

# Judges' additional jobs

In recent years, several incidents have drawn attention to the additional offices held by judges in the Netherlands. A debate has been initiated by a group of concerned citizens. They question the independence of judges working in additional jobs. Their main concern is with temporary judges<sup>1</sup>, many of whom are (commercial) lawyers in their regular jobs.

In the Dutch literature on this subject, many jobs have been called 'incompatible' with serving as judge. These include jobs in politics, government, civil service, (legal) research, consultancy and commissionerhips. With respect to temporary judges, jobs as advocate or public prosecutor are deemed incompatible by some. Our research shows that all these jobs do exist as additional jobs of judges.

There are several ways in which additional jobs can lead to undesirable consequences, like loss of integrity, independence and impartiality. Judges could serve *illegitimate interests* of the body they work for or the people they work with. Some jobs, for instance in government, can lead to a *violation of the Trias Politica*. Also, *cumulation* is possible, when a judge is given a case in which he has been involved in his additional job. *Taking position in a public debate* – as do scientists, writers, editors – can lead to reproaches of being biased. *The changing of roles in court* – public prosecutor or advocate today, judge tomorrow – leads to questions regarding interests and 'collegiality'. Last, in additional jobs judges could become involved with people or organisations that commit crimes, and do harm to the image of justice.

The debate goes further than just the risk of actual conflicts of interest due to additional jobs. In the European jurisprudence on the impartiality of judges, a judge should be withdrawn from a case if there is an objective reason for doubt concerning the impartiality of the judge. The interests stemming from an additional job could be such a ground.

In 1997 a law was introduced, which forced the Dutch courts to keep a register of additional offices held by their judges. In our research, these registers were used to make an inventory of the kind of jobs judges perform next to their job as judge. Based on literature, we described the kind of additional jobs which, according to some, would not be proper for a judge to perform.

1 Temporary judges are meant to serve as a substitute when a normal judge is not available (in case of illness, holidays). However, in the last decades these substitutes have become an important source of the courts capacity. Most temporary judges have a regular job as advocate or professor.

In our research, we used the registers of additional jobs from 21 courts, including cantonal courts (12), district courts (7) and courts of appeal (2); this provided us with the additional jobs of about one third of all Dutch judges. The sample contains 1,012 judges, including 400 temporary judges, and 3,393 additional jobs.<sup>2</sup> Temporary judges have significantly more additional jobs than normal judges. Even when the main jobs of temporary judges are excluded, 51% of the additional jobs are performed by temporary judges, who make up only 39% of the sample.

We categorised the additional jobs in several ways. For instance, we grouped them based on the role that judges perform in that job. Also, we categorised the jobs to (social, economical) sectors.

Roles frequently performed by judges in their additional jobs are:

- Solving disputes outside the courts: for instance, as a member of a body that handles complaints, a disciplinary board (related to a professional group), or as an arbiter or mediator.
- Advice: including legal advice, consultancy, advisory boards on laws and public policy; advisory boards of commercial and non-commercial institutions.
- Governing: in public and private sectors, mainly on boards that meet monthly, or less frequently.
- Transferring knowledge: this includes functions as a writer, editor and teacher. These jobs are directly related to being a legal 'professional'.

In which sectors do judges work in their additional jobs? Many jobs are in:

- (Scientific) education (502): professors, teachers, governors of educational institutes.
- (Public) health (375): mainly on governing boards.
- Advocacy (305): many temporary judges are advocates, also jobs on supervisory boards, in professional education and bar associations.
- Government and politics (209): civil servants, advisory boards, senators.
- Financial services (151): jobs in the banking and insurance business, disciplinary boards, asset management.
- Just a little less than 100 jobs were found in sports (98), building and housing (96), prison system and resettlement of discharged prisoners (96), art and culture (89) and churches (86).

Our inventory of additional jobs is not complete. Not all jobs have to be registered. Also, with a few simple checks we found inconsistencies in the registers, and jobs missing that should have been in the register.

In the last chapter of our report, the findings and their possible consequences are being discussed. Should some jobs be seen as 'incompatible' with working as a judge? Do existing 'checks and balances' provide the public with enough oppor-

<sup>2</sup> Many judges serve in several courts. Their additional jobs *as a judge* are excluded in this count. Their other additional jobs have been included only once.

tunities to act when interests stemming from an additional job are suspected to interfere with the judge's objectivity? Do complaints get serious attention?

It is being argued that there is imbalance between the permissive attitude towards additional jobs and the limited facilities to act in cases of suspected conflicts of interest.

It's not just a lack of formal facilities that inhibits taking action – there's a problem of attitude as well. By some judges, criticism – especially when it concerns their objectivity or independence – is taken as an insult and may lead to angry reactions. Complaints that are not being investigated or simply not even being handled – we found several examples in the literature – leave the complainants with the feeling that 'something is wrong'. In this way suspicions will linger, even those that could have been refuted.

