

*VSAN summary of COVID 19 measures in the Netherlands focusing on what this means for lawyers by Marleen van Geffen, lawyer and member of the board of the Amsterdam Bar Association. (DeepL translation and an addition by Hanno Bos regarding detention and asylum.)*

### **Financial support – general**

#### *Now*

The Temporary Emergency Measure Bridging Employment (NOW) provides an allowance for wage costs for employers who expect to have least 20% less turnover over a period of 3 months. The aim is to maintain employment.

The scheme initially applied for three months and was extended under the name NOW 2.0 until the end of August, with some adjustments.

An important part of the first scheme was a ban on dismissing employees on commercial grounds. Violation of this prohibition led to a dismissal fine. In the NOW 2.0 this dismissal penalty was removed. Because the adjustment could potentially lead to dismissals, the Cabinet is earmarking EUR 50 million for retraining staff through the crisis programme 'NL leert door'. Trade unions have a say if an employer wants to dismiss more than 20 employees.

#### *Tozo*

The Temporary bridging scheme for self-employed persons (Tozo) offers income support to small self-employed persons (including self-employed persons) with loss of turnover, so that they can earn a living. An important condition is that the total income as a result of the corona crisis has fallen below the social assistance level. The livelihood allowance (max. EUR 1,500 net per month) supplements the income for a maximum of 3 months up to the social minimum. In the event of liquidity problems, a loan for working capital is possible.

The scheme has been extended under the name Tozo 2 until the end of August, with some modifications.

#### *TOGS and TVL*

The COVID-19 Policy Rule (TOGS) provides one-off support of 4,000 euros to entrepreneurs in sectors directly affected by the government's measures to contain the coronavirus. This is a tax-free amount that can be spent at the discretion of the Cabinet. The TOGS does not apply to the legal profession.

As of 1 June the TOGS will be succeeded by the Tegemoetkoming Vaste Lasten mkb (TVL). Entrepreneurs who have lost more than 30% of their turnover due to the corona

crisis can receive compensation. This can amount to 20,000 euros tax-free over 3 months.

## **Financial support - financed legal aid**

### *Advance arrangement*

On 24 March last, the Legal Aid Board took three emergency measures, namely an advance payment arrangement, a session allowance for written sessions and earlier or interim payments in extra-hours cases. The advance payment arrangement means that an additional advance payment can be applied for, the amount of which is 50% of the additions issued in September up to and including December 2019. The advance must be repaid in instalments in 2021.

### *Compensation scheme*

On the 20<sup>th</sup> of May, after weeks of insistence by the NOvA (Dutch Bar Association) the Minister of Legal Protection announced a compensation scheme for social lawyers who suffer loss of turnover as a result of the corona measures. In a nutshell, the scheme provides compensation for loss of turnover in excess of 20 percent up to a maximum of 40,000 euros. The compensation is calculated on the basis of figures from the Legal Aid Board over the years 2019 and 2020. Further details of the scheme are forthcoming.

## **Judiciary**

On 17 March, all courts were closed and only very urgent criminal cases were dealt with. These 'very urgent' cases were dealt with as much as possible by videoconference and only in very exceptional cases at a physical hearing. As of 7 April, other urgent cases will be dealt with again, also by videoconference as much as possible. Lists of 'very urgent' and 'other urgent' cases have been drawn up.

From 11 May 2020, the dishes will gradually be opened. From this date, a start will be made with holding physical hearings in court buildings where 'corona measures' apply, such as keeping a distance of one and a half metres. This will involve a limited number of hearings in which criminal cases, juvenile (criminal) cases and family cases will be given priority. The starting point remains to deal with cases as much as possible in writing or by telephone (image) connection.

In addition, it is possible to make use of the court provisions for safe email communication (Veilig mailen voorziening van de Rechtspraak) for the submission of (procedural) documents and messages (Article 1.2). Besides the (highly) urgent cases, cases that lend themselves to written settlement are always dealt with.

How many cases can be handled in the physical presence of litigating parties depends, among other things, on the degree to which a courthouse can be made coronally stable and the capacity in the cell complex and at the carrier's premises. This may differ locally. Each court examines for each jurisdiction to what extent expansion is possible in the coming period. Consultations are held locally with the Public Prosecutor's Office and the legal profession, as well as with other relevant partners.

In addition, there will be extended opening hours for courthouses, so that hearings can also be held early in the morning or early in the evening.

### **Temporary law COVID-19 Justice and Security**

On 24 April, the Temporary Law COVID-19 Justice and Security entered into force. This Temporary Act provides the basis for the use of electronic means of communication in situations where a physical hearing or physical presence during an interrogation is not possible. Instead of videoconferencing, in which a direct audio and video connection is established, another two-way electronic means of communication can also be used.

The Explanatory Memorandum to the Temporary Act COVID-19 Justice and Security states that the physical presence of a person who is heard or interrogated is generally preferable to the use of videoconferencing. The use of this fallback solution should therefore only be resorted to, especially if this is against the wishes of the suspect or counsel, if the presence of the detained suspect at the hearing is not possible or very difficult in connection with the fight against the coronavirus.

With regard to decisions concerning the prolongation of the supervision or relocation of a minor, it applies that these can be taken immediately if oral proceedings prove impossible even with the use of a two-sided electronic means of communication. In that case, an extension is possible for a maximum period of three months. According to the Explanatory Memorandum to the Act, the impossibility of the hearing may lie in various circumstances: in the unavailability of the necessary electronic means or the (im)possibilities of the parties to participate fully in a hearing in this form, but also in a lack of capacity within the court or court of appeal as a result of which a hearing is logistically impossible.

### **Concerns**

The NOvA has expressed concerns about legal protection in corona time. Lawyers point out, among other things, that confidential communication between lawyer and detained clients is under great tension in some cases and that clients in some PIs and Asylum Centres (AZCs) cannot be visited safely. There are also concerns about the fact that, due to a lack of capacity, the telehearing (video hearing in criminal cases) is limited to a maximum of 45 minutes, that lawyers cannot see their clients during

hearings (and vice versa), and that people committed for psychiatric treatment (Wvggz cases) are forcibly admitted immediately for a period of five years, without ever having been seen or heard.

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### **Detention forced returns**

The courts have committed themselves to always having a hearing unless the right is waived by the person in detention or a hearing is impossible. In practice this means a video conference hearing but if this is not possible and the lawyer insists, a real hearing in court must be held and is possible again in most courts. It is possible to visit clients in prisons for alien's detention. At this moment detention remains possible because COVID 19 measures are deemed temporary. Because of COVID 19 measures in prisons the inmates must stay in their cells 20 hrs a day.

### **Asylum procedures**

There was a huge backlog before the COVID 19 measures. For months now it has not been possible to apply for asylum, increasing the backlog. The Immigration and Naturalisation Service (IND) has now started a new program of video interviews with asylum seekers in order to recontinue processing asylum requests. This must still be evaluated but there seem to be many problems one of which is that for the moment lawyers cannot view or participate in the interviews from their office and must travel to a separate location. However, on a more positive note, plans to remove lawyers from the preliminary asylum procedure have been dropped.