Research project EUPRETRIALRIGHTS

Improving the protection of fundamental rights and access to legal aid for remand prisoners in the European Union

EMPIRICAL STUDY

The actors of legal protection, their professional practices and the use of law in detention.

Report on the NETHERLANDS

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1 THE NATIONAL CONTEXT

1.1 Spaces of pre-trial detention

Pre-trial detention in this report has to be understood in a broad sense: it includes both detainees who are awaiting trial and detainees who have been sentenced by the court but are awaiting the result of appeal proceedings or who are within the statutory time-limit for filing an appeal. Both groups are referred to as remand prisoners or pre-trial prisoners in this report.

As described in the report on workstream 2, pre-trial detention can be divided in three stages: remand in custody (*inbewaringstelling*), detention in custody (*gevangenhoudin*g) and arrest (*gevangenneming*). Before the pre-trial detention phase, a suspect can be deprived of his liberty by means of police arrest for questioning (*ophouden voor onderzoek*), and by means of police custody (*inverzekeringstelling*). The competence to issue police custody is vested in the public prosecutor and the assistant public prosecutor. During this period of time, the suspect is held on the police station.

As a basic principle, remand prisoners, who are awaiting trial are held in a remand prison (*huis van bewaring)*. The capacity of the remand prisons consisted in September 2016 of 3.272 places (cells), which was about 1/3 of the total prison capacity of 10.688 places in that year.[1] The first placement of the pre-trial prisoner awaiting his sentence in first instance will be in a remand prison located in or assigned to the district of prosecution. Remand prisoners who have appealed to their sentence or are within the statutory time limit for doing so can already be transferred to a prison. The judge may decide that the pre-trial prisoner is placed in another place than in a remand prison in case of special personal circumstances. In such case, the order for pre-trial detention mentions the place where the pre-trial detention will be executed. For the investigation of the suspect's mental facilities, the examining judge can decide to place the prisoner in a special facility. Usually, such investigation takes place in the Pieter Baan Centre. If the detainee suffers from mental disease or defect, he can be brought to a psychiatric hospital. The selection officer (*selectiefunctionaris)* can decide that the remand prisoner is kept on the police station in case of a shortage of space for a maximum period of 10 days (excluding the time of the police arrest for questioning and the police custody).

Further information about the location of the pre-trial detention, the applicable regimes and detention circumstances can be found in the detailed description in the Introductory Part of the report on workstream 2.

1.2 Main social characteristics of the general detained population

1.2.1 Statistical information

[1] Council of Europe Space I 2016.1, Table 1,2, p. 46.

In the last 10 years the prison population in the Netherlands has decreased enormously. While on 1 September 2005 the prison population amounted to about 15.000, this number has decreased to 8.726 in 2016. Per 100.000 inhabitants the prison population decreased from 94.4 to 51.4. As a consequence, many prisons had to be closed. In 2016, the total prison capacity counted 10.688 places, what was still far above the total prison population of 8.726 detainees. The majority of these prisoners are male (94.7%) and 21% of all detainees (men and women) are foreigners (see table 1 and 2).

Table 1 Prison population on 1 September 2016[2]

Population on 1 September 2016	Total number of inmates (including pre-trial detainees)	Prison population rate per 100.000 inhabitants	Total capacity of penal institutions	Total number of cells	Prison density per 100 places	Average number of inmates per cell
16.979.120	8.726	51.4	10.688	10.688	81.6	0.8

Table 2 Prison population on 1 September 2016[3]***: men/women/foreigners***[4]

Population on 1 September 2016	Total number of inmates (including pre-trial detainees)	Total number of male inmates (including pre-trial detainees)	Total number of female inmates (including pre-trial detainees)	Total number of foreign inmates (including pre-trial detainees)
16.979.120	8.726	8.262 (94.7%)	464 (5.3%)	1.590 (21%)

According to table 3 about 44% of all detainees are remand prisoners. This is correct when the term pre-trial detainee is used in a broad sense, including both untried detainees and detainees who are already sentenced but who have lodged an appeal or who are in the statutory limit for doing so. 11.5% of 3.804 pre-trial detainees, as mentioned in table 4 belong to this latter category.[5] In contrast to the remand prisoners, who are detained in a remand prison until their first sentence, prisoners who are sentenced are no longer detained in a remand prison but are transferred to a prison for sentenced prisoners, regardless of whether they have lodged an appeal or are still in the statutory limit for doing so.

2 Council of Europe Space I 2016.1, Table 1 and 1.3, p. 37
3 Council of Europe Space I 2016.1, Table 1 and 1.3.
4 Council of Europe Space I 2016.1, Table 3A, p. 67, Table 3B, p. 69 and Table 4, p. 71.
5 Council of Europe Space I 2016.1, Table 5.1, p. 77.

Table 3 Population pre-trial detainees on 1 September 2016

a	b	c	d1	e	f1	g	h1
3.804	44%	3.618	43.8%	186	40.1%	803	50.5%
			d2		**f2**		**h2**
3.804			95.1%		4.9%		21.1%

a Pre-trial population on 1 September 2016
b Percentage pre-trial detainees in total number of detainees
c Male pre-trial detainees
d1 Percentage of c in total number of male detainees
d2 Percentage of c in total number of a
e Female pre-trial detainees
f1 Percentage of e in total number female detainees
f2 Percentage of e in total number of a
g Foreign pre-trial detainees
h1 Percentage of g in total number of foreign detainees
h2 Percentage of g in total number of a

Table 4 Pre-trial detainees (voorlopige hechtenis) according to the Custodial Institutions Agency (Dienst Justitiële Inrichtingen, DJI) 2012-2016[6]

	2012		**2013**		**2014**		**2015**		**2016**	
	N	**%**	**N**	**%**	**N**	**%**	**N**	**%**	**N**	**%**
Pre-trial/on remand	5.453	49	4.911	47	4.251	43	3.874	43	3.840	44
Untried prisoners	3.619	32	3.240	31	2.707	27	2.655	29	2.558	29
Appeal still possible	521	5	392	4	311	3	308	3	288	3
Appeal lodged	1.313	12	1.279	12	1.233	12	1.001	11	994	11

6 Dienst Justitiële Inrichtingen, *DJI in getal*, juli 2017, table 2.5, p. 24.

Table 5 shows that the majority of pre-trial detainees stay in a remand prison only for a relatively short period of time. The average period is 60 days, the median is 30 days. 23% is released within 2 weeks. About ¾ of all pre-trial detainees are released within 3 months and 82% within 6 months. Only 8% are detained for a period longer than 6 months.

Table 5 Length of pre-trial detention (untried prisoners)[7]

Length	**Number**	**%**
<2 weeks	1.873	23
2 wks <1 mth	2.180	27
1 mth < 3 mth	1.975	24
3 mth < 6 mth	1.505	18
6 mth <1 yr	554	7
1 yr < 2 yrs	80	1
2 yrs <4 yrs	11	0
4 yrs and more	3	0
Total	**8.181**	**100**
Median in days	30	
Average in days	65	

The majority of detainees are between 23 and 39 years old. Its percentage of the total prison population amounts to 54%. Notwithstanding the strong decrease of the prison population between 2012 and 2016 this percentage has remained very stable. A strong decrease can be observed with regard to the young adults (18-19 and 20-22 years). Their number reduced in these 5 years with 65% and 50% respectively.

Table 6 Age of detainees in 2012 and 2016[8]

Age	**Detainees in 2012**	**In %**	**Detainees in 2016**	**In %**	**Increase/decrease in %**
18-19 years	412	3,7%	143	1,6%	-65%
20-22 years	1.174	10,5%	592	0,7%	-50%
23-29 years	2.825	25,3%	2.162	24,6%	-23%
30-39 years	3.128	28%	2.595	29,2%	-17%
40-49 years	2.428	21,7%	1.988	22,6%	-18%
50-59 years	935	8,3%	1.014	1,2%	+8%
60 years and older	258	2,3%	312	3,5%	+21%
Total	**11.160**	**100%**	**8.806**	**100%**	**-21%**

Table 7 and 8 contain information on the main countries of origin of detainees and the crime(s) for which they are detained. The majority of the detainees are from Dutch origin or countries belonging to the Kingdom of the Netherlands (Aruba, Curacao and St. Maarten) or from Surinam, which has still strong cultural and economic ties with the Netherlands. A large minority of Dutch population has its roots in Morocco, Turkey and Poland, which is also reflected in their presence in Dutch penitentiary institutions.

7 Dienst Justitiële Inrichtingen, *DJI in getal*, juli 2017, table 2.13, p. 34.
8 Dienst Justitiële Inrichtingen, *DJI in getal*, juli 2017, table 2.8, p. 27.

The large number of detainees detained for being suspected or sentenced for having committed a property crime, a violent crime or sexual crime corresponds with the proportion of these crimes in annual criminal statistics.

Table 7 Prison population according to country of origin in 2016[9]

Country of origin	**Number**	**Percentage**
The Netherlands	5.127	58.2
Dutch Antilles	621	7.1
Surinam	456	5.2
Morocco	396	4.5
Turkey	213	2.4
Poland	196	2.2
Somalia	127	1.4
Romania	122	1.4
Yugoslavia	114	1.3
Iraq	81	0.9
Total Top 10	**7.453**	**84.6**
Other	1.246	14.1
Unknown	107	1.2
Total	**8.806**	**100**

9 Dienst Justitiële Inrichtingen, *DJI in getal*, juli 2017, table 2.9, p. 27.

Table 8 Population according to the crime committed[10]

Crime	Number 2012	%	Number 2016	%
Property crimes (excl. violence)	2.029	21	1.762	23
Property crimes with violence	1.966	20	1.183	16
Violent crimes (excl. sexual crimes)	2.755	28	2.147	29
Sexual crimes	442	4	393	5
Vandalism, crimes against public order	416	4	367	5
Other common crimes	47	0	34	0
Drug crimes	1.616	17	1.311	17
Traffic crimes and misde-meanours	339	3	120	2
Crimes accord-ing to the Act Weapons and Munition	92	1	108	1
Crimes of other Acts	92	1	80	1
Total known crimes	**9.844**	**100**	**7.505**	**100**
Unknown	1316		1.301	
Total	**11.600**		**8.806**	

1.2.2 Educational level of detainees

In 2015, Statistics Netherlands (*Centraal Bureau voor de Statistiek,* CBS) conducted an analysis of the socio-economic situation in the period 2011 to 2013 of a group of men who entered a remand prison between October 2010 and April 2011 and participated in the Prison Project. This analysis shows that the former prisoners from this group relatively often have a low level of education. More than 60% have completed a prevocational secondary education (*voorbereidend middelbaar beroepsonderwijs*, VMBO). That is more than twice as much as the national average. In 2012, 30% of Dutch men aged between 15 and 65 had a prevocational secondary education-level or lower education.

The level of education of ex-prisoners with work is slightly higher than for men living on benefits or those who are without an income. 57% did not follow a course or did so at prevocational secondary education-level, 36% went through a secondary education and 6% had a high level of education. The average age is higher in the group of former prisoners living on benefits than in the groups with work and without income.

[10] Dienst Justitiële Inrichtingen, *DJI in getal*, juli 2017, table 2,6, p. 25.

Nearly half of the male ex-prisoners depend on a benefit by the state three months after the end of detention. 20% derives their income mainly from work. The remaining 34% has no revenue that could be observed by Statistics Netherlands.

The examined Dutch male prisoners appear to have more work than the foreign ex-detainees. Men who had a job before the start of their detention period or who generated income as a self-employed person, are 25% more likely to find work after detention than men who did not. Men who have been detained for more than a year have less work than men who have been detained for a shorter period. Although these ex-detainees have unfavourable socio-economic prospects after detention, research shows that among a comparable group of people without detention, the same period of unemployment can be at least as unfavourable for socio-economic prospects.[11]

1.3 Recent evolutions of initiatives to compensate juridical inequalities among detainees/prisoners.

No evolutions of mechanisms have been put in place (or were withdrawn e.g. due to austerity measures) in the Netherlands on national or local level, aiming at compensating juridical and economical inequalities among prisoners.

1.4 Litigant information

In the literature, for a long time, there was no information about age, sex or educational level of litigants in penitentiary proceedings. It were Van Ginneken, Palmen, Bosma, Nieuwbeerta and Berghuis who have shed light on *inter alia* these characteristics of litigants in Dutch penal procedures. This information was gathered in 2017 in a wide-scale survey amongst prisoners in all prisons in the Netherlands.[12] In the survey, they could indicate whether they had ever filed a complaint. If so, they were asked to give their judgement on 4 statements, being 1) the visiting officer on a monthly or weekly rota basis could be reached easily, 2) the Complaint Committee took the complaint seriously, 3) the complaint was dealt with swiftly, and 4) I am satisfied about how the complaint was dealt with.[13] They could indicate whether they totally disagreed with the statement (1), they disagreed with the statement (2), they had a neutral stance on this (3), they agreed with the statement (4), or whether they totally agreed with the statement (5).[14]

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11 See <https://www.nationaleonderwijsgids.nl/mbo/nieuws/28377-cbs-ruim-60-procent-ex-gedetineerde-heeft-alleen-vmbo-diploma.html> (last accessed on 3 November 2018).

12 E.F.J.C. Van Ginneken, H. Palmen, A.Q. Bosma, P. Nieuwbeerta & M.L. Berghuis, "The Life in Custody Study: the quality of prison life in Dutch prison regimes", Journal of Criminological Research, Policy and Practice 2018, Vol. 4, Issue: 4, p. 253-268.

13 In Dutch: “De maandcommissaris is goed bereikbaar. De beklagcommissie nam mijn klacht serieus. De behandeling van mijn klacht ging snel. Ik ben tevreden over de manier waarop mijn klacht is afgehandeld.”

14 In Dutch: “1: Helemaal oneens. 2: Oneens. 3: Neutraal. 4: Eens. 5: Helemaal eens.”

Table 9 Total scores different groups of prisoners[15]

	a	b	c	d	e	f	g	h
	4938	262	1669	1867	409	253	221	175
Dealing with com-plaints	2.6	3.1	2.6	2.6	2.4	2.6	2.4	2.7
Lodged a com-plaint (yes)	36%	30%	46%	31%	18%	28%	54%	20%

a. N Prison population total
b. N Female prisoners
c. N Sentenced prisoners
d. N Pre-trial prisoners
e. N Arrestees
f. N Prisoners on a special need ward (extra zorg voorziening)
g. Prisoners detained on the basis of a custodial order for repeat offenders (isd-maatregel)
h. Prisoners in (very) low-security prisons ((zeer) beperkt beveiligde inrichtingen)

From this survey, it becomes clear that 36% of the prison population has lodged a complaint once or more complaints during his or her imprisonment. In total, for all statements, a 2.61 was given, which is sub-neutral. In the study of Van Ginneken, Palmen, Bosma, Nieuwbeerta and Berghuis, 46% of the sentenced prisoners indicated that he or she had ever lodged a complaint. 31% of the pre-trial prisoners indicated that he or she had ever lodged a complaint.

During our interviews, many respondents noted that they were under the impression that sentenced prisoners complain more often than pre-trial prisoners. Reasons for this that were given were that sentenced prisoners have more knowledge of the rules in the prison (as they have spent more time there already) and pre-trial prisoners are more focussed on other things than filing complaints, mainly the preparation of their criminal case. Pre-trial prisoners are qualified as more restless in this respect (PD04, KC01).
We are not under the impression that pre-trial prisoners complain about fundamentally other issues than sentenced prisoners. That the litigant in a penitentiary procedure is a pre-trial prisoner can be observed in procedures concerning requests for the use of a laptop and having the case file on cell to prepare for the criminal case. In such cases, the fact that the litigant is a pre-trial prisoner is often explicitly brought forward as an argument in the dispute (CA). As pre-trial detention in the Netherlands is usually a short period of time and penitentiary procedures may take months, it can be questioned whether the penitentiary procedure is a suited vehicle to receive a binding solution for obstacles that occur during the pre-trial detention phase. Nevertheless, the numbers in table 9 show that almost

15 E.F.J.C. Van Ginneken, H. Palmen, A.Q. Bosma, P. Nieuwbeerta & M.L. Berghuis, "The Life in Custody Study: the quality of prison life in Dutch prison regimes", Journal of Criminological Research, Policy and Practice 2018, Vol. 4, Issue: 4, p. 253-268.

one third of the pre-trial prisoners has indicated that he or she has made use of penitentiary proceeding. One lawyer notes that he actively undertakes penitentiary proceedings, since this may provide a pre-trial prisoner piece of mind in being able to ventilate his grievances, which in some cases is important in being able to prepare for the criminal case well (DL02).

The study of Van Ginneken, Palmen, Bosma, Nieuwbeerta and Berghuis shows, as reflected in table 9, that 30% of the women indicate that they have ever lodged a complaint, compared to 36% of the total prison population that indicates that they have ever lodged a complaint.

In our research, two prison directors noted that they observe that women complain less than men (PD02, PD04).

The study of Van Ginneken, Palmen, Bosma, Nieuwbeerta and Berghuis shows that the group of prisoners that are placed in the prison because of a custodial order for repeat offenders (*isd-maatregel*) seems to complain relatively much. More than half of this group of prisoners indicate that have once or more lodged a complaint (54%), a remarkably high number. Prisoners in a (very) low-security prisons ((*zeer) beperkt beveiligde inrichtingen*), on the other hand, do not seem to complain much (20%).

That prisoners that are placed in the prison because of a custodial order for repeat offenders complain relatively much is also observed by our respondents. Furthermore, although the statistical data on the specific group of prisoners on the TA and EBI are lacking, our respondents indicate that these prisoners seem to complain (much) less than prisoners in regular regimes (PD03, KC01).

Table 10 Total scores per age category[16]

	Prison population total (N=4938)	18-25 years old (n=796)	26-30 years old (n=1002)	31-40 years old (n=1352)	41-50 years old (n=979)	51-60 years old (n=493)	>60 years old (n=155)
Dealing with complaints	2.6	2.3	2.6	2.6	2.7	2.9	2.8
Lodged a complaint (yes)	36%	37%	36%	36%	34%	33%	27%

16 E.F.J.C. Van Ginneken, H. Palmen, A.Q. Bosma, P. Nieuwbeerta & M.L. Berghuis, "The Life in Custody Study: the quality of prison life in Dutch prison regimes", Journal of Criminological Research, Policy and Practice 2018, Vol. 4, Issue: 4, p. 253-268.

When the total scores per age category by Van Ginneken, Palmen, Bosma, Nieuwbeerta and Berghuis are compared, no major differences in lodging complaints seem to exist, other than the prisoners older than 60 years old seem to complain less than the other age categories. Remarkably, however, is that the specific group of 18-25 years old is more negative on the different statements on the complaints procedure in the survey.

Below, further specific for prisoners involved in prison litigation derived from the study by Van Ginneken, Palmen, Bosma, Nieuwbeerta and Berghuis are given.

Table 11 Total scores per detention period[17]

	Prison population total (N=4938)	<1 month (n=856)	1-3 months (n=943)	3-6 months (n=764)	6 months–1 year (n=709)	1-2 years (n=654)	>2 years (n=610)
Dealing with complaints	2.6	2.7	2.6	2.5	2.5	2.6	2.7
Lodged a complaint (yes)	35%	18%	24%	33%	40%	51%	56%

[17] E.F.J.C. Van Ginneken, H. Palmen, A.Q. Bosma, P. Nieuwbeerta & M.L. Berghuis, "The Life in Custody Study: the quality of prison life in Dutch prison regimes", Journal of Criminological Research, Policy and Practice 2018, Vol. 4, Issue: 4, p. 253-268.

Table 12 Total scores per category of prisoners on a one-person cell or on a multiple person cell[18]

	Prison population total (N=4938)	Prisoners on a one-person cell (n=3644)	Prisoners on a multiple person cell (n=980)
Dealing with complaints	2.6	2.6	2.6
Lodged a complaint (yes)	36%	37%	28%

Table 13 Total scores in relation to educational level[19]

	Prison population total (N=4938)	Low (n=2461)	Middle (n=1394)	High (n=594)
Dealing with complaints	2.6	2.6	2.6	2.5
Lodged a complaint (yes)	36%	35%	32%	39%

1.4.1 Cases

As described in the Introductory part of the report on workstream 2 under i, the following bodies are entitled to receive formal complaints:1) regional police complaints committees, dealing with complaints of persons who have been held in police cells, 2) the complaints committees of the penitentiary institutions that receive complaints of persons, who are or were detained in that institution, 3) the Appeals Committee of the Council for the Administration of Criminal Justice and Protection of Juveniles (*Raad voor Strafrechtstoepassing en Jeugdbescherming,* RSJ) that deals with appeals against decisions taken by the complaints committees, 4) the National Ombudsman, who is empowered to scrutinize the manner in which public sector authorities fulfil their statutory responsibilities. In exceptional circumstances, when the complaints procedure is not accessible the prisoner can lodge his complaint to the civil court. This is mostly the case if the complaint concerns a general rule or regulation that is applicable to all prisoners.

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18 E.F.J.C. Van Ginneken, H. Palmen, A.Q. Bosma, P. Nieuwbeerta & M.L. Berghuis, "The Life in Custody Study: the quality of prison life in Dutch prison regimes", Journal of Criminological Research, Policy and Practice 2018, Vol. 4, Issue: 4, p. 253-268.

19 E.F.J.C. Van Ginneken, H. Palmen, A.Q. Bosma, P. Nieuwbeerta & M.L. Berghuis, "The Life in Custody Study: the quality of prison life in Dutch prison regimes", Journal of Criminological Research, Policy and Practice 2018, Vol. 4, Issue: 4, p. 253-268.

The overwhelming number of complaints concern complaints send by both pre-trial detainees and sentenced prisoners to the Complaints Committees.
In 2017, the 16 prisons for adult remand and sentenced prisoners accommodated about 34.000 detainees. In that year the number of complaints lodged to the Complaints Committees of these prisons and remand prisons amounted to 21.653. In this number are included the cases that were lodged in 2016 but could not be dealt with in in 2016. It also includes the 3.441 cases that were postponed to 2018. In the 4 largest prisons the number of complaints varied from 1.163 to 2.039. Due to this high number the Complaints Committees reported in their annual reports of 2017 that in many cases they needed more weeks for reviewing the complaints than the prescribed four.

Also, because of the high number in complaints, many cases were not dealt with by the Complaints Committee in a bench sitting with three members, but were dealt with by only one member assisted by the secretary of the Committee.

With respect to 21.653 cases 3.541 cases were postponed to 2018. This means that 17.112 cases could be settled. As table 14 shows, only in about 7.6% the Complaints Committee considered the complaint fully or partially well-founded. About one quarter of the complaints was considered not founded and 18% of the complaints was declared inadmissible.[20]

The 8.6% of the cases that are dealt with after a rogatory procedure concern complaints of prisoners who after having lodged their complaint were transferred to another prison. The rogatory procedure means that the complainant was heard by the Complaints Committee of that prison. After having received the report of that hearing the Complaints Committee of the prison where the litigant has lodged his complaint will further deal with the case.

As described in the Introductory part of the report on workstream 2, not all complaints result in a formal hearing by the Complaints Committee. About one quarter of the complaints is withdrawn by the complainant. This can be done during the hearing of the Complaints Committee or on the initiative of a member of the staff before the hearing. Also, the secretary of the Complaints Committee may hand over the complaint to a member of the Supervisory Committee – who is not member of the Complaints Committee – with the request to try and mediate between the prisoner and the governor (Article 63 PPA). After a successful mediation the case will be dropped. In 2017 about 10% of the complaints was withdrawn and solved in this more informal way. This is much lower than in the previous years where 15% of the complaints was withdrawn after mediation. Some Supervisory Committees mention in their annual reports the increasing number of complaints where the litigant is assisted by a lawyer. Very frequently they advise their client to persist in their formal complaint and not to accept mediation by the member of the Supervisory Committee.[21]

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20 These numbers are based on the annual reports of the Prison Supervisory Committees. See <http://dji.nl/over-dji/organisatiestructuur/commissie-van-toezicht/index.aspx> (last accessed on 2 September 2018).

21 For example the annual reports of the Supervisory Committees of the prisons in Arnhem, Grave and Lelystad.

The remaining 8.4% concerned mainly complaints that were transferred to and dealt with by another institution.[22]

Table 14 Complaints 2017

Number of lodged complaints	21.653	%
Dealt with by Complaints Committee	17.112	100%
Not founded	3.771	22.8%
Fully or partially founded	1.377	7.6%
Not admissible	3.274	18%
Withdrawn	4.891	27%
Withdrawn after mediation by a member of the Supervisory Committee	1.734	9.8%
Dealt with after rogatory procedure	1.550	8.6%
Transferred to another Committee	1.515	8.4%

The list of grievances which were the reason of the complaint concerned issues that are of high importance in the day-to-day life of prisoners. The majority of cases concerned: labour and activity programs, outdoor exercise, treatment, contact with the outside world, disciplinary sanctions and security measures, regime, medical care, information, (the loss off) personal belongings, prison leaves and financial items.

Appeals to the Appeal Board

Also, the Appeals Committee of the Council for the Administration of Criminal Justice and Protection of Juveniles is every year confronted with a high caseload. In 2017, the total number of cases amounted to 4.365. The majority (3.161 cases) concerned appeals against decisions of the Complaints Committees by prisoners or prison governors. Of these cases 43% were dealt with after an oral hearing, the remaining 57% were settled in writing.

Besides these appeal cases the Appeal Board received 1.125 requests for suspending decisions of the governor or the Complaints Committee. The number of appeals against decisions of the Complaints Committees of forensic psychiatric hospitals amounted to 569 of which 62% were settled after an oral hearing.

[22] See: Kenniscentrum Commissie van Toezicht, klachtenoverzicht 2017, www.commissievantoezicht.nl/commissie/Klachtenoverzichten.

The Appeals Committee needed 81 sessions for all the oral hearings of which 44 concerned appeals against decisions of the Complaints Committees.

Although the Appeals Committee strives to handle an appeal case within four months it realized this target norm in only 54% of the cases.[23]

Judging from the number of complaints and appeals that are being dealt with by the Complaints and Appeals Committees on a yearly basis one could say that the right to complain and appeal has become an important and indispensable "touchstone for the lawfulness and quality of the police of prisons", as intended by the legislator in 1977.[24] However, the high number of complaints puts pressure on the current complaint and appeal procedure. In many cases, complaints cannot be dealt with within the prescribed four weeks and the different Complaints Committees and the Appeals Committee also suffers from a huge caseload. Still, the complaint and appeal proceedings remain to have an important function in the Dutch prison system, as it not only provides relief for prisoners who claim to have been the victim of unlawful treatment in prison, but it has also created a normative framework for the assessment of treatment in prison, which has a strong preventive function. Besides, as noted by the Council for the Administration of Criminal Justice and Protection of Juveniles in 2011, it works as an effective vent for feelings of unrest of prisoners by extracting the pressure of the boiler.[25]

Table 15 provides information about the number of complaints/appeals where the complainant has been assisted by a lawyer, assigned (with a so-called certificate, a *toevoeging*) by the Legal Aid Board (LAB). As stated above, some Supervisory Committees mentioned in their annual reports the increasing number of cases where a lawyer is involved. Also, almost all of our respondents mentioned the increasing role of lawyers in the complaint/appeal procedure. Information provided by the LAB shows that while the number of complaints/appeals between 2012 and 2017 increased with 9% the number of assigned lawyers increased with 149%. Compared with 2008 the number of assigned lawyers increased from 2.661 to 6.015, which is a rise of 228%. In 2017, in about one quarter of all complaints and appeals the detainee was assisted by an assigned lawyer.

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23 These numbers are taken from the annual report 2017 of the Council for the Administration of Justice and Youth Protection, p. 22-27. See <https://www.rsj.nl/Over-de-Raad/Jaarverslagen/> (last accessed on 20 September 2018).

24 See: Explanatory Notes to the Penitentiary Principles Act, in: *Handboek rechtspositie gedetineerden*, SDU Den Haag 2001, p. 147

25 Raad voor Strafrechtstoepassing en Jeugdbescherming, Reactie op het rapport `Toenemend appel', een verkennend onderzoek van de Erasmus Universiteit Rotterdam naar de toename van het aantal beroepszaken ex artikel 69 van de Penitentiaire beginselenwet, Den Haag 2011, p. 22.

Table 15

a	b	c	d	e	f	g
	2008	**2012**	**2017**	**% c:b**	**% d:b**	**% d:c**
Number of complaints/appeals	unknown	22690	24664	------	------	109%
Lawyers assigned by the LAB (certificate)	2.661	4038	6015	152%	226%	149%
% of cases with assigned lawyers	---------	18%	24%	-------	-------	--------

Some of the respondents were under the impression that that there is a trend that lawyers are trying to get as many complaint and appeal cases as possible, because being assigned for these cases by the LAB would guarantee them "easy money". However, the figures in table 16 do not confirm this impression. In 2017, out of 6.015 lawyers assigned by the LAB, only 47 got an assignment for more than 25 cases. Of these, 25 were involved in more than 50 cases and only 10 were providing legal aid in more than 100 complaint/appeal cases. The number of cases of these 10 lawyers varied from 117 to 311. So, while it can be said that a handful of lawyers have a significant income through prison litigation, these numbers do not substantiate a trend.

Table 16 Number of assigned lawyers with more than 25/50/100 complaint/appeal cases in 2008, 2012 and 2017

	2008	**2012**	**2017**
Assigned lawyers with more than 25 complaint/appeal cases	29	21	47
Assigned lawyers with more than 50 complaint/appeal cases	12	8	25
Assigned lawyers with more than100 complaint/appeal cases	1	2	10
Assigned lawyer with highest number of complaint/appeal cases	114	202	311

1.4.2 Practical means of litigation

As is described in detail in the report on workstream 2, the following actors are involved in providing legal information to pre-trial prisoners:

1) the lawyer assisting the prisoner in his criminal case. He may also be the one representing the prisoner during a complaint and appeal procedure, although the prisoner may also choose to have another lawyer than the one dealing with the criminal case to deal with his penitentiary complaint or appeal procedure (for example when the matter occurs long after the criminal case has occurred).
2) the Supervisory Committee. Every month or week a member of this committee will serve as a visiting officer on a monthly or weekly rota basis and will go into the prison to talk to prisoners about (potential) conflicts and problems. This visiting officer can provide the prisoner with information on his legal position and advise him to whether or not file a complaint on a certain matter.
3) legal clinics run by law students. They are however only active in a small number of prisons.
4) the Legal Services Counter (*Juridisch Loket)*, that gives free legal advice per email or phone.
5) Bonjo, an interest group of (ex) prisoners, that can be contacted by phone in case of questions by (ex)prisoners. Information is also provided in the newspaper that every two months is published by Bonjo and which is distributed in all penitentiary institutions.
6) although it is not their primary task, other persons and organisations working in prison may provide prisoners with information on their legal position in prison. Examples are: prison officers, spiritual counsellors, probation officers and members of organizations that regularly visit prisons.
7) legal assistance to foreign inmates can also be provided by Embassies and Consulates.

2 LEGAL PRACTITIONERS - LAWYERS

2.1 Lawyers and litigation work

2.1.1 General policy of the Bar (and of unions of lawyers) on legal counsel for prisoners

The Netherlands Bar (*Nederlandse orde van advocaten*, NOvA), introduced in the report on workstream 2, is an organisation for all lawyers in the Netherlands. It is important to realize that the Dutch Association for Defence Counsel (*Nederlandse Vereniging voor Strafrechtadvocaten*, NVSA) and the Dutch Association for young defence counsellors (*Nederlandse Vereniging van Jonge Strafrechtadvocaten*, NVJSA) are strong national associations that autonomously represent what could be considered as the (Young) Criminal Bar. However, as will be demonstrated below, the Netherlands Bar still represents criminal lawyers if needed in cases that are of considerable importance. It cannot be said, however that the Netherlands Bar or the (Young) Criminal Bar have a 'general policy' on legal counsel for prisoners.

- *Does the Bar organize dedicated workshops or education on penitentiary law? Precise frequency, size of audience.*

The Netherlands Bar itself does not organize specific coursed towards further specialization in the field of prison litigation. As such, dedicated workshops or specialized education on penitentiary law are not part of their programme. However, The Netherlands Bar offers a concise overview of courses on offer by external companies. There are several organizations that offer courses for criminal lawyers, such as (i) post-graduate (executive) education by universities; (ii) courses offered by publishing companies; (iii) commercial conference bureaus; and (iv) law-firms. These courses can be accredited by The Netherlands Bar[26] and as such, the lawyers can follow these courses to comply with the obligation to follow a certain number of certified courses each year. Among these courses, there are also courses on penitentiary law, although only a handful (we counted two specific courses among 150+ courses).[27] It appears that these courses are given once a year. We do not know how many lawyers follow them. As most of our respondents indicate that penitentiary law is mostly seen as a niche within legal practice and also given the very small portion

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26 <https://cursusaanbod.advocatenorde.nl/opleidingsinstellingen> (last accessed 1 October 2018).

27 We searched all the courses within the theme 'Straf(proces)recht' (Criminal Law and Criminal Procedure) and found two courses among more than 150 courses. A further search for courses in the entire database did not come up with more courses. The two courses we found are described here (only in Dutch) and respectively deal with penitentiary law and legal remedies and complaints-proceedings with detainees: <https://cursusaanbod.advocatenorde.nl/37300/detentierecht-beginselen-en-rechtsmiddelen-in-pbw-en-bvt/> and <https://cursusaanbod.advocatenorde.nl/36980/klachtzaken-van-gedetineerden/> (last accessed 1 October 2018)

that these courses have in the total of courses on offer, we believe the relatively few lawyers will subscribe for these courses.

Two government bodies also provide courses on prison law and prison litigation: The Council for the Administration of Criminal Justice and Protection of Juveniles and the Custodial Institutions Agency. The Custodial Institutions Agency has its own training centre.[28] These courses are primarily aimed at members of prison staff (e.g. prison directors, policy officers, legal assistants in penitentiary institutions) and members of Supervisory Committees: thorough knowledge of prison law is an important factor in guaranteeing fair proceedings for detainees.

- *Are there dedicated networks of lawyers? Are they generalists or dedicated to specific categories of detainees/prisoners or for specific legal fields? (for incarcerated foreigners, for prisoners with certain types of conviction, …)*

There are no dedicated networks of lawyers regarding prison litigation. One might say that two of the authors of the *Bajesboek* (see §4.2 below) are currently the key-representatives of the small group of lawyers that really immerse themselves in prison litigation. Most lawyers that we talked to were of the opinion that prison litigation is not very complicated and that it is not a topic that every lawyer should necessarily be well-versed in. One of them claimed that it made sense that it is mostly the junior lawyers that are competent in this field (L04). All lawyers that we spoke to that worked in law-firms, admitted that at least one of the junior lawyers within their firm was experienced in prison litigation (L02, L03, L04).

- *Does the Bar edit information booklets/digital tools on penitentiary law, access to legal counsel, practical problems faced by lawyers providing legal aid in police custody and prison? Who designs and promotes such tools? To what extent are they relevant with regard to major prison litigation issues? To what extent are they used by practitioners? Which importance do they give to these tools?*

In general: no. Of course, access to legal counsel in criminal cases and the right to be informed about this is governed these days by Directives 2012/13/EU (Right to information in criminal proceedings), 2013/48/EU (Access to a lawyer) and 2016/1919/EU (legal aid for suspects and accused persons in criminal proceedings), all of which have been transposed in the Dutch legal order (see the report on workstream 2). A lot of provisions were already in place before these directives were implemented. Article 56 PPA, for example, holds that every prisoner should be informed about his rights, including his right to file a complaint and appeal, upon arrival in the prison. This information should be in writing, in a language he understands. But these are legal duties for the authorities to provide information to the detainees. There are no similar obligations for lawyers.

[28] Training Centre DJI (*Opleidingsinstituut DJI*), www.oidji.nl.

Relations between the Bar and national Penitentiary administration (at different hierarchical levels). Tensions, cooperation?

In general, the Bar does not seem to have a specific institutionalized relationship with the Penitentiary administration. Most relations are between individual lawyers and penitentiary institutions on an *ad hoc* basis. However, very recent examples show that, when necessary, the Bar, supported by the NVSA and the NVJSA, also operates on an institutional level:

In August 2018, the Custodial Institutions Agency (*Dienst Justitiële Inrichtingen,* DJI) decided that, as of 1 September 2018, in two penitentiary institutions, lawyers would have to use an application called 'MyTelio'. Rather than calling the institution's administration, they would have to use this app to arrange for their clients to call them back and/or to arrange for dates to visit their clients. Using the app would involve costs (that previously were not there) and also it was not clear if the data protection of the app would be sufficient and that (therefore) the privileged contact between lawyer and client would be warranted. The Dutch Bar as well as the NVSA as the NVJSA released statements that using this app would go against the right of clients to freely communicate with their lawyers. The Dutch Bar communicated that it had been in consultations with the Custodial Institutions Agency on the matter, but in the end, the NVSA and the NVJSA, supported by the Dutch Bar, filed an application for a temporary injunction. Pending the proceedings, the obligation to use the app was abolished while the judge urged the parties to resolve the issues. However, the parties have not been able to come to a complete agreement. The hearing of the case will continue on 21 November 2018.
In the meantime, a rather embarrassing mistake by the Custodial Institutions Agency was revealed: due to (allegedly) faulty software, 3.000 phone calls between lawyers and their clients in prison have been recorded. After demands made by the Netherlands Bar, the Ministry of Justice and Security has announced independent research into this breach of the right to confidential communication.[29]

These examples illustrate that criminal lawyers have adequate and well-organised representation and that contact with the national prison authority, the Custodial Institutions Agency, is possible. It also shows that these contacts do not always go very smoothly, and that judiciary intervention can be necessary to really come to adequate consultations.

2.1.2 General profile of lawyers active on litigation

- *Level of legal education, average age, power position within the Bar and capacity to bring problems to the bar encountered during legal practice in prison.*

[29] <https://www.advocatenblad.nl/2018/11/07/nova-eist-onafhankelijk-onderzoek-naar-telefoonprovider-dji/> (last accessed on 15 November 2018).

On the basis of our research, we have not been able to collect data that allow for generalizations on this part. As said, there is only a handful of lawyers that are well-known for their specialization in penitentiary law. In general, lawyers that are familiar with prison litigation will be practicing criminal defence lawyers or asylum lawyers. Because these lawyers are highly dependent on the subsidies by the LAB, they will have to meet the criteria set for their practice by the LAB. This guarantees an elevated degree of legal education, as not only is a law-degree required, lawyers will also need to have completed the post-graduate training of the Dutch Bar. On top of that, both the Dutch Bar and the LAB require maintenance of professional standards through yearly additional training. We have elaborated on that in §3.2 of the report on workstream 2.

A large proportion of criminal defence lawyers participates in the so-called duty lawyer service (*piket,* see §3.2 of the report on workstream 2), which necessitates that they visit clients in detention (mostly police detention). We have not collected any data that showed that – on a regular basis – it was necessary for a lawyer to specifically bring problems to the attention of the national or the local bar. As demonstrated above, incidents can be reported to either one of the professional associations or to the Netherlands Bar. We have no indications that a certain 'stature' is necessary in order to be heard by these organisations.

- *Professional profile of lawyers acting in the field of prison litigation (larger firms, smaller offices, members of NGOs or professional interest organisations).*

Legal assistance is not obligatory in prison litigation (see the report on workstream 2). Most prison litigation consists of the use of the complaints proceedings. The basic premises are that these proceedings have a low threshold, that detainees are self-reliant and, as such, do not need legal assistance. Detainees do have the right to legal assistance, though. If lawyers are involved in prison litigation, these will – in the vast majority of the cases – be defence lawyers, not specialized prison litigation lawyers. NGO's and similar organisations in the Netherlands do, to our knowledge, not employ lawyers to assist detainees (see §3.2 below in more detail).

As to what lawyers are active in prison litigation, there is quite some diversity. It is safe to say that the largest firms[30] will hardly act in the field of prison litigation (primarily because these firms usually do not have a criminal defence practice – or a very small one with mainly 'white collar crime' suspects). Should one of their high-profile clients end up in prison, though, which is not unthinkable in some cases, they may enter into prison litigation for that specific client. We did not speak to lawyers of the biggest firms. Among our respondents we spoke to lawyers who work alone (so-called *eenpitters*: solopreneurs), but also to lawyers that work for relatively large firms with multiple offices. For the latter, prison litigation can be a spin-off from the fact that they have a client that is in detention and asks

30 In the Netherlands, these firms are often referred to as "Zuidas" offices. The largest law firms in the Netherlands all have their offices in a business district south of the city of Amsterdam – Zuidas. <https://en.wikipedia.org/wiki/Zuidas> (last accessed 1 October 2018).

for help with filing a complaint (L02, L03). A defence lawyer may find that the detention regime of his client has a negative impact on his ability to focus on preparing the defence and for that reason will start prison litigation (L02). Another lawyer mentions that he finds it crucial to enter into prison litigation if prison authorities have, for example, seized a USB-drive from his client that may contain privileged information (L03).
The solopreneurs and small firms may be more susceptible to "stand-alone" requests for legal assistance in prison litigation (L01, L03).
Some respondents claim that prison litigation is often performed by a different lawyer than the defence lawyer. The defence lawyer may, for example, find that prison litigation diverts his attention from the main case with too little (if any) financial compensation (L02). Sometimes the cases are given to lawyers from the same law firm. In big cases it is not uncommon for the defence lawyer (e.g. a senior partner in the firm) to delegate prison litigation to one of the junior lawyers. The plain and simple explanation: the hour rate of junior lawyers is lower (L03). One respondent (a solopreneur) noted in this respect that it sometimes makes her feel like a second-rate lawyer if she gets 'tossed' a case by a 'big shot' defence lawyer (L01)

- *Which proportion of litigation case work within their everyday practise?*

As a rule, prison litigation is a minority of the everyday case-load of most lawyers. We already mentioned that only a hand full of lawyers can really claim to be specialists in the field of prison litigation. One of these lawyers was among our respondents and even for this lawyer, prison litigation did not form the majority of the cases. As mentioned above in Chapter 1, §1.4.1, a handful of lawyers seem to enter into a lot of prison litigation with certificates from the LAB. These data were of course anonymized, so we do not know who the lawyers are that are getting the most certificates. However, we do know that only two or three lawyers really are the figureheads of prison litigation in the Netherlands. So apparently there are quite some lawyers who do a lot of prison litigation without holding the limelight.

- *Connections between lawyers and NGOs / Human Rights organisations / Legal Clinics/ Universities / …:*
- *Are most dedicated lawyers either members of or close to such organisations?*
- *Are there situations of competition/tensions between the two?*

We spoke to a couple of employees of Bonjo, the interest group of (ex) prisoners and they told us that there are some lawyers that they contact if it comes to their attention that a detainee needs a lawyer in a specific case. These contacts did not seem to be based on a more or less formal relationship. They are of a rather informal nature and our research did not provide us with information that these networks provide a significant added value to legal aid provided by lawyers in prison litigation. Of course, some of them, especially Bonjo and the legal consultation hours (law clinic), play a significant role in representing the interests of prisoners, but when it comes to legal assistance, if anything, they are intermediates that provide the first contact between detainees and their lawyer. None of the

lawyers among our respondents affiliated themselves with a specific organisation regarding prison litigation.
The complementary nature of the relation between lawyers and the NGO's does not provide much ground for possible tensions and/or competition.

- *Relationship with the judiciary?*

Lawyers and the judiciary in the Netherlands in general are on good terms. As the traditional judiciary is hardly involved in prison litigation, there is not much to say about the relationship with the judiciary within this specific ambit.

2.1.3 Legal relief specialization

- *Selection of cases - according to which legal or social/political criteria (is there a dedication to specific populations of detainees/prisoners or specific issues – i.e. disciplinary, security measures, relationship with the family, etc.)?*

Our research did not reveal much information that allows us to elaborate on this. It seemed that especially the lawyers working for bigger firms would not enter into prison litigation if it was not strictly in the interest of a client they were already assisting (L2, L3). Also, in those cases, it was mentioned on a regular basis that the prison litigation would relate to situations that would hamper the possibility of the lawyer and the client to work together on the case (e.g. the impossibility to have a case file on cell). Accordingly, it could be said that these lawyers would select the case on the criterion that it was relevant for a proper preparation of the trial, but at the same time these lawyers admitted that they would sometimes also do 'minor' complaints (without even asking for a certificate) in order to keep the client happy.

Even the more specialized lawyers did not seem to have a specific interest in certain types of cases. All in all, we would say that the legal aid scheme (that only allows for a subsidy in more complicated cases of prison litigation, see §2.4 of the report on workstream 2) is a main factor in the selection of cases:

2.2 How is litigation case work financed?

- *What is understood by "pro-bono" in the country?*
- *Is there state-funded pre-trial aid?*
    - If yes, is it sufficient to cover expenses?
    - If not what are the consequences? (selection of specific cases, insufficient time, coverage of expenses through other sources than pre-trial aid?)
- *Other? (e.g. private funding, coverage through other case work, legal insurance…)*

Of course, everyone who wants to, can pay his own lawyer. When it comes to subsidised legal aid, as explained in the report on workstream 2, the LAB is the sole financier in the

Netherlands. So, either the client pays the lawyer himself, or he uses subsidised legal assistance provided by the LAB. Persons can be eligible for subsidised legal assistance as long as their income is below a certain threshold. Even below that threshold, an income-related personal contribution is due. In some instances (notably when the suspect is in pre-trial detention), subsidised legal assistance in criminal cases is free of charge, regardless the income of the suspect. However, in criminal cases a duty to reimburse the subsidy will arise once a conviction follows and the income of the convict is above the threshold. Turning specifically to prison litigation: subsidised legal assistance in prison litigation is also possible, but only in the more serious cases. There is never a duty to reimburse the subsidy in prison litigation cases.

The term "pro-bono" is not commonly used in the Netherlands. Mostly the term "pro deo" is used. In light of what is mentioned above, it is unusual for a lawyer to provide legal assistance without any remuneration at all. The term "pro deo" lawyer is often used referring to the subsidised legal aid scheme, because the client will not pay the full fee for his lawyer, while the lawyer gets his fee from the government (through the LAB). Within this definition, a lot of the criminal defence lawyers work "pro deo", because the majority of regular clients will fall within the scope of the legal aid scheme.

In a stricter sense (working without any remuneration at all), "pro deo" work is not common in the Netherlands. However, due to certain restrictions within the legal aid scheme, some lawyers comment that they still work 'for nothing'. One respondent told us that a criminal defence lawyer gets eight points for a case before the criminal court. As one point equals (roughly) €100, and €100 is a fitting (actually rather low) tariff per hour for a lawyer, this respondent feels that that this is a remuneration for 8 hours of work. However, the LAB has set a so-called forfait of 24 hours for 8 points. This means that a lawyer can start applying for additional subsidies if he can demonstrate that he will spend more than 24 hours on the case. In other words, a lawyer either has to work 24 hours for €800, which means a per hour rate of €33, which is very low.[31] We consider these examples of 'hidden' pro deo work.

For prison litigation work the remuneration is 3 points (roughly €300), but only for more complex cases. Most lawyers feel that this is remuneration may be adequate in straightforward cases but also they feel that for adequate representation they (1) have to consult with their client in prison at least once, (2) attend the hearing before the complaints committee, and (3) of course have to prepare oral or written arguments. All in all, this can be rather time-consuming, especially considering that prison litigation is not a regular practice for most of them.
Most respondents told us that, when it comes to prison litigation in cases where the LAB will not provide a subsidy (the simple cases), they will sometimes still help their clients with filing a complaint. They get no remuneration for this, so this is also hidden pro deo work.

[31] Bear in mind that lawyers will have to pay for their offices, secretaries etcetera with this hour rate.

As discussed in the report on workstream 2, criminal defence lawyers are currently in a difficult position in the Netherlands. Not so long ago, the Netherlands was considered to be one of the European states that had a generous legal aid scheme, but recently significant cuts have taken place.[32] Austerity measures were put in place for the judiciary, for the public prosecutor's service and for the police. From that point of view, it made sense to cut back on the legal aid scheme too, so the government had made an urgent appeal to the Netherlands Bar to come up with propositions for retrenchment. The bar (and also the criminal bar) took a constructive stance and suggested cuts in the allocation of points in the legal aid scheme. Based on those suggestions, the State Secretary for Safety and Justice, Fred Teeven, amended the Legal Aid Payments Decree 2000[33] in 2015. This led to heated debates. A first episode of turmoil was caused in May 2017. According to the State Secretary for Safety and Justice, Fred Teeven, the cut-backs made in 2015 had been decided on after an advice from the NVSA. Indeed, in 2015 the NVSA had opted to cooperate with the State Secretary in order to try and find ways to cut-back on the legal aid scheme.[34] It came as a very unpleasant surprise for the criminal bar when it was disclosed in May 2017 that the (by then: former-) State Secretary had allegedly told a reporter that he had had ulterior motives. As a former public prosecutor with the image of a 'crime fighter', he had always been an advocate for reforms towards sterner penalization, but he had found that the government coalition between his right-wing party (VVD) and a left-wing party (PvdA) was not going to clear the way for more legislation in that direction. "I realized that further penalization was not in the cards. I then set myself to cut backs for the defence lawyers. It's a different way to reach the same objectives. When you give a lawyer little time to spend on a suspect, the criminal defence will never become much".[35] The quote led to a lot of outrage among lawyers, while the former State Secretary claimed he was quoted out of context and announced litigation (which he never pursued).[36] While it probably goes too far to claim that the cut backs were an instrument in a personal vendetta towards defence lawyers (austerity measures were needed at the time, not only in criminal litigation), the incident did demonstrate a lamentable attitude by at least some government officials towards the criminal bar.

Later in 2017, a state-appointed commission thoroughly researched the Dutch legal aid scheme. The commission found that lawyers receive a remuneration that is not commensurate with the effort, which endangers the quality of legal aid.[37] Since then, Dutch criminal

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32 Preložnjak 2017, p. 37.

33 In Dutch: Besluit vergoedingen rechtsbijstand 2000.

34 See the explanatory memorandum accompanying the decree: *Stb.* 2015, 35, p. 12 and p. 14.

35 Henri Beunders, 'Onrust en botte bijlen. De emotionalisering van het strafrecht #3', *De Groene Amsterdammer* 2017, nr. 20 <https://www.groene.nl/artikel/onrust-en-botte-bijlen> (last accessed on 3 November 2018).

36 Wiek van Gemert, 'Het wilde westen tussen Fred Teeven en De Groene Amsterdammer', *HP/De Tijd* 20 mei 2017 <https://www.hpdetijd.nl/2017-05-20/fred-teeven-lucky-luke/> (last accessed on 3 November 2018).

37 Report by Commissie-Van der Meer: *Andere tijden. Evaluatie puntentoekenning in het stelsel van gesubsidieerde rechtsbijstand*, 2017. The report is only available in Dutch.

lawyers have advocated even more for a significant increase in the budget. Up until now, the Dutch government has not been inclined to adhere to these requests, despite numerous protests and even a protest march on the *Malieveld* in The Hague (protesting on the *Malieveld* is one of the ultimate symbolic actions for any interest group to try and get their point across to the Dutch government).

In the summer of 2018, a highly respected (youth) criminal defence lawyer, Marije Jeltes, decided to quit her practice because she could not make ends meet anymore, this caused quite a stir, even in national newspapers and on national TV.[38] On the one hand, a lot of people were worried about the quality of legal aid, while others reacted quite fiercely that it sounded like lawyers made more money than a lot of other people and that helping criminals stay out of jail should not be paid for by tax-payers money.

In October 2018, the LAB released the 2017 Subsidized Legal Aid Monitor.[39] The monitor shows that the number of lawyers active in the legal aid scheme is declining, not only in general, but also specifically for criminal lawyers. The LAB does not see a trend that could be explained as being detrimental for the quality of legal aid in criminal cases. The young criminal bar (NVJSA), however, strongly argues that austerity measures have led to individual lawyers as well as law-firms leaving the system of subsidized legal aid. Also, there is a relative decline of younger lawyers entering into the legal aid system. All in all, the NVJSA sees a worrying trend: they claim that there is a direct relation between budget-cuts and the decline of the number of lawyers providing 'pro deo' services.[40]
In November 2018, the Minister of Legal Protection (one of the Ministers of the Ministry of Justice and Security) announced the outlines to a thorough reform of the legal aid scheme.[41] The main aim seems to be 'dejudification' of conflict resolution, leading to a

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Some news coverage on it in English can be found here: <https://www.fairtrials.org/news/dutch-lawyers-unite-against-cuts-legal-aid> and here: <https://www.liberties.eu/en/news/legal-aid-system-netherlands-change/13369> (last accessed on 3 November 2018).

38 Examples (unfortunately all in Dutch only): <https://www.volkskrant.nl/mensen/pro-deoadvocaat-marije-jeltes-stopt-ermee-op-deze-manier-gaat-het-niet-meer-~bc25a595/> (Interview in one of the big national papers (Volkskrant): Pro-deo lawyer Marije Jeltes quits: 'It just will not work anymore this way'); <https://www.advocatenblad.nl/2018/07/02/ik-werkme-het-schompes-voor-een-rotsalaris/> (Interview with the Dutch Bar magazine: 'I'm working my guts off for a miserable salary'); <https://eenvandaag.avrotros.nl/item/socialeadvocatuur-houdt-hoofd-nauwelijks-boven-water/> (Item for a national daily news show: 'Legal aid lawyers can hardly keep their head above water'); <https://evajinek.kroncrv.nl/artikelen/benedicte-ficq-en-marije-jeltes-over-de-slechte-vergoedingen-voor-prodeo-advocaten> (item in one of the main late-night talkshows on Dutch TV: 'Bénédicte Ficq and Marije Jeltes about the poor remuneration for pro-deo lawyers. (…) Star advocate Bénédicte Ficq speaks up for small lawyers invisibly slaving away'.

39 Legal Aid Board (Raad voor Rechtsbijstand), *Monitor Gesubsidieerde Rechtsbijstand 2017*, Utrecht: 2018 <https://www.rvr.org/binaries/content/assets/rvrorg/informatie-over-de-raad/monitor/mgr-2017-def-versie-mgr.pdf> (last accessed 15 November 2018).

40 NVJSA, letter of 5 November 2018 to the Legal Aid Board; <http://www.nvjsa.nl/4726/Reactie%20Monitor%20RvR.pdf>. Also, see <http://www.nvjsa.nl/4723/nieuws/.html>.

41 Letter of 9 November 2018 from the Minister for Legal Protection to the President of the House of Representatives, *Kamerstukken II* 2018/19, 31753, nr. 155, p. 13.

decrease in the use of lawyers. The Netherlands Bar as well as the (Young) Criminal Bar were very sceptical about the plans. The Netherlands Bar put forward that the plan would seriously hamper access to legal aid for people with limited means.[42] The Young Criminal Bar put forward that the plans hardly contained any specifics towards defence lawyers, who are the main participants in the legal aid scheme.[43]

It can be concluded that, although there currently is state-funded pre-trial aid, there are worries about the extent to which it is sufficient to really cover expenses and to maintain the quality of legal aid. The consequences are that, obviously, some lawyers quit their practice or law firms will not hire new junior lawyers (L04). Enough lawyers continue though, but some of our respondents expressed concerns as to the quality of their work. For example: a suspect under police arrest can talk to his lawyer for up to 30 minutes before the first police interrogation starts (article 28c CCP). Some of the lawyers we talked to told us that in their observations, lawyers often only spend a couple of minutes with their client while preparing their case. More than once this was depicted by describing the scene of a lawyer introducing himself to his client in the courtroom only shortly before the hearing. Obviously, there had not been any prior face to face contact, which is an indication of mediocre preparation of the case (L01, L02, L04).

- *Legal aid:*
  Amount of aid?
  - What type of costs may it cover, which costs does it rule out?
  - Forms of payment?
  - How is the aid provided? Directly to the lawyer or to the applicant? Can the aid be directed to the applicant's family?
  - Are there any delays for reimbursement?

As mentioned before, the legal aid scheme does not work with a fixed hourly rate, but with a remuneration per point. The height of this fixed remuneration is determined in article 37 of the Legal Aid Act[44] (LAA) and in the Legal Aid Payments Decree 2000 (LAPD)[45] and is €105,61. The LAPD also regulates the amount of points for different variations of legal aid (see §2.8 of the report on workstream 2). In 2019, for the first time in years, the height of the fixed remuneration per point will increase: to €108,57.[46]
Because of the fixed remuneration (lump sum), there is not a strict list of costs that it can cover. The lawyer is not allowed to let his client pay an additional fee. In certain cases, he can additionally get a remuneration for travel and time, but in general these costs are supposed to be covered by the 'lump sum'. The lawyer will have to arrange for the payment

42 <https://www.advocatenorde.nl/nieuws/garandeer-toegang-tot-het-recht-voor-mensen-met-een-kleine-portemonnee> (last accessed on16 November 2018).
43 <http://www.nvjsa.nl/4734/nieuws/.html> (last accessed on 16 November 2018).
44 In Dutch: Wet op de Rechtsbijstand (Wrb).
45 In Dutch: Besluit vergoedingen rechtsbijstand 2000.
46 Letter of 9 November 2018 from the Minister for Legal Protection to the President of the House of Representatives, *Kamerstukken II* 2018/19, 31753, nr. 155, p. 13.

and the LAB directly pays the lawyer. In other words: there is no initiative necessary from the client. Eventually, the client may have to pay the income-related personal contribution. No money from the LAB will go to the client.

In the past, a lawyer would have had to apply for each certificate in advance of the proceeding, which meant that the LAB had to verify and approve each application. In recent years, the LAB has changed its workflow by introducing the so-called High Trust system, which is based on 'transparency, trust and mutual understanding'.[47] Lawyers who have the High Trust certificate are expected to act in compliance with the LAA and can simply apply for a certificate digitally. They will get the certificate automatically. Verification will take place afterwards, using random samples. If more than a certain percentage of the certificates is found to be applied for unjustified, the lawyer will lose his High Trust certificate and will have to apply through the old-fashioned way. This is a practice that is found to be very efficient. On the other hand, lawyers want to avert being slapped on the wrist in retrospective. Especially in prison litigation this is a problem as not all complaints fall within the scope of the legal aid scheme (see §2.4 of the report on workstream 2). Although the policy of allocation of a certificate has been laid down in a written Instruction (Z080), there is a margin of appreciation. Lawyers have to think twice before using the digital application for a certificate (L03). They can of course always contact the LAB before they apply for the certificate.

Acting as a defence lawyer in criminal cases, board-registered lawyers can get a 'certificate' (*toevoeging*) which enables them to provide legal aid[48] in a specific case for a specific client. Prior to that, they can be appointed as 'Duty lawyers' (*piket-advocaat*) and assist clients during the first phase after their arrest. Duty lawyers have to be available 24 hours a day and lawyers participating in the system will take turns in availability shifts. Most criminal defence lawyers both work as duty lawyers and through certificates. It is, for example, not uncommon that a lawyer meets a new client while on duty and later on continues as his defence lawyer with a certificate. A table for remuneration relating to the certificates can be found in the report on workstream 2. Specific remunerations have been set for the Duty Lawyers[49] The remuneration for coming to the police station and consultation before the first police interrogation is 0,75 points. Assistance during the interrogation is 1,5 points (or 3 points in more serious crimes) and consultation after the hearing is 0,75 points. For these three points together (€315), a lawyer will have to travel to and from the

47 Legal Aid Board, *Legal Aid in the Netherlands – a broad outline*, 2017, p. 18. <https://www.rvr.org/binaries/content/assets/rvrorg/informatie-over-de-raad/12835_legalaid-brochure_2017.pdf> (last accessed 1 October 2018).

48 The LAA distinguishes between 'rechtshulp' (which literally translates into 'legal aid') and 'rechtsbijstand' (which literally translates into 'legal assistance'). Rechtshulp is also referred to as 'First-line legal aid' (*eerstelijns rechtsbijstand*), provided for by a Legal Services Counter (*Juridisch Loket*). Legal assistance is also referred to as 'Secondary legal aid', provided for by a Board-registered lawyer. In our reports, we mostly use the term Legal aid in the sense of 'Secondary legal aid', unless we specifically mention otherwise.

49 Article 23 LAPD.

police station and also will likely have to wait for quite some time between arriving and seeing his/her client, between the first consultation and the actual hearing.

The remuneration for prison litigation only applies to more complex cases and is 3 points. Until 2015 it was 5 points. Austerity measures led to a cut-back on this specific remuneration. As stated above, 3 points is seen as an adequate, yet moderate remuneration.

Lawyers can litigate if the LAB decides that prison litigation in a specific case is not eligible for a certificate (see §2.7 of the report on workstream 2). Most of the lawyers that we spoke to enter into such proceedings every now and then, but they admit that in most cases, the time it takes to litigate is disproportionate to the outcome (the allocation of 3 points, which estimates to €315). This leads to them choosing to provide legal aid for free.

What are the known consequences of the origin of funds (e.g. state-funded lawyer vs. paid lawyer) in terms of quality of service?

We are not familiar with any relevant research in this area. As mentioned above, some of our respondents noted that some of the state-funded lawyers seem to be cutting corners (e.g. only short visits to clients prior to their first interrogation). On the other hand, in the past years we have seen some very well-known private paid criminal defence lawyers struck from the board because of malpractice.

Most lawyers strive for a practice in which they can combine both a pro-deo practice and 'paying clients'. In that way they can make money when assisting the paying clients which will enable them to do the pro deo-work without struggling to make ends meet.

2.3 Access of lawyers to their clients

- *How does a lawyer access a potential client, that is, make his or her existence known to a prisoner?*

After having arrested a suspect, the police can hold him/her for questioning for a maximum of 18 hours,[50] after which the deputy-prosecutor[51] can order police custody for three days. Pre-trial detention starts after police custody. The public prosecutor can make a request to the examining judge for remand in custody for 14 days. After the remand in custody, the prosecutor can make a request to the chamber in courts for detention in custody, which can last up to 90 days.[52] After these 90 days, the trial against the – by then – defendant will have to start. In reality, more complex investigations will usually not have finished by

50 Nine hours for questioning, but not counting the time between midnight and 9:00 AM.
51 A police-officer with a higher ranking and additional training.
52 The court in chambers can decide on 90 days at once, or they can choose for a shorter period and extend after a new hearing. Only two extensions are possible and the maximum in total cannot surpass 90 days.

then, which leads to so-called *pro forma* hearings, where the trial court can extend the pre-trial detention for a further 60 days on each occasion.

In line with the EU-directives, the law prescribes that, after arrest, the suspect will have to get information on his defence rights, including the right to access to a lawyer (article 27c CCP[53]). The law also prescribes that a duty lawyer will be appointed to a suspect who is deprived of his liberty against his will (article 28b (1) and (2) in conjunction with article 39 CCP). The reason for this is that an arrested suspect will not be able to seek legal aid himself. Unless the suspect indicates that he wants a lawyer of his own preference, a duty lawyers will subsequently be appointed, free of charge (see §2.2 of the report on workstream 2). There is one exception: persons who are suspected of crimes or misdemeanours that are not eligible for police custody (and who therefore can only be held for questioning), will not get a duty lawyer appointed, but they will be allowed to contact a lawyer themselves (article 28b (3) CCP). In the latter category, the regular legal aid scheme as described in §2 of the report on workstream 2 applies. This means that the extent to which legal aid can be subsidized is income dependent and that the suspect will have to pay at least €143 as a personal contribution.

The lawyer will have to arrive within two hours and after arrival he will be allowed a 30 minutes conversation with his client.

It is not unusual for the duty lawyer to get a certificate to continue legal aid after the phase in which the duty lawyer is active (this is: up until the end of the police custody). But the suspect can also decide to choose another lawyer. In both cases, article 40 CCP arranges for a new assignment. If the suspect does not want to continue with the duty lawyer, he will have to find a new lawyer himself. The law does not provide in specific facilities for this, but in general the suspect will be allowed to make phone calls from the police detention facilities.[54] This is not a situation that our respondents pointed out as problematic. We did not come across situations in which it was described that arrestees had not been able to contact a lawyer.

That said, in §1.3 of the report on workstream 2 we already discussed the opinion of Attorney-General Spronken before a Supreme Court judgement.[55] The opinion suggests that the information that arrestees get is not always clear enough and/or may not be communicated in the right way. An arrestee mistakenly got informed that he was held for questioning for a crime that did not fall in the ambit of fully subsidized legal aid (article 28b (3) CCP) and that, therefore, he could contact a lawyer himself, but that he should realize that costs would be involved. The arrestee decided not to contact a lawyer. The Supreme Court

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53 Also see: Besluit mededeling van rechten in strafzaken, *Stb.* 2014/434 (*Decree on information on rights in criminal proceedings*).

54 Article 4.2.7 Landelijk reglement arrestantenzorg (National regulation on care of arrestees).

55 Opinion of 04-04-2017 (§3.3.12), ECLI:NL:PHR:2017:376, before HR 30-05-2017, ECLI:NL:HR:2017:968. Also see: Spronken 2017.

judged that the suspect was given a misrepresentation of facts which was in breach of procedural rules. The appeal was still dismissed, though, because it was not demonstrated that the suspect would indeed have contacted a lawyer if he had been presented with the correct information.[56]

- *How is lawyer attendance organized within detention facilities?*

Within police stations, the National regulation on care of arrestees (*Landelijk reglement arrestantenzorg*) applies, which holds the ground rule that lawyers should be able to visit their clients, under regular supervision and with due regard to the local rules of the police detention facility. Most lawyers will be contacted under the duty lawyer scheme and all our respondents confirmed that, in general, this system works quite well and that it is easier to attend a client in police stations than in penitentiary institutions. The lawyer will have to contact the local police station where his client is held in order to make arrangements.[57] It is of course also in the interest of the police to facilitate quick consultation, as they cannot start the interrogation before the suspect has spoken to his lawyer.

Similarly, the PPA holds provisions that guarantee access to a lawyer (see §3.3 of the report on workstream 2). The lawyers among our respondents seem to be less content with the organisation of their attendance in the penitentiary institutions. While the detainee normally has the right to make phone calls, this does not guarantee that he will always be able to speak on the phone with his lawyer: the time allocated to the detainee to call his lawyer may of course not be a time on which the lawyer is available. The other way around, it is also very difficult for a lawyer to immediately speak to his client on the phone. He can call to the penitentiary institution, but these are generally very big buildings with numerous 'wings'. Also, detainees are not always in their cell (e.g. when they are working, when they are in the library or outside). As a rule, it will take a very long time to find an individual detainee and the prison staff handling incoming phone calls mostly are not allowed to enter the actual cell blocks to go and find a detainee. So, when a lawyer wants to discuss matters with his clients, he will have to call (or in some cases send an e-mail) with a so called *terugbelverzoek* (call back request), which the administration will have to pass on to the detainee. Respondents put forward that these requests do not always reach their clients (in time). Also, depending on the institution, there did not always seem to be availability of a private phone to discuss confidential matters (L1, L2). One respondent also mentions that detainees that have to spend more time in their cell, have fewer opportunities to call their lawyer, because the staff will then have to make specific arrangements for a phone call (L02). A detainee who is free to roam the cell block during the day can use the collective phone which makes it easier to respond to a call back request.
Both the lawyer and the client are very much dependant on the administration of the penitentiary institution if they want to establish contact through telephone. That said, in case

56 HR 30-05-2017, ECLI:NL:HR:2017:968.

57 Article 3.8.2 Landelijk reglement arrestantenzorg (National regulation on care of arrestees).

of emergency (e.g. when additional files arrive very shortly before the hearing before the criminal court), lawyers may be able to pull some strings – even outside office hours (L2).

In order to visit his/her client, the lawyer can call the penitentiary institution to make an appointment. Experiences between respondents differed as to the possibilities for immediate contact in this regard, depending on the specific penitentiary institution. One example was given in which a lawyer drove to the institution very early in the morning, phoned the administration as soon as their offices opened and was allowed to enter the penitentiary institution straightaway (L04). However, common practice seems to be that at least one day prior to the desired visit, arrangements will have to be made and even then there may be factors that complicate matters.

A first complication can be the so-called *bloktijden* (blocked times), during which detainees participate in labour. As a rule, during these times, the detainees cannot receive visitors and/or phone calls. However, penitentiary institutions have different degrees of flexibility on this. Other activities can also fall under the blocked times and some of those activities are of added value to the detainee as well (e.g. regular visits from family), so the detainee may not be too keen to speak to his lawyer during those times.

A second complication can be the availability of consultation rooms. There is much difference between penitentiary institutions in this regard. We spoke to a prison director (PD5) who had approximately 250 pre-trial detainees with a total of six to eight available consultation rooms. These rooms were also needed for consultations with probation officers, behavioural experts and so on. He admitted that it was best for a lawyer to call a week in advance if he wanted to be sure to be able to meet his client. Other examples that were given showed more flexibility. Some lawyers, however, did point out that some consultation rooms are wired (in order to enable the authorities to monitor conversations between suspects and other visitors) and that they were not convinced by the guarantees that conversations between lawyer and client would never be recorded. One lawyer specifically pointed out that he always chooses the conversation rooms without wires, even if this means that he has to wait longer (L04). Not all penitentiary institutions have rooms that are guaranteed without wires.

A third complication is the availability of staff: outside of the regular office hours, only little staff is present in the penitentiary institution, so that visits are virtually impossible, and the possibility to make phone calls is also very limited.

All in all, the hours in a day in which the detainee is available for consultation can be quite limited and then of course the lawyer has his own agenda as well. This leads to a situation in which possibilities for contact between lawyers and clients are restricted. Paradoxically, though, some lawyers put forward that it is not always that easy to contact clients who are not in detention. These clients do not tend to have their minds set on the forthcoming case and sometimes they are downright reluctant to speak to their lawyer about the preparation of the case. Virtually all respondents agree, though, that a suitable infrastructure for telecommunication would hugely benefit the lawyer-client relationship, although some lawyers mention that they fear what would happen if their client would be able to call them 24/7,

as some clients manage to call them on a very regular basis already, even within the restricted possibilities.

- *Material problems related to access (e.g. remote prisons, costs of transportation)*

This is a topic that did not seem to raise many considerable issues. Most prisons are indeed quite remote and sometimes even have limited parking possibilities, but this does not seem to be a determinative factor overall, although one lawyer specifically mentioned that certain penitentiary institutions are so remote that he warns clients who are there that he may not be able to visit very often (L3).

- *Administrative problems related to access (e.g. security measures, searches)*

Apart from the logistical difficulties already mentioned above, specific security measures and/or searches were not commonly mentioned as problems regarding regular penitentiary institutions. Some lawyers mentioned that it was rather time consuming to have to wait in the same line as regular visitors and that sometimes and the staff were not sufficiently informed on the privileges of lawyers (e.g. allowed to bring a laptop or a phone with them) (L01, L02, L04).

- *Problems within detention facilities (e.g. mobility between wards, waiting times, existence of a dedicated space to meet detainees? Issues of confidentiality? Relations with staff: with officers, medical staff, social workers etc., on legal issues connected with their specific fields).*

Most issues have already been addressed above. As to the relations with staff no specific issues seem to arise.

In most penitentiary institutions, telephone interpreting services are used. Most lawyers have a subscription to these services and most respondents do not put forward any problems regarding the use of interpreters through telecommunication. One respondent told us about one specific penitentiary institution in which calling the service raised problems. Apparently, special approval is necessary before a lawyer can call the number. Getting the approval can be time-consuming. This seems a rather odd exception to the general practice (L03). Another lawyer mentioned the problem of the use of interpreters shortly before the first pre-trial detention hearing before the examining judge. Often, a lawyer will want to consult with his client before this hearing. In most cases the case-file will become available very shortly before this hearing and the lawyer will want to discuss the contents of this file with his client. If he needs an interpreter for this, this may very well be the same interpreter that will later on provide his/her services at the hearing. This is problematic when a client chooses, for example, to confess his crime before his lawyer, but chooses to remain silent, or to tell a different story, to the examining judge. If the same interpreter is used, this interpreter may somehow be able to influence the proceedings (L04).

- *Access to detainees and prisoners' files?*

In general, lawyers do not have access to the prisoners' detention files. Also, they do not have access to his/her cell. If a lawyer provides legal aid in prison litigation, access to relevant parts of the prisoners' files is possible and often inevitable, as effective legal aid would not be possible without knowledge of the relevant parts of the files. There is no significant legislation on this topic and our research did not reveal specific caveats or problems in this regard.

- *How are cases initiated, through initiative of the lawyer/the prisoner?*

The initiative for prison litigation, due to the specific character of the complaints proceedings, lies with the detainee. As mentioned before, the basic principle in these proceedings is the self-reliance of the detainee. Of course, this does not prevent the lawyer from suggesting to his client to file a complaint. And sometimes lawyers gave examples that made clear that they used these proceedings to provide their clients with better possibilities in order to prepare their defence (DL02 and DL03). There does seem to be a thin line however, since one respondent also put forward that he could communicate about these facilities directly with the prison director so that it was not necessary to formally file a complaint (DL02).

2.4 Overall image and trends

In this chapter, we discussed the key elements of legal aid to remand prisoners in the Netherlands. A suspect in pre-trial detention is entitled to legal aid for the preparation of the criminal case. The legal aid scheme provides subsidized legal aid free of charge, but for persons with an income above a certain threshold, there is a repayment obligation if the case results in a conviction (see §2.2 of the report on workstream 2). This relatively new rule does not apply to legal aid in prison litigation though. Every detainee has the right to legal aid in prison litigation, but the legal aid scheme is limited to the more complicated cases. While criminal law forms a specific field of expertise in the Netherlands, the same cannot be said of prison law. The assumption seems to be that lawyers who are well-versed in criminal law will also be able to enter into prison litigation. This assumption is ill-founded though, as penitentiary law is not a part of the education programme for lawyers and options for post-graduate courses are limited. As such, among lawyers there is very limited specific expertise in this field. In fact, lawyers with an established expertise in this field can be counted on the fingers of one hand. At the same time, our respondents also lament the limited expertise among members of the prison staff. Not only the prison officers in the wards, but also prison directors and their staff not always appear to stand out as skilled in prison law. Combining these findings with the rather high amount of complaints, we come to the inevitable conclusion that more thorough knowledge of prison law is needed on both sides.

We also found, though, that formal litigation is not always the holy grail. Almost all lawyers that we interviewed also put forward that informal contacts with the penitentiary institution could accommodate finding a solution for their client. Not only would a problem be solved much quicker, chances of the problem being solved in a satisfactory matter were also bigger. Some prisons are characterized by an over-formalistic approach by prison staff ("if you do not like it, file a complaint") resulting in lesser possibilities for a constructive dialogue. At the same time, though, more and more lawyers seem to discover the possibility of subsidized prison litigation, not always bringing with them the necessary expertise.
We feel that substantial efforts should be made to promote mediation as a front-portal for prison litigation.

Legal aid in prison litigation and legal aid in criminal justice proceedings are two different fields with different legal aid schemes. At the same time, prison litigation may be necessary to enable the preparation of the criminal proceedings. What struck us in our research, is that most penitentiary institutions used for pre-trial detention lack a regime that is primarily focused at facilitating the preparation of the criminal proceedings. The ability for detainees to have case files on their cell, either on paper or digitally, is an exception rather than a rule. Lawyers have no direct access to their clients, neither by phone nor face-to-face. They are always dependent on the cooperation of the prison. There seems to be a lot of room for improvement (especially regarding the use of telecommunication).
As a consequence of these rather counter-productive regimes, defence lawyers may have to initiate prison litigation. This is a grey area: the right to have adequate time and facilities for the preparation of the defence (article 6 ECHR) is, as such, not a right for detainees that falls under the ambit of prison law. From that point of view, efforts from a lawyer to achieve the enjoyment of this right could be said to fall outside the scope of prison litigation and also outside the scope of the legal aid scheme for prison litigation. On the other hand, the PPA holds a lot of provisions aimed at securing parts of these rights, which indicates that, indeed, prison litigation is suitable for securing these rights.
In any case: the availability of laptop computers for detainees, especially when they are a suspect in more complicated cases, seems to be a very important privilege: these suspects often are quite clever and can be of great help to a lawyer (e.g. with unravelling the case-file) (L02). Also, it can give them an opportunity to spend their time in a meaningful way. They can become quite fanatic in this respect, according to one respondent (L03). Also, it would be very helpful if a lawyer could digitally send additional documents. One lawyer explained that it can take days to send a client additional documents on paper (L04). Sometimes a lawyer will have to jump through all kinds of loopholes to provide his client with the most recent documents in time before the hearing.
What we learnt from these lawyers is that informal contacts can often be very fruitful in trying to achieve these facilities for their clients. One lawyer claimed that actually it is the only sensible way, as filing a formal complaint would almost always take much too long (L04). Again, we feel that this demonstrates that both parties should, on the one hand, take notice of the appropriate rights for prisoners while, on the other hand, being receptive to informal solutions and constructive debate.

3 LEGAL PRACTITIONERS - NGOS (E.G. NGOS / HUMAN RIGHTS ORGANISATIONS / LEGAL CLINICS/ UNIVERSITIES / MONITORING BODIES THAT PROVIDE LEGAL ADVICE AND/OR MAY START LITIGATION)

As shown in §1.3 of the report on workstream 2, there are multiple organisations that provide aid to (ex-)detainees. Not all of these organisations fit within the definition of NGO's, but we will nevertheless mention them here. Only a couple of those organisations provide direct legal aid. In this chapter, we will elaborate on the organisations that were mentioned in particular by our respondents. Apart from these organisations, there are some that are active in the Netherlands but who were not mentioned on a regular basis, such as Amnesty International and the so-called National Detainees Committee (*Landelijke Gedetineerden Commissie – LGC*).
Amnesty International has a Dutch branch, but they do not systematically provide legal advice or start up litigation for individual detainees. However, their report on the terrorist wings (see our report on workstream 2) has had considerable impact on the position of detainees in those wings.
The National Detainees Committee[58] is an organisation that represents the interests of (former) detainees. It does so in a broad sense, so they do a lot more than organise legal advice. Its aims are (among others): stimulation of education and schooling of detainees; equal treatment of detainees – notwithstanding the penitentiary institution they stay in; debt relief; a more extensive day programme for detainees; cooperation with other NGO's and enhancing the notification on information of rights to detainees. It is mainly the latter aim that is relevant for our research. From their website it becomes clear that a number of law firms have affiliated themselves with the National Detainees Committee. This suggests that actual legal aid in individual cases is, in the end, provided by these affiliated lawyers rather than by the National Detainees Committee itself or its employees.

The organisations that we will discuss in this chapter are:

(1) the members of the Supervisory Committees for each penitentiary institution,
(2) the legal consultation hours provided (mostly) by academic students (*juridisch spreekuur* – active only in some penitentiary institutions)
(3) Bonjo, the association that looks after the interests of (ex-)detainees.
(4) Legal Service Counters (not mentioned often as a relevant source for legal aid in prison litigation).

However, none of the employees of these organisations are legal practitioners that provide legal aid on and individual basis.

3.1 Description of dedicated networks (NGOs/ Human Rights organisations / Legal Clinics/ Universities / monitoring bodies (that provide legal advice and/or may start litigation).

[58] See <http://www.gedeco.nl/> (last accessed on 21 November 2018).

- *Brief history of each relevant body.*

(1) The Supervisory Committees were introduced in the 1970's, see the report on workstream 2 for a concise description of the history.
(2) Individual universities started with legal consultation hours. As an example, we will use the project from Utrecht University. This project, officially called *Juridisch Spreekuur Gedetineerden (JSG)*, started in 2002, although before that date students visited prisoners on a regular base already.[59]
(3) Bonjo (*Belangenoverleg Niet-Justitiegebonden Organisaties:* consultation group for organisations not related to judicial authorities) is an association that has been active at least since the 1980s. Their aims are, among others, to represent the interests of (ex)detainees, help (ex)detainees with finding housing, to visit detainees, to provide counselling and education. A lot of national and local (non-governmental) organisations representing these aims are associated to Bonjo.
(4) The Legal Service Counters are state financed and provide so-called first line legal aid in almost all disciplines. They have been established between 2003 and 2006 by the LAB.[60] Formally, it is a foundation that is financed through the LAB and the Ministry of Justice and Security.

    Before the establishments of these Legal Service Counters, the LAB and the Ministry financed so-called Legal Aid Offices (*Bureau Rechtshulp*). These Legal Aid Offices provided consultation hours in penitentiary institutions, which seemed to filter out a lot of superfluous complaints.[61]

    Legal Service Counters are also said to be present in penitentiary institutions, with consultation hours, but most of our respondents indicated that physical presence of advisors is scarce at best. One of our respondents, a lawyer (L01), participated in consultation hours for the Legal Aid Office and Legal Service Counters, but indicated that finances for this kind of legal support dried up and that since then, general staff have taken over and support is now mainly provided through telephone. Although the annual plan for 2018 still mentions consultation hours by employees in 'several' penitentiary institutions,[62] none of our respondents seemed familiar with any specifics on these consultation hours, so it cannot be said that these consultation hours are a widespread practice.

- *Staff (number, permanent or temporary staff, professional experience)*

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59 < https://www.uu.nl/organisatie/departement-rechtsgeleerdheid/over-het-departement/onderdelen/willem-pompe-instituut-voor-strafrechtswetenschappen/juridisch-spreekuur-voor-gedetineerden>.

60 Legal Aid Board, *Legal Aid in the Netherlands – a broad outline*, 2017, p. 7-8. <https://www.rvr.org/binaries/content/assets/rvrorg/informatie-over-de-raad/12835_legalaid-brochure_2017.pdf> (last accessed 1 October 2018).

61 Bleichrodt 2012, p. 182.

62 Jaarplan 2018, p. 23 <https://www.juridischloket.nl/media/1164/het-juridisch-loket-jaarplan-2018.pdf>.

(1) In Chapter 2 of the WS2 report, we have described the legal basis for the Supervisory committees. According to this legislation (the PPA), each penitentiary institution has its own Supervisory Committee. This is an external and independent body, that consists of members of the general public, as independent representatives of society. The committee consists of at least six members and is composed as broadly as possible, but must at least consist of a judge, a lawyer, a physician and a social worker. The members of the Supervisory Committee are appointed by the Minister of Justice and Security for a period of five years. Reappointment can take place twice.
(2) Students of a law school can participate in the legal consultation hours. They are usually supervised by academic staff. Students are, by nature, temporarily involved, ideally between one and two years.
(3) Bonjo has approximately 60 members (other organisations) and a small staff who run the administration. This staff consists mainly of ex-detainees. There is no professional legal experience at hand, but there is a network of lawyers that they often work with, a lot of these lawyers advertise in the Bonjo Newspaper (see below).
(4) The Legal Service Counter has 30 branches, staffed by 250 employees ('legal experts').[63] These employees have to cover all relevant legal areas (also civil law, family law, administrative law etc.). To our knowledge, there is little or no specific expertise on prison litigation. In the past, this expertise used to be provided by lawyers who would be hired by the LAB. These lawyers would then visit penitentiary institutions and advise detainees.

- *Internal relations between departments*
  (policy, law, finance, HR…); and notably with the policy department: e.g. modes of cooperation, cases of conflict, strains and hierarchy between these departments and how they collide or not.

Our research did not provide us with information that suggested problems or best practices due to specific internal relations between departments of the organisations mentioned here.

- *Legal relief policy*
  Selection of cases - according to which legal or social/political criteria (is there a dedication to specific populations of prisoners or specific disciplinary cases)?

(1) The Supervisory Committees decide on complaints within the scope of the complaints proceedings (see the report on workstream 2). In short: decisions by the prison director can be subject to a complaint, but a lot of actions by the prison staff are interpreted as 'decisions by the prison director'.
(2) The students of the legal consultation hours only deal with cases from the penitentiary institutions that are connected. They can inform detainees on their rights and on the possibilities of filing a complaint. Also, they can assist the detainee in filing a complaint.

63 <https://www.juridischloket.nl/organisatie/> (last accessed on 3 November 2018).

They will not represent the detainee during the hearing before the Supervisory Committee. Depending on the help the detainee needs, the students can also assist him or her with the communication with other government bodies, family etc.

(3) Bonjo provides aid to (former) detainees in a very broad sense, so not only with legal problems. They also provide assistance to, e.g. family members etc. There are no formal criteria.

(4) The Legal Service Counters has no specific criteria as to what group of prisoners can seek their advice. They provide consultation hours in 'several' penitentiary institutions, but we found no details that specify as to which institutions are concerned. None of our respondents were able to specify how and when these consultation hours took place. Our impression is that the Legal Service Counters do not fulfil a significant role in prison litigation.

3.2 How is litigation work financed?

- *Source of funding (public funds, funds stemming from private sectors such as private foundations)*

(1) Members of the Supervisory Committee get a moderate remuneration from the penitentiary institution.

(2) The students of the legal consultation hours act on a voluntarily basis. The academic staff is provided and paid for by the University, but it is fair to say that at least a part of their effort should also be considered as voluntary work.

(3) The vast majority of members of Bonjo work on a voluntarily basis. No financing for litigation work. Lawyers advertise in the periodical paper that is distributed within the penitentiary institutions.

(4) The Legal Service Counters are financed by the LAB, is an autonomous administrative authority, financed by the state. As said, the service counters are active in a much broader field than prison litigation and currently there does not seem to be a specific main focus on prison litigation, which does not give us the impression that significant shares of the budget are available for specific activities in this field.

- *assessments of possible impacts of funding notably on the selection of cases and their publicity (press, reports, …)*

Not applicable.

3.3 Within detention facilities

- *Where are these actors located? Possibility to use a permanent office/desk?*

(1) Members of the Supervisory Committee both provide legal advice as a visiting officer (see §1.3 of the report on workstream 2) and can act as a complaints committee once a formal complaint has been lodged. The members of the committee that perform

duties as a visiting officer have access to the penitentiary institution, which distinguishes them from most other practitioners. It allows them to have contact with both the detainees and the prison staff. This enables them to play a direct mediating role. There is no designated office for the visiting agents.

(2) The students of the legal consultation hours use consultation rooms within the penitentiary institution. Also, in some penitentiary institutions they are allowed to circulate between cells.

(3) No formal arrangements are in place for members or volunteers of Bonjo to visit detainees in prison or contact them in any other way. They are ordinary visitors.

(4) As said, Legal Service Counters can operate consultations hours in some penitentiary institutions, but we did not encounter respondents who were familiar with this. We are not aware of penitentiary institutions providing dedicated offices for these consultation hours, but given the facilities provided to the Legal Consultation Hours and the Supervisory Committee, we assume that a suitable room will be provided.

- *How do they access a potential client, that is, make their existence known to a detainee/prisoner?*
-

(1) Members of the Supervisory Committee acting as a visiting officer announce their visits beforehand. The house rules should inform the detainees that there is a Supervisory Committee and that visiting officers will come to the prison at regular intervals. Practices regarding announcements differ between penitentiary institutions.

(2) The students of the legal consultation hours visit the prisons at fixed times. Their existence is advertised with posters and/or leaflets. Also, of course, there is mouth to mouth-advertising.

(3) Bonjo distributes a newspaper for detainees periodically. The paper contains a lot of advertisements from lawyers, but also contains information for detainees and points out that detainees can contact them.

(4) As our respondents did not seem familiar with the consultation hours of the Legal Service Counters, we did not collect relevant date on this. We assume that those penitentiary institutions that host these consultation hours will announce them in a timely fashion. Apart from consultation hours, detainees can contact the service counters by telephone and sometimes via internet (in a reintegration centre, see Chapter 5).

- *Modes of organisation of attendance in prison facilities*

(1) Visiting officers (members of the Supervisory Committee) are to be allowed in the penitentiary institutions.

(2) Arrangements for the legal consultation hours are made with individual penitentiary institutions.

(3) Representatives of Bonjo have no specific rights to attendance in prison facilities.

(4) As noted, in the past, the counter would organise consultation hours in penitentiary institutions, but this practice seems to be very limited these days (DL 1).

- *Material problems related to access (e.g. remote prisons, costs of transportation)*
- *Legal problems related to access (e.g. security measures, searches)*
- *Problems within police custody/prisons (e.g. mobility between wards, waiting times, existence of a dedicated space to meet prisoners? Issues of confidentiality? Relations with prison staff: with wardens, medical staff, social workers etc., on legal issues connected with their specific fields? Other aspects of work conditions?).*

We take these subjects together. A lot of remarks made in this regard in Chapter 2 apply here as well. Entering a prison can be time-consuming because of the detection procedure, but our respondents did not mention any systematic problems.

(1) Due to their specific task, the visiting officers (members of the Supervisory Committee) do not have specific issues. The respondents we spoke to do not have issues as to their access to the penitentiary institution. Dependent on the institution, their relationship with the staff allows them to play their intermediary role more successfully: one of the respondents who is working in two different committees (in two institutions) specifically pointed out that in one institution the possibilities for mediation (and prevention of formal complaints) was better than in the other (SC01). We refer to Chapter 4 for a more concise description of the work of the Supervisory Committee.
(2) The students of the Legal Consultation Hours of the Utrecht University have no specific material or legal problems. They are often allowed to enter the wards and circulate between cells and as such are able to communicate with detainees without any specific problems. Again, we refer to Chapter 4 of this report for more concise description of the activities.
(3) No access to penitentiary institutions
(4) No access to penitentiary institutions

Access to case files? (also in police custody). Is there more specifically access to digital tools for defenders: how, what are the known obstacles?

(1) Members of the Supervisory Committee acting as a visiting officer have no on the spot access to case files of detainees. Once a complaint has been issued, the members of the Supervisory Committee hearing the complaint can ask for (and will receive) relevant files from the penitentiary case file. However, they are dependent on the prison staff to provide them with the relevant files. Sometimes the information is not complete straightaway, and/or the staff is slow in providing the files.
(2) The students of the Legal Consultations have no access to case files.
(3) Members of Bonjo have no access to case files.
(4) The employees of the Legal Service Counter have no access to case-files.

4 PRISONERS AS LITIGANTS

4.1 Assessment of shortage of juridical and economical capital of remand prisoners

There are no recent austerity measures or budgets cuts related to access to legal information.

4.2 Access to legal information

As described in the report on workstream 2, following the decision by the Dutch Supreme Court of 22 December 2015, as of 1 March 2016, lawyers are allowed to be present during every police questioning. Suspects are offered the opportunity to consult a lawyer in private before their questioning by the police and the lawyer could be present during the questioning. A suspect who does not or not sufficiently master the Dutch language is assisted by an interpreter. Persons who are arrested are informed about these rights promptly after the arrest but in any case before the first interrogation (par. 3, sub b). When the person is not arrested (*een niet aangehouden verdachte*) he is notified that he has the right to be assisted by a lawyer before the first interrogation and the right to interpretation and translation (article 27c, par. 2, CCP). Complaints of persons who have been held in a police cell are dealt with by the regional police complaints committees. Complaints are dealt with according to the rules concerning the complaint handling by the police (*Regeling Klachtbehandeling Politie*[64]), a copy of which must be present at every police station (article 9).

Specific for penitentiary matters, on the basis of Article 56 PPA, the prison director must ensure that every prisoner is informed of his rights and obligations under or pursuant to the PPA in writing and as far as possible in a language he understands. Paragraph 2 adds that in particular the prisoner must be informed of his right to file a complaint or appeal and to turn to the member of the Supervisory Committee serving as a visiting officer on a monthly or weekly rota basis. According to paragraph 3, a detained foreign national will be informed of his right to inform the consular representative of his country of his detention upon entering the establishment.

Informing the prisoner about his rights in practice is vital for him when it comes to being able to factually exercise his rights.[65] According to the Explanatory Memorandum with article 59 PPA, the obligation of the prison governor to inform the prisoner about his rights begins at the moment of his entrance but is not restricted to this moment. In the law, no precise way of informing the prisoner is mentioned. The Explanatory Memorandum notes that in many prisons an audio-visual presentation has been

64 Regeling van 13 december 2012, *Stcrt*. 2012, 26850, laatstelijk gewijzigd op 2 maart 2017 *Stcrt*. 2017, 13163, i.w.tr. op 18 maart 2017.

65 See C. Kelk (edited by M.M. Boone), *Nederlands detentierecht,* Deventer: Wolters Kluwer 2015, p. 64-66.

developed about the state of affairs in the institution and their legal position. This audio-visual presentation, however, must not come in the place of written information.66 Every prisoner must have access to the specific penitentiary regulations that apply. This applies in particular to the PPA, the Prison Rules (*Penitentiaire maatregel*), the regulations drawn up by the Minister relating to the arrangement of the prison and the house rules. The Explanatory Memorandum notes that the language barrier may be a complicating factor in the communication. Nevertheless, all parties involved must be expected to ensure that the information provided is understood by the detainee.[67] When it comes to transmitting essential information, the telephone interpreting service (*tolkentelefoon)* must be used. The Ministry of Justice can contribute to this by ensuring the availability of the (standard) regulations in current official languages. In the establishment, staff members, fellow prisoners and the telephone interpreting service can also form an indispensable link.[68]

In practice, informing the prisoner of his rights and duties in the prison is mostly done by handing the prisoner a copy of the house rules, which is available in different languages. According to the Explanatory Memorandum with the PPA, the house rules, if set up as a catalogue of the rights and obligations of the prisoner, are suitable to provide the prisoner with the necessary information about his internal legal position.[69] In the Model Regulations for house rules (*Regeling model huisregels penitentiaire inrichtingen*[70]) information on the legal position of the prisoner, including his right to lodge a complaint and appeal are included. In Rule 13.1 of the Model Regulations it is determined that the house rules must be made available for inspection on the prison ward and in the library. Also, the prisoner must receive a copy for inspection at his request without delay. In addition to the house rules, the Model Regulations for house rules determine that the prisoner must be able to inspect the PPA, the Explanatory memoranda to the PPA and the Penitentiary measure, the ministerial regulations and the circulars. These materials must at least be made available in the library.

The former prisoners we spoke to indicated that during the intake they were provided with the house rules (FP, also PD02, PD04 and SC02). During this intake, a conversation between the incoming prisoner and a member of the prison staff, practical information about the course of events in the prison and (an excerpt from) the house rules is provided. During the intake, a respondent notes that a prisoner is also provided with the form to file a complaint with the Complaints Committee (PD02). The risk of providing the prisoner with information on his legal position during the intake is, however, that during this moment the prisoner might be overwhelmed with papers and instructions, so that the information will not be completely clear or understood by the prisoner.

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66 *Kamerstukken II* 1994/95, 24 263, 3, p. 70.
67 *Kamerstukken II* 1994/95, 24 263, 3, p. 70.
68 *Kamerstukken II* 1994/95, 24 263, 3, p. 70.
69 *Kamerstukken II* 1994/95, 24 263, 3, p. 12.
70 Regeling van 24 juli 1998, *Stcrt. 1998, 158*, laatstelijk gewijzigd op 5 november 2015, *Stcrt*. 2015, 40088, i.w.tr. op 1 december 2015.

All prisoners receive the same information during their intake. Special groups such as prisoners with a minor intellectual disability (*lichte verstandelijke beperking*) are not given a special treatment in this respect. In many cases, this disability is not known to the authorities or noted by the prison worker and can be concealed during the intake (PD02). After the intake, there is no other moment on which the prisoner is actively informed about his legal position by the prison authorities, other than when he requests so. One respondent notes that this is in fact a missed opportunity (PD02). In relation to this, one respondent noted that it would be good for prisons to collaborate with universities in order to provide legal assistance or lectures on criminal or criminal procedural law for prisoners (PD01).

In some prisons, the house rules are provided on the prisoner's cells. A prison director notes that in her prison the house rules are not provided to the prisoners on their cells but are made available at the prison ward. This is done as prisoners in the past destroyed the house rules or drew on them (PD03). In case the house rules are not given to the prisoner at the intake and/or are available on his cell, the house rules are usually made available on the prison ward, in the library, via the cable TV information service and/or in the reintegration centres. One respondent notes that in one prison the house rules are only available in the library, which is according to his opinion is insufficient (SC02). Even more so, such situation is not in line with Rule 13.1 of the Model Regulations that determines that the house rules must be made available for inspection on both the prison ward and in the library, as stated earlier.

No respondent was able to say in which languages the house rules are offered. The respondent that was most precise in this respect indicated that the house rules are available in the prison concerned in at least the Dutch and English, and possibly also in the Arabic, Spanish, German and French language (PD03). In this respect, it is important to note that the Council for the Administration of Criminal Justice and Protection of Juveniles has determined in its case law that if a prisoner during his intake has not received a copy of the house rules, the prison director has to take care that the prisoner receives a copy of the house rules in a language he understands as soon as possible and that requests for a copy of the house rules must be adequately responded to. This applies even more so to the case if the prisoner does not master the Dutch language.[71]

The former prisoners we spoke to noted that it was very different whether prisoners were aware of the house rules or not. They indicate that some knew them by heart, whilst some did not read or knew them at all. These respondents note that they had the idea that if fellow prisoners wanted to complain the threshold to find that procedure was higher if they not (or not sufficiently) master the Dutch language. Also, they were less aware of their legal position in the prison. In case of questions, however, fellow prisoners were often prepared to help the prisoner with his questions and/or lodging his complaint. Prison staff in such cases were also mentioned as being often prepared to help. Nevertheless, one

71 BC 22 oktober 2012, 12/1592/GA.

respondent noted that it was nevertheless not always possible to provide a solution in every case. For example, with a Russian women with questions it was not possible to provide her with assistance on her questions, as no one of the prisoners or staff spoke the Russian language (FP).

According to Rule 13.1 of the Model Regulations the prisoner is entitled to be able to inspect the PPA, the Explanatory memoranda to the PPA and the Penitentiary measure, the ministerial regulations and the circulars. These materials must at least be made available in the library. To our own experience, however, it is very different amongst prisons whether (parts of) this information is in fact available. Respondents, including the prison governors, do not know either what information is exactly available in the prison library. Probably, this strongly differs per prison. Preferably, also law books such as the CCP should be available, complemented by legal journals on criminal law and criminal sentencing such as *Delikt and Delinkwent* and *Sancties.*

To our opinion, it is highly desirable, maybe even indispensable that important books on the legal position of prisoners such as 'Nederlands detentierecht' by Kelk and Boone[72] and the 'Bajesboek' of de Jonge and Cremers[73] are made available in the library. The latter work contains a description of the rights and duties of prisoners. The 'Bajesboek' is written primarily for prisoners, their families and friends in the hope that they will benefit from it in daily practice. For a long time, the latest version was from 2008, so the information in the book was no longer up to date. Fortunately, the book has recently (September 2018) been updated and the work is published online, on www.bajesboekonline.nl. This website provides for important information for prisoners on their legal position, their rights and duties in the prison, including their right to complain and to appeal. In order to make this website available to prisoners, it must be put on the whitelist to make it available in the so-called reintegration centres. We highly recommend that this is done, in order to provide prisoners with up-to-date and understandable information on their legal position. As access to the reintegration centres is not possible for all prisoners (see Chapter 5 of this report), it would also be highly recommendable to publish a hard copy edition of the latest work and to make this available in prison (e.g. in the prison library). That the 'Bajesboek' (the edition from 2008) is read and used by prisoners is acknowledged by our respondents, as they note that they see references to the book in legal pieces that are written by prisoners (CA, PD02). According to former prisoners it is the most read book in prison (FP).

As described in §1.4.2 of this report, the lawyer assisting the prisoner in his criminal case and/or penitentiary procedure is a valuable actor in providing the prisoner with information on his legal position in the prison. He may also help the client in filing a complaint, drawing up the legal documents and represent him during the complaint and appeal procedure. Spiritual counsellors were specially mentioned in this respect, as they are visible on the prison wards and can be easily approached by prisoners with questions, also that are not

72 C. Kelk (edited by M.M. Boone), *Nederlands detentierecht,* Deventer: Wolters Kluwer 2015.
73 G. de Jonge & H. Cremers, *Bajesboek,* Papieren tijger 2008.

directly related to spiritual matters (PD04, DL02). Often these spiritual counsellor have a relation of trust with the prisoners.

Respondents also acknowledge that prison staff, such as prison workers, case managers etcetera may provide legal information to the prisoner, although it is not their primary task.

Former prisoners indicate that they were aware of the existence and role of the Supervisory Committee. Through leaflets on the door it was announced when the visiting officer would come by and a form could be filled in in order to speak to him or her (FP). We did not receive indications that there were problems in getting in contact with the Supervisory Committee in case a prisoner wants to do so.

Legal clinics run by students were mentioned by respondents as being valuable in informing prisoners on legal matters and assisting them in case of questions on legal or practical issues. Former prisoners state that for information the legal information hours are in fact very useful. This was acknowledged by all prison directors we spoke to who have such legal consultation hours in their prison.

Only few respondents point to the Legal Services Counter, which can be contacted via the reintegration centre or by phone. We did not get a picture whether this is a service that is frequently used by prisoners to consult on legal issues they come across.

Bonjo, the interest group for (former) prisoners, can be reached by telephone via a free to dial number. They can answer questions and give information about the prisoner's legal position and answer questions of prisoners. These questions may concern practical issues or questions that relate to their legal position. Also, they can provide the contact information of defence lawyers when the prisoner wants to change his lawyer, and/or he seeks a new lawyer to represent him in a penitentiary procedure.

Also, government organisations from the outside world come in the prison, such as the Probation Services. Besides these organisations volunteer organisations also come into the prisons to provide assistance to prisoners. Nevertheless, they do not seem to play a role when it comes to providing legal information to prisoners or to provide legal assistance.

We did not explicitly discuss the legal assistance to foreign inmates as provided by Embassies and Consulates. The respondents, however, did not bring Embassies and Consulates up by themselves when asked to organisations that provide legal information to prisoners.

In general, we have noted that specific groups of prisoners are vulnerable when it comes to not knowing their rights. This specifically goes for (groups of) prisoners that do not speak the Dutch language (SC02, KC01, KC02 and DL04). These prisoners are often not aware of their legal position. Striking was that during the interview one respondent, a member of the Supervisory Committee noted that he hardly ever saw complaints by Polish prisoners. When discussing this, he started wondering whether the house rules were in fact available in Polish (KC02). Another respondent, also a member of the Supervisory Committee noted that because of the different nationalities and languages in

prisoners, the Supervisory Committee has developed a stream chart in different languages (e.g. Arabic, German, French, Dutch, English, Chinese and Spanish) on how to file a complaint (KC01).

Two other groups were identified as vulnerable groups in not knowing about their rights and duties in prison: psychiatric and psychotic prisoners (PD03, SC01, DL03) and prisoners with a minor intellectual disability (PD01, PD03, CA). This latter category forms a large group of about 45% of the prisoners.[74]

4.3 Organisational and practical issues related to legal aid

4.3.1 Formalities for filing a claim for legal aid:

As stated above, during the intake may be provided with the form to file a complaint with the Complaints Committee. The question is whether this is common practice for all prisons. Forms for filing a complaint to the Complaint Committee are generally available on the prison ward. The same goes for forms to appeal to the Appeals Committee and forms to request a suspension (*schorsing*).[75] These forms must be filled in by the prisoner, since his complaint concerns a conflict between the prison and the prisoner, and he is the only one who can start the proceedings. Nevertheless, the defence lawyer (or sometimes a family member) can file a complaint on the prisoner's behalf.

The complaint form is relatively simple to fill in: the prisoner must state his name and cell number and must shortly indicate the complaint and the reason of his complaint.[76] When this is too difficult, in most cases fellow prisoners or staff are willing to assist (PD02). Also, the defence lawyer or the visiting officer on a monthly or weekly rota basis may assist in filling in the form (DL02). The complaint files are put in a sealed envelope and sent to the complaints committee. One respondent notes that the form may be filled in very briefly, sometimes, only stating 'I don't agree with what has happened to me'. When the complaint is not clear the visiting officer on a monthly or weekly rota basis will then get in touch with the prisoner to clarify the exact content of his complaint (SC01).

The prisoner may appear before the Complaint Committee without legal assistance, as stated earlier no representation is obliged during the penitentiary proceedings. Nevertheless, on the basis of Article 65 PPA, the prisoner has the right to be assisted by a legal assistance provider or other confidential adviser, who has received permission from the complaints committee for this (par. 1). Such confidential adviser may be a fellow prisoner,

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74 Raad voor Strafrechtstoepassing en Jeugdbescherming, Advies uitvoering gevangenisstraffen Reactie op de kabinetsvisie Recht doen, kansen bieden. Den Haag, 23 augustus 2018.

75 These forms can be also found on <https://www.rsj.nl/Rechtspraak/Formulieren/> (last accessed on 2 October 2018).

76 An example of a form to file a complaint can be found on <https://www.bajesboekonline.nl/bajes-boek/18.html> (last accessed on 23 October 2018).

mother, aunt, nephew or niece (CA). When involved, the defence lawyer will be working out the complaint before appearing before the complaints committee or the Appeals Committee. On the hearing by the Complaint or Appeals Committee the defence lawyer will elaborate on the complaint, together with his client: they both get the chance to elaborate on the complaint during the hearing. When the prisoner appeals before the complaints or Appeals Committee and the prisoner does not speak Dutch, the telephone interpreting service can be used to provide for translation (PD03). Respondents do not indicate that there are problems in the use of the telephone interpreting service or in arranging such service when they want so. Nevertheless, one respondent notes that in his work as a member of the Supervisory Committee it is not possible to use the telephone interpreting service when he wants to talk to a prison who is placed on an isolation cell (SC02).

4.3.2 Organisation of financial aid for litigation and its concrete implementation

The organisation of the legal aid in penitentiary matters is described in §2.2 of this report.

4.4 Prisoners belonging to various minorities, under-represented or isolated groups within prisons

(e.g. LGBT, foreign-nationals, women, minors, disabled persons, persons suffering from chronic diseases, mental illness, …) or Prisoners facing special security measures, particular disciplinary sanctions, restrictions or isolation (e.g. individuals detained/convicted for terrorism, sexual assault, aggravated murder, gang-related violence, financial crimes, corruption, white-collar criminals, former law enforcement agents …)

All prisoners have the same possibilities for legal aid in penitentiary proceedings. In general, prisoners on the high security wings such as the EBI and the TA are subject to extra supervisory measures during visits, such as that visitors are received behind glass walls and all conversations are listened in. This is different for visits by the defence lawyers. These conversations are neither supervised nor listened in and take place in consultation rooms (PD03).

One respondent notes that a prisoner who is subject to restrictions (*beperkingen,* see the introductory part of the workstream 2 report) can be restricted in the possibilities to get in touch with his lawyer. On the basis of article 62, par. 2, CCP and article 76 CCP the person subjected to restrictions can be restricted in e.g. his right to receive visitors, to make phone calls and to send and receive mail. Such restrictions can be ordered by the Public Prosecutor when necessary for the criminal investigation to prevent the suspect from obstructing the criminal proceedings. In theory, when a suspect is subject to restrictions, he is still allowed to have unrestricted contact with his lawyer (article 62, par. 2 CCP *juncto* article 45 CCP). In practice, however, one respondent notes that the contact with the lawyer must be arranged in such a way that the prisoner has no contact with other persons. Phone calls are made on the prison ward, but are only possible when there are no other persons on the ward. For this reason, special arrangements have to be made. The respondent

notes that this may be an impediment in the possibilities for the prisoner to get in touch with his lawyer (PD04). Possibilities to get in touch with the defence lawyer when the prisoner is in the isolation cell do not seem to be more limited. During the time in the isolation cell, the prisoner is still allowed to get in touch with his lawyer when he wants (PD01, PD04)

4.5 Organisation of remedies inside prison facilities among prisoners

Article 74 PPA determines that the prison director must organize regular consultations with prisoners on cases that directly concerns the detention. To this purpose, in most prisons a detainee committee (*gedetineerdencommissie,* gedeco) is active. These committees represent the prison population and have regular consultations with the prison board. During these consultations, the detainee committee represents the interests of the prisoners in a specific prison. Besides that, they are often conversation partners of inspection visits, such as by the Inspectorate of Justice and Security and the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment. The detainee committee can also send a critical letter about certain aspects of penitentiary life in the prison to external organisations.[77] Members of the prison detainee committee are elected by the prisoners and act independent from the prison board. As stated earlier, on the basis of Article 65 PPA, the prisoner has the right to be assisted by a legal assistance provider or other confidential adviser, who has received permission from the complaints committee (paragraph 1). A confidential adviser can be a family member, a social worker, a spiritual counsellor, but can also be a fellow prisoner. The complaints committee has to approve the assistance of the confidential adviser. The complaints committee can refuse so if of the opinion there is no reason for this, or that there is a fear for a disruption of the order during the hearing.[78] When a fellow detainee is a member of the detainee committee he can be refused to act as a confidential adviser, since the task of the detainee committee is to represent all prisoner's interests and not to represent individual prisoners.[79]

Respondents note that members of the detainee committee can serve as an important source of legal information for other prisoners. Also, they can advise them in lodging a complaint. One respondent indicates that she has served as the president of the detainee committee for many years in several prisons and that she advised fellow prisoners on legal matters a lot. After entering a new prison, she almost automatically became a member of the detainee committee again. She saw other persons from detainee committees doing the same. Members of the detainee committee were mostly prisoners serving a long(er) prison sentence (FP). A prison director adds that in his experience it was the more intel-

77 C. Kelk (edited by M.M. Boone), *Nederlands detentierecht,* Deventer: Wolters Kluwer 2015, p. 312.

78 C. Kelk (edited by M.M. Boone), *Nederlands detentierecht,* Deventer: Wolters Kluwer 2015, p. 309.

79 BC RSJ 22 september 1999, A99/565/GA, referred to by C. Kelk (edited by M.M. Boone), *Nederlands detentierecht,* Deventer: Wolters Kluwer 2015, p. 309.

lectual prisoners who are not afraid to speak their minds who participated in such committees (PD04). The impact of detainee committee varies amongst prisons; some have very strong detainee committee that are very active, but former prisoners note that in other prisons they saw that detainee committees were not functioning at all (FP). Especially for remand prisons, a prison director notes that it is very difficult to arrange for a detainee committee, since prisoners come and go and only stay there for a relatively short period of time (PD01).

The 'jail-house lawyer' is a common phenomenon in Dutch prisons. There are examples of prisoners who have advised other prisoners on legal matters and helped them writing legal documents or did so on their behalf. Such prisoners can also act as a spokesperson for a group of prisoners. Sometimes they also assist prisoners during the complaint or appeal procedure (CA). They can do so because often they have a lot of experience with legal matters in their own case. Some jail-house lawyer took legal courses, some even followed a university study in law whilst in prison. Mostly, these are prisoners with intellectual abilities serving long(er) prison sentences.

5 ACCESS TO THE INTERNET/DIGITAL TOOLS FOR PRISONERS

Prisoners do not have access to internet. They can, however, access a computer in the so-called reintegration centres in the prison. These reintegration centres were created for prisoners to arrange for, *inter alia,* their housing, work or income and identity documents to prepare for their time after the release from prison. A reintegration centre is a space in the prison with working places with a computer. In these reintegration centres, prisoners can arrange their affairs themselves, working individually on a computer. Prisoners can be assisted during their activities in the reintegration centres by a volunteers and/or a prison worker. On the internet, prisoners for example can register for a home, search for vacancies or register with the Employee Insurance Agency (*Uitvoeringsinstituut Werknemersverzekeringen*, UWV).[80] In the reintegration centre the prisoner has access to the internet, but only for pages that are on a so-called whitelist. Before the prisoner uses a computer in the reintegration centre, he discusses his goals for the use of the computer and the necessary websites to that purposes. The use of the computer is always supervised (FP). The precise content of the whitelist was not known to our respondents. Some indicate that the white-list only contains websites that are related to arranging work and a home for after imprisonment (FP), while others mention that internet pages can be added to the list and also websites for educational purposes, the website of the Council for the Administration of Criminal Justice and Protection of Juveniles (www.rsj.nl) and www.rechtspraak.nl (where case law can be found) and news websites can be accessed (DL01, SC02, PD03, PD04, PD05). Prisoners on the EBI and TA are excluded from using the facilities in the reintegration centres, as the principle is that when prisoners are about to leave prison they will do so from another regime. Still, as some of the prisoners of the TA do not go to another regime before leaving prison, the prison director decided to place a computer on one of the terrorist wings. On this computer, the same possibilities as in the reintegration centre are offered (PD03).

It is not allowed for prisoners to use email. Still, there are initiatives for prisoners to stay in touch with family and friend through email services, such as eMates (this used to be known as Emailaprisoner). Emates started in 2013 in one prison (PI Heerhugowaard). Currently, according to eMates, this service is active in all prisons in the Netherlands and they are responsible for dealing with almost 8.000 messages a month.[81] Emails that are sent to this service are printed out in the internal prison mail room and delivered to the prisoner in an envelope. Usually, the printed emails are delivered to the prisoner ultimately the next working day (this may vary on the prison concerned). Prisoners are not able to respond to the email by email. Persons wanting to send an email have to register on www.emates.nl, sending a message (a maximum of 2500 characters) costs €0,40. Emates is a private

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80 Informatieblad Re-integratiecentrum, available on <https://www.dji.nl/binaries/Informatieblad%20RIC_tcm41-128052.pdf> (last accessed on 19 September 2018).

81 <https://emates.nl/200-000ste-emates-bericht-verstuurd/ > (last accessed on 19 September 2018). On the website of the Custodial Institutions Agency, it is mentioned that eMates is active in a number of prisons <https://www.dji.nl/contact/Contactmeteengedetineerde/index.aspx> (last accessed on 19 September 2018).

service, it is not a service from the Custodial Institutions Agency.[82] Since the emails are printed out and are handed to the prisoner by the prison staff, defence lawyers indicate that they do not use these email services to communicate with their clients, as the confidentiality of the content of the email is not guaranteed (SC02, DL03).

The use of Skype for prisoners to communicate with the outside world is still very limited. In some prisons, nevertheless, Skype is used to facilitate contact between prisoners and (potential) visitors that live far away in the Netherlands or abroad. These possibilities are also used for visitors who are for example because of school hours unable to visit the prisoner (PD04). Skype is also used for mothers to keep in touch with their children in the Netherlands or abroad. These possibilities complement the regular visiting hours and possibilities to make phone calls (PD02). Defence lawyers indicate that they do not use Skype in the contact with their clients (DL01, DL04).

In the Zaanstad Criminal Justice Complex (*Justitieel Complex Zaanstad*) prisoners are provided with digital devices to arrange for appointments with visitors and to order groceries. This is part of the program *Zelfbediening justitiabelen,* a program set up to make prisoners more self-reliant. Initially, the digital devices were planned to also store e-books, facilitating the removal of the prison libraries. To date however, the prison libraries are still in use. Respondents acknowledge that the library has an important social function.

A prisoner has no right to use a laptop to prepare for his criminal case. Still, in practice prisoners are allowed to prepare for their criminal case using a laptop. This is not a common practice, respondents call it an exception (PD01, FP, PD02). It is the prison director who decides on whether a prisoner is provided a laptop to prepare for his criminal case at the request of the defence lawyer. The use of a laptop for the preparation of the case mostly occurs in large criminal cases. In such cases, the use of a laptop can be an attractive alternative to big loads of paper case files, constituting a fire hazard when kept on cell. Also, in more and more cases paper case files are replaced by digital files.

Most prisons have laptops that are prepared for prisoners using them to read their case files. These laptops only facilitate the inspection of the case files, they do not provide other options for the use of other programs or to use the internet, although two defence lawyers note that their clients were allowed to make notes on the laptop using Word (SC02, DL03). The files are delivered digitally from the defence lawyer to the client on a usb-stick. The files are stored on the usb-stick, not on the laptop (the laptop remains clean in this respect). Respondents note that there have been incidents with the use of laptops, in a sense that other content than the case file was brought into the prison. One prison director has had a case of a prisoner with porn on his usb-stick (PD04). A defence lawyer notes that in one case, porn and music were also found on his client's laptop. A prison director note that in another case on the TA, decapitation clips and terrorist propaganda was brought in the prison, probably on usb-sticks. Because of the privileged content of the

[82] <https://www.dji.nl/contact/Contactmeteengedetineerde/index.aspx> (last accessed on 19 September 2018).

communication between the defence lawyer and client it was not possible to search the laptop and the usb-stick.[83] In response to this, the prison director decided for the future to only work with authenticated usb-sticks that are provided by the prison. Still, she acknowledges that it is impossible to prevent that (often very small) usb-sticks are brought into the prison e.g. by visitors (PD03).

Prisoners can use the laptop in their cell to prepare for the case. They can do so in between the hours for labour, activities and so one. One prison director noted, however, that he has been willing to allow that prisoners spend more time on the preparation of their criminal case using a laptop on their cell. In these cases, the prisoner decided to skip some of the activities that are offered and instead he worked on the preparation of his case. Then, only the required legal minimum of activities was offered, which meant that the prisoner was allowed to work on his case 2 hours more per day (PD05).

When the prison director refuses that a prisoner is provided with a laptop this decision can be subject to a complaint and appeal procedure. One defence lawyer indicated that in case of a refusal to keep the laptop after the case in first instance was finished and his client lodged an appeal and the prison refused that the client kept his laptop on his cell, he contacted the Public Prosecution Service to request for allowing his client to use a laptop to prepare for his case. In turn, the Attorney General would order the prison director to allow the laptop. The defence lawyer considered this informal way of requesting the laptop more effective and speedier than using the regular complaint and appeal procedure (DL04).

As described in §2.1 of this report, in August 2018, the Custodial Institutions Agency (*Dienst Justitiële Inrichtingen,* DJI) decided that, as of 1 September 2018, in two penitentiary institutions, lawyers would have to use an application called 'MyTelio'. Rather than calling the institution's administration, they would have to use this app to arrange for their clients to call them back and/or to arrange for dates to visit their clients. Using the app would involve costs (that previously were not there) and also it was not clear if the data protection of the app would be sufficient and that (therefore) the privileged contact between lawyer and client would be warranted. The Dutch Bar as well as the NVSA as the NVJSA released statements that using this app would go against the right of clients to freely communicate with their lawyers. The Dutch Bar communicated that it had been in consultations with the Custodial Institutions Agency on the matter, but in the end, the NVSA and the NVJSA, supported by the Dutch Bar, filed an application for a temporary injunction. Pending the proceedings, the obligation to use the app was abolished while the judge urged the parties to resolve the issues. However, the parties have not been able to come to a complete agreement. The hearing of the case will continue on 21 November 2018.
In the meantime, a rather embarrassing mistake by the Custodial Institutions Agency was revealed: due to (allegedly) faulty software, 3.000 phone calls between lawyers and their

[83] The laptop or USB-stick can be searched only when the prisoner gives his permission to do so.

clients in prison have been recorded. After demands made by the Netherlands Bar, the Ministry of Justice and Security has announced independent research into this breach of the right to confidential communication.[84]

[84] <https://www.advocatenblad.nl/2018/11/07/nova-eist-onafhankelijk-onderzoek-naar-telefoonprovider-dji/> (last accessed on 15 November 2018).

6 COMPLIANCE OF THE DUTCH COMPLAINT AND APPEAL PROCEDURE WITH EUROPEAN STANDARDS

The Dutch system of legal protection for prisoners through the complaints and appeal procedure for prisoners is unique in the world. In 2018, Jacobs and van Kalmthout concluded that the Netherlands belong to the few countries where the complaint and appeal system has got a high approval rating by the ECtHR and the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT).[85] Except the fact that not all complaints and appeals can be settled within the prescribed time limits due to the large amount of complaints and appeals lodged, one can conclude that the Dutch system reflects the main criteria as set by the ECtHR, the European Prison Rules and the CPT: the procedure is smart, easy accessible and based on confidentiality. It provides a preventive and compensatory remedy because the grievances are dealt with by an external, independent body that has the competence to issue binding and enforceable decisions and the power to redress complainant's situation or -if that is not possible anymore- to provide financial or other forms of compensation. It is also an effective remedy because of the effective participation of the prisoner in the complaint and appeal procedure and because of his entitlement to assistance of a lawyer.[86]

After the publication of the article of Jacobs and van Kalmthout, the CPT in 2018 has devoted a part of its 27th general report to the issue of complaint mechanisms.[87] In this report, the CPT has identified 5 basic principles for the proper handling of complaints against the officials of the establishments where people are deprived of their liberty. These are: 1) availability, 2) visibility, 3) accessibility, confidentiality and safety, 4) effectiveness, and 5) traceability: recording and data collection.

As a general conclusion, it can be said that the legal system of complaint and appeal procedures is in line with what is required by the CPT standards. Still, on the basis of our empirical findings some points of concern in the light of these standards can be formulated.

First of all, the information on the legal position of prisoners concerns mainly written information, which is not available to vulnerable groups of prisoners, because of their lack of or limited understanding of the Dutch language or difficulties to understand the information (e.g. prisoners with a minor intellectual disability). Prisoners are very

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85 See: ECtHR 10 January 2012, *Ananyev and others v. Russia*, app.nos. 42525/07 and 60800/08, par. 215 and CPT Report to the Netherlands 1992, par. 144, Report to the Netherlands 2007, par. 49, Report to the Netherlands 2013, par. 49-50 and Report to the Netherlands 2017, par. 79. P. Jacobs & A.M. van Kalmthout, 'The Dutch complaint and appeal procedure for prisoners in the light of European standards', in: G. Cliquennois & H. de Suremain (eds.), *Monitoring Penal Policy in Europe,* New York: Routledge 2018, p. 54-69.

86 P. Jacobs & A.M. van Kalmthout, 'The Dutch complaint and appeal procedure for prisoners in the light of European standards', in: G. Cliquennois & H. de Suremain (eds.), *Monitoring Penal Policy in Europe,* New York: Routledge 2018, p. 68-99.

87 CPT/Inf(2018)4, p. 25-29.

dependent on these written information as they have no or only limited access to the internet. Websites such as www.bajesboekonline.nl, www.rsj.nl and the website of the knowledge portal for Supervisory Committees www.commissievantoezicht.nl demonstrate that there are websites that could be of great value to prisoners, as they provide clear and up-to-date information on the prisoner's legal position. Accordingly, these websites should be made available to prisoners. Especially since legal information in the prison library is not always complete and up-to-date. Also, there are strong differences in whether, and if so how and when, prisoners are provided with the house rules.

Our research shows that its dependent on the prison director's discretion whether they are provided with a laptop or not. Also, we have noted that sometimes in the penitentiary system things go wrong, not always on purpose. For example, sometimes communication from the prisoner to the complaints committee get lost or letters are opened by prison staff. Fortunately, this seems to be the exception rather than the rule.

Practice shows that in some prisons there are problems with regards to the possibility for the defence lawyer to get in touch with his client by phone (e.g. call-back requests from the lawyer do not reach the prisoner or to late) and the confidentiality of the calls is not always guaranteed (the calls take place within hearing distance of other prisoners or prison staff). Specific problems seem to exist when prisoners are placed in an isolation cell. These prisoners are not always visited (in time) by the Supervisory Committee and the telephone interpreting service is not always available to communicate if the prisoner does not (sufficiently) master the Dutch language.

Because of the huge case load of the complaint and appeal committee in the Dutch system it will takes up to weeks or even months for a prisoner to get a binding judgment on his complaint. As pre-trial detainees in the Netherlands spend a relatively short period in detention, it can be questioned whether in such cases this provides a sufficient remedy for complaints that concern matters related to the preparation of their criminal case, such as the possibility to use a laptop, to contact their lawyer etc. The possibility of mediation is only used to a limited extent by the visiting officer of the Supervisory Committee because of their large case load. In the future, this will remain a point of concern because of the focus in Dutch prison practice to create new, large prisons with sometimes even 1000 prisons, with only one Supervisory Committee. We recommend that possibilities to increase possibilities for mediation will be investigated.

7 BIBLIOGRAPHY

Literature and reports

Bleichrodt 2012
F.W. Bleichrodt,'Toenemend appel in het penitentiair recht; achtergronden en voorstellen tot beheersing', *Delikt & Delinkwent* 2012 (3), p. 177-187.

Council of Europe Space I 2016.1
M. F. Aebi, M.M. Tiago, L. Berger-Kolopp & C. Burkhardt, *SPACE I – Council of Europe Annual Penal Statistics: Prison Populations. Survey 2016.* Strasbourg: Council of Europe 2017.

DJI in getal 2017
Dienst Justitiële Inrichtingen, *DJI in getal 2012-2016,* July 2017.

Raad voor Strafrechtstoepassing en Jeugdbescherming 2011
Raad voor Strafrechtstoepassing en Jeugdbescherming, *Reactie op het rapport 'Toenemend appel'. Een verkennend onderzoek van de Erasmus Universiteit Rotterdam naar de toename van het aantal beroepszaken ex artikel 69 van de Penitentiaire Beginselenwet,* Den Haag 2011.

Raad voor Strafrechtstoepassing en Jeugdbescherming 2017
Raad voor Strafrechtstoepassing en Jeugdbescherming, *Annual Report 2017,* The Hague 2017.

Commissie-Van der Meer 2017
Commissie-Van der Meer (Evaluatie puntentoekenning gesubsidieerde rechtsbijstand), *Andere tijden. Evaluatie puntentoekenning in het stelsel van gesubsidieerde rechtsbijstand,* October 2017.

CPT Report to the Netherlands 1992
Council of Europe, *Report to the Dutch Government on the visit to the Netherlands carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 30 August to 8 September 1992,* Strasbourg: 15 July 1993.

CPT Report to the Netherlands 2013
Council of Europe, *Report to the Dutch Government on the visit to the Netherlands carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 16 to 18 October 2013,* Strasbourg: 5 February 2015.

CPT Report to the Netherlands 2016

Council of Europe, *Report to the Dutch Government on the visit to the Netherlands carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 2 to 13 May 2016,* Strasbourg 19 January 2017.

Explanatory Notes to the Penitentiary Principles Act 2001
'Explanatory Notes to the Penitentiary Principles Act', in: *Handboek rechtspositie gedetineerden,* The Hague: SDU 2001.

Gloudemans-Voogd 2018
N. Gloudemans-Voogd, 'Ik werk me het schompes voor een rotsalaris', *Advocatenblad* 2 July 2018.

Jacobs & Van Kalmthout 2018
P. Jacobs & A.M. van Kalmthout, 'The Dutch complaint and appeal procedure for prisoners in the light of European standards', in: G. Cliquennois & H. de Surmain (eds.), *Monitoring Penal Policy in Europe,* New York: Routledge 2018.

De Jonge & Cremers 2008
G. de Jonge & H. Cremers, *Bajesboek,* Breda: Stichting Uitgeverij Papieren Tijger 2008.

Kelk 2015
C. Kelk (edited by M.M. Boone), *Nederlands detentierecht,* Deventer: Wolters Kluwer 2015.

Kreling 2018
T. Kreling, 'Pro-deoadvocaat Marije Jeltes stopt ermee: 'Op deze manier gaat het niet meer', *Volkskrant* 9 August 2018.

Legal Aid Board 2017
Legal Aid Board, *Legal Aid in the Netherlands. A broad outline*, September 2017.

Legal Aid Board 2018
Raad voor Rechtsbijstand, *Monitor Gesubsidieerde Rechtsbijstand 2017*, Utrecht: 2018.

Preložnjak 2017
Barbara Preložnjak, 'Impact of cuts to legal aid – comparative view and economic prospects', *InterEULawEast: journal for the international and European law, economics and market integrations* 2017 (2), p. 35-61.

Spronken 2017
T.N.B.M. Spronken. 'Waar is het recht op informatie van de verdachte over kostenloze rechtsbijstand geregeld?', *Nieuwsbrief Strafrecht* 2017/233.

Van Ginneken et al. 2018
E.F.J.C. Van Ginneken, H. Palmen, A.Q. Bosma, P. Nieuwbeerta & M.L. Berghuis, "The Life in Custody Study: the quality of prison life in Dutch prison regimes", Journal of Criminological Research, Policy and Practice 2018, Vol. 4, Issue: 4, p. 253-268.

Internet

‘200.000ste eMates-bericht’, *eMates* 27 juni 2018, <https://emates.nl/200-000ste-emates-bericht-verstuurd/> (last accessed on 19 September 2018).

‘Bénédicte Ficq en Marije Jeltes over de slechte vergoedingen voor pro-deo-advocaten’, *Eva Jinek* 24 July 2018 <https://evajinek.kro-ncrv.nl/artikelen/benedicte-ficq-en-marije-jeltes-over-de-slechte-vergoedingen-voor-pro-deo-advocaten> (last accessed on 3 November 2018).

H. Beunders, ‘Onrust en botte bijlen. De emotionalisering van het strafrecht #3’, *De Groene Amsterdammer* 17 May 2017 <https://www.groene.nl/artikel/onrust-en-botte-bijlen> (last accessed on 3 November 2018).

‘CBS: ‘Ruim 69 procent ex-gedetineerde heeft alleen vmbo-diploma’’, *Nationale Onderwijsgids* 2 July 2015, www.nationaleonderwijsgids.nl (last accessed on 3 November 2018).

‘Commissie van Toezicht’, *Dienst Justitiële Inrichtingen,* <http://dji.nl/over-dji/organisatiestructuur/commissie-van-toezicht/index.aspx> (last accessed on 2 September 2018).

‘Contact met een gedetineerde’, *Dienst Justitiële Inrichtingen,* <https://www.dji.nl/contact/Contactmeteengedetineerde/index.aspx> (last accessed on 19 September 2018).

‘Detentierecht: beginselen en rechtsmiddelen in Pbw en Bvt’, *Nederlandse Orde van Advocaten,* <https://cursusaanbod.advocatenorde.nl/37300/detentierecht-beginselen-en-rechtsmiddelen-in-pbw-en-bvt/> (last accessed on 1 October 2018)

‘Dutch lawyers unite against cuts to legal aid’, *Fair Trials* 1 February 2018, www.fairtrials.org (last accessed on 3 November 2018).

‘Erkende opleidingsinstellingen’, *Nederlandse Orde van Advocaten,* <https://cursusaanbod.advocatenorde.nl/opleidingsinstellingen> (last accessed on 1 October 2018)

‘Formulieren voor het instellen van beroep’, *Raad voor Strafrechtstoepassing en Jeugdbescherming,* <https://www.rsj.nl/Rechtspraak/Formulieren/> (last accessed on 2 October 2018).

‘Informatieblad Re-integratiecentrum’, *Dienst Justitiële Inrichtingen,* <https://www.dji.nl/binaries/Informatieblad%20RIC_tcm41-128052.pdf> (last accessed on 19 September 2018).

‘Klachtzaken van gedetineerden’, *Nederlandse Orde van Advocaten,* <https://cursusaanbod.advocatenorde.nl/36980/klachtzaken-van-gedetineerden/> (last accessed on 1 October 2018)

‘Netherlands Legal Aid System Is in Need of Urgent Change’, *Liberties* 8 November 2017, www.liberties.eu (last accessed on 3 November 2018).

‘Organisatie Het Juridisch Loket’, *Het Juridisch Loket,* <https://www.juridischloket.nl/organisatie/#> (last accessed on 3 November 2018).

D. Schouten en F. Tijmstra, ‘Sociale advocatuur houdt hoofd nauwelijks boven water’, *EenVandaag* 12 July 2018.

‘Zuidas’, *Wikipedia,* <https://en.wikipedia.org/wiki/Zuidas> (last accessed on 1 October 2018).

Regulations and parliamentary documents

Regeling van 24 juli 1998 houdende Regeling model huisregels penitentiaire inrichtingen, *Stcrt.* 1998, 158.

Regeling van de Minister voor Veiligheid en Justitie van 13 december 2012, nr. 330698, houdende nadere regels over de behandeling van klachten over gedragingen van ambtenaren van politie als bedoeld in artikel 2, onderdelen a tot en met c, van de Politiewet 2012 (Regeling klachtbehandeling politie), *Stcrt.* 2012, 26850.

Besluit van 18 november 2014, houdende regels inzake de schriftelijke mededeling van rechten ten behoeve van aangehouden verdachten (Besluit mededeling van rechten in strafzaken), *Stb.* 2014, 434.

Besluit van 29 januari 2015, houdende wijziging van het Besluit eigen bijdrage rechtsbijstand, het Besluit vergoedingen rechtsbijstand 2000 en het Besluit toevoeging mediation in verband met het treffen van enige maatregelen inzake de gesubsidieerde rechtsbijstand, *Stb.* 2015, 35.

Regeling van de Staatssecretaris van Veiligheid en Justitie van 5 november 2015, nr. 689569, houdende wijziging van de Regeling model huisregels penitentiaire inrichtingen in verband met aanpassing van de voorwaarden voor het verlenen van bezoek zonder toezicht, *Stcrt.* 2015, 40088.

Regeling van de Minister van Veiligheid en Justitie van 2 maart 2017, houdende wijziging van enkele regelingen in verband met het Besluit van 9 december 2016 houdende wijziging van het Besluit beheer politie in verband met de wijziging van de inrichting van de politie (Stb. 2016, 504), *Stcrt.* 2017, 13163.

Kamerstukken II 1994/95, 24 263, 3.

Case law

BC 22 September 1999, A99/565/GA.
BC 22 October 2012, 12/1592/GA.

Concl. A-G Spronken, ECLI:NL:PHR:2017:376, before HR 30 March 2017, ECLI:NL:HR:2017:968.
HR 30 March 2017, ECLI:NL:HR:2017:968.

ECtHR 10 January 2012, appl. nos. 42525/07 en 60800/08 (*Ananyev and Others vs. Russia*)

8 METHODOLOGY AND RESPONDENTS

Methodology

14 Interviews with in total 18 respondents were conducted with prison directors, defence lawyers, members of the Supervisory Committees, a member of the Council for the Administration of Criminal Justice and Protection of Juveniles and three former prisoners. We tried to achieve sufficient spread between respondents by interviewing both current and former prison directors, with both male and female prisoners. The prisons concerned housed both pre-trial and sentenced prisoners. In order to be able to interview the prison directors the permission of the Custodial Institutions Agency was obtained. Since all the researchers have good connections in the field, we contacted the defence lawyers from our own network. The same goes for the members of the Supervisory Committees and the member of the Council for the Administration of Criminal Justice and Protection of Juveniles. The former prisoners were found via contact with the BONJO, an interest group of former prisoners.

An overview of the respondents and their main characteristics can be found below. The interviews were semi-structured. On the basis of the required information for the workstream 3 report a questionnaire was developed. This questionnaire was the basis for the interview that was, however, kept very open. Except for one, all interviews were done in couples to guarantee that they were conducted more or less in the same way and that all items would be covered. The interviews took about 90 to 120 minutes. A verbatim report was made of all interviews.

Respondents

Code	M/F	Specialisation/function
PD01	M	Prison director (>20 years)
PD02	M	Prison director (>30 years)
PD03	F/F	Prison director (>15 years) & lawyer employed by the prison (>10 years)
PD04	M	Prison director (>5 years)
PD05	M	Prison director (>15 years)

Code	M/F	Specialisation/function
DL01	F	Defence lawyer (>15 years)
DL02	M	Defence lawyer (<5 years)
DL03	M	Defence lawyer (>5 years)
DL04	M	Defence lawyer (>15 years)

Code	M/F	Specialisation/function
SC01	M	Defence lawyer (>15 years) Member of Supervisory Committees (> 10 years)

SC02	M	Defence lawyer (>5 years) Member of Supervisory Committee (<5 years)

Code	M/F	Specialisation/function
CA	F	(Coordinating) secretary Council for the Administration of Criminal Justice and Protection of Juveniles (>15 years)

Code	M/F	Specialisation/function
LAB	M/M	Employee Legal Aid Board (>5 years) Employee Legal Aid Board (>20 years)

Code	M/F	Specialisation/function
FP	M/M/F	Former prisoner 1, served prison sentence >10 years, years in pre-trial detention: 2,5. In liberty: 4 years now. Former prisoner 2, served prison sentence: 5 years, 1,5 years in pre-trial detention. In liberty: 5 years now. Former prisoner 3, served prison sentence: 9 years, 3 years in pre-trial detention. In liberty: 5 years now.