

Exceptional measures regarding the COVID-19 crisis - Absence of public pronouncement of judgments - Article 14(1) ICCPR - Article 6(1) ECHR

(Appellant against the State Secretary of Foreign Affairs)

The coronavirus outbreak has led to exceptional measures in the Netherlands. The buildings of the (District) Courts have been closed as of 17 March 2020 to prevent the spread of the coronavirus. Due to this closure, no public disclosure hearings can be held in these buildings that are usually open to the public. Subsequently, the Judiciary sought a temporary alternative to holding disclosure hearings in order to meet the requirement that judgments should be pronounced publicly. In this judgment, the Administrative Jurisdiction Division of the Council of State (Division) rules on this matter.

The judgment is relevant for other administrative judgments during this exceptional period. Furthermore, the judgment explicitly applies only during this exceptional period and it is not a judgment of the Division regarding the publication of administrative judgments in the period before or after the COVID-19 measures of 17 March 2020.

Complaints

The appellant complains, *inter alia*, that the District Court's judgment was not properly pronounced in public. Although the District Court's judgment states that it was made public on 17 March 2020, the appellant argues that that cannot be true, since the buildings of the District Courts have been closed in order to prevent the spreading of the coronavirus from that day onward. .

Usual practice of public disclosure of judgments

Pursuant to Article 8:78 of the Dutch General Administrative Law Act (Awb), a judgment has to be delivered in public. The public disclosure of a judgment is a fundamental principle that has also been laid down in various human rights treaties (Article 14(1) ICCPR and Article 6(1) ECHR). Article 8:78 Awb takes into account that the internet offers opportunities to give a more contemporary interpretation to the public disclosure of the judgment. The legislator has made a reference to *inter alia* ECtHR judgment 7984/77, Pretto of 8 December 1983, ECLI:CE:ECHR: 1983:1208JUD000798477, in which is stated that human rights treaties do not require judgments to be pronounced in public. Other means of disclosure are also permissible as long as anyone can access the full text of the judgment.

The (District) Courts disclose a judgment to the parties involved in the dispute by sending the judgment to them. According to the Division, others, who are not involved in the procedure, must be able to read a judgment in a simple manner. As long as there is no suitable form of digital disclosure, holding disclosure sessions, which are accessible to the public, is an adequate measure to meet the requirements for the disclosure of judgments. The minutes of those hearings, including the case number and the names of the parties, and the relevant decisions, must then be made available for inspection by the public at the registry.

Judgment of the Division

The Division finds that the (District) Courts may suspend the disclosure hearings, given the current circumstances. The Division considers that the publication of the full text of judgments on the Internet via www.rechtspraak.nl provides easy access to interested parties. As publication of all judgments is not yet possible due to limited capacity of the Court administration, an alternative is to make available to interested parties and free of charge an official record of the judgments made on the same day.

Interested parties can then request a copy of a judgment. The Division accepts this alternative in the understanding that the Courts try to publish as many judgments as possible.

The Division rules that the combination of sending the judgement to the parties and providing an opportunity for interested other parties to become aware of the judgement via the internet or publication of official records is acceptable and does justice to the essence of the principle of public justice given the current very exceptional circumstances. The Division underlines that the adjusted Court practice should be of a temporary nature.

The appellant lost his case.