pro facto

Summary

Experiences with elements of the COVID-19 Justice and Security (Interim Measures) Act

Groningen, 1 September 2022

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Commissioned by	WODC
Date	1 September 2022
Status	Summary

This research was commissioned by the Dutch Scientific Research and Documentation Centre (WODC) and conducted by Pro Facto, an agency for administrative and legal research, consultancy and education.

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Summary

Background

On 24 April 2020, the COVID-19 Justice and Security (JenV) (Interim Measures) Act entered into force.[1] This Emergency Act contains a number of provisions within the domain of Justice and Security that were considered necessary in connection with the outbreak of corona. Later, additions were made in the COVID-19 Collective Emergency Act, in the Second COVID-19 Collective Emergency Act and in the COVID-19 SZW and JenV (temporary) Act. This legislation makes provisions for all areas of law (criminal law, administrative law, private law), mostly to ensure the continuity of legal transactions during the corona crisis.

These temporary provisions apply until the expiry of the Act. This was in principle on 1 September 2020, but the Act provides for the possibility of extending the validity period (of sections) every two months. In this way, a reassessment of the need for continuation of the provisions in question takes place at regular intervals, with accountability to Parliament where necessary. To date, due to the continuation of the corona crisis, this option of extension has been used with respect to some of the provisions.

During the parliamentary debate, the Minister for Legal Protection agreed to consider which of the temporary provisions could become permanent.[2] The Minister's pledge related to the following provisions of the temporary legislation:

Legal basis	Article	Brief description
COVID-19 (interim measures) Act Justice and Security	2	Oral hearing in civil and administrative proceedings
	2a	Electronic hearing of complaint/appeal in prisons
	26	Execution of notarial deed by audiovisual means
	27	Hearing or questioning by telephone in a criminal case
	28	Oral hearing in criminal proceedings
	29	Extension of deadline for compliance with community service orders

[1] Official Journal 2020, 126.
[2] *Parliamentary Papers II* 2019/20,35434, No. 6. (memo in response to the report).

	30	Rectifying omissions in appeals in immigration cases
Collective Emergency Act COVID-19 (Ministry of Infrastructure and Water Management, IenW)	1	Serving of writs
Second Collective Emergency Act COVID-19	3.4	Oral hearing in disciplinary proceedings

This research, commissioned by the Scientific Research and Documentation Centre (WODC), implements the pledge made by the Minister for Legal Protection to the Lower House. This is a summary of that research.

Main question and subquestions

The main question in this research reads as follows:

To what extent and under what (legal and practical) conditions can (parts of) the provisions of the temporary COVID-19 legislation JenV be converted into permanent regulations?

The aim of the research is to provide insight into the extent to which it is legally possible and desirable, according to those involved, to convert (parts of) the provisions of the temporary COVID-19 legislation JenV into permanent regulations in the judiciary and the notarial profession. The following research questions were central to each provision:

1. How often, by whom and for which cases are the provisions of the temporary COVID-19 legislation JenV used in practice? Have there been any changes in this during the period from April 2020 to December 2021?
2. What are the experiences with these provisions in practice?
   a. In what situations are the provisions applied?
   b. What does the application achieve (e.g. in terms of speed, capacity, flexibility)?
   c. To what extent does this differ per organisation and/or area of jurisdiction?
   d. How can the safeguards that are served by physical processes in a digital environment be incorporated (e.g. the due exercise of the right to speak, the right to assemble or the right to vote)?
   e. To what extent and how is the legal and de facto position of actors/participants in proceedings affected by this?
   f. What is the support base for the temporary provisions among those involved?
   g. What, according to those involved, could be improved or better regulated?
3. Which (parts of) the provisions of the temporary COVID-19 legislation JenV lend themselves to a more permanent arrangement from a legal point of view and/or according to those involved? Which ones explicitly do not, and why?

The findings and conclusions are described below for each provision. First, we will look at the research method.

Research methodology

Legal background analysis and policy reconstruction
The research started with collecting and studying as much (background) information as possible about the various provisions and their application. By studying the parliamentary records, insight was gained into the legislator's objectives in introducing the various provisions and a (brief) reconstruction of the policy theory was made for each provision. Various research reports were also studied.

General interviews
In order to get a general idea of the experiences with and the effectiveness of the different provisions six general (exploratory) interviews were conducted. We had talks with representatives of the Council for the Judiciary, the Dutch Association for the Judiciary (NVvR), the Dutch Bar Association (NOvA), the Royal Professional Organization of Judicial Officers (KBvG), the Royal Dutch Association of Civil-law Notaries (KNB) and Victim Support Netherlands.

Case studies
To gather more information on the application of the various provisions and to gain further insight into the experiences of those involved and the opinions on the necessity/desirability of a possible permanent arrangement, a case study was carried out for each provision. In total, 45 interviews were conducted with 72 different interviewees for the case studies. In most of the interviews, one legal provision was discussed with those involved. In a few interviews, more than one provision was discussed. Written input was also obtained from various organisations and different individuals involved regarding the (experiences with the) application of the provisions and/or the vision regarding a possible permanent arrangement. In addition, statistical information was obtained regarding the application of a number of provisions. The table below gives an overview of the (types of) interviewees we spoke to per provision.

Provision	Interviewees
Oral hearing in civil and administrative proceedings	Council for the Judiciary, NVvR, NOvA, Ministry of Justice and Security, project group Online Court hearings (of the judiciary) and individual judges, three lawyers, public prosecutors, legal aid insurers (lawyers and advocates) and a journalist
Hearing or questioning by telephone in a criminal case	
Oral hearing in criminal proceedings	
Electronic hearing of complaint/appeal in prisons	Ministry of JenV, Council for the Administration of Criminal Justice and Protection of Juveniles (RSJ), national coordinator of the Sounding Board Group CvT, four secretaries of different complaints committees, chairman of a complaints committee and two deputy directors of a penitentiary institution.
Execution of notarial deed by audiovisual means	Royal Dutch Association of Civil-law Notaries (KNB), six civil-law notaries and Ministry of Justice and Security (JenV)
Extension of deadline for compliance with community service orders	Ministry of Justice and Security (JenV), Probation Service Netherlands, Child Protection Board and Central Judicial Collection Agency (CJIB), individual judge and public prosecutor
Rectifying omissions in appeals in immigration cases	Ministry of Justice and Security (JenV), Administrative Law Division of the Council of State (Aliens Chamber), two lawyers specialised in immigration law
Serving of writs	Ministry of Justice and Security (JenV), Royal Professional Organization of Judicial Officers (KBvG), individual bailiffs

Disciplinary law provisions	Chairpersons and secretaries of the following disciplinary bodies: Chamber of Accountants, Chamber of Bailiffs, Chamber of Notaries, a Disciplinary Council for the Legal Profession and a Disciplinary Tribunal for the Health Care Sector

Oral digital hearing in administrative, civil and criminal proceedings

Background to the provisions
Article 2 of the Temporary Act provides for the possibility of holding a hearing in administrative and civil proceedings by two-way electronic means of communication as an alternative to a physical hearing. This means that the oral hearing can take place by (group) telephone call (where there is only an audio connection) or by video conference (where there is a video connection as well as an audio connection).

Unlike in administrative and civil proceedings, it has been possible in Dutch criminal law (and in immigration detention cases) to use videoconferencing in criminal proceedings since 1 January 2007.[3] According to this arrangement, all parties to proceedings may be heard by video, with the exception of judges, court clerks and public prosecutors. And video conferencing can be used at every stage of the criminal proceedings, such as the preliminary investigation, the hearing and the enforcement. Article 27 of the Temporary Act provides for an extension of this option by allowing the hearing or questioning of persons by telephone. This article also allows for the possibility that the suspect or his counsel may be heard, questioned or cross-examined in all cases without consent using a two-way electronic means of communication. In addition, Article 28 of the Temporary Act offers the possibility that the oral hearing in a criminal case can take place by means of a two-way electronic means of communication, if in criminal cases holding a physical hearing is not possible due to COVID-19. The provisions in Articles 2, 27 and 28 of the Temporary Act are aimed at ensuring that oral hearings in administrative, civil and criminal proceedings can continue to be held wherever possible during the corona crisis.

Use and experiences
Since the outbreak of the corona crisis, the judiciary has gained extensive experience with digital/hybrid hearings in administrative, civil and criminal proceedings. The extent to which digital means were used depended, among other things, on the phase of the corona crisis, the type of case, the availability and quality of the technical facilities for holding a digital/hybrid hearing, and the availability of courtrooms in courts that met the one-and-a-half-metre social distancing standard. In addition, the picture is that it differs per court and per judge(s) as to what extent digital/hybrid hearings have taken place.

In general, the experience of those involved is that a digital hearing has limitations with regard to non-verbal communication and that 'contextual' information may be missed (such as how the parties to the proceedings react to each other). Limitations in image and sound quality due to poor technical facilities and technical and logistical problems were also mentioned. All the interviewees differ in the extent to which they see added value in digital sessions. The most commonly mentioned advantages are: 1) it is a good alternative in situations where a party to the proceedings is unable to be physically present at a hearing, 2) it saves travelling time,

[3] See Article 78a of the Penal Code, Article 131a of the Code of Criminal Procedure and the Video Conference Decree.

(risky) transport movements and the associated costs, 3) it can shorten the duration of procedures and 4) it can increase the accessibility/lower the threshold of proceedings.

Vision on a permanent arrangement
There is broad support among the interviewees in favour of retaining the option of organising digital/hybrid hearings in administrative and civil proceedings. Most interviewees believe that the basic principle should remain that hearings should take place physically. Depending on the nature and circumstances of the case and the wishes of the parties to the proceedings, holding digital sessions may have added value. The general opinion is that the quality of the procedure (the due process rule), the importance of legal protection and the legal position of those seeking justice should outweigh efficiency and management considerations that might make a digital hearing attractive.

The assessment as to whether or not a digital/hybrid hearing is appropriate in a case should, according to almost all interviewees, lie within the judicial domain. A right of assent for the parties to the proceedings is not considered necessary. However, the parties to proceedings should be given as much opportunity as possible to make their wishes known. The interests/wishes of parties to proceedings are an important factor that the judge should take into account. The judge must assess the extent to which various legal principles are infringed (such as the right to be present, right to effective participation in the trial) and whether this is justified in the specific case. In addition to the interests/wishes of the parties to the proceedings, there are various factors/circumstances that are relevant to the assessment of whether a digital hearing is appropriate in a specific case, these include: the complexity and nature of the case, the emotional content of the case, the type of litigant, the digital proficiency and the technical resources available to the parties to the proceedings, the expected duration of the hearing and how many parties to the proceedings there are, et cetera.

For criminal proceedings (and immigration detention cases), there is already a legal regulation in place that provides for the possibility to hear, question or cross-examine persons by video link at any stage of the criminal proceedings. It follows from the interviews that most interviewees believe that the temporary possibility to hear or question persons by telephone link should be maintained, but only in cases where it is not possible to hear or question a person physically or by video link. A particular point of attention is the ability to sufficiently identify the person to be heard or questioned.

In addition, the interviews revealed that, in criminal cases, the use of digital means during court hearings should be (even) more restrained than in administrative and civil proceedings. This applies in particular to the consideration of the substance of criminal cases during court hearings. In criminal law, non-verbal aspects are particularly important during a hearing. Great value is also attached to the right of the accused to be present: if the accused himself wishes to be physically present, this counts for a lot. In the generally briefer and/or procedural hearings, such as detention hearings, pro forma hearings and pre-trial review hearings, there is more support among the interviewees for holding digital sessions. At these sessions, there is no discussion of the actual substance of the case and the emphasis is more on the procedural aspects of the criminal case, as a result of which the role and input of the defendant is limited. As with administrative and civil proceedings, the interviewees believe that the choice of digital, hybrid or physical hearing in criminal proceedings is up to the judge(s) (as is already the case in the existing regulation on the use of video conferencing). Furthermore, more parties seem to consider the right of consent of at least the suspect or his counsel desirable, as compared to administrative and civil procedures. In general, the view is that (at least in the actual

hearing of the criminal case) videoconferencing can only be used against the wishes of the suspect in exceptional situations.

With regard to holding digital hearings in administrative, civil and criminal proceedings, there are various points for attention/limitations that must be safeguarded (by regulation or otherwise):

- quality of image and sound and sufficient technical and logistical facilities;
- sufficient administrative, technical and logistical support during hearings;
- digital competence of the parties to proceedings and the availability of technical means to participate in a digital session;
- decorum;
- equality of arms;
- guaranteeing the principle of defence and facilitating confidential contact between lawyer and client;
- ensuring contact between judge and applicant;
- the public nature or privacy of the hearing.

Electronic hearing of complaints and appeals filed from prison

Background to the provision
Article 2a of the Temporary Act provides a temporary provision for the hearing of the complainant and director in complaint and appeal proceedings filed by detainees using a two-sided electronic means of communication (by means of video conferencing, (group) telephony or audio-visual meeting applications), instead of a physical hearing. The aim of this arrangement is to ensure access to justice for persons convicted of criminal offences by facilitating a timely decision on complaints and appeals.

Use
The application of digital hearing has allowed for an oral hearing of complaint cases within the framework of complaint and appeal procedures filed by detainees during the coronary crisis, without creating excessive backlogs. The extent to which digital hearings took place depended on the phase of the corona crisis, but also on the preference of the judges, the presence of sufficient technical facilities in the institution and the building-specific characteristics of the institution. The picture is that the extent to which digital hearing is applied differs between penal institutions and between complaints committees.

Vision on a permanent arrangement
From the interviews, it emerges that there is support for retaining digital hearings as a possibility also in the longer term. According to the interviewees, a physical hearing should remain the basic principle. In general, they indicate that a digital hearing is less desirable than a physical one. In a digital hearing, more distance is felt and there is no or less non-verbal communication possible. Technical/logistical shortcomings can also have a delaying/disrupting effect on the course of the digital hearing. Experience has shown that in a physical hearing it is easier to understand each other, there is more non-verbal communication, miscommunication occurs less frequently and it is easier to explain things when they are unclear. Furthermore, in penitentiary appeal procedures there is a vulnerable target group - especially when it comes to juvenile detainees and persons placed in preventive custody - who are not always able to express themselves well orally.

A digital hearing can have added value in certain cases, it emerged from the interviews. A digital hearing can offer added value in situations where a party is unable to attend the hearing physically for certain reasons (and where, as a result, the alternative would be that the hearing would have to be postponed or that the party in question would not be present). In addition, a digital hearing is seen as a great added value as an alternative to a rogatory hearing, because it allows for the hearing of both sides to take place immediately, the processing time of the complaint procedure is considerably shortened and the complaints committee that must decide on the complaint can also hear the complainant itself.[4]

In general, depending on the type of complaint, type of complainant, type of decision against which the complaint is made and the wishes of the parties to the proceedings, a digital hearing can offer (efficiency) advantages: less travelling time (and related costs), a shorter processing time of the proceedings and a greater chance of the presence of some parties (such as experts). The interviewees are of the opinion that it is up to (the chairman of) the complaints or appeals committee to weigh up whether a physical or digital hearing is desirable in the specific case.

Oral digital hearing in disciplinary proceedings

Background to the provisions
Article 3.4, first paragraph of the Second Collective Act provides for the possibility of holding a digital hearing in disciplinary cases. In order to limit the loss of capacity caused by the outbreak of COVID-19, the second paragraph of Article 3.4 gives the chairman of selected disciplinary bodies the option of stipulating that a case be heard and decided by three members instead of five.

Use and experiences
From interviews and written responses, the impression arises that various disciplinary bodies have regularly held a digital hearing. In the initial phase of the corona crisis, most disciplinary bodies decided to postpone the hearings. In later phases, when the technical facilities were better organised, digital hearings were however held. In the first phase, people had to get used to the use of digital means and there were regular technical problems. Here, the picture is that the quality of the technical facilities differs per court location. Over time, the technical facilities have improved, but getting a good image of different participants remains a point of attention.

According to the disciplinary bodies, digital hearings mainly have a practical advantage: holding digital hearings offers a solution for cases in which a party (or judge) could not attend the hearing. However, the disciplinary bodies prefer physical hearings, because the dynamics and interaction in a physical setting are better and non-verbal communication and emotions can be picked up better. Another disadvantage that was mentioned is that during a digital hearing, the account of the complainant makes less of an impression on the defendant; conversely, any apologies from the defendant make less of an impression on the complainant. Despite the fact

[4] A rogatory hearing takes place when a complainant has been transferred to another institution and no longer resides in the institution where the decision against which the complaint is made was taken. In that case, the complainant may be heard by (a member of) the complaints committee of the institution where the complanant is currently housed, at the request of the complaints committee. The member of this other complaints committee draws up a record of the hearing and then sends it to the complaints committee of the institution where the decision was made that must handle the complaint. After that, usually the director against whom the complaint is made is given the opportunity to respond (in writing or orally) to the contents of the report, after which a decision of the Complaints Committee follows.

that a digital hearing is regarded by the disciplinary bodies as 'the lesser way of dealing with things', they do say that they were able to obtain sufficient information during a digital hearing and that the quality of the disciplinary proceedings is not less in a digital hearing.

The temporary provision whereby a case can be heard by three instead of five members has not been used by the disciplinary bodies. Therefore, no experience has been gained with this provision. Cases have been heard by three members, but this was on the basis of statutory provisions that already existed before the Second Collective Emergency Act was introduced.

Vision on a permanent arrangement
The disciplinary bodies indicate that they are in favour of a permanent arrangement for a digital hearing. In simple cases, a digital hearing is a good and efficient alternative. The disciplinary bodies agree that the decision to hold a digital hearing should be left to the chairman. There is no consensus on whether the judge can only decide to hold a digital hearing if one of the parties requests it and on whether the consent of all parties is needed to hold a digital hearing. The disciplinary bodies indicate that when drafting a permanent arrangement, attention should be paid to the public nature of digital hearings and the verification of the identity of the parties to the proceedings.

Rectifying omissions in appeals in immigration cases

Background to the provision
Article 85 of the Dutch Aliens Act 2000 (Vw) imposes some additional requirements on appeals in aliens cases compared to general administrative law. The appeal in aliens cases is subject to the so-called ‘grievance system’. The notice of appeal must contain one or more objections to the decision of the court or preliminary relief judge. The notice of appeal must describe the part of the judgment with which the party lodging the appeal disagrees and state the grounds on which this disagreement is based. A pro forma appeal will have to be declared inadmissible by the Administrative Law Division of the Council of State (the Division) due to the absence of grounds for appeal.

Article 30 of the Temporary Act stipulates that, in aliens cases, the Division must give the person lodging the appeal that does not contain any grounds for appeal the opportunity to rectify this omission before the appeal is declared inadmissible. This temporary provision was created because it would often be difficult if not impossible for the legal assistance counsellor to enter into consultation with the foreign national on the formulation and substantiation of the grounds for appeal.

Use and experiences
It is clear from the interviews held that this provision was used to varying degrees. On the one hand, not all lawyers were aware at all of the existence of the temporary arrangement, and on the other hand, there were lawyers who repeatedly used the possibility of submitting the necessary grounds for appeal at a later date. Although the legislator's reason for granting the extension was the inability to consult with the client, in practice this is not always the reason why a postponement is requested. This is also reflected in requests received by the Division: apart from corona, matters such as 'holidays' and an 'inability to attend' are also cited as reasons for the request for postponement. Both the legal profession and the Division have indicated that it is not always necessary to coordinate with a client when submitting a legal notice of appeal; at this stage of legal protection, the dispute is highly juristic and is less concerned

with establishing the circumstances of the case. In practice, therefore, the provision has been of little added value when it comes to removing any obstacles caused by corona.

The Division has to deal with an increased administrative burden as a result of the Temporary Act. Opportunities must be offered to rectify omissions, deadlines must be monitored, which requires additional administrative acts and coordination with parties to proceedings. Moreover, there seems to be an increase in the number of requests for preliminary relief measures (to prevent expulsion). Because the grounds for appeal may be submitted later, the procedure leading up to the decision on the appeal is longer than usual. The appeal itself does not have a suspensive effect, which means that the foreign national can be deported before the Division has reached its decision. To prevent this, a request for a preliminary relief measure is submitted. Subsequently, it is not always possible to rule directly on the application because the grounds for the application had not been submitted at the time the application was dealt with.

Vision on a permanent arrangement
From the legislator's perspective, the grievance system is supposed to make an important contribution to limiting the workload of the Division and thus preventing unnecessary prolongation of the proceedings.[5] The Temporary Act has the opposite effect: it increases the administrative burden. Moreover, this seems to apply not only to appeal proceedings as such but also to the number of preliminary relief proceedings. The choice for the grievance system instead of the regular grounds system (including possibilities for rectification of omissions) was consciously made based on the idea that it involves professional, often specialised legal assistance providers who are able to arrive at an adequate formulation of the grounds for appeal in a short period of time. The legal profession and the Division did not identify any reasons during this research that would justify a deviation from the legislator's basic principles regarding the grievance system or that would give cause to reconsider the grievance system.

Extension of deadline for compliance with community service orders

Background to the provision
The Code of Criminal Procedure establishes maximum time limits for compliance with imposed community service sentences.[6] Just before the outbreak of the corona crisis, the Act on the Review of Enforcement of Criminal Decisions (USB Act) entered into force on 1 January 2020. The USB Act provided, among other things, for the relaxation of the standard terms for the compliance with community service sentences. At the same time, the option to extend the compliance period once was abolished.[7] Because of the corona crisis, Article 29 of the Temporary Act once again provides a temporary option to extend the statutory compliance periods for community service sentences for juveniles and adults by up to one year.

[5] *Parliamentary Papers II* 1998-1999, 26 732, No. 3,p. 85.
[6] See Article 6:3:1 and 6:3:8 of the Code of Criminal Procedure. A community service must be completed within 18 months after the verdict has become final or within nine months after a sentence has become final. In juvenile cases, community service consisting of a work or learning sentence of not more than one hundred hours must be completed within nine months. A work or learning sentence (for juveniles) of more than 100 hours must be completed within 18 months.
[7] Article 22c, third paragraph of the Penal Code (old) stipulated that the community service had to be completed within one year after the sentence was pronounced final or six months after the criminal order was pronounced final. This term could be extended once by the Public Prosecutor (ex officio or on request) by the same term. Article 77m, third and fifth paragraph and paragraph of the Penal Code (old) stipulated that in juvenile cases, a work or learning sentence not exceeding one hundred hours must be served within six months and a work or learning sentence exceeding one hundred hours must be served within one year.

Use

As a result of the corona measures, many community service sentences could not be carried out or not carried out on time during the corona crisis. As a result, the backlogs increased and the average compliance time of community service sentences was longer. According to the implementing organisations (probation and the Child Care and Protection Board), the possibility of extending the term of compliance by one year during the coronas crisis was therefore much needed. For all community service sentences imposed (for both adults and juveniles), the choice was made to extend the term of compliance by one year as a standard.

Vision on a permanent arrangement

The probation office sees no necessity to maintain the possibility to extend the term of compliance with community service sentences. Only in crisis situations, as a result of which it is not possible to carry out community service sentences (on time), would an extension be of added value. The standard term for compliance with community service sentences has already been extended with the introduction of the USB Act, so that, in principle, most community service sentences could be completed within this term. Furthermore, there are apparently no indications that, due to the absence of an option to extend, the number of cases in which community service is converted into an alternative custody arrangement - as a result of the failure to comply with the sentence on time - will increase (substantially). It is also pointed out that the absence of an extension option has the advantage of creating an incentive for enforcement agencies and community service workers to enforce compliance with the community service order quickly. This incentive is important because experience shows that the shorter the period of time between the final judgment and the start of the community service, the sooner the community service will be successfully performed. Also, administrative burdens can be reduced because no extension decisions will be required anymore.

On behalf of the Child Care and Protection Board, the CJIB, and according to a public prosecutor and judge who were interviewed, it is desirable to retain the option of extending the term of compliance with community service orders, over and above crisis situations. Although the option to challenge a decision to convert the community service order to a substitute custody arrangement if it is not complied with on time does exist, the person sentenced to the community service will have to submit a notice of objection to the court. This would consequently constitute an additional threshold. Another factor is that the decision to convert to community service will not be suspended by the lodging of an objection. This means that the substitute custody will start when the objection procedure is still running and there could be valid reasons why the community service has not been completed on time. There are also doubts as to whether not having the possibility of extending the term will actually result in a lower administrative burden. This was one of the reasons why the legislator decided to do away with the option of extension in the Act on the Review of Enforcement of Criminal Judgements (USB). Although extension decisions are no longer needed (and therefore less of an administrative burden), the absence of an extension option may lead to more frequent conversion decisions by the court and/or to more frequent appeals to the court. This, in turn, may lead to a greater administrative burden on the judiciary.

The Child Care and Protection Board and the CJIB consider it desirable to retain the option of extension, over and above crisis situations. This would offer more flexibility and a make a more tailor-made approach possible by taking the personal circumstances of those sentenced to community service into account. However, the extension option should not be a standard

power. Only if there are special circumstances and when there is a valid reason for not completing the community service on time, might an extension of the term of completion of the community service be appropriate - over and above crisis situations.

Executing deeds

Background to the provision
Notarial deeds are legally valid if they are signed by the person concerned in person before a notary. For some types of deeds, it is possible that a private power of attorney is granted by the notary. In the case of the execution of a will or a mortgage deed, the granting of a power of attorney is not possible. Due to the outbreak of corona it was not possible to validly execute these deeds if the client, due to quarantine or hospitalisation, could not appear at the notary's office. For this reason, Article 26 of the Temporary Act makes digital formatting - the drawing up of notarial deeds by means of two-way audiovisual media - possible.

Use and experiences
No figures are available on the application of Article 26 of the Temporary Provision Act. Interviews with the Royal Dutch Association of Civil-law Notaries (KNB) and civil-law notaries give the impression that the provision has been applied very cautiously. This applies in particular to the digital execution of wills. Only one interviewed civil-law notary reported that he had done this once. The digital execution of mortgage deeds was done slightly more often: of the civil-law notaries interviewed, one had done this once, and two other civil-law notaries estimated that they had done this about five times.

In interviews, it was indicated that it is less easy to recognise emotions via an image link, which makes it difficult to ascertain whether a client is being pressured or is incapable of giving informed consent. The notaries are also less able to give the client a good explanation and find it more difficult to verify someone's identity. These problems are considered especially troublesome for the execution of wills, because a will has irreversible consequences after death, and when executing a mortgage deed there is usually less doubt about whether the client understands the content.

Vision on a permanent arrangement
Neither the KNB nor the interviewed civil-law notaries feel the need to make the temporary provision for the digital execution of deeds permanent - beyond crisis situations - because it is more difficult for the civil-law notary to fulfil the duties associated with his office remotely. However, it did emerge from the interviews that the temporary provision for the remote execution of wills and mortgage deeds - as an addition to the existing regulation on the emergency will [8]- has had added value during the corona crisis, despite the fact that this provision has rarely been used.

Serving of writs

Background to the provision
In principle, a writ must be delivered to the addressee in person (or to a housemate or another person who is present at the address).[9] Only if there is a ‘de facto impossibility' may the writ

[8] Article 4:102 Dutch Civil Code.
[9] Article 46 Dutch Code of Civil Procedure.

be left in a sealed envelope.[10] Due to the outbreak of the coronavirus, the Royal Professional Organization of Judicial Officers (KBvG) issued a number of recommendations to its members on 23 March 2020. One of the recommendations was to avoid physical contact wherever possible when serving legal documents. If necessary, the writ should be left in the mailbox and the usual explanation about the nature of the writ should be provided by alternative means of contact such as telephone or e-mail.

Article 1 of the Collective Emergency Act COVID-19 clarifies the standards to which the court bailiff is bound when serving writs during the COVID-19 crisis. It provides a legal basis for the procedures that the Royal Professional Organization of Judicial Officers (KBvG) prescribed for its members in March 2020. Article 1 stipulates that a 'de facto impossibility' to issue a writ to a person exists for as long as the National Institute of Public Health and the Environment (RIVM) guidelines prescribe that persons must observe social distancing due to the risk of contamination with COVID-19.

Use and experiences
This so-called 'corona writ service' has enabled court bailiffs to continue their work during the corona crisis. The actual use seems to be related to the phase of the coronal crisis and to some extent to the bailiff's own judgment. In the phases where less strict corona measures applied, corona writ service was used to a lesser extent, even though at the time the RIVM advice to keep a one and a half metre distance still applied. Bailiffs usually assessed at the door whether there was a risk of contamination (of themselves or of the person who might open the door). Corona writ service was mainly used when dealing with natural persons (in residential properties). In the case of legal entities or law firms, the risks of contagion could be overcome by taking precautionary measures, as a result of which, in those cases, service could be effected in the normal way. The temporary provision ensured that legal transactions could continue and that writs could be issued; therefore, it most certainly met a need.

It emerges from interviews that - in circumstances other than an emergency situation such as the coronas crisis - there is no support for making this provision permanent. Respondents are of the opinion that the regular working method is best suited to and does justice to the office of the court bailiff. In normal circumstances, the service of writs is accompanied by an explanation of the writ; in some cases, this contact results in alternative solutions being found. According to bailiffs, this is an essential part of the bailiff's work.

Vision on a permanent arrangement
Despite the fact that alternatives to door-to-door contact have been developed, it is clear from the interviews that these alternatives cannot serve as a fully-fledged alternative. Nor do practical experiences show any other advantages of the alternative serving of writs during corona, such as cost savings, over the regular method. In addition, it is evident that there is little support among the bailiffs who were interviewed and the KBvG for changing the current method of service; the current regulation of not serving writs in person in the event of de fact impossibility is sufficient. Therefore, this study has not found any arguments for converting this temporary provision into a permanent regulation.

[10] Article 47 Dutch Code of Civil Procedure.

Finally

It follows from the research that there does not seem to be full support for a permanent legal basis for all provisions. This is the case, for example, in immigration cases, with regard to the temporary possibility of giving the person submitting an appeal that does not contain any grounds for appeal the opportunity to rectify this omission later. A number of provisions have been of added value during the corona crisis in allowing legal proceedings to continue. However, the final conclusion with regard to several provisions is that the regular working method offers so many more advantages that, according to those involved, the crisis legislation should not become the new normal. This applies to the possibility of executing deeds at a distance, the corona writ service and the possibility of extending the term for compliance with community service sentences. These provisions may be of added value in the event of a future emergency. This added value can be achieved by introducing temporary legislation quickly in the event of a subsequent crisis. It is also possible to make a permanent arrangement (per provision) for emergency situations. If the latter option is chosen, the question is what is meant by an 'emergency' and what is not.

With regard to the possibility of holding oral digital hearings in (disciplinary) court proceedings and with regard to complaints and appeals lodged by detainees, the research shows that there is support for making permanent arrangements. It follows from the research however, there are several preconditions and issues that need to be addressed with respect to holding hybrid/digital hearings. For example, careful consideration should be given to how aspects such as contact between the applicant and the judge (and other parties to the proceedings), contact between the applicant and their lawyer and the openness/closeness of the hearing can best be safeguarded (based on legislation and regulations or otherwise).


pro facto