Political independence

1.
   a.
   Judges in the Netherlands are appointed for life (Article 117 of the Dutch Constitution); they can resign voluntarily or will be fired at an age determined by law (Subarticle 2); present law prescribes an age of seventy. Judges can remain in office until the age of 70. At a younger age, they can only be removed from office against their will by the highest court in the Netherlands, the Dutch Supreme Court (Hoge Raad der Nederlanden), at the instigation of the Procurator General (procureur-general) of this Court. This system provides adequate protection against political influence on appointment and removal from office.

   b., c., e. and f.
   There is no Dutch legislation that expressly forbids members of the government or others to interfere in the judicial decision-making process. However, interference in court cases would definitely be in breach with unwritten constitutional law and would also be in breach with Article 6 of the European Convention of Human Rights, which is binding to the Netherlands.

   d.
   If necessary judges and prosecutors and their family will be protected.

Appointment system for judges and justices

2. and 3.
   The organisation, composition and competence of the Dutch judiciary is regulated by law; delegation is possible (Article 116 of the Constitution). Judges are appointed by the Crown, under the aegis of the Minister of Justice. Only Dutch nationals can be appointed to the office of judge. Moreover, the candidates must have a law degree from a Dutch university.

   Individuals can only be nominated for appointment to the judiciary after a recommendation from a national selection committee, made up of members from the various courts, the public prosecutor’s office and individuals that are active in society. The judge will be appointed to administer justice at a specific court. Such appointment is not possible, unless the court in question has nominated the prospective judge. Thanks to these conditions, the appointment system is as objective as possible. The judge is a government official with a special status. After the initial appointment, the judge need not accept an appointment elsewhere.
Administration of the judiciary

4.
   a. salaries are set by the Dutch legislature in conformity with the Dutch Constitution.
   b. YES
   c. YES. Judges salaries are comparable with the salaries of Dutch members of parliament.

5. NO. There is no formal nor informal way in which the adjudication of cases is being influenced by administrative authorities within the Dutch judiciary.

6.
   a. There are statutory provisions on the behaviour of judges. The purpose of these provisions is guaranteeing that judges do their work impartially. Complaints about behaviour of a judge may be filed with the board of the court where the judge in question holds office. Every court has a complaints procedure providing for the rules on dealing with complaints.

International human rights issues

7. According to the Dutch Constitution the international source of law taken into consideration are mainly international treaties. Article 90 states that it is the duty of government to promote the international rule of law. Article 94 determines that legal prescripts are inapplicable if they conflict with treaties of a generally binding nature. This means that national laws can be tested against treaty norms and obligations.

8-9. Court cases involving violations of international human rights are connex to breaches of national law. However in civil law it is quite easy for a party involved to construct a case of tort.
ANNEX

Dutch Constitution, Chapter 6: Administration of justice

This chapter regulates the Dutch judicial system. The central subject is the relation between the judiciary and other courts. The term "judiciary" is not meant to indicate the Judicial of the Trias politica, but rather a purely organisational complex of judicial institutions: those courts are simply part of the judiciary that are designated as such by formal law (Article 116). Their organisation, composition and competence is regulated by law; delegation is possible (Subarticle 2). However, one safeguard that is typical of the Judicial, to guarantee its independence, is also characteristic of the Dutch judiciary: its members are appointed for life (Article 117); they can resign voluntarily or will be fired at an age determined by law (Subarticle 2); present law prescribes an age of seventy. Other principles, like impartiality, are not explicitly mentioned in the constitution. The law regulates to which extent persons who are not members of the judiciary, partake in its rulings; delegation is possible (Article 116, sub 3). This refers to (scientific or other) experts on a certain subject, not to a system of jury trials, which is absent in the Netherlands.

Article 112 states the main principle: the power to judge disputes of private law and the law of obligations is exclusively attributed to the judiciary (subarticle 1); formal law can attribute other judicial powers to either the judiciary or other courts; delegation is possible as regards the regulation of the procedures and the implementation of rulings (subarticle 2). Doctrine holds that the competence of the court is determined by the nature of the legal rule on which the plaintiff founds his claim. This implies that even in administrative disputes the citizen can always assure some legal resort, simply by bringing a tort action against the State: the judiciary is then competent. Article 115 states that in the cases covered by Article 112, sub 2, always some administrative appeal is possible. However, it does not guarantee a decision by an independent court: on 23 October 1985 the European Court of Human Rights ruled that the Crown Appeal by the Council of State, then by exclusion the highest administrative appeal court, lacked the necessary independence. This necessitated a complete revision of the Dutch administrative court system, resulting in a much expanded access to independent administrative courts.

Article 113 exclusively attributes also the power to judge offences to the judiciary. However, law can regulate the establishment by government of disciplinary courts outside of the judiciary. Delegation is possible (Subarticle 2). The judiciary is attributed the exclusive right to impose a punishment entailing a deprivation of liberty (Subarticle 3). This does not refer to forms of detention that are not punitive in nature. Law may regulate exceptions to the provisions of Article 113 in case of trials held outside of the European territory of the Netherlands or of proceedings of martial law; delegation is possible (Subarticle 4).

Article 114 entails a civil right: the prohibition of the death penalty, included by the constitutional revision of 1983 after the death penalty itself had already been abolished in 1870. The article is not a guarantee, as doctrine holds that in a state of emergency any right might be suspended by unwritten constitutional emergency law; also in principle some treaty might oblige the judge to impose the death penalty. However, in fact the Netherlands has ratified the Sixth Protocol of the European Convention on Human Rights, also containing a prohibition and having precedence
over any other treaty. Therefore, since 1986 no Dutch judge has any formal competence to impose the death penalty. Nevertheless, the Dutch government might by treaty be obligated to cooperate with some international tribunal with the powers to impose the death penalty, such as the International Military Tribunal once was.

**Article 118** regulates the Dutch Supreme Court, the Hoge Raad der Nederlanden. Their members are appointed from a shortlist of three, made by the House of Representatives of the States-General (Subarticle 1). Formal law determines in which cases the Supreme Court may reverse judgments of lower courts (cassation) for violation of the law (Subarticle 2). The Supreme Court in revision only decides points of law, not substantial matters. Other duties may be attributed by formal law (Subarticle 3). These other duties in fact include the resolving of conflicts of competence between courts, penal trials against judges for offences committed in office, disciplinary and advisory tasks and the decision in disputes about prizes taken by Dutch vessels. Article 119 attributes the exclusive right to the Supreme Court of trying members of the States-General, ministers and secretaries of state, whether incumbent or formal, for offences committed in office. It also states such a trial is instigated by either a Royal Decree or a decision by the House of Representatives.

**Article 120** states that no judge will judge the constitutionality of laws and treaties. Therefore no constitutional review of formal laws is possible; the Netherlands lack a Constitutional Court. However, regulations of lower administrative bodies may be tested against the constitution by the courts. Also any law may be tested against any self-executing treaty, though this rarely happens.

**Article 121** states three safeguards for a fair trial: the first is that trials are public. The second is that judgments must specify the considerations and grounds upon which they are based. The third is that any judgment must be pronounced in public. Any exception to these principles can only be made by formal law; no delegation is possible. Article 122 states that pardon is granted by Royal Decree, on advice by a court indicated by law. Formal law regulates the procedure; delegation is possible. Also an amnesty is possible by a special law or by force of such law; delegation is possible (Subarticle 2).