Summary

This summary answers the main questions of our research format

1. The selection of countries

This international comparative study was set up to make an inventory of ways to manage case assignment between and within courts. We started from a more or less accepted typology of 'families' of judicial systems, analogous to the typology of systems of law, such as the Anglo-Saxon, the Scandinavian, the German and the French. Next to that we wanted federal states and centralized states in our sample. Together with the availability of reliable researchers abroad, our sample consisted of:

Anglo Saxon	England and Wales, Québec (federation)
German	Austria (federation),
French	Italy, Portugal
Scandinavian	Norway
	Netherlands

From the reports delivered, it was not possible to draw solid conclusions on the type of legal-system in relation to judicial administration. There are differences between the countries, especially in the flexibility of case assignment. In addition, in our sample no differences between judicial administrations could be found that relate to the centralized or federal character of the state.

2. What are the backgrounds and the starting points of the systems of case allocation?

Judicial administration

The backgrounds of judicial administrations do differ. We can make a distinction between countries with a ministerial court service and countries with an autonomous court service. And we can also make a distinction between countries with and without a council for the judiciary. For the countries with a council for the judiciary, we can distinguish between those with an autonomous court service and those with a council with only personnel and disciplinary powers, which have a ministerial court service. This leads to the following matrix:

It should be noted that the High Council for the Magistracy in Italy also has a role in case assignment within the courts. A peculiar situation exists in England & Wales where the court service has quite some autonomy but still is a part of the department for constitutional affairs.
The distinction between criminal, civil (trade and family) and administrative (general and taxation) jurisdictions is dominantly present everywhere, except for the administrative jurisdiction in Norway and, to a certain extent, in the Anglo-Saxon countries.

Constitutional backgrounds

There are two major starting points for judicial organizations in Europe. The first one is the demand of judicial independence and impartiality. We did not elaborate on that.
The second one is the 'ius de non evocando', which has a special meaning in Austria, Italy and Portugal. Ius de non evocando in all countries means that those seeking justice are enti-

tled to the court assigned to them by law. It means that no special courts should be instituted to deal with some case, and it stresses that no executive body or managing judge should try to influence the way in which a court handles a case. Typically, in the Northern countries, this ius de non-evocando gets not much attention. However, in Austria, Italy and Portugal, the ius de non evocando is also interpreted as the right to have one's case handled by one's *natural judge*. This interpretation demands that case assignment within courts takes place at random or with very detailed pre-established criteria so as to make unpredictable which judge gets which case. It also means that if a case is assigned to a judge, it is not to be assigned to another judge. In Italy and Portugal this demand is also elaborated by appointing judges not only in a court, but also in a division (sector) – Italy and in a unit (chamber) Italy and Portugal. Fixing judges in their units and divisions, it is difficult to transfer them to the unit or division of the court where the caseload is high.

Rules of case allocation

A major difference exists between the Anglo-Saxon countries and the Continental countries. In the Anglo-Saxon countries, hearing locations and court organisation generally are separated. Judges are allocated to hearing locations and deal with the cases to be heard there. In the Continental countries, cases are assigned to the courts and the courts' divisions. They follow rules of subject matter jurisdiction and rules of territorial and functional competence. In civil procedure, parties may often deviate from territorial rules of competence if they agree to it. In criminal proceedings the public prosecutions service may sometimes choose between different courts, because rules of territorial competence allow flexibility. In administrative procedure, differences do occur. E.g. In Italy all cases against decisions of the central government have to be dealt with by the administrative court in Rome, in the Netherlands for such decisions the place of residence of the claimant is dominant.

3. Are there any bottlenecks in the method of case allocation, for instance as regards: (temporary) unbalanced burdening of the courts (peak loads)?

Unexpected peak loads do not occur very often. Courts in major cities are bigger because they have more cases to handle. Beyond a certain scale it is no use to enlarge a court. So in some countries extra courts are instituted to deal with big caseloads. Especially in southern countries with fixed case allocation systems, it is difficult to react flexibly to locally changing circumstances regarding caseload and personnel. Cases just pile up.

4. Are there many conflicts of jurisdiction and territorial competence among the different courts? Which authority is charged with solving these conflicts? (E.g. court of cassation, court of appeal, judicial council etc.)

Conflicts of jurisdiction and territorial competence do occur, but not in large numbers. Jurisdiction conflicts are mostly decided by the supreme courts or by the constitutional court. Conflicts of territorial competence are, in many cases, decided by the competent appeal court.

5. Are there major differences in processing times between comparable courts?

This aspect was most difficult to deal with. Data were available from Norway, but not from the other countries.

6. Is there a tendency to create specialized courts?

The dominant attitude in all countries is that justice should be a delivered equally to all, so that judges should be able to handle any case. Nevertheless, specialization of judges and courts is an issue in almost all countries, with different solutions. One extreme is the compartmented Portuguese court system; the other side is the non-specialisation of the Norwegian court system. The problem that certain scarce cases demand special judicial knowledge and skills is recognized in most countries, but scarcely addressed by concentration of knowledge and skills in one court. It does happen, but especially so in the field of administrative law in England &Wales (tribunals), and in the Netherlands

7. Are there - compared to the Netherlands - different roles played in the allocation of cases by, for instance, litigants, injured parties/victims, prosecuting authorities, institutions –like a court service department- involved in the dispensation of justice?

Case allocation is the most flexible in England & Wales and in Quebec. The most important courts are organised on a national scale and judges are allocated to cases. Next in line is the Netherlands with many recent measures that enable an allocation of cases i.e. according to capacity (Aliens cases and big criminal cases) by special judicial bureaus that function nation wide.

8. Do public and/or private parties in different kinds of proceedings (civil, administrative, criminal) have the opportunity for so-called forum shopping or forum selection?

Generally speaking, in the continental countries, the rules of case allocation do not allow for special roles of parties. Forumshopping, however, is possible for civil proceedings (by agreement of the parties) and in criminal proceedings, sometimes, by the public prosecutions service. We know it happens but no adequate data were provided to gain more insight in this subject.

9. What steps are taken or prepared to solve problems concerning case allocation and efficiency? Will this leave the specific basic principles of the judicial system unharmed?

In most countries measures have been taken to do something about backlogs and to enhance efficiency and timeliness of justice. These measures are:

- Give judges explicit responsibility for case management.
- Enlarge the competence of single judge courts
- Introduction of differentiated case management
- Make court divisions pervious for judges, to enable transfer of judges to divisions with the largest caseload
- Enable the transfer of cases to courts with a lesser caseload in order to use existing capacity more efficiently
- Court funding according to productivity
- Adapt court building and offices to modern needs

- Deployment of flying squads
- Temporary and flexible deployment of new judges in courts within the resort of a secondary appeal court
- Deployment of substitute judges
- Reduce demand for court services by redirecting demand to mediation and arbitration
- Reduce demand for court services by increasing court fees

These measures leave the judicial systems basically unharmed. However, flexibilisation of allocation of cases and judges may necessitate in principle a recapitulation of the design of a judicial organisation and its functioning. The question is if and when such a recapitulation is necessary.

10. Are there tensions regarding the allocation of cases within the court? Who is in charge to solve such conflicts if they occur?

Tensions regarding case allocation do occur regarding the amount of work individual judges have to do. In Portugal and Italy, this is a problem that cannot be fixed easily. In England &Wales, Quebec, Norway and the Netherlands it is easier. In all countries it is either the president or the management board of the court who is responsible. In Austria the allocation of cases is a responsibility of the so-called "Personnel Senate" of the court. Individual judges may appeal the "Personnel Senate" of the next superior court if they disagree with their workload. In Italy, individual judges may address the High Council of the Magistracy

11. Is there a special role of ICT applications to remedy bottlenecks in allocation of cases to courts?

Court-organisations are not ahead in using ICT applications. This also holds for remedies for bottlenecks in allocation of cases. ICT is used in general. If this is done, it is done to improve court services primarily, e.g. Money Claim Online in England & Wales. We cannot give a clear relationship between the use of ICT and the speed of justice and efficiency

12. Discussion for the Netherlands

The comparative analyses leads to the following questions for the Netherlands concerning case management and case assignement to and within courts.

- How should the tension be resolved between demands of efficiency for organisational flexibility on the one hand, and institutional and constitutional demands for judicial independence and impartiality together with transparency and accountability of the courts on the other?

- There is some tension between the starting points that courts and judges are expected to give like judgements in like cases throughout the country and that it should not matter which court and judge deals with a case on the one hand, and the inevitability of specialization of judges given the increasing complexities of certain areas of law on the other. How should this tension best be resolved?

- Is a less territory oriented judicial organisation in principle so different that in order to reach that situation changes of the Judicial Organisation Act are desirable, or may this other judicial organisation also be realised by cooperation between courts and adjustments of delegated legislation (orders in council)?

- Is, from the viewpoint of personnel policy and the legal position of judges, a transformation of the Dutch judicial organisation into a system which, within certain geographical area's, allocates judges to different several hearing locations acceptable?

- Do Dutch courts have sufficient possibilities to account for the way in which they allocate cases internally in order to live up to demands of transparency? Is there a need for explicit and thus formal checks and balances within the judicial system concerning internal case allocation?