Introduction

The Supreme Court of the Netherlands (*Hoge Raad*) belongs to the judiciary and sits at the top of the hierarchy of the general court system in the Netherlands. The Supreme Court is the highest national court in civil, criminal and tax cases. It also functions as the highest court for the islands of Aruba, Curacao, St Maarten, Bonaire, St Eustatius and Saba. The islands of Aruba, Curacao and St Maarten are autonomous countries within the Kingdom, while the other islands are considered part of the country of the Netherlands.

1. The tasks of the Supreme Court of the Netherlands

The most important task of the Supreme Court is cassation, in which the judgment of a lower court is assessed in terms of its conformity with the law. The aims of cassation are to preserve legal uniformity, steer the development of law and safeguard legal protection. The Supreme Court is required by law to base its deliberations on the facts established by the lower court, and cannot substitute its own findings of fact for them. However, the Supreme Court can quash a lower court's decision if it considers the reasons for that decision, based on the lower court's findings of fact, to be incomprehensible. Proceedings at the Supreme Court are conducted almost entirely in writing. In civil and criminal cases representation by an advocate (*advocaat*) is mandatory.

Because of the Supreme Court's position and the special nature of the proceedings before it, the emphasis lies on the interpretation of the law. Normally the Supreme Court's interpretation of the law will be followed by the lower courts. The Supreme Court also conducts independent constitutional review although, because of Article 120 of the Dutch Constitution, it does so via an 'indirect route'. This is explained in section 2 below.

Other specific tasks of the Supreme Court are (a) the adjudication of public office offences; (b) dealing with complaints against members of the judiciary and with the Procurator General's applications to suspend or dismiss members of the judiciary, (c) cassation in the interests of the uniform application of the law, and (d) preliminary referrals.

(a) A longstanding provision of the Constitution stipulates that occupants of high office (members of parliament, ministers and state secretaries) are to be tried by the Supreme Court for offences committed in the course of the exercise of their duties. A ten-judge court hears cases of this kind. In such cases the Supreme Court is the court of first and last instance. This means that no appeal, in cassation or otherwise, from the Court's decision is possible. The Procurator General at the Supreme Court is responsible for the prosecution of persons charged with public office offences. It should be noted that the Procurator General cannot institute such criminal proceedings of his own accord. Rather, they must be instituted by royal decree or by a resolution of the Lower House of the States General (Parliament). This has never yet taken place.

(b) Complaints that a public official has behaved improperly may generally be submitted to the national ombudsman. However, because of the independence of the judiciary, complaints of improper behaviour by judges must be submitted to the management board of the judge's court. If the management board does not resolve the complaint satisfactorily, a further complaint can be lodged with the Procurator General at the Supreme Court. Court decisions

are excluded from this procedure, since they are open to appeal and possibly to appeal in cassation.

Because the independence of members of the judiciary and of the Procurator General at the Supreme Court is essential to the rule of law, the Constitution stipulates that they are to be appointed for life. The advocates general at the Supreme Court are also appointed for life. The Judiciary (Organisation) Act sets a compulsory retirement age of 70. Judges may not be suspended or dismissed by the government or parliament. Nevertheless, situations may arise in which suspension or dismissal becomes necessary, for instance if a judge is no longer physically or mentally capable of performing his duties or if he has been convicted of a serious offence. In such situations, the Procurator General is empowered by law to submit an application for suspension or dismissal, to be decided on by the Supreme Court. Such cases rarely reach this stage. A judge who anticipates being convicted of a serious offence will generally resign rather than await dismissal proceedings, although there have been some exceptions to this in recent years

(c) Cassation decisions are important both in terms of monitoring the correct application of the law in given cases and in terms of creating new law. It is often the Supreme Court which has the final say in legal questions of the utmost social importance. Sometimes, however, such urgent legal questions remain outside its terms of reference. This is because of the peculiar nature of appeals in cassation: it is the uniformity and development of justice as a whole which is at stake, yet whether an application for such an appeal is made depends on individual interests. Only if the losing party in a case believes that an appeal in cassation can be won and is therefore prepared to devote time and money to lodging such an appeal can the Supreme Court pass judgment. If no appeal in cassation is lodged the Supreme Court cannot assess the legal question involved, no matter how important it may be.

Cassation in the interests of the uniform application of the law is intended to solve this problem. When it is in the public interest to address a particular legal question, the Procurator General is empowered by law to lodge such an appeal in cassation with the Supreme Court. The Procurator General receives requests to do so from the public prosecution service, other courts, government and quasi-government agencies, businesses, individuals and lawyers. In recent years the Procurator General has been assisted by an advisory committee, which assesses for him whether cases are eligible for cassation in the interests of the uniform application of the law. In civil matters only a limited number of cases have proved eligible.

(d) Since 1 July 2012 it has been possible for district courts and courts of appeal to apply to the Supreme Court for a preliminary ruling in civil cases. This new possibility was created to enable the Supreme Court to answer an important question that may arise in other cases at an early stage of the proceedings. An application for a preliminary ruling must therefore concern new and as yet unanswered legal questions of a general nature or of general relevance. If the answer to the question is relevant only to the case in hand and not to other cases, there is no need for a preliminary ruling.

The Supreme Court's position at the top of the judicial hierarchy, its specific tasks and authority and the aims and nature of cassation set this institution apart from the other courts.

2. *Constitutional review*

As was mentioned above, the Supreme Court conducts constitutional review in civil, criminal and fiscal cassation proceedings, as well as via preliminary referrals and cassation in the interests of the uniform application of the law.

Article 120 of the Dutch Constitution prohibits the courts from reviewing the conformity of Acts of Parliament with the Constitution. However, it does not forbid the constitutional review of other legislative and administrative acts of the State, the Provinces, the Municipalities and other legislative and administrative authorities.(1) According to Dutch doctrine this type of constitutional review is not limited in scope to reviewing conformity with the written Constitution; it also encompasses reviewing conformity with constitutional principles and with international legal obligations of a 'constitutional' nature, in particular concerning human rights.

Moreover and more importantly, Article 94 of the Constitution obliges the courts to review the conformity of Acts of Parliament and all other legislation including the Constitution itself with directly effective obligations under international law. This means that the Supreme Court is obliged to give priority to written international law when the application of national law of any nature whatsoever (e.g. an Act of Parliament, royal decree, ministerial regulation etc.) is contrary to written international law. As in several other European countries, the lower courts must also conduct constitutional review in this way. This only enhances the level of constitutional protection and does not lead to conflicts of jurisdiction, since the Supreme Court, as the highest jurisdictional body, is able through its interpretation to guarantee unity in the application of the law.(2)

Since practically all the fundamental rights and freedoms (both civil and political rights, and economic, social and cultural rights) guaranteed by the Dutch Constitution are also incorporated in international treaties such as the European Convention on Human Rights, the European Social Charter, the International Covenant on Civil and Political Rights and the Charter of Fundamental Rights of the European Union, the Supreme Court does in fact conduct an extremely comprehensive constitutional review: constitutional review in the strict sense of reviewing all delegated, provincial and municipal regulations and all acts of the State and administrative authorities, and constitutional review via the 'indirect route' of reviewing the compatibility of Acts of Parliament with international treaties. This review can be applied for by parties in all proceedings before Dutch courts which, in the fields of civil, criminal and tax law, fall under the Supreme Court in the judicial hierarchy. The Supreme Court's review of constitutionality or conformity with binding treaties can result in the non-application of Acts of Parliament and all other forms of legislation.

A new element with regard to constitutional review was introduced on 10 October 2010. The Supreme Court now supervises the *ex post* constitutional review conducted by the Joint Court of Justice of Aruba, Curaçao, St Maarten and of Bonaire, Saint Eustatius and Saba in civil and

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1 In this respect the constitutional position of the Dutch Supreme Court is somewhat similar to that of the Swiss Supreme Court, which is not permitted to review federal laws but does review cantonal laws.

2 See: Prof. A. Alen, *The relations between the Constitutional Courts and the other national courts, including the interference in this area of the action of the European courts*, General report for the Conference of European Constitutional Courts, Part I, p. 9-11.

criminal cases. Aruba, Curaçao and St Maarten are all autonomous Caribbean territories belonging to the Kingdom of the Netherlands.

The relevant provisions of the respective constitutions are as follows. Under Article I.22 of the Constitution of Aruba, statutory regulations are not applicable if such application is in conflict with constitutional provisions securing fundamental rights. Article 101 of the recently adopted Constitution of Curacao provides for constitutional review by the courts as far as the fundamental rights as enshrined in articles 3 to 21 of the Constitution are concerned; country ordinances are not applied if such application is in conflict with one of these provisions. In the case of St Maarten, Article 119 of its Constitution allows for judicial constitutional review for the laws indicated in Article 81 (g), (h), (i) and (j) of the Constitution.

Another recent development that will enhance the Supreme Court's task in the field of development of the law is the enactment on 1 July 2012 of section 80a of the Judiciary (Organisation) Act. This section has introduced a selection system allowing a panel of three justices to declare a case inadmissible without further motivation for what basically amounts to 'want of interest'. Section 80a of the Judiciary (Organisation) Act will release capacity, giving the Supreme Court and the Procurator General's Office greater scope to focus on the development of the law.

3. Selection and appointment of justices

The legal basis for the appointment and selection procedure for justices of the Supreme Court can be found in article 118 of the Dutch Constitution and section 5c(6) of the Judicial Officers (Legal Status) Act (*Wet rechtspositie rechterlijke ambtenaren*). The Constitution and the aforementioned Act merely stipulate that justices of the Supreme Court are appointed by Royal Decree at the recommendation of the Lower House of the States General and that a nominee is chosen from a list of six recommended candidates, to be provided by the Supreme Court after consulting its Procurator General. No provisions are laid down on how the Lower House makes its choice from the list of six recommended candidates and how the Supreme Court draws up this list. Over the years the Supreme Court and the Lower House have developed the following practice.

Procedure for recruiting justices
When a seat falls vacant, the Supreme Court notifies the President of the Lower House, providing a list of six recommended candidates. The candidate at the top of the list is the Supreme Court's preferred candidate, chosen according to its own needs and requirements. The Supreme Court also explains why it believes the candidate at the top of the list and any candidate(s) appearing on the list for the first time to be qualified for appointment. The list of recommended candidates is accompanied by an extensive curriculum vitae for each of them. The same notification and documents are forwarded to the Lower House's Permanent Committee on Justice.

The President and the Procurator General at the Supreme Court are then invited to a hearing of the Permanent Committee on Justice, at which they explain the Supreme Court's reasons for putting a certain candidate at the top of the list and including any new candidate or candidates. The candidate at the top of the list will almost always have been included on a list of recommended candidates for earlier vacancies, but in a lower position. The Permanent Committee holds separate sessions to interview any new candidates on the list and then draws

up a binding shortlist of three candidates, which is sent to the Lower House. The candidate at the top of this shortlist will usually be the Supreme Court's preferred candidate. The House then sends this binding shortlist to the Minister of Justice. After the Cabinet has been consulted, a candidate is chosen from this shortlist – and usually the candidate at the top of the list. A royal decree is then prepared to make the official appointment. Generally speaking, the other five candidates on the Supreme Court's list will be included on the next list when a new vacancy arises.

Criteria used to select the candidates
Candidates are selected mainly on the basis of legal qualifications and expertise; a creative and highly developed legal mind is a requirement. Integrity is of the utmost importance. A candidate's political opinions are of no relevance as the nomination is not a political matter. Like religion, political opinions are seen as a purely private matter.

The Supreme Court strives for diversity in several respects. First, there is a need for both generalists and specialists. Generalists play an important role in guaranteeing the unity of the law, while specialists are needed for some important areas, such as private international law, customs law etc. Second, diversity in terms of experience is important: people who have trained and worked as judges, as well as private lawyers, tax consultants and tax officials, prosecutors, law professors. Third, gender diversity is also essential.

4. Legal instruments, texts and examples

As prescribed by Article 6, paragraph 5 of the Statute you will find below information on (a) the legal instruments governing the establishment and composition of the candidate institution and the appointment and status of judges; (b) the texts establishing the nature and scope of its jurisdiction; and (c) some examples of cases that can illustrate how constitutional review by the Supreme Court takes shape in practice.

(a) Legal instruments governing the establishment and composition of the candidate institution and the appointment and status of judges

- Article 117 of the Dutch Constitution

> "1. Members of the judiciary responsible for the administration of justice and the Procurator General at the Supreme Court shall be appointed for life by Royal Decree.
> 2. Such persons shall cease to hold office on resignation or on attaining an age to be determined by Act of Parliament.
> 3. In cases laid down by Act of Parliament such persons may be suspended or dismissed by a court that is part of the judiciary and designated by Act of Parliament.
> 4. Their legal status shall in other respects be regulated by Act of Parliament."

- Article 118 of the Dutch Constitution

> "1. The members of the Supreme Court of the Netherlands shall be appointed from a list of three persons drawn up by the Lower House of the States General.
> 2. In the cases and within the limits laid down by Act of Parliament, the Supreme Court shall be responsible for annulling court judgments which infringe the law (cassation).
> 3. Additional duties may be assigned to the Supreme Court by Act of Parliament."

- Section 72, subsection 1, Judiciary (Organisation) Act

"1. The Supreme Court must consist of a president, a maximum of seven vice-presidents, a maximum of thirty justices and a maximum of fifteen justices extraordinary."

(b) The texts establishing the nature and scope of its jurisdiction

- Article 93 of the Dutch Constitution

"Provisions of treaties and of resolutions by international institutions which may be binding on all persons by virtue of their contents shall become binding after they have been published."

- Article 94 of the Dutch Constitution

"Statutory regulations in force within the Kingdom shall not be applicable if such application is in conflict with provisions of treaties or of resolutions by international institutions that are binding on all persons."

- Article 119 of the Dutch Constitution

"Present and former members of the States General, Ministers and State Secretaries shall be tried by the Supreme Court for offences committed while in office. Proceedings shall be instituted by Royal Decree or by a resolution of the Lower House."

- Article 120 of the Dutch Constitution

"The constitutionality of Acts of Parliament and treaties shall not be reviewed by the courts."

- Section 2 of the Judiciary (Organisation) Act

"The courts belonging to the judiciary are:
a) the district courts,
b) the courts of appeal, and
c) the Supreme Court."

- Section 13a, subsection 1 of the Judiciary (Organisation) Act

"1. Anyone who has a complaint about the conduct of a judicial officer responsible for the administration of justice towards him in the course of that officer's performance of his duties can submit a written request to the Procurator General at the Supreme Court to lodge an application at the Supreme Court for an investigation into that conduct unless the complaint concerns a judicial decision."

- Section 76 of the Judiciary (Organisation) Act

"1. The Supreme Court takes cognizance at both first and last instance of serious and minor public office offences committed by members of the States General, ministers and state secretaries.
2. Serious and minor public office offences include criminal offences committed in one of the aggravating circumstances referred to in article 44 of the Criminal Code.
3. In the cases referred to in subsections 1 and 2, the Supreme Court also has jurisdiction to hear claims by an injured party for costs and damages.
4. The cases referred to in subsections 1 and 2 are heard by ten justices of the Supreme Court. In the event of a tied vote, judgment must be given in favour of the defendant."

- Section 77 of the Judiciary (Organisation) Act

"1. The Supreme Court takes cognizance at both first and last instance of jurisdictional disputes between:
a) district courts, unless section 61 is applicable;
b) courts of appeal;
c) a court of appeal and a district court;
d) a court belonging to the judiciary and a court not belonging to the judiciary;

e) administrative courts, unless another administrative court has jurisdiction in this matter.
2. If a jurisdictional dispute has arisen between the Supreme Court and another court referred to in subsection 1, the division of the Supreme Court that decides the case must be composed as far as possible of justices who have no prior knowledge of the case."

- Section 78 of the Judiciary (Organisation) Act

"1. The Supreme Court takes cognizance of appeals in cassation against the acts, judgments and orders of the courts of appeal and the district courts instituted either by a party or, in the interests of the uniform application of the law, by the procurator general at the Supreme Court.
2. Subsection 1 does not apply to the acts and rulings of the district courts in cases of which they take cognizance as administrative courts.
3. Subsection 1 does not apply to acts and decisions either of the district courts or of the court of appeal in Leeuwarden in cases concerning the Traffic Regulations (Administrative Enforcement) Act, subject to the proviso that the Supreme Court will take cognizance of an application by the procurator general for cassation in the interests of the uniform application of the law.
4. The Supreme Court takes cognizance of appeals in cassation against rulings of the administrative courts in so far as this is provided for by statute.
5. A party may not institute an appeal in cassation if another ordinary legal remedy is or was available to him.
6. Appeal in cassation may not be instituted in the interests of the uniform application of the law if an ordinary legal remedy is available to the parties. Such appeal does not prejudice the rights obtained by the parties."

- Article 1 of the Cassation Regulation for the Netherlands Antilles and Aruba

"1. Unless provided otherwise by this Kingdom Act, the Supreme Court of the Netherlands takes cognizance of appeals in cassation in civil and criminal cases in the Netherlands Antilles and Aruba in similar circumstances, in a similar manner and with similar legal consequences as it does in civil and criminal cases in the Netherlands, whether the appeal in cassation is lodged by the parties or in the interests of the law by the Procurator General at the Supreme Court.
2. Incorrect application or infringement of Dutch law in civil and criminal cases in the Netherlands Antilles and Aruba also constitutes grounds for annulment."

- Article I.22 of the Constitution of Aruba

"Statutory regulations shall not be applicable if such application would be in conflict with the provisions of this chapter."

'This chapter' refers to the chapter containing provisions on human rights.

- Article 101 of the Constitution of Curacao

"The courts do not assess the compatibility of country ordinances with the Constitution, with the exception of review in the light of the fundamental rights specified in articles 3 to 21 inclusive. Country ordinances are not applied if their application would be incompatible with one or more of the said provisions."

- Article 119 of the Constitution of St Maarten

"1. The judge has authority to assess the compatibility of any effective statutory regulations as defined in Article 81.g (except for uniform national ordinances), 81.h, 81.i, and 81.j with the Constitution. The judge may refrain from testing the statutory regulation as defined in the preceding sentence against the Constitution if there is no sufficient interest for doing so, or if the contents of the provision in the Constitution do not lend themselves to being tested. Nor may a judge test the process of enactment of effective

statutory regulations, as defined in the first sentence of this paragraph, against the Constitution.
2. The judge is entitled to declare that an effective statutory regulation, as defined in the first sentence of paragraph 1 of this article, is fully or partially inapplicable. In so doing, the judge may specify that the consequences of the statutory provision that has been declared fully or partially inapplicable shall remain in effect, fully or partially."

- Article 81 of the Constitution of Country St Maarten

"The valid statutory regulations in Sint Maarten are:
a. the Charter for the Kingdom of the Netherlands;
b. agreements with other powers and with international law organisations insofar as they have been ratified for Sint Maarten;
c. Kingdom laws and Kingdom administrative orders that are binding in terms of the Charter for Sint Maarten;
d. this Constitution;
e. mutual regulations as specified in Article 38.1 of the Charter in so far as they have been given statutory authority by a competent body of Sint Maarten;
f. mutual regulations as specified in Article 38.2 of the Charter;
g. national ordinances, including the unified national ordinances;
h. national decrees incorporating administrative orders;
i. ministerial regulations;
j. ordinances by public bodies as defined in Article 97.2 and independent administrative bodies as defined in Article 98.2."

(c) Some examples of cases that can illustrate how constitutional review by the Supreme Court takes shape in practice.

The most common way in which constitutional review plays a role in the practice of the Supreme Court is when, in the course of cassation proceedings, the court reviews the compatibility of decisions of courts of appeal with the fundamental rights provisions laid down in treaties such as the European Convention on Human Rights (ECHR). As part of this review, the treaty-compatibility of Acts of Parliament or any other form of legislation that is relevant in the case at hand may be considered.

This review may lead to a variety of outcomes. First, the Supreme Court may give an interpretation of the legislation in which it is in conformity with the fundamental right(s) concerned or with other elements of international law. Second, the Supreme Court may declare the application of the statutory regulation at issue (even an Act of Parliament) to be in conflict with a provision of a treaty or a resolution that is binding on all persons, and thus rule that the provision is not applicable. Third, the Supreme Court may identify an omission or error in the legislation in question and repair this omission or error. An example of each of these three outcomes is given below. Although many more such examples could be given, this would only make this document excessively long without offering greater insight into the nature of the Supreme Court's authority. The selection of cases is therefore is somewhat arbitrary. Further examples can be provided if necessary.

(i) – Supreme Court (HR) 15 May 2005, ECLI:NL:HR:2005:AS7054. In this case the Supreme Court interpreted article 1:253c, paragraph 1, of the Dutch Civil code (an Act of Parliament and part of Dutch family law) in conformity with article 6, paragraph 1 of the ECHR. The question to be answered by the Supreme Court was whether a father who was not married to the mother of a child was entitled on his own – and not, as the Civil Code at face

value seemed to provide, only together with the mother – to file an application for parental authority to be conferred on him. The Supreme Court held that the Civil Code should be understood in such a manner that the father can indeed do so – otherwise the Code would violate the right of access to justice laid down in article 6 ECHR.
- Supreme Court (HR) 6 September 2013, ECLI:NL:HR:2013:BZ9225 and ECLI:NL:HR:2013:BZ9228. In these cases the Supreme Court held that the Dutch State was liable for the deaths of three Muslim men from Srebrenica who had sought refuge in the compound of the Dutch battalion (Dutchbat). On 13 July 1995 Dutchbat decided that the men would be sent out of the compound rather than evacuated along with the battalion. Outside the compound the men were murdered by the Bosnian-Serb army or related paramilitary groups. The Supreme Court answered the question of whether Dutchbat's conduct could be attributed to the State by reference to public international law. In doing so it followed two sets of rules drawn up by the International Law Commission of the United Nations. The Supreme Court held that public international law allowed the conduct in question to be attributed not only to the United Nations, which was in charge of the peace mission, but also to the Dutch State, since the latter had effective control over the disputed conduct of Dutchbat. The Court of Appeal was therefore entitled to hold that Dutchbat's conduct was attributable to the State.

(ii) – Supreme Court (HR) 8 April 1988, NJ 1989/170. At the time of this judgment, Dutch family law prohibited the recognition of a child by a father who was married to a woman other than the child's mother. The Supreme Court found this prohibition to be at odds with article 8(2) ECHR because of the prohibition's absolute nature. The same applied to the provision of family law which required the consent of the mother for recognition of a child born out of wedlock: this provision was ruled inapplicable since no exceptions were allowed, leaving open the possibility of abuse.
- Supreme Court (HR) 16 June 2009, ECLI:NL:HR:2009:BG7750, NJ 2009/379, with commentary from E.J. Dommering. This was a criminal case of defamation. Shortly after the fire at a detention centre for failed asylum seekers at Schiphol Airport in which eleven people died, the applicant showed a poster to a local television crew displaying the words: 'Rita's travel agency, arrest – deportation – cremation adequate to the bitter end'. Rita Verdonk was at that time Minister for Integration and Immigration. The Court of Appeal held that the defendant's freedom of speech as protected by article 10 (1) ECHR would be violated if it were to rule that the proven offence was a crime under article 261, paragraph 2 of the Dutch Criminal Code, and therefore ruled that article 261, paragraph 2 was not applicable. The Supreme Court affirmed the Court of Appeal's judgment.
- Supreme Court (HR) 9 April 2010, ECLI:NL:HR:2010:BK4549, NJ 2010/388. In this case the Supreme Court ruled that, on the basis of Article 7 of the Convention on the Elimination of All Forms of Discrimination against Women and Articles 2 and 25 of the International Covenant on Civil and Political Rights taken together, the State is obliged to ensure that political parties allow women to exercise their right to stand for election.

(iii)
- Supreme Court (HR) 31 March 1998, NJ 1998/779. In this case the Supreme Court held that an amendment to the Dutch Criminal Code made by an Act of Parliament contained an error. According to the Supreme Court, article 116 of the Criminal Code had mistakenly been amended in such a way that, at the police investigation stage of criminal proceedings, the prosecutor would have the authority to deal with seized objects as if they had been confiscated, even if the suspect had not waived his rights in relation to these objects. Prior to the amendment the Criminal Code had demanded a waiver of rights in such cases. In ruling this amendment to be an error, the Supreme Court took into account that the amendment's

parliamentary history did not suggest any other explanation and that the amendment's compatibility with article 1 of the First Protocol of the ECHR had not been discussed. By Act of Parliament of 10 May 2000 the Dutch legislature repaired this error in line with the judgment of the Dutch Supreme Court.
- In *Salduz v. Turkey*, ECtHR (GC) 27 November 2008, the Court ruled that Article 6 ECHR requires that access to a lawyer must be provided, as a rule, as from the moment of the first police interrogation of a suspect, unless there are particularly compelling reasons to justify an exception. In the Netherlands there was no such requirement, nor did this happen in practice. In Supreme Court (HR) 30 June 2009, ECLI:NL:HR:2009:BH3079, NJ 2009/349, the Supreme Court considered the implications of the Salduz judgment and decided that any testimony obtained from a suspect who had not been provided with legal counsel before the first interrogation in police custody could not be used in evidence. The Supreme Court interpreted the ECtHR judgment as meaning that only minors, not adults, have the right to have a lawyer present during a police interrogation.

5. *Conclusion*

In conclusion, irrespective of Article 120 of the Constitution, the Supreme Court of the Netherlands does conduct *ex post* constitutional review. Therefore the Supreme Court seems to fully satisfy the requirement laid down in Article 6 of the Statute of the Conference of European Constitutional Courts. The Supreme Court conducts its constitutional review in accordance with the principle of judicial independence, being bound by the fundamental principles of democracy and the rule of law and the duty to respect human rights.

The prior application to be admitted as a member of the Conference of European Constitutional Courts may not have been entirely clear on all aspects of the constitutional practice of the Supreme Court of the Netherlands. Moreover, one could say that new developments have strengthened the position of the institution as a constitutional court. In addition it should be noted that in the meantime both Houses of the Dutch States General have adopted at first reading a proposal to amend Article 120 of the Constitution to make constitutional review of Acts of Parliament possible. Such an amendment requires a two-thirds majority at second reading.

In my opinion there is sufficient justification for filing a new application for the Supreme Court to be admitted as a full member of the Conference of European Constitutional Courts in order to participate in the Conference's work. This would not only be in the interests of our institution and of legal practice in the Netherlands as a whole, but would also be conducive to the purpose of the Conference, namely to exchange information on the working methods and constitutional case law of European institutions exercising constitutional jurisdiction (see the Preamble and Article 3 of the Statute).

The Hague, April 1st 2014

Dr G.J.M. Corstens, President of the Supreme Court of the Netherlands