

Rule of Law report 2023 Contribution of the Netherlands Bar

General remarks

According to the Rule of Law Index of the World Justice Project, the Netherlands has been in the top five countries with a well-functioning rule of law for years¹. There are no major bottlenecks in the rule of law in the Netherlands.

Resilience/protection of lawyers

In the context of the proper administration of justice, lawyers must be able to do their work in a safe environment. In recent years, there have been several situations in which the safety of lawyers has been seriously compromised. Together with the Ministry of Justice and Security and the National Coordinator for Counterterrorism and Security (NCTV), the Netherlands Bar is enhancing the security and resilience of the legal profession. The Netherlands Bar has developed an approach that focuses on increasing resilience and awareness of potential risks. The Netherlands Bar founded the 'protection against criminal subversion task force' at the end of 2021. With this task force, the Netherlands Bar aims to strengthen the rule of law. Also, the Netherlands Bar wants to increase the awareness of the possible vulnerability of lawyers, just as their resilience and safety. The following initiatives are part of the task force:

- i) the emergency telephone of the Netherlands Bar,
- ii) a free safety scan through which lawyers can have their own law firm or private house checked for vulnerabilities; A specialised and certified company investigates physical vulnerabilities such as locks, windows, access control and cameras in the building. If needed, the lawyer will be advised about the security measures to take.
- iii) trainings to increase resilience; In 2022 the Netherlands Bar offered 500 spots free of charge. Besides, a special training on resilience was organised for lawyers who work with detainees. At the beginning of 2023, the Netherlands Bar will start to offer the training to increase resilience to starting lawyers and trainee lawyers so that they could learn how to deal with threats and which preventive measures could be taken.
- iv) digital resilience to increase the awareness of the risks of internet communication; The Netherlands Bar listed tips for confidential internet communication.
- v) team LawCare; lawyers who wish to talk to an experienced peer could call the LawCare telephone helpline.
- vi) blocking the home address in the trade register; from 1 January 2023, the Chamber of Commerce in the Netherlands blocks the home address in the trade register of owners from sole proprietors², partners of general partnerships³, limited partnerships⁴ and professional partnerships⁵. The blocked home addresses are only visible for government organisations like the Tax and Customs Administration or for authorised professional groups such as lawyers and bailiffs. As of 15 December 2022, blocking is also possible without demonstrable threat towards the lawyer. The Netherlands Bar and the Chamber of Commerce in the Netherlands have concluded a covenant that provides for blocking based on the mere demonstrability of being a lawyer.
- vii) findability of information in public registers; The Netherlands Bar intends to make a tool available in spring 2023 to lawyers to check in which public registers their (private) address details appear and to request the relevant register(s) to protect the lawyer's data.

¹ [WJP Rule of Law Index | Global Insights \(worldjusticeproject.org\)](https://worldjusticeproject.org/rule-of-law-index)

² 'Eenmanszaak' in Dutch

³ 'Vennoten van VOF's' in Dutch

⁴ 'Vennoten van CV's' in Dutch

⁵ 'Maten van maatschappen' in Dutch

The Netherlands Bar also intends to create a confidant for lawyers. This person, who is probably a lawyer as well, could be consulted in absolute confidentiality and separate from the supervisor. With this confidant, lawyers could exchange views on threats and matters that deal with (attempts to) criminal subversion. Besides, the Netherlands Bar is developing towards a Resilience knowledge and training centre together with other professional organisations. Furthermore, the University of Leiden conducts two researches commissioned by the Netherlands Bar. Both researches are approached from the perspective of the possible risk for the lawyer and his environment. The first research concerns the use of PGP telephones and other identity obscuring communication tools (f.i. Telegram), the second concerns the risks that are accompanied by the expansion of the regulation on collaborators of justice⁶. The Erasmus University Rotterdam will soon start a research with regard to the payments to lawyers including cash payments and the use of cryptocurrency.

Legal aid

Thanks to a passed motion in the House of Representatives of the Netherlands in 2021, it was decided that remunerations for the funded legal aid system will be increased in 2022. This change is in line with an independent research conducted in 2017 titled '*Evaluatie puntentoekenning in het stelsel van gesubsidieerde rechtsbijstand*'⁷. Furthermore, a new government and a new Minister for Legal Protection took office in 2022. In the coalition agreement it is indicated that the government wants to strengthen the funded legal aid system by implementing the recommendations from aforementioned research. This did not only imply higher remunerations, but also that the remunerations need to be up-to-date. The criticised reform of the system has been repealed. Instead, improvements of the current system will be worked on through strengthening cooperation between the different legal advisers and preventing unnecessary litigation by the government; A vision that is advocated by the Netherlands Bar since 2018. The Netherlands Bar will contribute to these improvements in the coming period.

Although the remunerations have been adapted since July 2022, legal aid lawyers, like many other people, face high inflation since then. Higher office expenses, training costs and personnel costs ensure that the increase in the remunerations is largely negated. At the moment of writing, the Minister for Legal Protection is not planning to increase the fees in line with the inflation until 2024. However, the travel allowance will be increased. Therefore, the Netherlands Bar will continue to argue for a higher indexation of the remunerations.

At the same time a labour market research titled '*De arbeidsmarkt voor de sociale advocatuur*'⁸ shows that there are serious concerns about the future supply of legal aid lawyers. The biggest problems consist of the low fees and the relative unfamiliarity with the legal profession among students. With the recommendations from that research, the Netherlands Bar will improve this supply to be able to safeguard access to justice in cooperation with the Ministry of Justice and Security.

Confidentiality

The confidentiality of the contact between the lawyer and the client is under pressure for several years and in many ways. In the framework of tackling subversive (organised) crime, the Dutch government announced measures in 2022 of which some seriously hinder legal aid in this type of cases. A legislative proposal has been proposed that intends to enable visual supervision during

⁶ 'Kroongetuigenregeling' in Dutch

⁷ [Eindrapport Evaluatie puntentoekenning in het stelsel van gesubsidieerde rechtsbijstand | Andere Tijden \(eerstekamer.nl\)](#)

⁸ [Arbeidsmarktonderzoek sociale advocatuur: tekort sociaal advocaten problematisch | Nederlandse orde van advocaten \(advocatenorde.nl\)](#)

the visit of a lawyer to high-security prisons. The Netherlands Bar opposes this and points out the importance of free and confidential lawyer-client communication.

With regard to respect for legal professional privilege, a judgment in interlocutory proceedings found that in a situation in which large amounts of emails are ordered from service providers, a real danger exists that the right of non-disclosure could be breached by the State in criminal investigations. The Netherlands Bar will be involved in the development of a new manual on how to deal with the disclosure of sensitive information.

Digitisation of justice

After the failure of the 'program quality and innovation'⁹ of the Judiciary (2014-2018), the Council for the Judiciary gradually works on the modernisation of and digital access to legal procedures from 2018. The Council for the Judiciary is now focusing on digital access instead of the automation of legal procedures. To minimise the risks, the next step will be taken when the technology has proven itself in practice. The aim for litigants and defending counsels is to enable, as far as possible, paperless litigation in administrative and civil proceedings. The Netherlands Bar is being closely involved. Although other chain partners (f.i. the Netherlands Public Prosecution Service) are involved in the digitisation of criminal law, the Netherlands Bar is also closely involved here. Lawyers do already receive digital files in almost all criminal cases in first instance, but also more frequently in appeal cases. Lawyers regularly test new parts of the digital service and share their thoughts in working groups on certain issues. The introduction of digital case flows for civil and administrative law always starts first at one or a few courts. Digital litigation will be enabled in all courts when all involved parties think that the systems work adequately. Lawyers could now litigate digitally via a web portal in different case flows. The role of the Netherlands Bar is mainly supervisory and to make sure that lawyers get involved in the development of the digital service. For the legal profession it is important that the system, that is used to exchange documents digitally with the Council for the Judiciary, is uniform and user-friendly. Other judicial bodies like the Council of State and the Supreme Court in the Netherlands develop their own digital systems for lawyers to exchange documents digitally via a web portal. This is also done gradually and the Netherlands Bar is closely involved.

Development of digitisation in civil law:

- Lawyers could voluntarily submit a petition for seizure digitally to all courts via the web portal 'Mijn Rechtspraak'.
- In all courts it is possible for lawyers to see the digital file on the case via 'Mijn Rechtspraak' and to communicate digitally.
- Since 1 February 2022 it is no longer possible to use the fax to communicate with the Council for the Judiciary. Now safe mailing is used. In this way information could be safely shared via e-mail and encrypted when confidential.
- Since 11 April 2022 lawyers could petition the courts in Midden-Nederland (location Utrecht) and Overijssel (location Almelo) for divorce digitally and jointly.

Administrative law:

- Lawyers are bound to litigate digitally in asylum and custody cases since 2017.
- Lawyers could opt between digital litigation and litigation on paper in regular immigration.
- Since 28 March 2022 digital litigation is possible at the Arnhem-Leeuwarden court in appeal cases where the Tax and Customs Administration is the other party. Citizens as well as professionals and organisations could carry out appeal procedures fully digital.

⁹ KEI, 'programma kwaliteit en innovatie van de Rechtspraak' in Dutch