

FIRST STUDY COMMISSION – QUESTIONNAIRE 2010

Report from the Netherlands

Are prosecutors regarded as members of the judiciary?

In the Netherlands the judiciary include public prosecutors. When acting in court in criminal proceedings they are expected – and enabled – to function independently. Out of court they ultimately come under the direction of the Office of Prosecutors General (OPG). The Minister of Justice bears political responsibility for the OPG and may give directions in specific criminal cases – in writing and to be included in the file presented to the court. The Minister very rarely uses his power to do so.

Is there security of tenure once a judge (prosecutor) has been appointed?

Judges, after having completed their training successfully to the satisfaction of the court are appointed for life, i.e. till 70 years of age and may be dismissed by the Supreme Court only. Public prosecutors have the same status as civil servants and therefore have no security of tenure. They can be dismissed by the OPG.

Does an independent body regulate appointment and promotion of judges (prosecutors) If so, are judges in a majority? Is its advice binding?

No, judges and prosecutors are appointed and promoted by Royal Decree on the recommendation of the Minister of Justice. However, the Minister will as a rule follow the advice of the Council for the Judiciary (the Council) for judges or the OPG for prosecutors. The Council acts on the advice of the court concerned. In fact courts therefore have a large say in appointment and promotion of the judges – less so for court presidents and section heads – in their court. That is not the case for the local offices of prosecutors. Neither the Council nor the OPG however can be seen as completely independent bodies though they have a considerable margin of policy.

Is salary determined by an independent body? Is its advice binding? Can salaries be reduced?

The salary and pension scheme for judges and prosecutors is provided for by law. Negotiations on the periodical adjustment of salaries etc take place between the Minister of Justice and the Dutch Association for the Judiciary but it is the Minister – with the Minister of the Interior in the background – who determines in the end. Salaries normally are raised in connection with the salaries of the civil servants. There is no provision against reduction although that has never happened.

Are disciplinary matters dealt with by an independent body?

Yes. Except in small disciplinary matters which are dealt with by the president of the court disciplinary matters are judged by the Supreme Court. A judge can appeal from disciplinary measures taken by the president with a special chamber of the Administrative High Court.

Is training organised by an independent body?

The greater part of the training – education permanent and initial training - for judges and prosecutors is organised by the Study Center for the Judiciary , a body governed by the Council and the OPG, which are not completely independent. Government however does not control in any way the kind and contents of the training . The practical part of the training is organised on the job by the courts and the prosecutors offices.

Is the court administration independent of other administrative powers?

Each court has its board, composed of president, judges/heads of sections and director of operations; this board is responsible for the court administration too. There is however a relationship between Council and court board as far as concerns administration: there is a planning and reporting cycle with year plans, progress reports and annual reports on operational matters. Judges are not accountable to the court board and court boards are not accountable to the Council for the way judges arrive at their decisions or for the contents of those decision.

Is there a separate budget for the court system? Who determines the budget? Who decides spending priorities?

The court system has a separate budget; it is allocated by the Council, mainly on the basis of a workload measurement system with separate budgets for housing. The budget as a whole is allocated by the Ministry of Justice on the same basis. Courts submit a year plan on which budget is allocated; final allocation is based on the year report. Factors (prices) of the workload management system are negotiated with the Minister by the Council every 3 years. Courts are within the frame of their year plan free to decide on priorities within the court.

Is there immunity from criminal/civil suit for judges (prosecutors)?

There is immunity in the case of judicial errors both for criminal and civil suits. Of course there is no immunity in the case of criminal behaviour. In that case judges and prosecutors will have to stand trial and – with the exception of very minor infringements – will have to resign or will be dismissed. Judicial errors, if more than incidental and depending on the gravity of the error, may affect their career and chances of promotion.

Is there freedom of association for judges (prosecutors)

There is complete freedom of association.

Is there recognition of professional bodies of judges by the executive?

The Dutch Association for the Judiciary is recognized by the government, the OPG and the Council as the representative body for the judiciary. It is consulted frequently and is a trade union as well as a professional union. On the level of the courts judges determine sentencing guidelines etc; in the courts there are mixed committees of judges and staff who are to be consulted on work conditions.

What is the public opinion/press of the independence of the judges (prosecutors) in the Netherlands?

Judges are considered independent by public and press, prosecutors not always. Public opinion however is becoming more and more critical as concerning the decisions in criminal cases in which judges are thought to be, however independent, too lenient. Some right wing parliamentarians express the same opinion.

Are there any reports by international organisations on the independence of judges (prosecutors) in the Netherlands?

Apart from the regular reports of CEPEJ I am not aware of any special reports on any international organisation on the independence. Recently ENCJ has started a working group on the Statute of Judges in the member countries in which independence of course is an important factor.

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