

International Association of Tax Judges

13th Assembly

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Procedural Issues (the Netherlands)

CHAIR
PANELISTS

ALEXANDER VAN DER VOORT MAARSCHALK (SUPREME COURT)
NADIA DJEBALI (AMSTERDAM COURT OF APPEAL)
FAUSTINA PETERS (DEN HAAG COURT OF APPEAL)
ROEL MONTEIRO (GELDERLAND DISTRICT COURT)



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Procedural issues

- Judicial review by Appeal Court and Supreme Court
- Compensation for costs of the tax procedure
- Challenging judges by motion for recusal

Judicial review by Appeal Court

- No restrictions to appeal
- Full review of the case (in fact and law)
- The submission of new issues, arguments and evidence is allowed

Judicial review by Supreme Court

- No restrictions to appeal
- Limited grounds for appeal
 - Error of law
 - Incomprehensible reasoning
- No new facts
- No mandatory representation (except for pleadings)



Judicial review by Supreme Court (ct'd)

- No reasoning required to declare the appeal inadmissible if:
 - manifestly insufficient interest in appeal or
 - manifestly ill-founded appeal
- No reasoning required for dismissal of the appeal if:
 - unity or development of the law is not at stake

Compensation for costs of the tax procedure

- Tax authorities pay compensation, not tax payer
- € 837 per point
- One point per brief, hearing
- Weight factor (0,25 – 2)
 - complexity
 - (financial) interest
- Court can award higher or lower amount

Compensation for costs of the tax procedure (ct'd)

- Courts are reluctant to deviate from standard amounts
- Compensation in full (or partially) is possible, but uncommon
- The role and modus operandi of no-cure-no-pay-offices

Challenging judges by motion for recusal

- Principle of a fair trial, including:
 - (i) judicial independence
 - (ii) judicial impartiality
- Motion for recusal mostly focuses on (ii), e.g.:
 - Alleged bias due to treatment of similar cases
 - Alleged bias due to previous employment

Challenging judges by motion for recusal (ct'd)

- Risks and consequences?
 - Abuse of the instrument
 - Delay of procedures
 - Limitation of judicial freedom
- Remedies?
 - Restricting the so-called repeat player
 - Imposing a prohibition by court



Procedural issues

- Conclusions and comments