

## EPK COUNTRY REPORT 2021 - THE NETHERLANDS BAR

In 2021 the Netherlands Bar will focus on various issues, of which the most significant are highlighted below. This report concludes with figures that are extracted from the bar register.

### Resilience/protection of lawyers

Increasing the resilience and awareness of the possible vulnerability of lawyers is an important and topical subject for the legal profession in the Netherlands. The direct reason for this is the murder on Derk Wiersum (September 2019), lawyer for a state witness in a case against members of a violent drug gang. Additionally, the Netherlands Bar has been noticing an increase in threats against lawyers. Initial observations amongst lawyers in various areas of law and in several roles (besides lawyer also curator and supervisor) underline that importance. At the same time, it seems to be difficult to make the topic vulnerability a subject of discussion in the legal profession. However, there is need for support with regard to this issue. The Netherlands Bar is coordinating this support with the Judiciary, prosecutors and journalists. In 2021, some concrete steps to support lawyers will be put into practice. These steps include: i) trainings to increase resilience that are an inherent part of the vocational training, ii) a free “object scan”, through which lawyers can have their own law firm checked for physical vulnerabilities and for findability in registers, and iii) the national bar initiative to set up a place of refuge for persons threatened in their professional practice. The so-called “Wijkplaats” intends to provide a quiet shelter to share negative experiences with other (legal) professionals like judges, notaries, prosecutors but also journalists, bailiffs and public administrators. National bars from other countries are invited to participate. For more information you could contact Mrs. Van den Berg ([r.vandenberg@advocatenorde.nl](mailto:r.vandenberg@advocatenorde.nl)) or Mr. Korsten ([l.korsten@advocatenorde.nl](mailto:l.korsten@advocatenorde.nl)).

### Reasonable remuneration for legal aid lawyers

Since 2008 the Dutch government has cut back a number of times on the subsidized legal aid system. As a result, legal aid lawyers do not receive reasonable remuneration for their work. Despite the possible consequences for the access to justice and the quality of legal aid, the current government has chosen not to structurally invest in higher remuneration for legal aid lawyers. Notwithstanding the campaigns of the Netherlands Bar, the legal profession and even the parliament, the Minister for Legal Protection focused on a reform of the system that could only be implemented in 2025; a system reform that has already been criticized on several points. After the March 2021 Dutch general elections, the Netherlands Bar will draw the attention of the new government and parliament to the acute needs of legal aid lawyers and the importance of investing in access to justice.

### Digital assistant

In the provision of first line legal aid, the Netherlands Bar is working closely with the Legal Service Counter (in Dutch: Juridisch Loket) on a digital assistant for the website of the Legal Service Counter. This online assistant uses a chatbot to help people obtain advice for legal questions about divorces and dismissals for example. It is also useful for people who would like to calculate their personal contribution when they are eligible for subsidized legal aid. Currently the digital assistant only covers a limited number of areas of law, but the aim is to expand this.

### Other pilots and projects to improve the legal aid system

The Netherlands Bar actively contributes to improve the legal aid system by participating in various pilots and projects. One of the pilots is called “cooperation in the first line” and is aimed at further improving the cooperation between legal aid lawyers, social legal counsellors and staff members of the Legal Service Counter. The pilot aims to provide an easily accessible, low threshold access for citizens to effective legal aid and will be completed and evaluated this year. Another project will be further rolled out, i.e. that big

commercial law firms assist legal aid lawyers with practical matters. Secondment of trainees and opening up of the legal library are examples of this assistance.

### **Renewed vocational training**

In the past years, the Netherlands Bar has developed a new, consistent and future proof vocational training for lawyers. The new training starts in March 2021. The curriculum will focus more on ethics (including the topic resilience/vulnerability of lawyers), practical skills and the application of legal knowledge.

### **Modernization of criminal proceedings**

In 2021 the parliamentary process to revise the Code of Criminal Procedure will start. The new Code of Criminal Procedure will consist of eight parts, or 'books'. The changes will make the Code easier to use, improve the administration of justice by the courts, and improve the performance of the criminal justice system. This process commences with the submission of the official final version of the new legal text by the Ministry of Justice and Security to the Council of State. Simultaneously the preparation of the implementation of the so-called Innovation Act Criminal Proceedings takes place. The Netherlands Bar has been involved in the preparatory phase and will also continue to be involved in an active manner towards the government to influence the content of the Code and to map the impact on the subsidized legal aid system.

### **Legal aid in cases where the Public Prosecution Service imposes the sentence**

Already for several years the Netherlands Bar is making efforts to achieve an intensification of legal aid regarding the imposition of penal orders. A well-organized legal aid system is essential in a model in which a prosecutor acts as judge. Important steps were taken in 2020 that will need to be further developed in 2021. The Netherlands Bar continues its efforts and also emphasizes the importance of an adequate remuneration for lawyers. In doing so, the necessary legal aid could really be granted in a fully responsible way.

### **Legal professional privilege**

In the past years consistent calls have been made for containing legal professional privilege of lawyers and notaries (and medical practitioners). The main reason seems to be that this privilege is 'bothering' (fiscal) investigation authorities during the performance of their work activities. The Netherlands Bar is committed to put the importance of professional secrecy and legal professional privilege into the right perspective, namely to protect the litigant.

### **Digitalization of court proceedings**

The plans of the Council for the Judiciary to enable digital litigation in civil and administrative law cases have been assessed by a Bureau for ICT (in Dutch: BIT). As these plans gained the confidence of the Minister for Legal Protection in October 2020, the Council for the Judiciary will now start to enable the digital submission of cases, the digital exchange of documents and the digital correspondence with the Judiciary as well as the digital handling of files. The Council for the Judiciary has chosen to roll out digital accessibility small-scale and step-by-step for parties within the present legal framework. Therefore the Netherlands Bar expects that it will take years before all case flows are digital in civil and administrative law cases. By contrast, in other areas of law digital proceedings are already very common. For example curators and professional administrators already communicate digitally with the Judiciary about insolvencies and protective guardianships. Furthermore, digitalization of court proceedings is extensively applied in criminal proceedings (around 98%) and quite common at the Supreme Court. The Council of State is working towards the implementation of obligatory digital litigation in asylum and custody cases.

### Quality management

A lawyer in the Netherlands needs to provide good quality, not only for the parties seeking justice, but also in the interest of the profession itself. The Netherlands Bar ensures that quality is assured and contributes to a further promotion of quality. The Netherlands Bar has introduced an obligatory register with areas of law. Lawyers need to register themselves in this register for at least one and at most four areas of law after their vocational training. Since March 1 2020, lawyers in the Netherlands are required to pass annual quality tests by participating in a form of structured feedback. Structured feedback is a way to learn from experiences, problems, successes and challenges together with colleagues or peers in the daily working practice. This deepening of knowledge, insight and competences needs to lead to more effective professional conduct. Lawyers could choose from three forms of structured feedback, i.e. intervision, peer review and structured intercollegiate consultation. In the past years the Netherlands Bar has mainly focused on the training of discussion leaders for intervision. At this moment around 450 discussion leaders have registered. The focus of our general council has now shifted to training reviewers for peer review. In spring 2021, 'Reviewer peer review' courses will start. Later in the year peer review will be further stimulated. The Netherlands Bar has developed general assessment criteria for this that were established by law in December 2020.

### Self-assessment

As part of quality management, the Netherlands Bar has developed a self-assessment tool in 2020. This tool helps lawyers to gain insight in their functioning as a lawyer. The self-assessment will be voluntary and there are no "right or wrong" answers. The emphasis lies on self-reflection and self-development. On content the focus is on ethics. It is expected to be accessible for lawyers towards the end of March 2021. A sounding board of lawyers with various background has been involved in the development of the self-assessment tool. The official introduction is preceded by a pilot in January 2021 in which approximately 100 lawyers participate. With the feedback from this pilot, the self-assessment tool will be further optimized.

### Platform for inclusion and diversity

The Netherlands Bar underlines the importance of equal opportunities, diversity and inclusion, not only from a social perspective, but particularly because this leads to an enrichment of the Bar itself. The diversity and inclusion statement that the Netherlands Bar has drafted in 2018 will be further put into practice this year to promote inclusivity. As part of this, the Netherlands Bar has taken the initiative to set up the platform 'Inclusion and diversity'. 35 participants will research concrete possibilities in small groups for social innovation, i.e. the promotion of diversity in the legal profession and increasing the awareness of the added value.

### Policy development ABS

In 2021, the Netherlands Bar will further develop its policies with respect to the alternative business structure (ABS) from the perspective of the legal profession regulations and the code of conduct. In this policy development, the core values of the lawyer are leading. With this research the Netherlands Bar is looking at the possibilities to impose the guarantees against risks of infringements on the core values on the level of the lawyer instead of on the level of the business structures. The Netherlands Bar involves the expertise of lawyers and plans to have results by the end of 2021.

### Supervisory Board

In 2015 the legislator established the Supervisory Board (in Dutch: College van Toezicht). The Supervisory Board has an independent position within the Netherlands Bar and is tasked with the functioning of supervision and the handling of complaints by the local bar presidents. In October 2020 the Supervisory Board has established its [enforcement framework](#).

### Covid-19

The developments concerning Covid-19 have significant impacts on justice and the legal profession. The Netherlands Bar established a crisis team that has a permanent dialogue about the measures regarding justice and the consequences for lawyers with the Ministry of Justice and Security, the Judiciary, the Public Prosecution Service and the Legal Aid Board.

### Figures of the Netherlands Bar

Lawyers per district	1-1-2020	1-1-2021	Difference
Amsterdam	5568	5769	3,6%
Abroad	215	180	-16,3%
Den Haag	1894	1939	2,4%
Gelderland	1186	1200	1,2%
Limburg	747	730	-2,3%
Midden-Nederland	1831	1793	-2,1%
Noord-Holland	835	828	-0,8%
Noord-Nederland	772	747	-3,2%
Oost-Brabant	1122	1140	1,6%
Overijssel	662	652	-1,5%
Rotterdam	2042	2018	-1,2%
Zeeland-West-Brabant	950	968	1,9%
<b>Netherlands</b>	<b>17824</b>	<b>17964</b>	<b>0,8%</b>

Below chart shows the distribution of the law firms in the Netherlands by size

