

# **KINGDOM OF THE NETHERLANDS**

(KONINKRIJK DER NEDERLANDEN)



## **BACKGROUND AND LEGAL SYSTEM**

LEGAL SYSTEM	Civil law system.
POLITICAL SYSTEM	Constitutional Monarchy.
HEAD OF STATE	Monarch.
HEAD OF GOVERNMENT	Prime Minister.
SUBNATIONAL ENTITIES	12 provinces; Drenthe, Flevoland, Friesland (Fryslan), Gelderland, Groningen, Limburg, Noord-Brabant, Noord-Holland, Overijssel, Utrecht, Zeeland, Zuid-Holland 2 dependent areas; Aruba, Netherlands Antilles.
TRANSLITERATION SYSTEM	None.
LANGUAGES	Dutch and Frisian (both official languages).

## CONSTITUTION

OFFICIAL NAME	The Netherlands has two constitutions: 1) Statute of the Kingdom of the Netherlands - governs the Kingdom in Europe and the dependent areas; 2) Dutch Constitution – governs the Kingdom in Europe, considered inferior to the Statute of the Kingdom of the Netherlands. Furthermore, international treaties supersede the Constitution (such that most of the typical constitutional rights are enforced by such treaties as the European Convention on Human Rights).
ENACTMENT	Adopted 1815; amended many times, most recently in 2002.
CITATION FORMAT	STATUUT NED. [Constitution] art. <article>. GRW. NED. [Constitution] art. <article>, sub.<subdivision>.
<i>Example</i>	STATUUT NED. [Constitution] art. 91. GRW. NED. [Constitution] art. 6, sub. 1.

## STATUTES

GOVERNMENT STRUCTURE	<p><u>Legislature</u> A bicameral legislature (States General or <i>Staten Generaal</i>). The First Chamber (<i>Eerste Kamer</i>) consists of 75 seats elected by the country's 12 provincial councils for 4 year terms. The Second Chamber (<i>Tweede Kamer</i>) consists of 150 seats directly elected by popular vote for 4 year terms.</p> <p><u>Executive</u> The Monarch is a largely ceremonial head of state but does have a role in appointing the Council of Ministers and the Cabinet (which consists of ministers and junior ministers, called state secretaries). Together, the Monarch and the Council of Ministers are the “Crown”. The Council of Ministers plans and implements government policy. In practice, the Monarch will ask the representatives of the Second Chamber of the Parliament to form a coalition which will select the Cabinet after each election (in order that the Cabinet will be effective in the legislative process).</p>
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The Dutch Constitution establishes a Council of State as an advisory body to the government. This Council consists of members of the royal family and Crown-appointed members, and must be consulted by the Cabinet on proposed legislation before a law is submitted to the Parliament. The Council of State also serves as a channel of appeal for citizens against executive branch decisions.

The Prime Minister (or Minister President) is the head of government and active executive authority of the Dutch Government. He or she is the leader of the majority party or coalition in the lower house of parliament, and is a member of the Council of Ministers.

#### Judiciary

##### **District Courts**

The Netherlands is divided into 19 districts, each with its own court. Each court has a number of subdistrict venues. There are 61 of these in total. The district court is made up of a maximum of five sectors. These always include the administrative sector, civil sector, criminal sector and subdistrict sector. Family and juvenile cases are often put into a separate sector, as is sometimes the case with the administration of the law concerning aliens. The court council is free to determine such matters.

##### **Courts of Appeal**

The 19 districts are divided into five areas of Court of Appeal jurisdiction: The Hague and Amsterdam in the west, Arnhem in the east, Hertogenbosch in the south and Leeuwarden in the north. With regard to criminal and civil law, the justices of the Court of Appeal only deal with cases where an appeal has been lodged against the judgment passed by the district court. The Court of Appeal re-examines the facts of the case and reaches its own conclusions. In most cases it is possible to contest the Court of Appeal's decision by appealing in cassation to the Supreme Court of the Netherlands. In addition to criminal and civil cases, the Court of Appeal also deals with all appeals against tax assessments, in its capacity as administrative court.

##### **Special tribunals**

The Central Appeals Tribunal is a board of appeal which is mainly active in legal areas pertaining to social security and

the civil service. In these areas it is the highest judicial authority. The Tribunal is based in Utrecht.

The Trade and Industry Appeals Tribunal is a special administrative court which rules on disputes in the area of social-economic administrative law. In addition this appeals tribunal also rules on appeals for specific laws, such as the Competition Act and the Telecommunications Act. The Tribunal is based in The Hague.

### **The Supreme Court**

The Supreme Court of the Netherlands, located in The Hague, examines whether the lower court observed proper application of the law in reaching its decision. At this stage, the facts of the case as established by the lower court are no longer subject to discussion. The appeal in cassation therefore fulfils an important function in promoting unity of law.

### LEGISLATIVE PROCESS

New bills can be proposed by the Cabinet or Second Chamber, although the latter rarely does so. The parliamentary bodies may deliberate and take decisions only if over half their members are present. Most decisions are taken by majority vote. The Senate is a co-legislator and monitors government policy. All bills which have been passed in the House of Representatives must also be approved by the Senate, which has the power to accept or reject a bill but cannot propose or amend bills. As discussed above, Parliament alone ensures that legislation is compatible with the Constitution - no court is entitled to do so.

### REPORTER

Dutch legislation is officially published in the *Staatsblad* (acts) and the *Staatscourant* (ministerial decisions).

### CITATION FORMAT

Stb. <year> <number>, art. <article> (<date>).

### *Example*

Stb. 2004 238, art. 3 (17 May 2004).

## ADMINISTRATIVE REGULATIONS

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ADMINISTRATIVE SOURCES	In the Dutch system of government, autonomous administrative authority is given to agencies either by an act of parliament or by an order in council. The minister responsible for an agency has a limited number of powers, like the power to appoint board members, issue instructions, approve a budget, etc. The General Administrative Law Act (Algemene wet bestuursrecht - Awb) represents a codification of large parts of administrative law and the procedural law in administrative litigation (analogous to the Administrative Procedure Act in the United States).
REPORTER	Civil Code (Burgerlijk Wetboek) – BW. New Civil Code (Nieuw Burgerlijk Wetboek) – NBW. Administratiefrechtelijke Beslissingen (Administrative Decisions) (AB).
CITATION FORMAT	<Court>, <date>, <reporter> <publication number>, <Page Numbers>.  <u>Administrative Court of Appeals Citations:</u> Centrale Raad van Beroep (Social Security and Civil Service) – CRvB. College van Beroep voor het Bedrijfsleven (Trade and Industry) – CBB.
<i>Example</i>	CRvB 5 January 1988, AB 1988, 252-254.

## CODES

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CIVIL CODE	Civil Code (Burgerlijk Wetboek) – BW. New Civil Code (Nieuw Burgerlijk Wetboek) – NBW.
CODE OF CIVIL PROCEDURE	Currently unavailable.
COMMERCIAL CODE	Currently unavailable.

CRIMINAL CODE      Currently unavailable.

CODE OF CRIMINAL  
PROCEDURE      Currently unavailable.

CITATION FORMAT      Currently unavailable.

*Examples*      Currently unavailable.

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## CASE LAW

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JUDICIAL  
OVERVIEW      The Dutch legal system is divided into two spheres: the general system and the administrative law system.

The general system (civil and criminal jurisprudence) is administered in sixty-two cantonal courts (*kantongerecht*) for petty offenses and small claims, nineteen district courts (*arrondissementsrechtbank*), five courts of appeal (*gerechtshof*), and the Supreme Court (*Hoge Raad*) of the Netherlands (the court of last resort). Judges at all three levels are appointed for life to ensure their independence, but in practice they retire at the age of 70. The Supreme Court, situated in The Hague, is composed of a president, six vice-presidents and twenty-five justices. This is the Netherlands' highest court for both civil and criminal cases, but it is not a constitutional court. It does not have the power to repeal an Act of Parliament on the grounds of incompatibility with the Constitution. Both civil and criminal trials are held in front of judges - there are no jury trials in the Netherlands.

The courts of first instance in administrative law are the *rechtbanken*, and there are several courts of last resort dealing specifically with certain areas of Dutch administrative law. Furthermore, the Supreme Court does have some administrative law tasks as well - the chamber on criminal matters deals with punitive administrative law matters, and Dutch tax law is considered a form of administrative law.

REPORTER	Nederlands Jurisprudentie (NJ).
CITATION FORMAT CONSTITUTIONAL COURT	<plaintiff>/<defendant>, <court>, <city (except when citing Supreme Court)>, <date>, <reporter> <publication number> (ann. <initials of annotator>).  <u>Court Citations:</u> <ul style="list-style-type: none"><li>• Hoge Raad der Nederlanden (Supreme Court) – HR.</li><li>• Gerechtshof (Ordinary Court of Appeal) – HoF.</li><li>• Arrondissementsrechtbank (District Court) - Rb.</li><li>• Kantongerecht (Labor, Rent and Misdemeanor Court) - Ktg.</li><li>• Militair Gerechtshof (Military Court of Appeal) – HMG.</li><li>• Krijgsraad (Court Martial) - Kr.</li></ul>
<i>Example</i>	Quint/Te Poel, HR 30 januari 1959, NJ 548 (ann. DJV).

## SOURCES

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CIA Factbook Website:

<http://www.cia.gov/cia/publications/factbook/geos/nl.html>

Dutch Senate Website

<http://www.eerstekamer.nl/>

Dutch House of Representatives Website

<http://www.houseofrepresentatives.nl/>

The Netherlands Ministry of Foreign Affairs Website: Dutch State Factsheet

<http://www.minbuza.nl/default.asp>

LEGAL SYSTEMS OF THE WORLD: A POLITICAL, SOCIAL AND CULTURAL ENCYCLOPEDIA Pages 1114-1121 (Herbert M. Kritzer ed., 2002).

THE BLUEBOOK: A UNIFORM SYSTEM OF LEGAL CITATION, 17th ed., T.2: Foreign Jurisdictions, Netherlands, at 277-88.

Law and Technology Resources for Legal Professionals

<http://www.llrx.com/features/dutch.htm>

Dutch Government Websites Listing  
<http://overheid.nl/guest/sites/>

Dutch Judiciary Website  
<http://www.rechtspraak.nl/information+in+english>

Dutch Royal House Website  
<http://www.koninklijkhuis.nl/english/index.jsp>

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## **SPECIAL THANKS**

P. Graham Singer – Staff Member. Oct. 2006  
Isabella Stankowski – ICM Committee Member. Oct. 2006  
Matthew T. Nagel – Icm Coordinator. Nov. 2006