

Assistance to judges in the Netherlands

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- **The Netherlands:** 17 mio inhabitants; approximately 34.000 km² land
- 11 courts of first instance (civil, criminal, administrative)
- 4 courts of appeal (civil, criminal, tax) and 3 special Superior Courts for administrative cases (e.g. social security)
- 1 Court of Cassation (civil, criminal, tax)
- about 2.500 judges
- and about 4.000 supporting lawyers
- **North Rhine Westphalia (Germany):** 17,9 mio inhabitants, 34.000 km² land
- about 5.000 judges in civil and criminal law alone, hardly any supporting lawyers

Most of these supporting clerks are fully trained lawyers

Originally judges were supported by “le greffier”; the clerk(s) of the court.
Each chamber of the court had a clerk

Since the 1970's: the role of the clerk evolved
Initially in criminal cases, later also in family cases and administrative cases (social security)

Common feature:

- large numbers of cases
- with many similarities and few variations - repetitive
- not always legally complex

Nowadays: supporting lawyers in every domain of the courts
Also the Supreme Court and the Office of the Advocate General work with court lawyers

Work of the court lawyers consists of:

- Making a summary of the file or a check list (agenda) for the judge for the hearing
except in commercial law: judge and lawyer make their own check list
- Taking notes during the hearing/writing the protocol when necessary
- Writing draft decisions (mostly in some of the cases)

Sometimes: doing research

Effect: not necessarily cheaper, but proceedings go quicker
So after a while judges can do more cases

Requirements for working with court lawyers:

- They have to be trained and instructed by the judges they work with (what does the judge want from them?)
- After the hearing, the judge must know what to decide and be able to give precise instructions to the court lawyer (it is not the task of the court lawyer to make the decision, he or she only has to write it down)
- The judge must know how to edit a draft text that is written by someone else
- The court lawyers must have access to professional courses and trainings for judges;
They must have access to the same legal knowledge/sources of law etc. as judges
- The judge must be willing to discuss a case again (within certain limits)
After all: writing a decision requires close reading. During the writing process the court lawyer can discover problems that have not been addressed yet.

Advantages

- Efficiency. The work that requires no explicit judicial skills but is very time consuming (e.g. writing down the law and the facts) is delegated to lawyers who are less expensive.
- Judges are able to concentrate on the core of their business: doing hearings and deciding
- A more flexible organisation. It is easier to find a new lawyer than to find a new judge. And when the work drops behind, it is easier to dismiss a lawyer or place the lawyer somewhere else...
- Young lawyers are offered a look behind the scenes and have a chance to get to know how judges come to their decision Which is good for the legal profession as such

Pitfalls / disadvantages

- Who takes the decision when also a court lawyer is intensely involved in the case?
Think of an incapable or inexperienced judge.
Is it wise to team him or her up with an experienced court lawyer?
- Conflict of interests; who controls that the court lawyer has no connection with the parties?
NL: Court lawyers are obliged to inform their manager of possible conflicts, also when family members are involved; in such case the case is referred to another court
- Frustration of experienced court lawyers. Few chances of promotion!
The organisation of courts is relatively flat.
Whereas in general the government offers many promotional opportunities to good lawyers, courts do not
- Can they become judges?
A good court lawyer is not necessarily a good judge

In the Netherlands it is clear: without external professional experience of at least 2 years, it is not possible to become a judge.
- In general it is a very attractive job for young lawyers with not much experience
But after their training they often leave the organisation
Is it worth the investment of time and money?

LHH

National commercial chamber of the courts of appeal

In commercial law sections of the courts of appeal, court lawyers were only recently introduced.

LHH = experiment

With 4 judges 9 court lawyers we try to resolve the back log of the 4 courts of appeal.

Amsterdam and The Hague can manage their own back log at the moment

Substantial problems in Arnhem/Leeuwarden and Den Bosch



- No Hearing (traditionally appeal proceedings in commercial cases were only in writing)
- Files are pre-selected: a hearing is assumed to be not necessary
- Files are digitalised by the administration of the court (paperless work)
- Decision in a panel of three judges
- Each judge is paired with 2 court lawyers
- Judge and 1 court lawyer study the file and then they meet and discuss the case. The judge indicates how the case has to be decided according to him or her. The court lawyer makes a first draft which is corrected/edited by the judge.
- Then the draft goes to the second judge who makes his/her amendments and then the file goes to the third judge for amendments. Often the 3rd judge is a substitute judge (think of a highly experienced advocate or university professor of law)
- Only in cases in which the decision is expected to be subject of discussion, all 3 judges will be involved in the process of deciding from the beginning