

1. What are the main problems the Judiciary experienced at a general level in your country as a consequence of the legal reforms approved in order to cope with the COVID-19 pandemic?

The Temporary Law COVID-19 Justice and Security (the Corona emergency law, <https://zoek.officielebekendmakingen.nl/stb-2020-124.html>) entered into force on April 24 2020. Some provisions apply retroactively from March 16 2020. Here after we will call this law The Temporary Law Covid-19.

The Temporary Law is intended to ensure the good functioning of the legislative process, the judiciary and the public administration, under the restrictive corona measures and applies until 1 September 2020. It can be extended by 2 months if necessary. The emergency law provides, among other things, that the judiciary can use electronic means of communication in more cases, so that lawyers and litigants do not have to be physically present in the courtroom, with the aim that cases can be handled as much as possible. For civil and administrative cases, the Temporary Law makes it possible - with retroactive effect from March 16 2020 - that the oral hearing takes place via a video connection or, if there is no other option, by telephone.

Also, but not by formal law, the Minister of Justice has taken special measures concerning detainees and detention centers, by letter dated 13 March 2020 and 1 April 2020.

The main problems are the following:

The courts are closed, public is not welcome or allowed in the court buildings.

Much less cases can be handled.

The contact between lawyers and their clients is more difficult.

Parties, also defendants, cannot fully exercise their right to be present.

Cases are finalized without a court session where parties are present.

The contact between parties and judges is not possible or difficult.

Delays in the handling and finalizing of cases will occur, as well as a growing backlog.

Judges, law clerks and all staff are supposed to stay at home and work at home, with (electronic) means. These are for different reasons not always adequate (availability and quality of computer connection, of computers or screens, of electronic files, of skype facilities), although improvements are made over time.

Detainees, also juveniles since 1 April 2020, are no longer allowed to receive visitors. Further, the detainees are not allowed to go on leave and their transport to the court, in order to be present at their own court case, is very much limited, except for juveniles.

Near

future

The measures of the government and of the judiciary gradually become less strict, since 11 March 2020. In general and especially if the presence of the parties is necessary, parties and witnesses will be able to come to the court, but only if the court building and the courtroom is "Corona proof". This means that people should be able to maintain a 1.5 metres distance to others when travelling to the court and entering the court building, while being inside the court building and inside the courtroom. Also glass screens are constructed in the court room between the judge(s) and the parties, between the judges and the law clerk and - in criminal cases - between the judges and the prosecutor. In some courts parties are expected to clean their own working space in the courtroom when leaving the courtroom. Cleaning material will be provided by the courts.

2. Did the legal reforms approved in your country in order to cope with the COVID-19 pandemic affect Rule of Law and Human Rights principles? If any, pls. enumerate them.

Some writers argue that the law is not consistent with constitution, more particularly the house right and right of privacy. Also recently the *Council of State (Raad van State)* who normally advises on draft laws, was critical as to the fundamental right of gathering.

Also question mark as to article 6 EHRM may be put at the practice of the delegated judge (see question 5), when resulting in the situation that a party concerned is more or less forced to accept this practice, in order to get a decision earlier.

Lawyers in criminal law complain that they do not get enough time for consulting with their client and that the confidentiality of their meeting is not guaranteed.

Defendants are not given full opportunity to be present in court, as is their fundamental right.

Lawyers in family law complain that an electronic hearing is not equal to a live hearing. Their clients lack the necessary skills to communicate by means of video and the lawyers are unable to represent the interests of their clients in an adequate way. In their opinion the unwanted result is that advice of the *Council for the protection of juveniles (Raad voor de Kinderbescherming)* is always followed and that the measures of court custody and civil supervision of juveniles are applied for the full term. This relates especially to the district courts where the initial decisions are made. When the case is brought before the court of appeal, the decision of the district court has already been executed.

3. As to the judicial organisation of your country, what impact had the legal reforms approved in order to cope with the COVID-19 pandemic? More specifically, what were their effects on the powers of the Minister of Justice, Council for Judiciary, Heads of Courts, Heads of Prosecution Services, Judges, Prosecutors, Court Administrators, Court Managers?

The legal reforms in The Temporary Law do not give the judge 'more powers' or 'less powers'. It gives them more 'tools' to cope with the security measures (such as the 1,5 meter distance measurement).

The judge will determine how to settle the case, where possible after consultation with those involved in the case.

As for the other institutions and representatives such as the *Council for the Judiciary (Raad voor de Rechtspraak)*, Head of Courts, Court Managers etc., it can be remarked that the legal reforms in The Temporary Law do not mention these institutions and representatives and that they do not affect their powers.

The judiciary must follow a protocol. The protocol states that a crisis management team must be established. This team includes only members of the judiciary: Board members of the Council for the Judiciary, the director, the chief communication and the security officer of the Office of the Council for the Judiciary and the daily management of the Presidents' Meeting (three court presidents representing all the court presidents). This crisis management takes decisions regarding the safety and welfare of the judiciary during the COVID-19 crisis.

The Temporary Law makes it possible for the judiciary and notaries to do their work in these new circumstances.

As to the powers of the Ministry of Justice, we can notice a shift of power at a macro level but this shift is not facilitated by the Temporary Law. In general, a slight increased focus does occur on the executive power, because of the safety measurements needed to cope with the crisis and determined by the Ministry.

As for the Prosecutors' Offices following can be said.

General

Some provisions of The Temporary Law have retroactive effect, as already mentioned. The law does not increase or change powers, but is arranging more practical aspects of the judicial process (see also question 7), such as more possibilities of video-conferencing and of the use of other means of two way electronic communication video-conferencing and further extended deadlines for the execution of community service.

The main concern and effort of the public prosecutor is getting back to business as usual, as soon as possible, by starting the judicial process again within its normal legal possibilities and powers.

See also question 12.

International

International cooperation in criminal cases is limited due to the Corona crisis; in some countries only urgent cases can be dealt with. Possibilities differ per country. Cooperation with the neighbor countries seems to be most easy. Some investigation actions, like e.g. house searches, have to be applied restrictively.

International alerts and arrest warrants can be executed. International extradition is limited. Extradition is possible when transfer of the person over land is possible. Otherwise procedures are put on hold. Persons in extradition detention are being held in custody depending on the severity of the crime(s) or the flight hazard. In some cases the detention is being suspended.

The transfer of custodial sentences within the EU is limited to the cases where transfer of the person over land is possible. Mostly transfers with Germany and Belgium. Other cases are put on hold.

Probation measures and alternative sanctions can be transferred within the EU, because mostly the convicted person is already in the other member state. The procedure is electronic and the signed decisions will be send as soon as possible.

Financial sanctions and confiscation orders are temporarily not being transferred since April 6 2020, because of the uncertainty of the hard copy post-delivery. The transfers of these decisions are being put on hold.

Transfer of supervision measures during the pre-trial phase is possible within the EU. These cases are tailor made and ask a lot of international tuning by mail or telephone.

4. As far as Court activity, Court proceedings and trials are concerned, what was the impact of legal measures adopted? Pls. provide relevant information distinguishing between civil, criminal and administrative cases.

The *Council for the Judiciary (Raad voor de Rechtspraak)* decided to restrict access to all district courts, appeal courts and special courts in the Netherlands in March 2020. Employees of the courts were asked to work at home as much as possible.

The hearings in criminal, civil and administrative cases were postponed, unless a case was deemed "urgent". The Crisis Management Team of the judiciary (CMT) comprised a list of "urgent cases".

The list of "urgent cases" has been expanded during the different phases of the outbreak; phase 1, 2 and 3.

The "urgent cases" in criminal cases in phase 1 consisted of - decisions on pre-detention (14 days) by the investigative judge (*rechter-commissaris*), decisions on remand (30, 60 of 90 days) by a chamber of 3 judges (*raadkamer*) and in civil cases consisting of bankruptcies, compulsory care (*zorgmachtiging*), prolongation of court custody (*uithuisplaatsing*) and civil supervision (*ondertoezichtstelling*) of juveniles.

A more detailed overview of the definition of "urgent cases" is given under question number 5.

For criminal cases the legal measures had the effect that the hearings in criminal cases were postponed if the case was not deemed an "urgent case". The Prosecutions' Office dealt with the withdrawal of summons for hearings. The court dealt with postponing non urgent cases to a later date. If a criminal case is deemed "urgent", it will be dealt with through a video conference between the defendant and the chamber of the court. The judges are present in the court room. The public prosecutor and the lawyer can either choose to be present in the court room or use a video or telephone link. It was not clear for a while if lawyers had access to the court rooms given the restrictions, but because the public prosecutor did have access, it was also granted to the lawyers.

As for the investigative judge: all decisions regarding pre-detention were deemed urgent and were continued by videoconference. There is a video link with the police station where the defendant is in custody. The defendant's lawyer can be either present with the defendant at the police station (which has to be "Corona proof"), or will be present through a telephone link. If an interpreter is needed, she/he will also be present by telephone.

The hearing of witnesses by the investigative judge has been postponed from 17 March 2020 and will continue once the court building and chambers of the investigative judges are made Corona proof.

Because of the legal measures implemented, a lot of criminal cases and hearings have been postponed. This backlog of cases will create problems in the (near) future. Not only the cases which were already ready for a hearing by the chamber of the court, but also the cases which were still in the phase of hearing witnesses by the investigative judge have been postponed.

For civil cases, the legal measures that took effect from 17 March also meant that the hearings involving the case list of the court (*rolzittingen*) were no longer held.

These hearings are normally held in order to instruct parties about the procedure and to decide how the procedure will go forward. Parties have now received information that their case will be postponed until a next hearing, of which the date has to be set.

All hearings in civil cases are postponed, unless it is a "urgent case", in which instance a case will be dealt with using video or telephone conferences. In civil cases however (which is not the same in criminal cases), there is the possibility to go forward using a written procedure. Parties will submit their legal arguments in written form and the judge will decide on the merits of the case based on the written statements. If deemed necessary a telephone or videoconference can be held.

For *administrative law* a temporary regulation has been created with additional guidelines and instructions for the treatment of administrative law cases at the court, in connection with the measures to cope with the COVID-19 pandemic. The basic principles are:

- What can be done without a court hearing, will be done in writing only;
- If that is not possible, then it is considered whether the parties involved can be heard via electronic (video) connection.

Aforesaid regulation has been drafted by the national assembly of team leaders in administrative law at the 10 different courts in the Netherlands. This regulation is a temporary regulation, as meant in the existing General case handling procedure of the Judiciary.

The General case handling procedure gives general rules about the presence in the courtroom, the provision 'safe emailing' and the closed hearings. The stipulations about the use of safe emailing have been included in the temporary regulation.

These special measures to cope with the COVID-19 pandemic have led to a number of questions and concerns. They have to be answered by administrative judges in separate cases.

First of all the measures within the judiciary, like the possibility of giving a ruling without a hearing.

For instance, a case in which the judge decided to give his ruling without a hearing because in his opinion the documents presented by the parties concerned were sufficiently clear and the parties were not harmed in their interests by not being heard in court, whilst there was an urgent interest that made a verdict necessary. (ECLI:NL:RBOBR:2020:1904).

Secondly, administrative judges will have to decide about questions arising from measures by the government(s) to cope with the COVID-19 pandemic. For instance the closing of restaurants and pubs, the prohibition to execute certain professions in which contact between persons is inevitable and the rule to keep a distance of 1.5 m. Other questions can arise about the enforcing of these rules.

There is a number of publications about these subjects (in Dutch).¹

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- ¹ [Tijdelijke wet COVID-19](#) (gepubliceerd in Staatsblad op 24 april 2020; Stb. 2020/124).
 - [Kluwer Navigator, thema: Corona en recht](#)
 - [Covid- 19 in het publiekrecht, een overzicht](#), 8 april 2020
 - [www.Hekkelman.nl](#):
blog:[Handhaving ten tijde van de coronacrisis](#), 20-04-2020, update 24-04-2020
blog: [Bestuursrechtelijke rechtspraak: twee wetsvoorstellen naar aanleiding van het coronavirus](#), 16-04-2020, update 17-04-2020
blog:[Het voorbereiden van besluiten en beslissen tijdens de coronacrisis](#), 07-04-2020
blog: [Het samenscholingsverbod in de strijd tegen het coronavirus](#), 23-03-2020, laatste update 30-03-2020
 - [Gemeente.nu: Veiligheidsberaad: gewijzigde noodverordening komt eraan](#) 24-03-2020
 - [Recht.nl: Corona en bestuurlijke besluitvorming](#) 23-03-2020
 - [www.stibbe.com](#):
*[verwerking van gegevens in het kader van corona \(update\)](#) 25-03-2020
 - [www.omgevingsweb.nl](#):
*[wat is groepsvorming en wanneer is sprake van samenkomsten](#), 30-03-2020
*[kunnen bedrijven vanwege de coronacrisis uitstel krijgen voor het indienen van bijvoorbeeld een bezwaarschrift of beroepschrift](#), 26-03-2020
*[binnentreden in woningen mogelijk bij overtreding noodverordening?](#), 25-03-2020
*[1 juni verbodsbepaling geldt alleen voor vergunnings- en meldplichtige evenementen](#), 24-03-2020

5. Did "urgent" cases receive a different treatment and in this framework was a special legal definition or specification of "urgency" introduced for Court proceedings and trials?

Urgent cases got a different treatment: they were to be continued whereas non-urgent cases were put on hold.

Civil law (comprises commercial law and family law)

The Temporary Law Covid-19 holds two articles (2 and 3) that are relevant to civil law cases. However, these articles do not differentiate between urgent and non-urgent cases. There is no specific legal definition of "urgency". A General regulation Case treatment Judiciary was determined by the day-to-day management of the Assembly of chairmen of the courts. In this regulation you will find a list of cases that are deemed urgent.

Article 2 of The Temporary Law provides for an oral hearing by means of a two sided electronic means of communication instead of a live hearing. Article 3 holds a special provision for a certain type of family law cases: prolongation of court custody (*uithuisplaatsing*) and civil supervision (*ondertoezichtstelling*) of juveniles. Decisions can be taken immediately when two sided electronic communication is not possible.

Delegated judge

For the courts of appeal, at least the court of appeal The Hague, the most important measure was the hearing in family law cases by one *delegated judge* instead of the statutory three judges. One delegated judge is, under normal circumstances, only allowed in a very limited number of cases. This temporary practice of the court The Hague is based on existing jurisprudence of the Supreme Court. The practice is dictated by practical considerations: it is easier for the services to organize an electronic hearing when only one judge is involved. However, this practice is only followed if parties agree. If the parties don't agree their hearing will be by three judges and will be postponed. As the health regulations are being - slightly - lifted by now, court-hearings in these matters will now be held either in persona or through video-conferencing with all judges - and the clerk - present in the courtroom.

Criminal law:

Urgent cases are treated with priority and in a different way than in pre-Corona times.

We know 'very urgent' case and 'other urgent' cases.

The definition is as follows.

Very urgent cases:

- Decisions about pre-detention by the investigating judge;

*[lex silencio positivo en de reguliere procedure tijdens de corona crisis](#) 19-03-2020

*[uitstel van de beslistermijn vanwege het coronavirus](#) 19-03-2020

*[Juridische basis Corona-maatregelen voor horeca en evenementen](#) 19-03-2020

• [www.stibbeblog.nl:](#)

*[Bouwsector en corona: onnodig op de rem?](#) 08-04-2020

*[Nederland 'op slot gooien' vanwege corona: wie is daartoe bevoegd?](#) 19-3-2020

*[Begunstigingstermijn en dwangsommen bij overmacht door crises](#), 17-03-2020

• [Centrum voor openbare orde en veiligheid: Coronacrisis en het recht deel 1 t/m 10](#), 16-03/22-04-2020

- Decisions by the (investigating) judge which cannot be delayed, because of imperative legal deadlines, f.i. about the extension of the detention of a defendant in a psychiatric clinic;
- Court session in so called speedy cases and super speedy cases of (detained) defendants;
- Decisions about the execution of conditional convictions and community service and revocation of conditional released detainees;

Procedure:

Very urgent cases are settled as much as possible by video-conference. Only if the detainee cannot be heard by video and does not renounce his right of presence, the (investigating) judge can decide, by high exception, that the detainee will be brought to the court building where a physical court session will take place in the presence of the detainee.

Other urgent cases:

- Criminal cases of detained defendants, no injured party;
- International requests for detained 'requested persons';
- Decisions about extradition detention;
- Decisions about the extension of the detention of a defendant in a psychiatric clinic or an institution for frequent perpetrators;
- Hearing of witnesses by the investigating judge in cases where the defendant is in pre detention;
- Cases where there is a risk that the defendant will be longer in pre-detention than his ultimate punishment will last;
- So called mega-cases;
- Juvenile cases;
- Domestic violence and sexual abuse;
- Serious traffic accidents with victims;
- Cases which can be settled in writing without a court session;
- Exchange of opinions in writing not in court.

Procedure:

Urgent cases will be settled as much as possible by video-conference. If the detainee cannot be heard by video and does not renounce his right of presence, the case will be postponed.

Public prosecutor and lawyer are may be present if they wish, or take part by video-conference.

The interpreter takes part by preference by a telephone connection. Only if such is not possible he can be physically present in the courtroom

All other parties (also victims, relatives of a fatal victim, witnesses and experts) take part by video or bring in their written report or statements).

Advising bodies report in writing.

Public is not allowed in the courtroom.

Journalists can be present with a maximum of three persons, but where possible life streaming or screen connections will be used.

While scheduling the cases, the extra time needed because of the video- and possible other technical connections, will be taken in to account.

Other not urgent cases:

All cases will be postponed or delayed.

The public prosecutor is asked to withdraw the summons of these cases or request on for hand postponement and not to summon new cases which are not urgent.

Correspondence with the public prosecutor, defendant and other participants, may be done by e-mail.

From 11th May 2020 the following, mostly additional, rules apply.

Organization:

The court buildings will open up gradually.

A start will be made with physical court sessions.

Corona measures will be executed, f.i. one and a half meter distance.

The volume of the transport of detainees will be closely monitored.

Unusual times will be included in the planning, that is early mornings and late evenings.

Spare time in between the different court sessions will be scheduled, so parties and other involved persons can go in and out and hygienic measures can be executed.

Cases and procedure:

The juvenile cases and cases with a victim, will get priority attention.

The non-detained defendant will be in principle physically present.

The juvenile defendant, also when detained, will be in principle physically present.

If the public-prosecutor is physically present, also the lawyer can be present.

If a physical court session is held, all involved parties and persons are invited to be present.

If they wish, they can participate by video or in writing.

Public is still not allowed in the court buildings.

Administrative law:

The national assembly of team leaders made an internal working-instruction for the treatment of very urgent cases. The instruction describes which cases are to be considered very urgent. These are:

- preliminary injunctions;
- cases in relation to COVID-19, or measures taken to cope with the COVID-19 pandemic;
- certain asylum cases;
- evictions with severe potential consequences for public order;
- cases in which a request for accelerated processing is granted.

The administrative judge can decide to handle certain cases, such as harrowing affairs or those where a person's livelihood is at stake, even without a court hearing. This also applies to relatively simple cases that can be handled without a court hearing. If necessary, in these cases an extra possibility can be given to the parties concerned to reply in writing. The judge can also decide to hear parties by phone or video connection. In so far as possible the judge will also handle other categories of cases.

When judging whether a case should be heard in court, with physical presence of the persons involved, the next questions can be taken into account:

- are there witnesses to be heard?;
- is there a legal obligation to appear in court?;
- are the parties concerned unable to use means like video connection (either because they don't have the means or because they don't have the ability)?;
- is an interpreter necessary?;
- is the case subject to interest from the press?
- are there more than three parties?;

- has one or more of the parties explicitly requested a hearing in the court building?;
- is the case treated by three judges in the context of the training of judges?;

6. Did the amount of money and, more generally, the value at stake in the case play a role in the treatment of it?

Not particularly. As already explained, the criteria for urgent cases (per area of law) have been determined by the court presidents within the crisis management team, also in close consultation with the 'National Judicial Conference Committees' (LOVs). Per jurisdiction a list with urgent cases has been published online. It always concerns cases in which a decision cannot be postponed.

The full list can be found (in Dutch) on rechtspraak.nl.

In the end it is the judge who decides how a case should be handled (face-to-face, virtual, written or postponed etc).

7. As far as criminal cases are concerned, did cases concerning arrested defendants receive a different treatment?

The Temporary Law contains special provisions (article 27 and 28) for the way in which persons are heard by court in criminal cases.

In situations where the criminal procedural law accepts hearings of persons by video conference, another means of two-way communication can be used as well.

An exception is made for the hearing of defendants concerning (only) their pre-trial detention. These specific hearings on prolongation after a police arrest before a single judge (deciding on two weeks prolongation) or a panel of three judges (deciding up to another 90 days), can only be done by video conference or another means of two-way electronic communication in case of *ultimate, unavoidable necessity*.

Note: the practical outcome until end of April 2020 is that these hearings are practically all done by video conference or telephone call.

As already explained specific provisions are made in The Temporary Law for the hearing in court.

When a hearing in court in the presence of all parties involved, is impossible due to the outbreak of Covid-19, the hearing can be held by means of two way electronic communication. This exception does not apply in case the hearing is about the substantial aspects of the case.

Note: in practice, the courts didn't finalize any cases in physical presence of the defendants until now (the end of May 2020).

8. What was the impact of such legal reforms on legal deadlines and procedural timeframes?

Dutch *civil law* does not know many legal deadlines. Of course we know legal deadlines for appeal. These are upheld by the courts. Furthermore there are procedural regulations that contain timeframes (*proces- of rolreglementen*). Procedural timeframes are merely administrative measures to assure the due progress of procedures and don't have legal consequences. However, if a procedural timeframe has passed without the required action from the party concerned, it may be that the possibility to take that action (e.g. submitting a response) is lost. In emergencies these procedural timeframes in the

administration (*roltermijnen*) can be applied with lenience if required, without legal reforms.

In *criminal law* legal deadlines and timeframes when compulsory, have been respected since the outbreak of the pandemic. In general, especially when cases are not considered as (very) urgent, it will take longer to finalize the cases. Although specific numbers cannot be given at the time, the backlog of criminal cases already consisting before the outbreak, will certainly increase as a result of the measures. A lot of cases were postponed because of the limited possibilities for the courts to organize hearings, within the anti-virus provisions. It is a serious risk that the number of defendants that will be released from pre-trial detention will rise, while it is uncertain when their cases can be scheduled.

The Law introduces in article 29 the power for the Ministry of Justice to prolongue the term for completing the punishment of public service with a maximum of 12 months.

9. What is the role played in your country by IT, e-filing, smart and remote working in the management of cases as an effect of legal measures approved in order to cope with the Covid-19 pandemic? To what extent these measures are applicable also to the activity of Public Prosecutors?

Courts continue to work with digital means.

From May 11, court cases with litigants in the courtroom will again be limited if the physical presence of the parties is necessary. Temporary arrangements have been established for a number of jurisdictions.

Lawsuits that take place are as far as possible carried out remotely and with digital options. For video sessions, the judiciary uses the Skype Web App.

Parties/lawyers can now send procedural documents and messages that until now normally were send by post or fax, via Secure Mail. This makes the General case handling procedure possible.

International speaking we point at at an international initiative.

A Call to Action from Former Ministers, Attorneys-General, and Senior Judges:

"Justice Leadership in a Pandemic"

<https://www.globaldashboard.org/2020/04/29/a-call-to-action-from-former-ministers-attorneys-general-and-senior-judges/>

It is an initiative of Global Dashboard with i.a. Diego García-Sayán, UN Special Rapporteur on the Independence of Judges and Lawyers, saying:

"The COVID-19 pandemic places demand on more than health systems. Well-functioning justice systems are important in normal times - they are critical in the current crisis. (...) they must innovate. Not simply to move face-to-face operations online - though this is now urgent - but to increase their commitment (...)."

The Prosecutors' Office is using the options of IT as much as possible. In some judicial processes it has attended the court session by video-conference. From the re-opening of the courts 11th of May 2020, the prosecutor will again attend the court session in person.

Also the prosecutor has been an intermediary for the courts and the prisons in order to arrange more video-conferences for the court sessions. As mentioned, our Temporary Law provides the prosecutor with a broader legal option to work in this manner.

10.

What is the role played by your Association in the drafting of such legal reforms? Was your Association consulted by the Government before adoption of the aforesaid measures?

In non-pandemic circumstances the *Dutch Association for the Judiciary (de Nederlandse Vereniging voor Rechtspraak (NVvR))* is asked regularly to comment on drafts of law and legal regulations. COVID-19 urged the Dutch government to emergency legislation in which our Association was not asked to comment. Only the *Council of State (Raad van State)* who normally advises on draft law, commented the draft of the emergency legislation before it passed the parliament. The Dutch Association for the Judiciary however took the liberty to draft some statements concerning the immediate effect of this legislation on the everyday litigation and send it to the Ministry of Justice and Safety matters.

11. Did the Government consult the High Council for the Judiciary and/or other judicial institutional instances or representatives before adoption of the aforesaid measures?

Before the The Temporary Law Covid-19 was adopted, the following judicial institutions or representatives were consulted.

Formal consultation took place with advisory department of the *Council of State (Raad van State)*. The Council of State is an advisory body of the government in the Netherlands and the highest judicial body that can give a decision on a dispute between the citizen and the government.

Informal discussions have taken place with other judicial institutions. These stakeholders such as the Council for the Judiciary, the Dutch Bar Association and bailiffs (KBWG) read the proposals and advised the Ministry of Justice and Security.

The security measures that were incorporated in the so called Dutch 'intelligent lockdown', such as keeping 1.5 m distance and working from home as much as possible, were not discussed with judicial institutional instances. After these measurements were publicly announced by the prime minister, the Council for the Judiciary took its own responsibility and decided to close court buildings for the sake of public health. Since justice is an essential part of the democratic constitutional state it was decided that urgent cases should continue as much as possible. The urgent cases have been determined by the presidents within the *Crisis Management Team of the Judiciary (CMT)* in close consultation with the 'National Judicial Conference Committees' (LOVs).

12. What is the attitude of Bar Associations and Lawyers vis-à-vis such legal reforms?

The National Dutch Bar Association (The NOvA) has concerns about legal protection during Corona times.

Lawyers report, among other things, that confidential communication between lawyers and detained clients is in some cases under great stress and that clients cannot be visited safely in some prisons and refugee facilities. Also, due to lack of capacity time the hearing in court is limited to a maximum of 45 minutes and lawyers cannot see their clients during the hearings (and vice versa). Especially criminal lawyers face problems. Until now the situation in interrogation rooms at police stations are not safe. Further concern exists as to the position of mentally ill people, who are placed in institutions forcibly, without having seen a judge in due time

The letter from the Minister of Justice and Safety mentions "coordination" and "consultation" with the legal profession on a number of occasions. Indeed the NOvA often speaks with the Judiciary, the Public Prosecution Service and the Ministry of Justice and Security to find solutions. However, as the Nova has stated, this does not mean that everything is coordinated with the NOvA and done in accordance with the suggestions of the NOvA.

The NOvA stated that it is of great importance that the Minister pays sufficient attention to the extra vulnerable position of the social advocacy and its clients during the corona crisis. Social lawyers who suffer a loss of turnover as a result of the corona crisis will receive a compensation, as announced by the Minister of Justice on May 20. In recent weeks the NOvA has strongly urged a scheme for social advocacy to prevent their further financial difficulties. In short, the scheme includes a compensation for loss of turnover above 20 percent to a maximum of 40,000 euros.

The NOvA appreciates that the minister does not exclude further compensation measures if it turns out, as is expected, that this group of lawyers will face additional financial problems in the coming weeks.

The police complains that the Public Prosecution Offices cannot pursue with criminal proceedings because of the closing of the courts. There is a (new) backlog of criminal cases and the police fears that the Prosecution will dismiss a lot of these cases. The Prosecution Offices is planning to use in an increased measure to use its competence to handle small criminal cases outside the courts. The NOvA agrees with dismissal of cases.

The NOvA supports the decision of the Judiciary to gradually re-open the courts from 11 May for the physical handling of cases. At the same time, the NOvA points out the importance of close consultation with the attending lawyer and the litigant about their availability at the announced extended opening hours. The courts will extend the opening hours, so that courts are open from 7 am to 10 pm.

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