

THE DUTCH JUDICIAL SYSTEM

The basic principles of the Dutch rule of law stem from the 1848 Constitution. One of these is the principle that everything the government does must have its basis in Acts of Parliament. This principle also implies that courts may not apply criminal law retroactively. The separation of powers is another basic principle of the rule of law. One of its important manifestations is the independent judiciary.

The Dutch judicial system has undergone a series of reforms since 1992, when the administrative tribunals were integrated into the District Courts as one administrative chamber for matters of social security and regulations for civil servants.

There is no special court in the Netherlands that deals with constitutional questions. Dutch Courts are not allowed to review the constitutionality of acts of legislation; however, they may review the compatibility of acts of legislation with international treaties and conventions.

The Supreme Court (*Hoge Raad*)

The Supreme Court is the highest instance court in the Netherlands and it is located in the Hague. It only reviews questions of law and must either dismiss the appeal or annul the decision of the lower court. In the case of annulment, the Supreme Court must either remit the case to a lower court or render final judgement.

Decisions of the lower courts are subject to appeal in cassation to the Supreme Court without leave. But if the decision is one of first instance and can be appealed to a court of second instance, an appeal to the Supreme Court cannot be lodged without the consent of the other party. Supreme Court decisions do not establish precedent binding for the lower courts, though they have a highly persuasive effect in practice.

The Supreme Court has three major divisions: private law, criminal law and tax law. Private law includes civil law, commercial law, family law, labour law, intellectual property law, etc. (this is also true for the lower courts). Contrary to the District Courts and the Courts of Appeal, a case may be decided by five judges instead of the usual three, depending on the complexity and importance of the case.

The Supreme Court is also the court of first and final instance for proceedings against Members of Parliament, Ministers and State Secretaries, for offences committed while in office.



Courts of Appeal (*Gerechtshoven*)

There are 5 Courts of Appeal for private, criminal and fiscal matters in Amsterdam, The Hague, Arnhem, Leeuwarden and Den Bosch. These courts usually try the cases with a bench of three judges, with the exception of criminal cases of lesser importance which may be tried by a single judge. Appeals to all of these Courts may be brought from the District Courts on questions of law or mixed fact and law.

Appeals in administrative matters are not dealt with by these five Courts of Appeal, but by the Central Appeals Tribunal or the Administrative Law Division of the Council of State (*Raad van State*). In addition to the five courts of appeal, there are two special appeal tribunals: the Central Appeals Tribunal (*Centrale raad van beroep*), which handles matters involving public servants and social security matters, and the Trade and Industry Appeals Tribunal (*College van beroep voor het bedrijfsleven*), which handles matters involving industrial insurance boards, for example. There is no right of appeal from these special appeals tribunals to the Supreme Court. (this has been but is longer the subject of reform proposals).





District Courts (*Arrondissementsrechtbanken*)

There are 19 district courts which serve as the courts of first instance on the basis of territorial jurisdiction. Each district court is made up of three sections: civil, criminal and administrative. Although these sections may be and often are subdivided into specific divisions, such as for commercial law or family law, there are no separate courts in the Netherlands for specialised fields of private law (such as commercial law, labour law etc.).

Since 1 January 2002, the 62 subdistrict courts (*Kantongerecht*) for summary offences and small claims have been incorporated administratively into the district courts.

An appeal of a District court decision may be lodged without leave with the Court of Appeal. However, claims for small amounts may not be appealed.