to large-scale protests of judges.

<sup>318</sup> Article 19 paragraph 2 Order in Council 2005.

<sup>319</sup> Council for the Judiciary, The Financing System of the Netherlands Judiciary' (Report) (20 August 2010). See also article 20 Order in Council 2005.

In the annual report of the Council, the number of cases actually disposed of is published. It is also one of the subjects covered in the audit by the Court of Audit (*De Algemene Rekenkamer*).<sup>320</sup> The Council sends this report to the Ministry who subsequently submits it to Parliament, which provides for a resource allocation process that is transparent and statistically reliable.

The number of cases that have actually taken place may be higher or lower than the number agreed upon in the Ministry's budget. When the income received by the judiciary is found to operate in a (a 'profit'), this is credited in the own funds of the Judiciary. Hence, an operating deficit results in reduction in the equity. The Council's budget consists of the contribution by the Ministry and its' own equity. Yet, as figure 11 displays, the financial capital of the judiciary is empty as from 2015 onwards (eigen vermogen per 31-12).<sup>321</sup>

Figure 10: Equity of the Judiciary (x million euro)

	2013	2014	2015
Eigen vermogen per 1-1	49,2	28,6	23,5
Resultaat	-20,6	-5,1	-23,5
Eigen vermogen per 31-12	28,6	23,5	0,0

#### **(b) Resources flow 2: by the Council to individual courts**

The second cash flow is between the Council and the respective courts. As mentioned before, each court's management board provides the Council with a production plan and a draft budget for the court, based on the prospective number of cases to be handled.<sup>322</sup> The several boards decide on the way in which the resources are spent. The relationship between the boards and the Council is also embedded in a planning and reporting cycle that include year plans, progress reports every four months and annual reports.

In the relationship with the Government, the budget is estimated based on 11 case categories, but the distribution of the budget to the courts is based on 53 case categories.<sup>323</sup> Each product group is classified within the output-based contribution, as laid down in Article 11 of the Order in Council on the financing on court budgets.<sup>324</sup> Housing costs and 'specific' costs are part of the budget for the courts. Unfortunately, in the past 5 years, the Ministry refused to accept the production estimates for the following year, as it had also been subjected to austerity measures.

Court production is not the only basis for the financing of the courts, but 95% of the budget for the courts comes from production. The other 5% are for services to disciplinary proceeding courts for different professions, and for court cases that fall outside calculated production parameters, such as criminal 'mega cases'. The results of these calculations are to be submitted to the Ministry, and are part of the budget cycle. The Minister can change the budget if he does not agree with the calculations of the Council, or for other reasons.<sup>325</sup> As figure 12 displays, there has always been a

<sup>320</sup> Court of Audit, 'Funding the Judiciary System: consequences for efficiency' (Report) (21 April 2016) 22. Accessible through [www.courtfaudit.nl](http://www.courtfaudit.nl).

<sup>321</sup> Long-rangeplan Judiciary 2015-2020 (Judiciary Report) 33.

<sup>322</sup> ENCJ, 'Final report working group on Courts Funding and Accountability', (2006-2007).

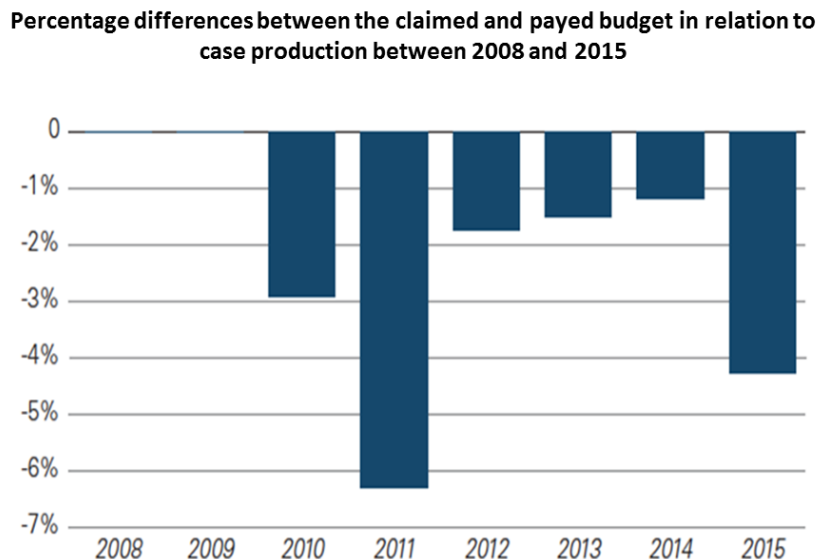
<sup>323</sup> Court of Audit, 'Funding the Judiciary System: consequences for efficiency' (Report) (21 April 2016) 22. Accessible through [www.courtfaudit.nl](http://www.courtfaudit.nl).

<sup>324</sup> See the explanatory note by the Order in Council on the financing on court budgets (*Toelichting bij Besluit Financiering Rechtspraak 2005*).

<sup>325</sup> Court of Audit, 'Funding the Judiciary System: consequences for efficiency' (Report) (21 April 2016) 20-22. Accessible through [www.courtfaudit.nl](http://www.courtfaudit.nl).

couple of percentage differences between the claimed and honored production-related contribution between the budget proposal of the Council and the assigned budget.<sup>326</sup>

Figure 11: Percentage differences between claimed and payed production-related budget between 2008-2015



It should be noted that the basis of the calculations for the government budget cycle differs from that for the calculations for the distribution of the budget among the courts. The difference is that the calculation for the government budget is based on 11 case categories, whereas the budget cycle for the courts is based on 53 case categories.

### ***Criteria for resource allocation***

In 2002 an output based funding system based on objective criteria replaced the non-transparent ad-hoc allocation of funds by the Ministry to individual courts. The Council applies more detail to the prices per case than the Ministry does when allocating resources to the Council. Instead of eleven product groups, there are 53 product groups and prices used to determine the budget of a district court, nineteen product groups for a Court of Appeal and three for the Central Appeals Tribunal.

One of the criteria that determine the prices of the case categories is the lead times of the various case categories. As the Council is obliged to carry out periodical time allocation surveys to assess these lead times,<sup>327</sup> the prices agreed with the Minister are translated into prices for the case categories. Since there is no direct relationship between the findings and the absolute level of the prices, the results of the negotiations process is still based on the out-turn costs in previous years.

Each of the different categories of court cases are attributed a specific standard amount of court time in minutes. To this end, the courts annually register the number of cases decided per category,

<sup>326</sup> Court of Audit, 'Funding the Judiciary System: consequences for efficiency' (Report) (21 April 2016) 22. Accessible through [www.courtofaudit.nl](http://www.courtofaudit.nl). While the Minister has fully financed the forecasts for the relevant fiscal year in the first years of the Prognosis Model of Legal Chains (pmj, 2008 and 2009), the production agreements since 2010 are under the forecasts and production proposals of the Council. The deviation from the Council's production proposal in the Minister of Security and Justice budget of 2015 was over € 40 million, with the allocated production-related contribution for 2015 4.3% lower than the claimed production-related contribution for 2015 by the Council.

<sup>327</sup> Which are obliged under the Order in Council on the financing on court budgets (Court System Decree 2005).

in relation to the numbers of judges and staff. Every three years, the Minister determines the price per minute. Hence, those prices are fixed for a three-year term (2014-2016, 2017-2019 etc.).<sup>328</sup> Forecasts for the following three years, of numbers of cases filed and numbers of cases decided, are part of the calculation. As mentioned before, results of the quality management system of the courts are to be taken into account when negotiating and determining the price per minute.

The Council fixes the prices of the case categories annually – correct for wage and price adjustment – and each court receives the same amount for a given case category. As an incentive for courts to reduce costs, they can retain a surplus if they manage to keep their costs low. The equalization account is meant to be able to finance unexpected costs afterwards. When having lower costs they are then reflected towards the Council and the Ministry in the price negotiations. If they produce more than expected, they receive 70% of the agreed price per product group from the equalization account. Also at this level an operating surplus results in crediting the court's own funds (the financial business reserve). Though in case of operating in deficit results, which follows in reduction of the courts' own funds, the Council sets conditions for repayment and improvement measures. When producing less than agreed, the court must deposit 70% of the agreed prices of the unprocessed part in the equalization account.<sup>329</sup> If a court has generated more money for its own funds than 3% of its annual budget, the excess is creamed off by the Council. When assessing the budgets per court though, the Council needs to take into account the court size. For instance, courts that have 'mega cases' have higher throughput times than regular courts and therefore there is a separate funding for those mega cases.<sup>330</sup> Registration systems like KEI<sup>331</sup> or other Information Technology Systems also have a separate funding.<sup>332</sup>

### 3.5.3. Consequences of resource allocation for the quality of justice

The system of financing the courts' sole purposes were to calculate the budget for the courts and distribute the budget over the courts. Somehow, in the past, the management of the courts translated the budget outcome into the different departments of the courts, also based on production per department. Thus, the money distribution system was transformed into a quite direct pressure on judges to produce judgements for economic reasons. Together with quite a number of proposals to change the court map, rules of procedure, legal aid and giving online-court proceedings a boost, the judiciary has become weary of all the changes and protested against the austerity measures in 2012. The Council adopted this protest.

It should be mentioned that the internal management of the courts has changed, since the change of the court map, so that in the court organisation money is allocated where necessary and not primarily in accordance with production. Nevertheless, allocating resources based on performance has various consequences for the quality of justice.

#### *Caseload and quality of performance*

Performance budgeting can result in low quality, namely because budgetary constraints result in a higher workload for individual judges,<sup>333</sup> and therefore quality standards have been designed. There is a different interpretation on what is considered to be 'quality': the Council used to interpret this as handling cases with high speed, but most judges interpret this as providing a high quality of

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<sup>328</sup> Court of Audit, 'Funding the Judiciary System: consequences for efficiency' (Report) (21 April 2016) 22. Accessible through [www.courtfaudit.nl](http://www.courtfaudit.nl).

<sup>329</sup> Court of Audit, 'Funding the Judiciary System: consequences for efficiency' (Report) (21 April 2016) 22. Accessible through [www.courtfaudit.nl](http://www.courtfaudit.nl).

<sup>330</sup> Interview with Jasper van den Beld and Antoinette Opstelten, Judicial Board Member and Secretary of the Board, Court of First Instance Rotterdam (Rotterdam, 9 May 2017)

<sup>331</sup> Programma Kwaliteit en Innovatie Rechtspraak (Programme on quality and innovation of the judiciary).

<sup>332</sup> National Budget 2016, see: [http://www.rijksbegroting.nl/2016/voorbereiding/begroting,kst212222\\_22.html#\\_33\\_back](http://www.rijksbegroting.nl/2016/voorbereiding/begroting,kst212222_22.html#_33_back)

<sup>333</sup> Council for the Judiciary, 'Judicial Reform In The Netherlands: change in broad outline', (Sdu Publishers The Hague 2014) 27.



judgments, which takes (a lot) more time.<sup>334</sup> Nevertheless, the output-based financing structure results in judges being scheduled to handle a specific number of hearings.<sup>335</sup> This implies often that an disproportionate workload lies on the shoulders of courts and judges.<sup>336</sup> The allocation of resources is not providing enough resources to handle all the caseload, but it is unclear to what extent this affects the quality of judicial work.<sup>337</sup> What can be said is that the pressure to perform within the budget restrictions may lead to peculiar situations. For instance, when realized production and due compensation provided for civil cases tends to be less than the planned production while the realized production and due compensation provided for criminal cases is larger than the planned production, the budget for the civil section needs to be leveled. If this is done in accordance with internal production results, every department tries to get as much cases they need to comply with the available budget.<sup>338</sup> Some of our interviewees state this is still the case, others told us the management boards of the courts have left this way of budgeting behind.<sup>339</sup> If a court handles less cases than initially planned, the court will lose some of its budget and this may have personnel consequences (but not for judges). If a court handles more cases than initially planned, the court will eventually receive more money than budgeted. In short, the output financing means that they can handle less or more cases than were budgeted planning wise and they get paid out for the output realised.<sup>340</sup>

Even if the workload is not experienced to be unacceptably high, the strict schedule of hearings reduces the autonomy of judges in allocating time to cases (or to refer a case to a three-judge panel). The complexity of a case does no longer play a dominant role, while considerations of effectiveness and efficiency are emphasized.<sup>341</sup> Since the budget model changed into an output model, the emphasis on quantity steers to more productivity<sup>342</sup> and accountability for production. Consequently, judges may experience dilemmas when faced with tensions between organizational and professional values. An example is that certain interim judgments made during court proceedings are not qualified by the management as 'output' and are therefore not financed. This leads to situations where courts operate in a way where they consider themselves applying to the output-rate soon, or explaining why they are not complying to the standards yet.<sup>343</sup> One of the problems then arises on what point a case is considered to start or to end. The increase of lead times of cases has the consequence of not handling enough cases according to the budget plan, but it is measured on the total of cases in all jurisdictions.<sup>344</sup> Since the output-based budget is strict in the sense that when courts don't comply to the output that is planned (or only for 90%), they will get paid less. Accordingly, efforts to increase output are threatening the independent position of judges in deciding concrete cases because they can feel pressured to complete cases.<sup>345</sup> The question is how the judiciary is supposed to be responsible to draft its budget and present it to Parliament or that it can be organized differently.

Apart from the before-mentioned problems that became more urgent when the government implemented austerity measures to all its departments, the average length of time calculated for a product group of cases based on registrations often turns out not to be specific enough. Especially

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<sup>334</sup> Interview with Jules Loyson, Judge, Court of Appeal Amsterdam (Amsterdam, 9 February 2017)

<sup>335</sup> Nina L. Holvast, Nienke Doornbos, *Exit, Voice, and Loyalty within the Judiciary: Judges' Responses to New Managerialism in the Netherlands*, *Utrecht Law Review*, Volume 11, issue 2 (June 2015) 56.

<sup>336</sup> Bert Maan, 'Past and Future For Management Of Courts', *International Journal for Court Administration* (August 2009) 22.

<sup>337</sup> Council for the Judiciary, 'Judicial Reform In The Netherlands: change in broad outline', (Sdu Publishers The Hague 2014).

<sup>338</sup> Interview with Jules Loyson, Judge, Court of Appeal Amsterdam (Amsterdam, 9 February 2017)

<sup>339</sup> Esther de Rooij, Member of the Board, Court of First Instance Amsterdam (e-mail message November 13, 2017)

<sup>340</sup> Interview with Ingrid Corbeij, Member of the Board, Court of First Instance Noord-Holland (Utrecht, 3 March 2017)

<sup>341</sup> Council for the Judiciary, 'The Judiciary System in the Netherlands' (Report) (20 August 2010).

<sup>342</sup> Productivity as the number of cases in a year divided by the total amount of fte employed by the courts.

<sup>343</sup> Interview with Frans de Boer, Chief Planning and Control, Amsterdam (Amsterdam, 31 January 2017)

<sup>344</sup> Interview with Jasper van den Beld and Antoinette Opstelten, Judicial Board Member and Secretary of the Board, Court of First Instance Rotterdam (Rotterdam, 9 May 2017)

<sup>345</sup> New Year's speech by Frits Bakker (President Council for the Judiciary) 7 January 2016.

the smaller courts dealing with complex cases experience difficulties. The workload of judges goes up, because they are in a way forced to finish the cases within the reserved time. In addition, there are often insufficient resources to meet important innovations in the Judiciary. In 2013 for example, the judiciary experienced this problem with the reform of the court map. There were additional resources needed to manage this smoothly. As visualized before, these additional funds came from the budget of the judiciary itself. Bakker concludes in a speech that the judiciary is a core task of the state and deserves straight application of the financing model that fits thereto.<sup>346</sup> Also in reaction to those complaints, the government decided recently to invest an extra 35 million euros annually in order to enable the courts to hire more court clerks and judges.

### ***The Court of Audit on performance-based funding***

According to the Court of Audit, the performance-based funding of the judiciary system introduced in 2002 has aided in controlling the costs.<sup>347</sup> The consequences for the quality of the judiciary are uncertain. The conclusions from the Court of Audit are based on the following content:<sup>348</sup>

First, the annual performance-based funding of the judiciary system is ultimately dependent on the funds available in the Ministers' budget. The funding of the judiciary system therefore combines the characteristics of performance-based funding and budget-based funding: a two funding method is a source of tension.

Second, the introduction of performance-based funding leads to less expensive court cases. This results from the costs of courts being stabilized after having increased for a long period of time (1983-2002) and from a decline of the cost differences between courts and cases.

Third, the efficiency incentives do not bring about a further reduction in costs per case. The cost control by the Ministry has improved as a result of the budget ceiling – cost control is a key priority of the Council – but they give higher priority to meeting the performance agreements than to improving their efficiency. Efficiency incentives are not particularly strong in practice and courts can only reduce the costs per case if they deal with more cases. Because the number of cases has been lower in recent years than expected, courts have been unable to meet the performance agreements and do not mind increasing their productivity. The consequence is, that the average costs per case is higher during years of lower productivity. The Court of Audit also finds that the triennial price agreements were not reviewed if there was a demonstrable increase in productivity.

Last, the effect on quality is not known, while the costs of a case should reflect the costs incurred to achieve the required quality. This is a major concern, because the available information provides no reliable indication that there has been any structural change in quality. The absence of reliable information on quality and efficiency incentives prevents a proper consideration of the relationship between quality and price. Also, whether and to what extent the quality of the judiciary system has been influenced by performance agreements is uncertain. Furthermore, the Ministry does not have agreements with the courts regarding the required quality level.<sup>349</sup>

Other factors in the consequences of resources allocation on the quality of justice are related to enhancing the specialized expertise of judges, to raise the procedural and financial thresholds for

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<sup>346</sup> New Year's speech by Frits Bakker (President Council for the Judiciary) 7 January 2016.

<sup>347</sup> Court of Audit, 'Funding the Judiciary System: consequences for efficiency' (Report) (21 April 2016) p. 58. Accessible through [www.courtfaudit.nl](http://www.courtfaudit.nl).

<sup>348</sup> Idem. More information and reports can be found on [http://www.courtfaudit.nl/english/Publications/Annual\\_Reports](http://www.courtfaudit.nl/english/Publications/Annual_Reports).

<sup>349</sup> Court of Audit, 'Funding the Judiciary System: consequences for efficiency' (21 April 2016). Conclusions accessed at [www.courtfaudit.nl](http://www.courtfaudit.nl) on 17 December 2016. See also: Reactie op hoofdartikel 'De pratende, schrijvende en twitterende rechter: terughoudendheid troef' door Elaine Mak met 'Rechterlijke uitsingsvrijheid in common law- en civil law-systemen, Rechtstreeks 2017 nr. 1, (accessible at <https://www.rechtspraak.nl/SiteCollectionDocuments/rechtstreeks-2017-1.pdf>) where she speaks about 'Foreign experience [provide] a reference framework for further policy formation and the development of best practices'.

litigants and to increase the uniformity of procedures. Basically, improvement of quality and consistency of judicial decisions should result in enhanced performance of the judiciary, which then results in a propitious allocation of resources. The major categories of costs that are affected by measures to improve the performance of the courts are briefly based on transaction costs, costs of postponing activities and costs of uncertainties.<sup>350</sup>

### 3.6. Assessment of existing evaluation methods

The allocation of resources with performance based budgeting as described before, has both profitable (such as timeliness) and adverse consequences (too much pressure) for the quality of the justice. Based on the recommendations given by the Court of Audit, the Minister is advised to explain in its budget what consequences any increase or decrease of the budget ceiling for the Judiciary system has for the number of cases to be funded, the required quality and the costs involved. Also, he should explain what risks are involved, what impact they can have and how they can be mitigated and addressed if they occur and what measures should be taken.<sup>351</sup>

One of the existing evaluation methods is trial risk management. It is based on identifying the working processes. It seems to be desirable to conceptualize the risks of the processes in legal proceedings, and develop methods that restrict the risks of these processes.<sup>352</sup> Another method is the measurement on the hours spent in professional education. It seems that registering these hours are more difficult in practice.<sup>353</sup> Furthermore, it would be more useful to steer and control what kind of professional education is attended by what kind of judges, than simply measure the quantity of lectures attended by judges in a specific period.<sup>354</sup>

In the field of the court evaluation, the adoption of innovative practices should rely on investing in better information on the cost and quality of the Judiciary system. Also, a method to monitor the quality of the Judiciary system has to be developed. Therefore, the courts need to agree on a minimum quality standard for the system together with the Minister. This information has to be taken into account in the triennial price review. Another recommendation for the courts is to provide quantitative information on the causes of variances between agreed and actual costs per product group, and from one court to another. Lastly, the cost of a particular type of case in different jurisdictions has to be compared. Differences must be explained, especially if the complexity (or simplicity) of the case appears comparable. This data must be used to improve the efficiency of court procedures and develops professional standards for each jurisdiction. It should be noted that the equalization account (as mentioned in paragraph 2.5.2) is meant to pay unforeseen costs, not to fund the agreed number of cases.

## 4. Innovative practices in quality evaluation and quality development

This chapter contains a discussion on five innovative practices in the Netherlands. These are professional standards (1), the ‘Organization of Knowledge’ program (2), mirror meetings (3), the digitalization of processes (4), and the directive role of judges during court sessions (5). Other new or innovative initiatives include communication teams within courts and the hosting of meetings with regular litigants, such as the Prosecutors Office or the tax authority for consultation, to strengthen the connection between the judiciary and the external world.<sup>355</sup> Some legal areas of

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<sup>350</sup> Frans van Dijk, ‘Netherlands Council for the Judiciary Improved performance of the Netherlands Judiciary: Assessment of the gains for society’, (The Hague May 2014) 4.

<sup>351</sup> Court of Audit, ‘Funding the Judiciary System: consequences for efficiency’ (21 April 2016). Conclusions accessed at [www.courtfaudit.nl](http://www.courtfaudit.nl) on 17 December 2016.

<sup>352</sup> Interview with Andre Dekker, Consultant Quality and Planning, Court of First Instance Noord-Holland (Haarlem, 23 February 2017)

<sup>353</sup> Interview with Frans de Boer, Chief Planning and Control, Amsterdam (Amsterdam, 31 January 2017)

<sup>354</sup> Interview with Jules Loyson, Judge, Court of Appeal Amsterdam (Amsterdam, 9 February 2017)

<sup>355</sup> Council for the Judiciary, ‘Rapport visitatie gerechten 2014’ 2014, pp. 79, 80; Interview with Liesbeth van Walree, Monique Fiege and Jaap de Wildt, Judicial Quality Coördinators (KC), Court of First Instance Rotterdam (Rotterdam, 11 May 2017)

courts have yearly evaluation meetings with ‘repeat players’, such as curators, to discuss how everything is going.<sup>356</sup> Also, many courts have communication teams and a press office that manage publishable cases that are legally or societally relevant.<sup>357</sup> So-called press judges respond and reply to the media, especially in sensitive cases.<sup>358</sup> To tackle the negative feedback on throughput times courts have adopted a new practice within the administrative law area. Judges in this field try to organize a hearing as soon as possible in order to get the issue clear, which increases the chance on a quick and final solution.<sup>359</sup> Lastly, some courts have introduced the so-called ‘Feedback Online’ pilot, which is a survey to be filled in right after a hearing to see what the litigants thought of the performance of the judge and the support staff of the court.<sup>360</sup> Another initiative is called “meet the judge”, which is a meeting of judges with citizens.<sup>361</sup>

The following will discuss the identified first five major innovative practices in the Netherlands regarding evaluation of the judiciary. The other innovations are not discussed further given the scale of the development.

#### 4.1. Professional standards

In addition to Rechtspraak judges have been developing so-called ‘professional standards’ since 2012/2013. These standards embody the vision of judges on quality of judicial performance. These standards have no binding force for judges and are meant for internal use.<sup>362</sup> Judges themselves can decide on whether or not to follow them. This is one of the main aims of the standards: to be an instrument of the judges, they are not an internal management & organization tool.<sup>363</sup> In this fashion the standards do serve as necessary conditions or criteria for quality judicial work, and as such do not function as an evaluation instrument.<sup>364</sup> Effectively they function as a (re)confirmation of judicial professional space within the court organization. As such, they can, however also be translated by the courts’ management boards and the Council for the Judiciary into budgetary demands.

Professional standards are originally intended to be by and for the professionals and to provide a certain level of responsibility to each other.<sup>365</sup> The standards therefore need a wide support among the professionals. The standards have evolved from the tension between the quality of the judiciary and pressure to produce sufficient cases or verdicts. The professional standards could be a ‘codification’ of existing, informal agreements to provide counter pressure to the existing workload and financial pressure.<sup>366</sup> Moreover, in general society’s demands have increased, which means the judiciary does not longer have the surety of trust.<sup>367</sup>

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<sup>356</sup> Interview with Jaqueline Frima and Jennifer Willemsen, Unitmanager Insolventie and Unitmanager Canton, Court of First Instance Rotterdam (Rotterdam, 9 May 2017)

<sup>357</sup> Council for the Judiciary, ‘Rapport visitatie gerechten 2014’ 2014, p. 79; Interview with Jasper van den Beld and Antoinette Opstelten, Judicial Board Member and Secretary of the Board, Court of First Instance Rotterdam (Rotterdam, 9 May 2017)

<sup>358</sup> Council for the Judiciary, ‘Rapport visitatie gerechten 2014’ 2014, p. 79.

<sup>359</sup> Council for the Judiciary, ‘Rapport visitatie gerechten 2014’ 2014, p. 81.

<sup>360</sup> Council for the Judiciary, ‘Rapport visitatie gerechten 2014’ 2014, p. 80; Interview Ingrid Corbeij, Judge and Member of the Management Board, Court of First Instance of North Holland (Utrecht 3 March 2017); Interview with Hester Brouwer, Member of the Board, Court of First Instance Midden-Nederland (Utrecht, 23 March 2017)

<sup>361</sup> Interview with Ward Messer, Judge, Court of First Instance Midden-Nederland (Utrecht, 22 February 2017)

<sup>362</sup> Dutch criminal law judges, ‘Professionele standaarden strafrecht’ (2016), p. 3

<sup>363</sup> Interview with Hester Brouwer, Member of the Board, Court of First Instance Midden-Nederland (Utrecht, 23 March 2017)

<sup>364</sup> Interview with Esther de Rooij, Member of the Board, Court of First Instance Amsterdam (Amsterdam, 31 January 2017); Interview with Hester Brouwer, Member of the Board, Court of First Instance Midden-Nederland (Utrecht, 23 March 2017)

<sup>365</sup> Hans Milius & Paul Becht, ‘Professionele standaarden in de rechtspraak. Inleiding op het hoofdartikel’ (2014) 1 Rechtstreeks 1, 13.

<sup>366</sup> Marie-Jeanne Schiffelers, Aline Bos & Mirko Noordegraaf, ‘Collectief vakmanschap’ Leren van professionele standaarden in andere beroepsgroepen’ (2014) 1 Rechtstreeks 1, 17.

<sup>367</sup> Mark S. Frankel, ‘Professional Codes: Why, How, and with What Impact?’ (1989) 8 Journal of Business Ethics 109, 109

Each court has established ‘implementation groups’ that look at the professional standards and determines whether a court already acts conform the standard or whether changes are needed.<sup>368</sup> The team coordinators in the civil law department in the Court of Mid-Holland discuss the standards with their team to see what could or should be changed.<sup>369</sup> The team coordinators then discuss where they are with the professional standards with the court board.<sup>370</sup> They can also identify a couple of professional standards to focus on in the following year. Some standards require financial changes and more budget, for example a mandatory legal support officer at every session, whereas other standards do not necessarily or immediately require more compensation, such as how you behave at court sessions.<sup>371</sup> The first requirement can entail the hiring of many new legal support staff, whereas the second can be worked into the daily routine without a need for additional funds. The elements that do require these funds receive them next to the output financing system.<sup>372</sup> The implementation groups are needed because some of the professional standards are formulated quite vaguely, which requires additional specification. For example, if you have to be a pro-active *supervising* judge it is unclear how much extra time this will cost.<sup>373</sup> To aid this the national meetings of judges in specific fields discuss the standards and try to objectify them as much as possible.

The judges in the Netherlands specialized in criminal law were the first to publish their professional standards after a couple of years as a result of many national meetings (*Landelijk Overleg Vakinhoud Strafrecht*), internal reflection of the judiciary and advice by parties such as the Public Prosecutor.<sup>374</sup> Judges in other legal fields are also working hard to develop standards and they are currently in the process of being published. Each legal field can determine its own speed and route.<sup>375</sup> At the moment the professional standards for administrative law, tax law, and family and juvenile law are published.<sup>376</sup> The underlying aim is to keep the professional standards with the professionals and to not let the national meetings ascend to be part of the management.<sup>377</sup>

The criminal standards have been formulated and implemented first because, according to some judges, the judges in this legal field were the most active in questioning their work load and communicating this to the Council.<sup>378</sup> In addition, these judges mentioned that this legal field seems to have the most public relevance and is perceived as having the most impact on people, together with family law.<sup>379</sup> In general the standards are launched bit by bit, to make it financially feasible.<sup>380</sup>

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<sup>368</sup> Interview with Hester Brouwer, Member of the Board, Court of First Instance Midden-Nederland (Utrecht, 23 March 2017); Interview with Aafke Klippel and Anneke de Graag, Judges, Court of First Instance Noord-Holland (Haarlem, 23 February 2017); Interview with Ingrid Corbeij, Member of the Board, Court of First Instance Noord-Holland (Utrecht, 3 March 2017)

<sup>369</sup> Interview with Hester Brouwer, Member of the Board, Court of First Instance Midden-Nederland (Utrecht, 23 March 2017)

<sup>370</sup> Interview with Ingrid Corbeij, Member of the Board, Court of First Instance Noord-Holland (Utrecht, 3 March 2017)

<sup>371</sup> Interview with Hester Brouwer, Member of the Board, Court of First Instance Midden-Nederland (Utrecht, 23 March 2017); Interview with Aafke Klippel and Anneke de Graag, Judges, Court of First Instance Noord-Holland (Haarlem, 23 February 2017)

<sup>372</sup> Interview with Jasper van den Beld and Antoinette Opstelten, Judicial Board Member and Secretary of the Board, Court of First Instance Rotterdam (Rotterdam, 9 May 2017)

<sup>373</sup> Interview with Jaqueline Frima and Jennifer Willemsen, Unitmanager Insolvency and Unitmanager Canton, Court of First Instance Rotterdam (Rotterdam, 9 May 2017)

<sup>374</sup> Dutch criminal law judges, ‘Professionele standaarden strafrecht’ (2016), p. 2

<sup>375</sup> Hans Milius & Paul Becht, ‘Professionele standaarden in de rechtspraak. Inleiding op het hoofdartikel’ (2014) 1 *Rechtstreeks* 1, 15.

<sup>376</sup> Council for the Judiciary, ‘Gepubliceerde professionele standaarden’ (2017) < <https://www.rechtspraak.nl/Uw-Situatie/Onderwerpen/Rechtspraak-in-Nederland/Rechtshandelingen/Paginas/De-professionele-standaarden-van-de-rechters.aspx> > accessed 18 August 2017

<sup>377</sup> Hans Milius & Paul Becht, ‘Professionele standaarden in de rechtspraak. Inleiding op het hoofdartikel’ (2014) 1 *Rechtstreeks* 1, 14.

<sup>378</sup> Interview with Hester Brouwer, Member of the Board, Court of First Instance Midden-Nederland (Utrecht, 23 March 2017).

<sup>379</sup> Interview with Jasper van den Beld and Antoinette Opstelten, Judicial Board Member and Secretary of the Board, Court of First Instance Rotterdam (Rotterdam, 9 May 2017); Interview with Jaqueline Frima and Jennifer Willemsen, Unitmanager Insolvency and Unitmanager Canton, Court of First Instance Rotterdam (Rotterdam, 9 May 2017).

<sup>380</sup> Interview with Esther de Rooij, Member of the Board, Court of First Instance Amsterdam (Amsterdam, 31 January 2017).

Nevertheless, the financial consequences of the professional standards can be greater than anticipated. The concern-controller in Amsterdam emphasized that some professional standards can be calculated precisely, such as shorter court sessions that lead to more sessions to hear all cases. However, other quality elements are more difficult to quantify, especially the ones that are still being objectified. This last category can lead to unanticipated financial needs.<sup>381</sup> Another problematic item for the professional standards is the fact that there are currently insufficient judges to implement all professional standards.

### ***Professional standards: criminal law***

The standards aim at increasing the quality of work done by criminal law judges by addressing both the individual judges and the judicial organization.<sup>382</sup> The standards supplement other standards already in place, such as the Code of Conduct for the Judiciary.<sup>383</sup> The professional standards influence several elements and therefore have a societal (for example legal unity), substantive (for example expertise) and institutional relevance (for example the judiciary as a branch).<sup>384</sup> Moreover, the standards function as facilitator for quality, regulation and responsibility.<sup>385</sup>

The professional standards concerning criminal law have a three-layer build up. The professional standards for civil law have the same build up and there is communication among the legal fields on using the same format.<sup>386</sup> The first level of the criminal law standards comprises ten fundamental principles and standards that are at the heart of the judiciary. These include but are not limited to the need for proper and continuous education of judges, a balanced division of judges on cases, sufficient administrative support, comprehensible judgments and attention for societal context and treatment of cases that are made to measure.<sup>387</sup>

The second level specifies the practical ways in which the judiciary can meet the standards of level one. The second level is subject to more discussion and provides for more room for maneuvering in terms of the possibility to deviate when motivated properly.<sup>388</sup> For example, the standard of proper education has two lines of practical developments, namely education and development and permanent education. The permanent education then deliberates in six specific ways to safeguard this specific element, for example through periodical discussions of relevant case law and the national norm of ninety hours of permanent education per three years. Another fundamental principle is the exit point that criminal law judges should engage in the ‘professional discussion’. The second level then states that each judge should regularly partake in judge-meetings and should provide each other with feedback (peer review) and participate in professional meetings.<sup>389</sup>

The third level comprises a compilation of publications and best practices that supplement the adopted standards. The several documents listed in this section aim at inspiring judges and a further development of the professional standards.<sup>390</sup>

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<sup>381</sup> Interview with Frans de Boer, Chief Planning and Control, Amsterdam (Amsterdam, 31 January 2017).

<sup>382</sup> Dutch criminal law judges, ‘Professionele standaarden strafrecht’ (2016), p. 1.

<sup>383</sup> <https://www.rechtspraak.nl/SiteCollectionDocuments/Matters-of-principle.pdf#search=rechterscode>

<sup>384</sup> Marie-Jeanne Schiffelers, Aline Bos & Mirko Noordegraaf, ‘Collectief vakmanschap’ Leren van professionele standaarden in andere beroepsgroepen’ (2014) 1 Rechtstreeks 1, p. 19.

<sup>385</sup> Marie-Jeanne Schiffelers, Aline Bos & Mirko Noordegraaf, ‘Collectief vakmanschap’ Leren van professionele standaarden in andere beroepsgroepen’ (2014) 1 Rechtstreeks 1, p. 22.

<sup>386</sup> Interview with Hester Brouwer, Member of the Board, Court of First Instance Midden-Nederland (Utrecht, 23 March 2017); Interview with Jasper van den Beld and Antoinette Opstelten, Judicial Board Member and Secretary of the Board, Court of First Instance Rotterdam (Rotterdam, 9 May 2017).

<sup>387</sup> Dutch criminal law judges, ‘Professionele standaarden strafrecht’ (2016), pp. 1, 4.

<sup>388</sup> Dutch criminal law judges, ‘Professionele standaarden strafrecht’ (2016), pp. 1-2, 5

<sup>389</sup> Dutch criminal law judges, ‘Professionele standaarden strafrecht’ (2016), pp. 5-6, 13

<sup>390</sup> Dutch criminal law judges, ‘Professionele standaarden strafrecht’ (2016), pp. 2, 14



Some judges felt in the beginning that the professional standards were obvious self-evidences and they are surprised that the standards at this time actually did lead to more legal support and shorter sessions.<sup>391</sup> Others consider professional standards also valuable in the sense that they acknowledge the workload of judges.<sup>392</sup> Nevertheless, some judges are a bit skeptical towards the real workings of the professional standards – the formal launch does not guarantee practical implementation – and the implementation of the professional standards in legal areas other than criminal and family law.<sup>393</sup> However, they do applaud the professional standards because the judiciary as a substantive business should give the good example.<sup>394</sup>

The levels of these specific standards correspond to the theoretical framework of professional standards in all sorts of academic fields.<sup>395</sup> According to a research memoranda professional standards have a core of ideals (layer one, the ambition code); a practical realization of these ideals (layer two, the educational code); and a regulatory code that links the first two levels in case of non-compliance.<sup>396</sup> A fourth layer encompasses policy choices and organizational conditions relating to time and money.<sup>397</sup> The professional standards designed by the criminal law judges clearly shows the first two layers or levels, but do not comprise the others levels in the document. Nevertheless, the current Dutch reality embodies the fourth layer. The third layer is also represented, but solely in terms of financial compensation for cases completed. To do it otherwise, could compromise judicial independence within the courts.

#### 4.2. Organization of Knowledge<sup>398</sup>

Another current development in the Netherlands is the move towards more specialization of knowledge.<sup>399</sup> Judges in the Netherlands have started in 2015 to develop the so-called project “Organization of Knowledge” for and by the professionals.<sup>400</sup> The problems this new project aims to address are the increasing complexity of cases and more specialized litigators.<sup>401</sup> The idea is that the current body of knowledge is rather piecemeal and not always transparent in terms of where to go to get what information.<sup>402</sup> The main parts of the project are five: reinforcement of the local quality infrastructure (a), digitization of the paper books of the court libraries (b), reinforcement and transparency of the nationwide knowledge management services (organization, management, sharing of information - c), reinforcement of nation-wide expert groups and knowledge centers; networks that gather, manage and share knowledge related to specific legal domains (d), ICT-innovations, like a digital tool to integrally search sources and work on and store results (e).<sup>403</sup>

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<sup>391</sup> Interview with Ward Messer, Judge, Court of First Instance Midden-Nederland (Utrecht, 22 February 2017)

<sup>392</sup> Interview with Jasper van den Beld and Antoinette Opstelten, Judicial Board Member and Secretary of the Board, Court of First Instance Rotterdam (Rotterdam, 9 May 2017)

<sup>393</sup> Interview with Liesbeth van Walree, Monique Fiege and Jaap de Wildt, Judicial Quality Coördinators (KC), Court of First Instance Rotterdam (Rotterdam, 11 May 2017); Interview with Jaqueline Frima and Jennifer Willemsen, Unitmanager Insolventie and Unitmanager Canton, Court of First Instance Rotterdam (Rotterdam, 9 May 2017)

<sup>394</sup> Interview with Jaqueline Frima and Jennifer Willemsen, Unitmanager Insolventie and Unitmanager Canton, Court of First Instance Rotterdam (Rotterdam, 9 May 2017)

<sup>395</sup> Council for the Judiciary, ‘Research Memoranda: Professionele standaarden: een vergelijkende perspectief’, 3(2014)10, pp. 3-4

<sup>396</sup> Council for the Judiciary, ‘Research Memoranda: Professionele standaarden: een vergelijkende perspectief’, 3(2014)10, pp. 4, 24

<sup>397</sup> Council for the Judiciary, ‘Research Memoranda: Professionele standaarden: een vergelijkende perspectief’, 3(2014)10, p. 4

<sup>398</sup> On knowledge management for judiciaries, see: Sandra Taal, ‘Working separately together: A quantitative study into the knowledge sharing behaviour of judges’, Stämpfli Verlag AG, Bern, 2016).

<sup>399</sup> Interview with Ward Messer, Judge, Court of First Instance Midden-Nederland (Utrecht, 22 February 2017); S. Taal, “Working separately together: A quantitative study into the knowledge sharing behaviour of judges” (PhD Dissertation 2016).

<sup>400</sup> Council for the Judiciary, ‘Programmaplan Organisatie van Kennis’ (20 March 2017); Interview with Jasper van den Beld and Antoinette Opstelten, Judicial Board Member and Secretary of the Board, Court of First Instance Rotterdam (Rotterdam, 9 May 2017)

<sup>401</sup> Council for the Judiciary, ‘Programmaplan Organisatie van Kennis’ (20 March 2017), p. 10.

<sup>402</sup> Council for the Judiciary, ‘Programmaplan Organisatie van Kennis’ (20 March 2017), p. 5.

<sup>403</sup> Council for the Judiciary, ‘Programmaplan Organisatie van Kennis’ (20 March 2017), p. 5.

In order to organize the knowledge networks, each legal field, for example civil law, has a couple of expert groups connected to it, for example international private law or civil procedure.<sup>404</sup> These expert groups are formed at the national level, although sometimes not all courts participate, and these groups safeguard knowledge sharing on specific topics.<sup>405</sup> These expert groups do not replace the knowledge centers that have been discussed earlier: those centers are usually organized as a part of a court and cover less areas of law than the expert centers.<sup>406</sup> However, the goal is to merge the expert centers and knowledge centers.<sup>407</sup>

At the local level the (national) expert groups correspond to knowledge groups. Some legal areas at some courts let their knowledge groups synchronize with the national expert groups, but not all.<sup>408</sup> Within the Court of First Instance in Rotterdam the foregoing has resulted in knowledge groups at the local level on specific topics or legal fields, for example migration law or TBS. Such knowledge groups have 6-10 members including one or two judges.<sup>409</sup> Some knowledge groups are temporary, which could foster enthusiasm, and others are permanent.<sup>410</sup> In any regard, the overarching project aims to support the sharing of knowledge.<sup>411</sup>

The project also aims to make all information digitally available through an e-library and sustainable online sources. One of the main changes includes the formation of one central library instead of many local libraries and one digital library.<sup>412</sup> Finally, the project has the objective of using ICT to facilitate what the professional needs. For example, currently the project is working on a personalized starting page that embodies many or all the elements the professional needs.<sup>413</sup> Hence, the organization and sharing of knowledge sits at the base of one of the main innovations in the Netherlands.

### 4.3. Mirror meetings

Another innovative practice is the use of mirror meetings (*spiegelbijeenkomsten*), of which there have been more than twenty-five across the Dutch courts.<sup>414</sup> According to the visitation report these meetings could improve the performance of Dutch courts and are initiated by courts.<sup>415</sup> In mirror meetings customers of the judiciary can articulate their experiences with a specific court under supervision of an independent moderator, while the judges and other staff of the court are only observing.<sup>416</sup> It depends on a specific reflection meeting who is invited to participate, for example lawyers or citizens, so where the reflection is coming from.<sup>417</sup>

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<sup>404</sup> Interview with Liesbeth van Walree, Monique Fiege and Jaap de Wildt, Judicial Quality Coördinators (KC), Court of First Instance Rotterdam (Rotterdam, 11 May 2017)

<sup>405</sup> Council for the Judiciary, 'Programmaplan Organisatie van Kennis' (20 March 2017), p. 18.

<sup>406</sup> Council for the Judiciary, 'Programmaplan Organisatie van Kennis' (20 March 2017), p. 18.

<sup>407</sup> Council for the Judiciary, 'Programmaplan Organisatie van Kennis' (20 March 2017), p. 18.

<sup>408</sup> Interview with Liesbeth van Walree, Monique Fiege and Jaap de Wildt, Judicial Quality Coördinators (KC), Court of First Instance Rotterdam (Rotterdam, 11 May 2017)

<sup>409</sup> Interview with Liesbeth van Walree, Monique Fiege and Jaap de Wildt, Judicial Quality Coördinators (KC), Court of First Instance Rotterdam (Rotterdam, 11 May 2017)

<sup>410</sup> Interview with Liesbeth van Walree, Monique Fiege and Jaap de Wildt, Judicial Quality Coördinators (KC), Court of First Instance Rotterdam (Rotterdam, 11 May 2017)

<sup>411</sup> Council for the Judiciary, 'Programmaplan Organisatie van Kennis' (20 March 2017), p. 28.

<sup>412</sup> Council for the Judiciary, 'Programmaplan Organisatie van Kennis' (20 March 2017), p. 22.

<sup>413</sup> Council for the Judiciary, 'Programmaplan Organisatie van Kennis' (20 March 2017), p. 25.

<sup>414</sup> Jitta Miedema and others, 'Feedback uit de relevante buitenwereld' (2015) 9 *Trema* 315, 315;

<sup>415</sup> Council for the Judiciary, 'Rapport. Visitatie Gerechten 2010' (2010) The Netherlands, p. 39

<sup>416</sup> Jitta Miedema and others, 'Feedback uit de relevante buitenwereld' (2015) 9 *Trema* 315, 316

<sup>417</sup> Interview with Jasper van den Beld and Antoinette Opstelten, Judicial Board Member and Secretary of the Board, Court of First Instance Rotterdam (Rotterdam, 9 May 2017); Interview with Aafke Klippel and Anneke de Graag, Judges, Court of First Instance Noord-Holland (Haarlem, 23 February 2017); Interview with Kim Oldekamp and Tanya Chub, Senior Chief Judge and Consultant Business Management, Court of First Instance Amsterdam (Amsterdam, 31 January 2017); Interview with Jules Loyson, Judge, Court of Appeal Amsterdam (Amsterdam, 9 February 2017)

The mirror meeting has three rounds. In the first round judges and other observers discuss and come up with points that are important to discuss in the meeting. The second round is the actual reflection meeting. The third and last round contains a meeting with all observers to analyze the feedback and sometimes supports teambuilding, which is also linked back to the feedback givers.<sup>418</sup> Mirror meetings do not require all observers of the judiciary to be positive about them. However, to implement such meetings there is a need for support from the management and key figures in the judiciary.

During the mirror meeting, judges are required to not engage in exchanges with participating respondents. The goal is purely to receive feedback.<sup>419</sup> The observing stance of the judges increases the sense of safety and stimulates openness among the feedback givers, while the judges have room to listen and reflect.<sup>420</sup> The mirror meetings do not comprise a representative idea of the view of customers, such as the CUS aims to do, but the personal nature of the contact and sometimes the repetition of the same feedback does provide courts and participants with a sense of recognition and increases the impact of the feedback.<sup>421</sup> Moreover, the meetings can identify blind spots regarding the impact and performance of judges and support staff.<sup>422</sup>

#### 4.4. Digitalization: KEI/QAI legislation

A fourth innovative practice constitutes the KEI legislation, which stands for legislation on **Quality And Innovation**. The aim of QAI is to streamline processes and to digitalize legal proceedings, especially proceedings that occur regularly and routinely. QAI is in the process of implementation. The judiciary aims to be more accessible and understandable and QAI is supposed to make the procedures quicker, simpler and more approachable.<sup>423</sup>

One of the features of QAI is the operationalization of ‘digital files’ for all parties involved in specific proceedings. This is because the Dutch judiciary lags behind in terms of digitalization, still using paper files and fax machines for communication on a daily basis. The paper-based system is supposed to be replaced by standardized and user-friendly online-proceedings, designing a new digital procedure that is reforming the national procedural law and regulations.<sup>424</sup> Apart from digitalization, QAI has also started legislative and organizational changes to legitimize adaptations of rules of procedure to digital programming necessities.

For civil law the new legislation involves simplified initial proceedings and mandatory digital litigation. For administrative law the proceedings will also become faster and mandatory digital litigation is introduced. Within the criminal law the several main actors (Courts, Prosecutors’ Office, prisons) try and make their proceedings to fit together to facilitate complete digital documentation.

#### 4.5. Directive role for Judges

Lastly, the Dutch courts have adopted the idea that judges need more of a directive role when leading court proceedings. Traditionally this role differs per type of legal field, for example a rather passive judge in civil law proceedings (‘equal’ parties to the conflict) but a rather active judge in administrative proceedings (‘unequal’ parties to the conflict).<sup>425</sup> The current legislation

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<sup>418</sup> Jitta Miedema and others, ‘Feedback uit de relevante buitenwereld’ (2015) 9 *Trema* 315, 317

<sup>419</sup> Jitta Miedema and others, ‘Feedback uit de relevante buitenwereld’ (2015) 9 *Trema* 315, 316

<sup>420</sup> Jitta Miedema and others, ‘Feedback uit de relevante buitenwereld’ (2015) 9 *Trema* 315, 316

<sup>421</sup> Jitta Miedema and others, ‘Feedback uit de relevante buitenwereld’ (2015) 9 *Trema* 315, 316-317

<sup>422</sup> Jitta Miedema and others, ‘Feedback uit de relevante buitenwereld’ (2015) 9 *Trema* 315, 319

<sup>423</sup> Council for the Judiciary, ‘Digitaal procederen stap voor stap’, available at < <https://www.rechtspraak.nl/Voor-advocaten-en-juristen/modernisering-rechtspraak/Paginas/Digitaal-procederen-stap-voor-stap.aspx>> accessed 7 July 2017.

<sup>424</sup> Thomas de Weers, ‘Case Flow Management Net –project: the practical value for civil justice in the netherlands, *International Journal for Court Administration*, Vol. 8 no. 1 October 2016, p. 34.

<sup>425</sup> Thomas de Weers, *ibidem*.

incorporates competences to incorporate such an active or directive stance, for example by being able to add facts to a case on trial (administrative law judges).<sup>426</sup> However, those competences differ per type of judge. To a certain extent, the QAI legislation will codify and streamline competences regarding the directive role – for example asking questions to the parties, requiring more evidence, asking to hear an expert, making sure the proceedings do not drag on endlessly.

Also judicial case management is introduced to develop the possible role of a judge as a case manager in a civil procedure, which develops a new trend in the concept of the so-called ‘Caseflow Management’ (CFM).<sup>427</sup> The role of judges implies – mainly in the field of civil justice – managing judicial experts and the monitoring of their performances by putting more emphasis on the division of labor between judges and court clerks, and managing expert witnesses.<sup>428</sup> The Dutch judiciary has drawn up detailed guidelines for expert opinions that concern the communication with the parties, the right to hear and be heard and impartiality.<sup>429</sup> Yet, in civil law there is no official system to monitor the quality of experts.

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<sup>426</sup> Article 8:69(3) Awb

<sup>427</sup> Thomas de Weers, ‘Case Flow Management Net –project: the practical value for civil justice in the netherlands, International Journal for Court Administration, Vol. 8 no. 1 October 2016, p. 32

<sup>428</sup> Thomas de Weers, ‘Case Flow Management Net –project: the practical value for civil justice in the netherlands, International Journal for Court Administration, Vol. 8 no. 1 October 2016, p. 37.

<sup>429</sup> Leidraad deskundigen in civiele zaken (date unknown), <https://www.rechtspraak.nl/SiteCollectionDocuments/Leidraad-deskundigen-WT.pdf> (consulted 7/09/2017).