

# **Transcript of Plea mr J. Pols**

## **In the appeal case against the Covid19 Curfew in the Netherlands**

*Court of Appeal of The Hague Preliminary Relief Judge*

*Thursday, February 19, 2021*

*In matters:*

- 1. Stichting Viruswaarheid (www.viruswaarheid.nl ; The Foundation for Virus Truth in the Netherlands),*
- 2. Willem Christiaan Engel,*
- 3. Jeroen Sebastiaan Pols,*

*Respondents,*

*Lawyer: mr G.C.L. van de Corput*

*against*

*The State of the Netherlands (Ministry of General Affairs and Ministry of Justice and Security)*

*Appellant,*

*Lawyers: mr R.W. Veldhuis and mr J. Bootsma (mr is the Dutch equivalent for Magister Legis or LLM)*

*In order to improve the readability and to elucidate the context and meaning of certain passages for the international readers, not familiar with the Dutch situation, its institutions, state organization and judiciary, the translator has added certain comments and suggestions in square brackets [ ] preceded by a \* sign. These are not part of the plea by mr J. Pols but may serve for improved understanding. Other technical and semantic clarifications may appear between regular brackets ( ).*

Your Honor,

Before I start, I would like to emphasize for everyone watching, that we (Viruswaarheid/Virus Truth Foundation) do not deny the existence of the Covid19-virus. Nor that there exist certain groups within the population with an increased risk to be severely affected and sickened by the Covid19-virus, and even die as a result. Anyone confronted with the death of a close one feels a heartbreaking loss, of which we are very well aware and fully acknowledge. Let this be clear to all. The issue here is, however, no matter how you feel about the virus or the Covid-measures taken, ultimately everyone should desire the observance of the law and constitutional human rights, and the safeguarding of the rule of law. This as prior remark.

I would like to begin by expressing my deepest respect for the preliminary relief judge mr Hoekstra who delivered a just and incredibly courageous verdict. We have now conducted more than ten proceedings [against the various Covid-measures \(regulation\)](#) and this is the first judgment that genuinely takes the people into account: the rights and lives of 17.5 million Dutch citizens. For almost a year they have lived in a society that is undeserving of the rule of law. Government policy should be just, fair and humane.

A policy that does not follow its constitutional requirements and takes into account the interests, happiness and welfare of 17.5 million people *is* injustice. A policy that does not allow children and young people a carefree childhood and takes away their future prospects *is* injustice.

This inhumane government policy is destroying the current and future prospects of the entire population. Judge mr Hoekstra gave many people hope that there are still people in the judiciary who stand up for their interests. Everyone has moments in their lives when they have the obligation to do the right thing. She did that.

The State should have done the right thing here too [\[\\*and has the OBLIGATION to follow the law without prejudice\]:](#) to respect the court ruling. But it did not. [\[\\*instead, the State followed a legally dubious route to prevent enforcement of the judgment \*ab initio\*\].](#)

In a constitutional state based on the rule of law, a government does not lock up (or down :-) its citizens in their own homes. It is shameful that our Dutch government representatives believe they have a mandate to enforce such measures. This courageous judge mr Hoekstra chose to apply justice for a society in which injustice has become the new norm. But even if the underlying legal premises of the verdict of the judge will fail [\[\\*meaning be successfully challenged in appeal by the State\]](#), even then it is clear that all adopted Covid19 measures are neither lawful nor legally admissible [\[\\*because they grossly violate international law and the international human right treaties\].](#)

The most important question has never been asked by the policymakers and the members of parliament, being: "do we in fact have the legal power to take these measures?". The only possible answer to this question is: NO.

The Covid19 regulations constitute an unacceptable violation of the European Convention on the protection of human rights ("ECHR") and the United Nations International Covenant on Civil and Political Rights ("ICCPR"). Furthermore, they violate the WHO International Health Regulations ("IHR") and the regulations are irreconcilable with the legal regime of the Dutch Public Health Act (Wet Publieke Gezondheid). I will explain this further.

The Dutch government justifies its adopted Covid19 measures by reference to Articles 2 ECHR and 22 of the Constitution of (the Kingdom of) the Netherlands. These oblige the State to take measures to protect public health, which therefore would (supposedly) justify the State to adopt and enforce these rules. The State however, perverted the concept of public health protection as will be explained below. [\[\\*Perversion is a type of human behavior that deviates from that which is understood to be orthodox or normal. For example also the "new normal" as propagandized by State.\]](#)

After that, I will address the basis of the entire policy, namely the advisory opinions/recommendations of the OMT (Outbreak Management Team - temporary pandemic/Covid19 public health advisory organ to the State). Can such one-sided advice of a small subset of experts [\[\\*that notably, deliberate in secret\]](#) constitute the legal basis for any policy decision by a (serious) government? I will then submit my conclusion that there is only one acceptable and just outcome of this appeal case: the integral rejection of the State's claims [\[to retain the mandatory curfew instituted by abuse of a non-applicable law circumventing the \*lex specialis\* - cf. articles 15 and 18 ECHR\].](#)

## Violation of WHO IHR and Dutch Public Health Act

Allow me to begin with the WHO International Health Regulations and the Dutch Public Health Act. After all, The WHO International Health Regulations or "IHR", constitute the legal basis for combating virus-induced illness/disease worldwide. The Dutch Public Health Act (Chapter V) implements the obligations of this IHR treaty. All WHO member States (currently 194 countries) that have ratified this treaty in 2005, have submitted themselves to an obligation to ensure conformity and compliance with the provisions of this treaty [*pacta sunt servanda*] and adjust their domestic legislation accordingly. And what is the object and purpose of this treaty? [cf. [1969 Vienna Convention on the Law of Treaties](#)]. That will surprise you!

The aim is to prevent societies from being disrupted by a viral disease. And what is it our policy-makers do? They adopt and enforce Covid19 measures that result in precisely that which is to be prevented under the treaty and implemented health law, namely, the total disruption of the society. Ergo: this policy is therefore already in its entirety in violation of this treaty [*i.e., its very object and purpose.*]

Neither the IHR nor the Public Health Act provide a legal basis for these unlawful Covid19 measures. The State operates here in a total legal void, without any legal authority. The IHR is based on measures that are consistent with "full respect for the dignity, human rights and fundamental freedoms of persons". The IHR does not allow a harsh and repressive policy by which fundamental human rights are violated on the large scale. Fighting a viral disease is no justification for unbridled restrictions of life, liberty and freedom.

In doing so, the WHO emphasized that, should a serious situation arise that necessitates the use of an "emergency power", this will first have to be assessed against the requirements of article 15 ECHR (on permitted exceptions to human rights during public emergency) and the criteria of the equally applicable Siracusa Principles. I will further elaborate.

The Dutch Public Health Act therefore does not provide a legal basis for these measures either (*inter alia*, [social distancing, closure of buildings, schools, restaurants, non-essential stores, mandatory face masks, prohibition of gathering in public places, protests, stay at home, prohibiting attendance to funerals of family members, limiting international travel, requiring negative PCR test to enter own country, etc., and case in question, mandatory curfew](#)).

Chapter V of this Act (implementing the WHO IHR into domestic law) is strictly focused on very dangerous infectious diseases that result in mass illnesses. This concerns primarily the high lethality aspect of certain viruses. These include Ebola with a mortality rate of up to 90% and other viruses with extraordinary high mortality rates of 20% or more. In the present Covid19 "emergency regulation", these measures have been unlawfully added to this Chapter V of the Dutch Public Health Act. However, the SARS-Cov-2 virus, with a demonstrated mortality rate (IFR) of only 0.23%, is almost 500 times less deadly than the aforementioned Ebola virus. The invasive and limiting measures from IHR treaty were specifically intended for viruses with the mentioned extraordinarily high mortality rates. Despite that fact, our policymakers have purposely brought the SARS-Cov-2 virus under this same chapter of extreme deadly viruses.

Moreover, the Public Health Act does not provide a legal basis for generalized and large-scale coercive measures and repressive State policies. That is logical and self-evident. If there would be a dangerous viral disease circulating, the government would only need to provide guidance to the public on a voluntary basis as per the treaty. People are inherently afraid of dying, so the streets would be empty anyway without the need of a whole army of police to fine healthy citizens that pose no risk whatsoever into obedience.

This law is specific; a *lex specialis*. This means that other laws and regulations cannot be used to legitimize measures and create new powers to combat viral diseases. Every single Covid19 measure will have to find a solid legal basis in this *lex specialis*, the Public Health Act.

During the negotiations of this Act, the late Minister of Health, Dr. Else Borst [[\\*brutally murdered in 2014](#)], made a conscious choice for “coercion as ultimate last resort” and to ensure safeguards in the law against taking such powers lightly. The Public Health Act therefore only allows for the application of coercive measures in respect of individual cases.

This is, for instance, applicable in case it has been confirmed (by a qualified physician) that a person is suffering from a dangerous and highly infectious illness ([by a physician](#)), who can then be brought into mandatory isolation or quarantine. But he or she will at all times be entitled to a lawyer and a judicial review (in conformity with ECHR and other human rights treaties). [[\\*so in other words; forced quarantine can only be applied against sick individuals that pose – e.g. by recalcitrant risk-inducing behavior - a serious health risk to the population at large. It can never be applied against an entire healthy population!](#)]

However, a serious problem arises if the Government deprives an entire population of its freedom to combat a relatively mild virus such as Sars-Cov-2, *in casu*, with a very low death rate of 0.23%. and that poses no health threat to more than 98% of the population – a documented data number by the RIVM (Dutch National Institute for Public Health and the Environment / the “Dutch CDC”). In such irrational situation, of course, a government will need an army to force people into compliance with such unnecessary measures that completely destroy their lives. At which point you find yourself in a dictatorship!

The current Dutch Government imposed Covid19 measures, however, have at the same time imprisoned 17,5 million people in their own homes without due process, without a court review and without being assigned a lawyer.

Another fundamental problem is the following: the Dutch Public Health Act is restricted to combat a virus-induced ILLNESS and not [[\\*supposed](#)] INFECTION. The law (Chapter V) does not provide a legal basis to combat infections [[\\*that in the present situation do not even result in disease](#)]. That is *de facto*: PREVENTION. You cannot imprison people based on prevention. Constitutional fundamental human rights cannot be violated nor curtailed on the basis of preventive measures. Nor is the law intended to lower [[\\*supposed](#)] R-(viral virulence) values. None of this is possible under international law [[\\*and international law supersedes local law at all times, as will be demonstrated later](#)].

Incidentally, the powers in The Dutch Public Health Act (*lex specialis*) only apply in the event of an EPIDEMIC. However, there is no longer an epidemic in the Netherlands: according to the definition in article 1 of the Act, an epidemic occurs if there is a sharp increase in new PATIENTS *suffering from an infectious disease* within a short period of time. Note: Patients! Patients are something very different as (supposedly) “infected persons”. Infected persons are not sick persons.

The [[\\*alleged](#)] Sars-Cov-2 epidemic [[\\*never having reached the exponentiality to be able to be defined as “pandemic”](#)] already ended in the period March/April 2020 [[\\*As epidemics rarely or never have a duration longer than three months](#)]. Regardless of the aforementioned general objections to the legality of the restrictive measures taken by the Dutch government, any measure taken after the ending of the epidemic in 2020 is simply unlawful: every legal basis for taking emergency/coercive measures is since then is absent.

And, moreover, the Dutch Public Health Act is certainly not intended to solve capacity problems in the Intensive Care Units of the hospitals in the Netherlands. Dutch policymakers have over the past 10 years systematically cut down more than half of the available ICU capacity. Now they lock up the entire population of 17.5 million people to solve this self-created ‘problem’. Most obviously, what the policymakers should have done is immediately ‘[build back better](#)’ ICU capacity, for which ample time was available since March 2020. Now, one year has passed. What has been done by the government to expand the alleged urgently needed ICU capacity? Nothing. The policymakers prefer to keep the entire population in a tight stranglehold.

What is happening here are gross human rights violations. As previously stated, it is impossible for a positive PCR test to demonstrate if somebody is [*\*either infected or*] sick. *Positive tested persons are not patients at all.*

I cannot repeat it enough: the current counting of [*\*positive PCR tests and/or alleged*] infections by the Dutch government is complete nonsense. The Act is based on *patients* (persons that are actually ill from Covid19). People who do not have symptoms, *are not sick*. Without symptoms, there is no need to test them [*\*and therefore no need for quarantine*].

Here I refer to the words of the outgoing Dutch Prime Minister Mark Rutte who stated on television without reservation that "it is useless to test persons that have no symptoms" [*\*after being asked whether he ever had done a Covid19-test himself*]. But this senseless PCR-testing is exactly what we massively being done nonetheless.

Merely on this ground alone - not only the mandatory curfews - but all implemented restrictive Covid19 measures should be abrogated immediately. Of course, the government can still provide well-intentioned health advice to the population.

### **Violation of ECHR and Siracusa Principles**

Now I will demonstrate the violations of the ECHR and Siracusa Principles. The Dutch population has *de facto* been placed in a "state of emergency" since March last year. The (unlawful) measures that have been taken under the emergency Covid19 regulation, hastily added to the mentioned Dutch Public Health Act, constitute emergency rules that normally can only be taken on the basis of article 103 of the Constitution of the Netherlands. This was not done.

The curfew-rule should be considered in conjunction with the other implemented measures. In an emergency situation, a State can only take measures that infringe on fundamental human rights and freedoms, provided the stringent conditions of article 15 ECHR are met. The fact that this article 15 ECHR is applicable, can also be discerned from the statement of the Raad van State (the Dutch Council of State), which underlines:

"A number of Contracting Parties has informed the Secretary-General of the Council of Europe that they will enforce Article 15 ECHR in relation to the Covid19 crisis in order to divert from certain ECHR-guarantees. *The Netherlands has not done so. The rights as provided within the ECHR therefore are here therefore fully applicable.*"

The State of the Netherlands should have informed the Council of Europe similarly, but failed to do so. These rights may therefore not be curtailed at all, and the State of the Netherlands in violation of ECHR and is thus (also in this respect) acting unlawfully.

These prerequisites for curtailing (infringing) human rights under article 15 ECHR are further subject to the specific requirements laid down by the Siracusa Principles; adopted under the auspices of the Human Rights Commission of the United Nations. These Principles were developed at the time in response to the fact that emergency coercive measures are a favorite tool for abuse among dictators, especially in South America. Notably, at the very initiative of the Netherlands in 1984, these Siracusa criteria became also applicable to the ECHR.

By the way, I have been in contact with Professor P.J.G. Kapteyn yesterday who has signed the Siracusa Principles on behalf of the Netherlands. He has reached the age of 92 years and unfortunately his energy failed him to personally attend here to elaborate on the Siracusa Principles in person.

Only under stringent conditions, States are allowed to take measures that violate fundamental human rights and limit freedoms. First of all, there needs to be an "*exceptional or actual and imminent danger* which threatens the life of the nation". This is the case if the entire population is threatened and its physical integrity is endangered. As indicated before, this is presently not the case. More than 98% of the population will not develop any symptoms after a SARS-CoV-2 infection. Therefore the most important Siracuse condition has not been met.

Another requirement set by the Siracusa principles is that the effect of a measure must be measurable. If the effect of a policy is not measurable, its effectiveness cannot be established. This is self-evident. Since otherwise you will not know whether the implemented measure is effective.

The State of the Netherlands, by its own admittance, has established that the effect of the implemented measure (mandatory curfew) cannot be measured. With the simultaneous implementation of the rule of maximum one visitor per household, the government has made it technically impossible to verify *any* effect of the curfew and its restrictions (positive or negative).

Furthermore, the law prescribes preceding factual events in order to legitimize restricting measures. This curfew measure was implemented however in succession of a long winding government policy without substantiating events or data [*\*nor any proper verification*] since March 2020.

It needs to be emphasized that an emergency measure is not a policy instrument, but serves the sole purpose of dealing with an "acute emergency" resulting from "actual events". After a year, there can hardly be any unexpected "sudden" event that necessitates or justifies the enforcement of such a restrictive emergency measure (that violates fundamental human rights),

I want to further stress here, that possible adoption of a curfew-rule was already announced on 14th of December 2020, and then discussed as intended to be instituted already beginning of January 2021. So this is not a measure that the government suddenly and promptly adopted directly in response to a sudden threatening event or urgency [*\*with no increase in virulence or mortality*]: the intention of the government existed already long before that point in time, which in itself is disconcerting.

There must also "a direct threat of an extraordinary magnitude". There is no evidence or data of that. The curfew rule has never been justified. The government based its measure only on an [*\*arbitrary*] *recommendation* of the (unelected) OMT. This recommendation deliberates pages-long on potential Sars-Cov-2 variants from all kinds of countries and supposed numbers of infections related thereto [*\*The Dutch health department RIVM falsely predicted a staggering 170.000 daily infections as a result of the British Sars-Cov-2 variant supposedly 'flooding' the country, none of which occurred*]. The projected devastating apocalypse by the Dutch government and the OMT over the past eleven months, never materialized and never will. This is evidently impossible with a virus that is harmless to more than 98% of the population. [*\*In the words of attorney mr J. Pols: "Dark clouds on the horizon do not indicate an end of the world flood"*]

Any government measure must be directed against an actual, clear, and identifiable present or imminent threatening danger and cannot be imposed in reaction to a "mere fear of such potential danger". The State is willfully substituting a "potential danger" for "an actual real threat". Theories [*\*and projections*] of fast spreading viruses that will lead to an additional burden on the healthcare system at some point in the future are potential threats but not real threats. A real threat is when a dyke breaches or a 60 yard high tsunami wave is imminent.

An actual emergency situation is easily recognizable to all. Nobody needs months of rambing on in the (corporate) media about dangerous killer viruses that could mutate [*\*As a matter of fact, all viruses mutate into more virulent but much less dangerous variants, for a virus wants to spread as much as possible and not kill the host. That is why Ebola is in its essence an unsuccessful virus*]. In a pandemic, for example, fleets of ambulances will scurry back and forth, funeral directors (and crematoria) will work overtime and a society as a whole will be in a constant severe panic. An emergency situation is *clearly evident from observation*, not from (inflated) mathematical models or *subjective opinions* of "health experts" [*\*E.g. Dr. van Dissel, Dr. Fauchi, research biologist Tedros Adhanom Gebreyesus, software entrepreneur Mr. Bill Gates*].

Apart from this fact, an emergency measure can never be used as a behavioral experiment on the population. The Curfew however is precisely aimed at that, according to the policymakers in the Netherlands themselves. That is a more than a questionable argument for locking up an entire population of 17.5 million Dutch citizens.

### **More criteria have not been met.**

In addition, more criteria have not been met: the severity, duration and geographical scope of every measure should be strictly necessary to avert the imminent danger to the State and should be proportional in nature and extent of the measure. The necessity for the proposed emergency measure to avert the danger must be investigated and documented. A measure is not strictly necessary if less drastic or invasive measures are available to avert the threat.

The principle of "strict necessity" has to be applied objectively. The burden of proof for the necessity of a measure rests with the State.

And here I like to add, that currently something is "strictly necessary" because the State believes or simply proclaims it so. The required substantiation thereof however, is lacking. Any factual substantiation has to be demonstrated by unequivocal scientific proof.

Due account must be taken of the international health regulations (IHR) of the World Health Organization. And most importantly, the proclamation must be made in *good faith*, based on an objective assessment of the situation to determine the extent to which it threatens the life of the nation.

And as before, the State will surely claim, "we did not declare a State of emergency", and that may be true, but in fact we are confronted by an emergency (through all measures taken), which makes it only worse.

All these strictly required criteria are not met and have not even been discussed! Neither by the policymakers, nor by the parliament. And it is striking that the defense of the State, also currently, does not contain one remark dedicated to address international legal obligations and treaties, despite the fact that this has been raised on numerous occasions. This is further remarkable, since these international conventions are an integral part of our legal system and are legally binding.

Again, a necessity is not a necessity by merely proclaiming it as one (in the absence of data).

In short: the Curfew and all other Covid19 measures are a flagrant violation of international human rights treaties [[\\*that constitute crimes against humanity](#)].

### **Violation of article 2 ECHR and article 22 Constitution**

Now I will discuss Article 2 ECHR and article 22 of the Constitution.

In each court procedure to date, the State refers to its obligation to take measures to protect public health, based on Article 2 ECHR and 22 of the Constitution of the Netherlands. This obligation has become a kind of silver bullet for every conceivable curtailment of fundamental human rights by the Dutch government.

It is deplorable, however, that policy makers did not take this obligation more serious in the past.

The deliberate drastic reduction in ICU beds over the past decade is, in fact, difficult to reconcile with this obligation. They constitute a clear failure by the responsible government actors to follow their obligations to take the prescribed measures to protect public health, as stated by the very same Article 2 ECHR and 22 of the Constitution of the Netherlands [[\\*In short; the government grossly failed its stated responsibilities, and the responsible actors need to be held accountable for this. If more and more people die and suffer from these unlawful acts, the State and international law will have to criminally prosecute those responsible actors, which historically proves to be the inevitable result](#)].

But the pressing issue here is the State's restricted one-dimensional interpretation of the concept of health. The Dutch Cabinet and the Parliament are apparently of the opinion that *public health equals the absence of a virus*. Public health is however a much broader concept and government responsibility. Since 1972 the concept of health has been internationally recognized as an indivisible trinity: In addition to physical health, people also have mental and social health and all three together have to be met in the protection of public health.

But the current Covid19 measures are devastating for the mental (psychological) and social health of the public. The policy pursued has serious ethical objections and its disastrous consequences are clearly visible everywhere now and are supported by data. I refer the Court to the productions (attachments) 24, 27 and 28 on this matter, research conducted by Professor Michaela Schippers, in which such consequences for the population of: social distancing, isolation, the prohibition of group formation, forced confinements in nursing homes, large scale closure of schools, businesses and other institutions, are scientifically substantiated and how these policies affect our children and the youth as a whole. This is downright criminal. Also the curfew rule is specifically directed at that young generation. We are damaging our children and youth for the rest of their lives.

And in conjuncture with this, for almost a year now, people have been living under a constant atmosphere of fear of [\*death and] terror from viruses and suffer from constant persisting stress related to their financial and existential insecurities and diminishing future prospects. The policy inflicts an unthinkable damage to the social fabric and mental well-being of the entire population.

Also the curfew rule was adopted within the scope of public health. But a prerequisite for the lawfulness of such measure is that the overall health gains and losses should constitute a positive health result for the entire population. Nothing indicates that such assessment between health harm and real health gains were ever investigated. Meanwhile it is evident that this final balance is nothing less than catastrophic.

Professor Michaela Schippers has calculated the damage resulting from these measures. I refer to the attached data in these court proceedings. For example, in the Netherlands alone 40.000 children were abused at home during the first lockdown and more than one million medical treatments were delayed or cancelled altogether. This also involved persons with serious illnesses or postponed diagnoses (e.g. cancer-related), etc. It is clear that we will pay an astronomical price in human life: and that is not the price we will pay for the Covid19 virus, but the price we will pay for the government enforced [\*unnecessary and ineffective] Covid-measures themselves.

Finally, also the economic consequences have an enormous impact on public health and well-being. These include declines in gross domestic product, the [\*rapidly increasing] mountain of financial debt, the steep rise in unemployment and the staggering number of bankruptcies caused. The damage can hardly be overseen, and it is totally unclear what benefits, if any, have been achieved by these destructive, [\*random] and unfounded policies. This balance was never researched or analyzed: the State just "does something", i.e.,- acts in an absolute rational vacuum or 'black hole'.

### **Flaws in the OMT's recommendations**

I now come to the subject of the Outbreak Management Team recommendations that constitute the sole basis for the entire set of government policy. The State permits itself to maintain the opinion that it should rely blindly on these recommendations. But the pressing question here is whether this is a responsible or wise thing to do. A year has passed, and the problems only seem to increase. In the meantime we are just repeating more of the same policies in the faint hope that we will succeed perhaps one day in the future [\*Albert Einstein's definition of insanity is: "repeating the same behavior and expecting different results"].

Firstly, the OMT continuously changes the purpose of the recommended (and implemented) measures. Initially, the number of occupied IC beds had to decrease; then (and we all still remember this well) we had to "flatten the curve", after that, the "R" (virulence) number had to be brought below 1.0.

As soon as it became clear that these goals were achieved already, the severely restrictive measures were still not abolished. Instead, suddenly a new criterion to continue the measures was found: "the signal value". After that issue was solved, the criterion of "vaccine availability" was introduced for our freedoms to be regained. As soon as the vaccine was here, suddenly a new argument surfaced: "we have to wait until enough people are vaccinated". Then it turned out that the vaccine does not fully protect against "positive" infections (regardless of the clinical relevance thereof). Now we have to continue the curfew again because there are alleged new variants of the Sars-Cov-2 virus [[\\*Coronaviruses, including the majority causing the common cold, mutate rapidly into new variants by their nature](#)].

According to the OMT, the restrictive measures must therefore become permanent. The measures have now continued for a year without any [[\\*demonstrable result or](#)] prospects. According to the latest ideas of the OMT "the restrictive measures can only be cancelled if and when the 'British variant' is under control. Thereafter the 'Brazilian variant' and the 'South African variant' must be under control". "After all, these are the *really* dangerous ones". As such, we still have about 200 countries to go, each with their own specific viral mutations. After that perhaps we can go local. Then we have to fight the "Gooise" and the "The Hague" Dutch variants; the latter allegedly most dangerous of them all :-).

To date, no OMT or government prediction has ever come true and materialized. Last Tuesday, you yourself, Honorable Judge, craftily summed up the accuracy and usefulness of all OMT recommendations as: "It can freeze, it can thaw". It is a regular case of 50-50.

Regardless the above, such OMT recommendation can obviously never constitute the sole basis for binding government policy. The Council of State of the Netherlands explicitly points this out in its latest guideline: The State is obliged to make individual independent assessments. In addition, a *legal analysis* will always have to be made before any OMT recommendation can be adopted. It must be corroborated whether a to be implemented OMT advice remains within the boundaries of the law. An OMT advice has no power whatsoever to authorize the violation of any law.

For that reason, I was surprised by the remarks by the State lawyers, "well we are lawyers, we cannot judge these OMT recommendations". But that is their very profession: lawyers if confronted with the OMT recommendations, before adopting and executing those, should examine whether such recommendations *are legally allowed and justified*. Because we live under the rule of law, and as such, all laws constitute the legal framework within which we are allowed to operate; outside thereof you are legally off limits!

Incidentally, this also applies to the "margin-of-appreciation": another silver bullet that the State and judiciary are eager to systematically invoke. Yes, the State has a certain discretion to act, but its limits are clearly defined in the existing legal framework; outside of that - there is no margin-of-appreciation!

### **Additionally, facts [[\\*and evidence](#)] are missing**

What is also missing are facts (and evidence). And then I refer to the stories we just heard by the counterpart, I listened to it very carefully, but I have no idea what exactly was factually said. I hear stories about mutant-viruses, spread of viruses, infections, etc., but actual facts or data are lacking. According to the OMT there is extraordinary pressure on health care system and services. "That is what we do it all for, right?"

But if there (really) would be such an exceptional crisis, why does the OMT remain completely silent on how this situation compares to previous years? That is in fact the only way we can know if something out of the ordinary is really happening. I have put this fact forward in every single lawsuit over the past year: those figures are not available and both State and OMT refuse to give the public any insight in this! Whereas, should I be on the side of the State, it would be the first thing I would submit.: "*Mr Pols you say there is no exceptional situation, but see here, the ICU's have an (over)load of 200% whereas in previous years it was only 80%*". Then, perhaps, you may have an argument. But I have never heard something like it from the State or OMT.

The opposite is true: the hard facts are that the Dutch hospitals are no more 'flooded with patients' as in other years [[\\*during a comparable flu epidemic](#)]. Currently only half of the available ICU capacity is in use. Factually, nothing exceptional is happening [[\\*due to the very mild 2019 flu season perhaps fragile elderly survived 2019 but now died of Covid19 in 2020, which may also explain the slightly higher 2020 death rate](#)].

And in addition, I refer to the OMT recommendations of April 2020, where it was stated that should used ICU capacity fall under 700 beds then hospital personnel can take a leave again... Honorable Judge, we are now below 500 beds and we throw our society in an even more restrictive lockdown! If you still understand this? ... well I do not!

That does not mean that nothing is occurring. We now have a structural problem due to our Cabinet of Ministers engaging in mismanagement: First of all, as I mentioned earlier, the government significantly cut down the ICU capacity in the preceding years. Secondly, the available ICU capacity is being disrupted by the practice of continuously and unnecessarily PCR-testing medical staff. Staff are sent home *en masse* while they are not sick or infected at all. They only carry a positive PCR test result.

As outgoing Prime Minister Rutte himself confirms, "he never had himself tested, since this is nonsense if you do not have symptoms". However, the hospital personnel does not have that choice and is legally required to regularly take those PCR-tests ([that are invalidated anyway - contested by another lawsuit and already abandoned in various countries](#)). And if they have a positive test, they are required to home-quarantine, and thus the health care system is further reduced in capacity. *Ergo*: this is a self-induced (created) problem by deliberate government policy.

So the question is; why do we really send so many nursing staff home?

A pressing question here is also why the OMT makes government policy based on hundreds of thousands of positive ([worthless](#)) PCR test results from people who are not sick at all? [[\\*Also called a "CaseDemic"](#)]. And who not even have symptoms? What real value can these OMT recommendations have if this meaningless fact constitutes their very basis?

Again, since I cannot explain it more accurately and simple than Mr. Rutte did, "it is not useful to test people who have no symptoms". So why are we doing this? I say this, because this (questionable) PCR testing is the fundament of the entire policy and related measures, including the recently implemented (unwarranted) curfew rule.

Another major flaw in the setup is that the OMT is not investigating whether less drastic measures can be taken instead. What about long existing proven antiviral therapies with demonstrated positive results, such as Ivermectin, which can instantly reduce ICU admissions for COVID19 by 90% or more? [[\\*This would end the entire 'pandemic' within 2 weeks or less](#)]. How is it possible that these alternatives are not researched by the government? A possible motivation could be that vaccines [[\\*that have an astronomical profit margin](#)] can no longer be sold.

The most important point of this debate is the proportionality tradeoff. The Council of State rightly pointed this out the day before yesterday. If you take measures to bring an entire country to a standstill, you will first have to determine what exactly does the potential danger consist of? What is the possible disease burden of this specific virus? How many patients can end up in a hospital, *especially if we take no measures at all*? That seems to me the first necessary assessment before proceeding to implement draconian measures against an entire population. We do it all for the healthcare system, right? But no trace of this primary argument can be found in these OMT opinions. Therefore, the OMT recommendations prove to be nonsensical [[\\*and unscientific, with a total absence of data](#)].

In all the recommendations, and also now, I never hear anything about this. I only hear about very high tidal waves - but how high - is kept secret by the authorities and never revealed to anybody. [[\\*So, do we need to put our finger in the dyke or not?](#)]. Because this really is the crux of the matter; what this is all about. I would like to hear from the State and RIVM, also present here today, how many patients actually could end up in a hospital because of the Sars-Cov-2 virus. It is not that complicated.

The virus is known to be completely harmless to more than 98% of the population [\*this means that 98% x 17.500.000 = 17.150.000 or more Dutch citizens are not affected at all by Covid19! And obviously, should not be exposed to (potentially harmful experimental) vaccination.] The IFR, the number of people who get the disease and die from it, is only 0.23% of the population - that is the rate of people that get infected and die as a (allegedly direct) result. But that rate is comparable to a moderate seasonal flu!

[\* The Covid19 IFR (infection death rate) of 0.23% established by the WHO, translates to 40.250 deaths if the entire population of the Netherlands were to be infected. However, the entire population never gets infected. Usually the infection rate would amount to around 20%, so around 3.5 million Dutch citizens. The WHO confirmed death rate of 0.23% would then lead to 8050 Covid19 deaths. That is the typical amount of deaths caused by the seasonal flu. In 2018 we had more than 11.000 flu deaths because the flu severity was above average that season. The current 14.000 Covid19 deaths (still relatively low in number) as reported by the RIVM cannot be the actual Covid19 death number which is more likely to be around 8.000, in line with the established IFR of 0.23%. Many deaths of various causes (patients with multiple severe pre-existing underlying conditions dying *with* Covid19 not *of* Covid19) were relabeled "Covid19 deaths" by the government; possibly to artificially inflate the severity of the supposed 'pandemic'. As mentioned before, the 2019 flu season was mild, so a couple of thousand patients that would normally have died in 2019 now also died in 2020, slightly increasing the average number. In summary, and discounting the abovementioned circumstances, the real Covid19 death rate in the Netherlands is comparable to an *average* seasonal flu, about 6500 deaths. This means that there is no pandemic at all, no emergency situation and in fact nothing out of the ordinary going on. And that the entire cluster of Covid19 measures have been unlawful from the outset.]

The only relevant question that now indeed remains, is how many people *can* realistically become infected? Experience learns that generally a maximum of 20% of a population can become infected by a virus. I am not an immunologist, but this is what I have been told by experts. I hope to hear from Professor Pierre Capel (expert witness for Virus-truth) and the State, what that percentage exactly is according to the State. I assume that the Dutch health department RIVM is conducting an accurate study of the percentage of the Dutch population that was already infected [it is relevant to establish whether and at which point this 20% has been reached; after all, the institution performs serological blood tests for that.] Should these figures not be available, which would surprise me, then we can make a rough estimate here. Professor Capel will be happy to help with this in a moment.

By the way, last year, we also sued the RIVM and requested this related research, analyses and data (financed by our tax-money), but RIVM refused to submit those to the public! It only published a few meaningless results of those analyses, nothing more. These are essential analyses however, because if you don't know how many people were already infected by Covid19, then you are sailing blindly, without any fundament for your policy. But this should be the core issue of what this is actually about: what is the potential scope and extent of the expected (health /ICU) capacity problem caused by the virus itself?

### **Democratic legitimacy**

Before I end this plea, I would like to say something about the democratic legitimacy that the Dutch State and judiciary seem to be prone to lean on. Democratic legitimacy means more than just a favorable vote by the Members of Parliament. Anyone following the related debates, can observe that those parliamentarians mainly exhaust themselves by crying out for taking away even more freedoms from the people and adopting even more Covid19 measures. But I have not yet heard a single Member of Parliament ask how these measures relate to the State's international obligations under the various applicable treaties.

Article 27 of the Vienna Convention on the Law of Treaties (1969) stipulates that *a State cannot invoke provisions of its internal law as a justification for its failure to perform a treaty and to violate obligations of laws of a higher order.*

A duty of international law towards citizens supersedes national law. And, mind you, the *very issue at stake here is fundamental human rights*. Again, not a single Member of Parliament has asked a question about this essential issue (with the exception of Forum for Democracy)? Equally, I have not heard from policymakers about this aspect either. Absolutely no legal assessment has taken place in respect to all these Covid19 measures.

And precisely for that reason alone, "democratic legitimacy" cannot be a reason for the judiciary not to intervene - on the contrary - this is precisely the area where the judiciary is obliged to fulfill its legal function. It must promptly dismiss this kind of unlawful regulation!

### **Conclusion**

And with that, I will now reach my conclusion: This case is not only about the curfew. This case is about our society as a whole. It is about the lives, well-being and livelihoods of 17.5 million people.

Do we consider our constitutional State and its long established rule of law, with its associated personal freedoms and human rights, worth preserving for our children?

Do we accept a government that only seeks solutions in inhumane and repressive measures that eliminate our personal freedoms and human dignity?

Do we accept measures that let people die unlovingly in solitude and harm our children and youth? Do we accept that the entire population is imprisoned by its own government?

Do we accept measures that threaten the happiness and existence of millions of people?

What this cabinet is doing, is not possible and blatantly unlawful. We can no longer regard this behavior as mere mismanagement. The responsible individuals will, in my opinion, one day be held criminally accountable. This also applies to the people *who facilitate* this policy (and do not intervene when they have the means to do so - *inaction*).

As a judge, the binding obligations of international treaties leave you no choice: you are obliged to abrogate and annul conflicting national regulations (that are of lower order) and render them ineffective. Neither the Dutch Cabinet of Ministers nor the Dutch Parliament have the power to set aside these international treaty obligations.

Justice Hoekstra has made an audacious and just decision. The question now is, Honorable Judge, what you are going to decide? Are you going to rule in the interests of the people or will you facilitate this inhumane policy?

I trust that you will do the only right thing and reject the State's claims. In that case, I request you to do this on the basis of the ECHR treaty and the IHR. Then perhaps the parliament will come to understand that curfew rule (now imposed by ministerial decree) *cannot be laid down in national law either*.

Thank you for your attention.

Mr. Jeroen Pols - February 19th, 2021

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