

EPK COUNTRY REPORT 2023 - THE NETHERLANDS BAR

In 2023 the Netherlands Bar will focus on various issues, of which the most significant are highlighted below. This report concludes with figures on the growth of the Netherlands bar per district, taken from the bar register.

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*'¹. 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 The criticised reform of the system has been repealed.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*'² 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.

Continuous training

The Netherlands Bar has started a study of a new quality system to maintain the professional competence of the lawyer. Further to the recent implementation of the renewed vocational training, the continuous training is now being examined. The Netherlands Bar is examining which requirements a future-proof continuous training should meet, in any case, it will be more concentrated on a principle-based instead of a rule-based approach.

Digitalisation of justice

After the failure of the 'program quality and innovation'³ 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

¹ [Eindrapport Evaluatie puntentoekenning in het stelsel van gesubsidieerde rechtsbijstand | Andere Tijden \(eerstekamer.nl\)](#)

² [Arbeidsmarktonderzoek sociale advocatuur: tekort sociaal advocaten problematisch | Nederlandse orde van advocaten \(advocatenorde.nl\)](#)

³ KEI, 'programma kwaliteit en innovatie van de Rechtspraak' in Dutch

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.

Supervision of the legal profession

The general council of the Netherlands Bar supports the plan of the Minister for Legal Protection in which supervision is exercised at national level and within the profession, the Netherlands Bar. Supervision within the profession is necessary for the independent position of lawyers and the litigants. The national supervisor (LTA⁴) will be responsible for national supervision. National supervision leads to the pooling of knowledge and experience and to harmonisation of supervision. The local embedding should be secured by (specialised) supervisors. A good exchange of information between the local bar president and supervisors is required. Dialogues about this are taking place with the local bar presidents. Members of the LTA shall not be a member of other bodies within the Netherlands Bar and the local bars. They will also be exempted from lawyer's activities. In appointing members of the LTA, independence is integrated via an outward-looking approach. Besides, the LTA appoints its own personnel and personnel is exclusively responsible to the LTA. Financial independence is ensured, as the LTA has its own autonomous budget, which it determines in consultation with the general council and with the 'view from outside'. The general council will consult the Minister to further discuss this. With the introduction of the LTA, there will no longer be any role for the supervisory board. The general council will address the new supervision model to the members of the bar.

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

⁴ 'Landelijk Toezichthouder Advocatuur' in Dutch

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 proprietors⁵, partners of general partnerships⁶, limited partnerships⁷ and professional partnerships⁸. 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.

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 justice⁹. The Erasmus University Rotterdam will soon start a research with regard to the payments to lawyers including cash payments and the use of cryptocurrency.

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 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

⁵ 'Eenmanszaak' in Dutch

⁶ 'Vennoten van VOF's' in Dutch

⁷ 'Vennoten van CV's' in Dutch

⁸ 'Maten van maatschappen' in Dutch

⁹ 'Kroongetuigenregeling' in Dutch

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.

Restrictive detention measures

The Netherlands Bar opposes the proposed decision of the Minister for Legal Protection to restrict the number of criminal lawyers for detainees to two in the Vught Penal Institution, a high-security facility for serious criminals in the Netherlands who present a risk of escape. This decision infringes the right to choose one's own lawyer. Besides, the Minister intends to enable the recording of conversations visually between lawyers and detainees in certain prison regimes. The Netherlands Bar considers that this conflicts with the necessary confidentiality of lawyer-client communication and the right to legal aid. In response to the proposed decision of the Minister, the Netherlands Bar points out that the vast majority of lawyers do their work with integrity and that the Minister should be reluctant to implement generic legislation.

Sanctions following Russia's military aggression against Ukraine

The Netherlands Bar regularly consults with the departments of various ministries about the practical elaboration of new sanctions packages against Russia. The Netherlands Bar maintains a separate web page on which it publishes up-to-date and practical information about the application of the sanction rules by lawyers and informs lawyers about this via newsletters as well. The Netherlands Bar will actively participate in the consultation of the revision of Dutch sanctions legislation in 2023.

AML

In 2022, the Minister of Justice and Security and the Minister of Finance made policy (priorities and actions) to further tackle money laundering¹⁰. The Netherlands Bar is involved in developing actions aimed at strengthening the gatekeeper function of lawyers. Efforts by the Netherlands Bar to increase awareness of the national AML/CTF rules among lawyers tie in with this. In addition, strengthening the mutual cooperation between Designated Non-Financial Businesses and Professions including the Netherlands Bar. In February 2023 the parliamentary process to revise the current Dutch AML/CTF rules will start. The legislative proposal includes an obligation for – among others – lawyers to exchange data regarding high-risk clients (lawyer to lawyer). The Netherlands Bar will be involved in an active manner towards the government to influence the content and the impact on the profession.

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'. 26 participants are researching 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.

Growth of the Netherlands Bar in 2022 and in the past 10 years

On 1 January 2023, 18,218 lawyers are registered, a limited increase of 0.63% compared to 2022 (18,104). The limited growth of the Netherlands bar in 2022 is almost entirely attributable to the district of Amsterdam (+3%). There has been a slight decrease in the number of lawyers in nine of the eleven districts. Relatively the largest drop is the district of Limburg (-2.25%)

¹⁰ 'Beleidsagenda plan van aanpak witwassen' in Dutch

Groei van de balie 2022

ARRONDISSEMENT	Aantal advocaten per 1 januari 2022	Aantal advocaten per 1 januari 2023	Verschil	
			aantal	percentage
Amsterdam	6.036	6.225	189	3,13%
Den Haag	1.941	1.948	7	0,36%
Gelderland	1.189	1.173	-16	-1,35%
Limburg	756	739	-17	-2,25%
Midden-Nederland	1.801	1.788	-13	-0,72%
Noord-Holland	801	796	-5	-0,62%
Noord-Nederland	753	751	-2	-0,27%
Oost-Brabant	1.146	1.145	-1	-0,09%
Overijssel	665	657	-8	-1,20%
Rotterdam	2.039	2.034	-5	-0,25%
Zeeland-West-Brabant	977	962	-15	-1,54%
TOTAAL	18.104	18.218	114	0,63%

Groei van de balie in de laatste 10 jaar

