

Remco van Rhee

University of Maastricht

**THE SUPREME CASSATION
COURT OF THE NETHERLANDS
(*HOGE RAAD DER NEDERLANDEN*)¹**

The Dutch Supreme Cassation Court has jurisdiction in civil, criminal and tax matters. The court is based in The Hague, not the capital but the administrative centre of the Netherlands where the government is based as well. The Netherlands is a medium sized European country with ca. 17 million inhabitants. The Supreme Cassation Court of the Netherlands is also charged with cassation appeals against judgments of the Joint Court of Justice of Aruba, Curaçao, Sint Maarten and Bonaire, Saba and Sint Eustatius (overseas territories in the Caribbean) in the fields of criminal and civil law.

The court was founded in 1838. It took its name from a court that had been established in the 16th century but that had been abolished in 1795 under French influence. Between 1795 and 1838 several other supreme courts existed, but these will not be discussed here. In administrative litigation (apart from tax matters), the supreme court does not have jurisdiction; other courts have been established for a final decision in administrative cases: the Central Appeals Council, the Trade and Industrial Affairs Appeal College and the Administrative Jurisdiction Division of the Council of State. These three courts are appellate courts, not courts of cassation.

The 1838 Dutch supreme court adopted the French model of cassation. However, some improvements were introduced in the 19th century, such as the lower court being bound by the judgment of the cassation court directly after the first cassation appeal.

During the 19th century, the court was not regarded as being very relevant in the Dutch judicial system and it was stated by various authors that it could better be abolished. This has changed during the 20th century and currently the Dutch supreme court is one of the most prominent courts in the country. Being appointed as a judge in this court is considered to be a great honour. The judge's

¹ Part of the information in this summary is based on info that can be found on the website of the Dutch Supreme Cassation Court: <http://www.rechtspraak.nl/Organisatie/Hoge-Raad/Pages/default.aspx> (last accessed 1 June 2014).

salary is public like the salary of all civil servants in the Netherlands. It is comfortable but not excessive.

The Supreme Court is responsible for its own managerial and operational tasks. The Supreme Court, the Procurator General and the Director of Operations are in charge of this; the Dutch Council for the Judiciary is not in charge of the supreme court; it is only in charge of the lower courts.

In the first eighty years of its existence – from 1838 till 1918 – the Supreme Court of the Netherlands consisted of two chambers or divisions: the civil chamber and the criminal chamber. During that period the civil chamber also heard tax cases. Mainly as a result of an amendment of the law in 1914 however, the number of these cases grew so substantially that a third chamber had to be established. This chamber is now known as the fiscal or tax chamber, but originally it was called administrative chamber. Only the fiscal or tax chamber is divided in two sections.

Each chamber consists of: 2 vice-presidents and approximately 10 judges, 5 to 10 advocates general, approximately 35 members of the legal research office and administrative support. In each chamber some of the members are specialists, others generalists. As a rule the generalists are career judges. In the group of specialists one finds law professors, lawyers, tax consultants and also some career judges.

The civil chamber (also known as the first chamber) deals with ca. 550 cassation appeals per year, and the average duration of such an appeal is 550 days. The chamber is responsible for civil cases, including commercial and family law cases. This chamber also deals with many cases that do not fall under civil law in the strictest sense, for example those pursuant to the Psychiatric Hospitals (Compulsory Admission) Act. The tax division deals with 1,100 cases per year and the average duration is 356 days per case. The criminal division handles 3,500 cases per year and the average duration is 459 days. The total number of cases is more than 5,000. Apart from criminal cases, extradition proceedings are the responsibility of the second chamber. The chamber also handles applications for review in criminal cases. There are no considerable backlogs. In principle cassation proceedings take place before a panel of five judges of the Supreme Court in complicated matters. Since 1986 cases that do not qualify as complicated have been decided by a panel of three judges, unless one of these judges is of the opinion that a judgment by a panel of five is required. The possibility to judge with a panel of three has been introduced in order to decrease the workload of the court. For obvious reasons (avoidance of any undue influence) the members of specific panels are not named by the chamber or its chairman but more or less at random by the clerk's office. The panel decides by majority vote. Other members of the chamber also have some influence in the decision-making process. It is open to them to make remarks, especially in the interest of a uniform and consistent application of the law. These remarks can be made orally or via the internal

e-mail system, while the case is under discussion. This is the so-called system of consultations in chambers. These consultations in chambers take place on a weekly basis (Thursdays).

Traditionally, two types of cassation proceedings are to be distinguished (here, again, the Netherlands follows the French model): ordinary cassation appeals and cassation in the interest of the uniform application of the law.

Ordinary cassation appeals are brought by the parties to the lawsuit and may only concern complaints about the application of the law (including procedural law) and the legal reasoning provided. The Supreme Court also monitors whether the lower court satisfied the requirements of due process. The aim of cassation is to preserve legal uniformity, to develop the law and to provide legal protection in individual cases.

Cassation in the interest of the uniform application of the law may only be brought if the original parties to the action have decided not to bring a cassation appeal and if the Procurator General considers it to be in public interest to address legal questions which are not submitted to the court by the parties. The Procurator General receives requests to bring cassation proceedings from the public prosecution service, other courts, government and semi-governmental agencies, businesses, individuals and lawyers. The judgment of the court as a result of cassation in the interest of the law only has consequences for the future and does not affect the original parties to the action. The unsuccessful party in the case at hand remains unsuccessful and the successful party remains successful. The decision of the supreme cassation court is in these cases only relevant for the future.

Apart from bringing cassation in the interest of the uniform application of the law, the Procurator General and his advocates general at the Supreme Court provide the Court with independent advice, known as an advisory opinion (“conclusion”). These opinions, which are written with the help of the research office (each Advocate General has several staff members who help him) represent a substantial and indispensable contribution to the Supreme Court’s work and thereby to the quality of the administration of justice and its development, legal protection and legal uniformity. An advisory opinion generally reviews the facts upon which the Supreme Court must base its judgment, the legal questions the Court must answer, the decision of the court whose judgment is being appealed in cassation and scholarly opinion and existing case law. In addition, a number of possible solutions are sometimes presented. In civil cases and most criminal cases an advisory opinion is compulsory. There is no such requirement in tax cases. The Supreme Court is free to concur with or differ from the advisory opinion and is not obliged to account for itself in this respect. The advisory opinions are published together with the judgments in legal journals and on the internet.

THE SUPREME CASSATION COURT OF THE NETHERLANDS
(HOGE RAAD DER NEDERLANDEN)**Summary**

The text presents the development of the Dutch Supreme Cassation Court from the early 19th century onwards. The Court adopted the French model of cassation, which is reflected in two types of cassation proceedings: ordinary cassation appeals and cassation in the interest of the uniform application of the law. The text offers an outline of the organisation of the court, status of the Dutch Supreme Cassation Court's judge as well as the layout of the Court's chambers. Interestingly, although administrative matters are generally excluded from the Court's scope of competence, an exception to this rule has been made for tax cases, which are examined by one of the Court's chambers (the so-called "fiscal or tax chamber"). Additionally, the text not only discusses the question of influx of cases and duration of proceedings, but also presents comparative data with regard to each chamber of the court. The author also touches upon the system of consultations in each chamber, which positively affects the uniformity of the Court's jurisprudence.

KEYWORDS

cassation court, organization of the court, system of consultations

SŁOWA KLUCZOWE

sąd kasacyjny, organizacja sądu, system konsultacji