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| Part | Minutes | **Transcript of the recording as it appears on YouTube from Pot candle: 1 hour 54 minutes 51 seconds** |
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|  |  | Judge G.H.IJ. Hage (R) State's Attorney Reimer Veldhuis (LA) or (RV) State's Attorney Maartje Möhring (MM) Virus Truth Attorney Gerben van de Corput (A) or (GvdC) Biochemist Willem Engel (WE) Lawyer Jeroen Pols (JP) |
| 1 | OmOs up to 5m43s | Opening of the session + start of the oral argument Jeroen Pols  R: This summary proceedings of Virus Truth and you, Mr. Engel and Mr. Pols, against the State. I would first like to take stock of who I have in front of me. That is actually almost superfluous, because we know Mr Engel and Mr Pols by now, and Mr Van de Corput is also present. And on behalf of the State, I understand that Mr Veldhuis and Mrs Möhring are present.  MM: That's right.  R: Good. I have received the following documents: an extensive writ of summons with 17 productions in the end and subsequently a Deed of Amendment of Claims. From the State I have received a Statement of Reply with 4 productions, with a reaction to the amendment of the claim in which Mr. Veldhuis states on behalf of the State that he objects to the amendment of the claim.  R: The change of demand means that you actually no longer focus - as in the summons - on the curfew. That is also logical; that has been cancelled or revoked in the meantime, but that you focus on all other restrictive measures imposed in the Temporary Regulation Covid and you say that - very briefly - we do that on the same basis as the claim as it originally read in the summons. And the State opposes that and wants that resistance. |

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|  |  | R: I think we should now consider the extension of the requirement. If we leave that aside, then of course we have little else to do here. Then we would only be talking about the curfew that no longer exists. But the question is whether the dispute can now be drawn more broadly as you have put *it* there, and then I will give you the opportunity to explain your objection, Mr. Veldhuis.  LA: Yes, um, after it was announced that the curfew would be lifted on 28 April (2021) at 04.30 hours, the State repeatedly contacted the plaintiffs' lawyer and finally on Wednesday morning, 28 April, a message was received, and there was some pressure on the State side, because the Conclusion of Reply had to be submitted on Thursday at 10.The first response was received, which actually said: "Plaintiffs are prepared to withdraw the preliminary relief proceedings, provided that an undertaking is given that the State will not reinstate the curfew from one day to the next". The State is not prepared to make that promise, because the State naturally wants to have its hands free if an acute situation arises. After this, nothing more was heard from plaintiffs. Subsequently, the Conclusion of Answer was submitted, and two hours after the CoA was submitted, the claim was changed, in which actually *(ed. the claim regarding)* the curfew is cancelled entirely and all other measures are actually drawn into the dispute, which as such do not have much to do with the curfew. Of course, this claim could have been made from the outset. In this respect it has nothing to do with the fact that the curfew has been lifted, because these measures were actually already in place before the curfew.  LA: Yes, so the State (...), in fact, just two working days before the hearing, less than two working days before the hearing, a whole new summary proceedings is brought. Now I know you a little and I know that you are a practical person, and then you say: "Yes, but if the same arguments are used as a basis, why is the State's defence damaged? Well, that is (...), yes, on the one hand, I have of course included in my pleading a defence in which the arguments from the summons are applied mutatis mutandis to the current measures. If it remains at that, then the State can put up a defence against that, but if all kinds of new arguments are put forward at the hearing, specifically with regard to those measures, in order to substantiate the change of claim, the amended claim, then the State will object to that. And if all kinds of new factual information or substantiation or that kind of thing (...) is put forward. |

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|  |  | R: Ok, well, of course it says in the writ of amendment that for the same reasons as mentioned in the writ of summons, these measures should also be disregarded *(ed. unintelligible).*  R: I understand the position of Virus Truth and you both in the sense that you say: "Those arguments, which were mentioned there, are now also the weapons for us to fight the other restrictions".  GvdC, WE and JP all nod in agreement and say YES at the same time].  JP: If I may respond to that? Look, we have also stated with regard to the curfew that this measure should be viewed in conjunction with the entire package of measures. In the CoA, the State chose not to elaborate on the other measures, but all the measures have already been described in the writ of summons which we (...) |
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| 2 | 5m21s to  7ml3s | Jeroen Pols is interrupted by the judge regarding the change of claim  Interruption R: Well, well, you have of course limited your claim to the curfew, so it is logical that the State says: then I'll keep it to that curfew too. But anyway, that is your comment. Does that give rise to any further reaction? Otherwise (...)  R: You have actually already said; "Ok, provided...".  LA: Yes, I can imagine that we were going to postpone the decision on the change of demand, and that is what is going to happen today at the hearing.  R: But anyway, you can also say that, that was my thought which I took from this discussion and with that I want to close the case, that I allow this change of claim, but that of course this change of claim is also limited, in a certain sense, by the fact that you have included your statements in the summons, that we have here |

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|  |  | not then be able to extend the discussion, for example, to discussion per restriction of proportionality and its effects.  R: It is about the system as such, and I have read enough about that in the writ of summons to be able to include that in the discussion here. That is no surprise to me, but in so far as the discussion moves beyond those boundaries, it may be, because the State is man enough, to point out that the State is unreasonably disadvantaged in its defence. That could be, but we will see, but in that light I will also look at what you say about the other restrictions. If this goes beyond what you indicate in the amendment of the claim, then it is possible that you will receive a rebuttal in the sense of: "I cannot defend myself against this at such short notice, because it is in the summons". So that is pretty much the limit within which we have to look at the case.  R: Can we live with that then we can go about the business ourselves now, well.... I have decided, so you will have to live with it at the moment. |
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| 3 | 7ml3s to llm43s | Judge summarises summons 'label' emergency and framing (legislative route does not allow for it)  R: Anyway, very briefly, when I read the extensive "workpiece", I would almost say, of the writ of summons, I get the following picture; that you say, well, the facts that the State keeps referring to, following the OMT and other authorities, are not valid, because there is in fact no exceptional situation, factually speaking.  R: And the next step you take is: what has the State done? The State has assumed a very extensive package of powers. Initially through the WBBG, and now through the WPG, and the temporary measures based on it, and those powers are so extensive that they only fit under the label of "state of emergency". |

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|  |  | R: And that state of emergency is framed in the law and in the Constitution, and also in the European Treaty, in regulations and conditions, and that is the path that should have been followed. So what is happening here is a legislative path that the law and the constitution and so on do not allow for, so that is what you are invoking.  R: And furthermore, you have developed various arguments to say that what is happening here is also wrong from a treaty point of view, and you invoke Article 15 (ECHR), but also that IGR, and that is just as well, regardless of the chosen route; those treaty obligations are being violated.  R: And finally, you say; if you look at the WPG itself, then the WPG would not provide an adequate basis for these measures either, because the WPG presupposes an epidemic, and that epidemic does not actually exist.  R: And even if you reduce it to the WPG itself, we will not be able to take these draconian measures. That is pretty much it, and the State is now putting forward a defence against it, yes well that defence has also been taken up by you of course, and you have also seen what the Court has done with parts of that defence. You say several times in the writ of summons that you do not agree with that either, but that in fact comes down to the State saying: "Well, we are not following that route of the Constitution at all, because there is no - admittedly there is a special situation, but not a state of emergency in the legal sense - and we simply remain responsible for our treaty obligations and within the deviation possibilities that those treaty obligations offer, these measures, which do not go nearly as far as the state of emergency as described in the Constitution and in the Coordination Act, fit.  R: And if we test them, then there is every reason to take those measures. We base our decisions on the current situation, which is assessed very differently, or much more seriously, than Virus Truth does, and are therefore entitled to do so, especially because the actions of the government are done on an expert basis and we as a government may reasonably take that expert basis as the starting point of our decisions.  R: And you also refer to the judgment of the Court of Justice regarding those treaty obligations, which I believe was the tail end of the Opinion, with that IGR and what the Court of Justice said about it, that that is not a treaty obligation that is binding and also not, that such as |

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|  |  | Virus Truth, there are obligations which can only have an individual effect and not a collective one.  R: That's pretty much the debate that has been going on so far, but now of course the differentiation gets to the other, well differentiation it shouldn't be entirely, but focusing on the restrictions other than the curfew that have been imposed.  R: I understand that Mr. Pols usually speaks, is that also the case now?  GvdC: Yes, he also has the pleading on paper and because of time (...)  R: Yes, you announced in the summons, I believe, that you would need 20 minutes to speak. That does not always work out.  JP: I think I'll stay pretty close today.  R: 0 yes, do you have that plea note available to hand out so that we can read it?  JP: Certainly.  R: Thank you.  MM: Thank you.  LA: Thank you. |
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| 4 | llm43s up to  14m23s | Pleading note is circulated by Jeroen Pols, everyone concerned in the room has received a copy of the pleading, the judge gives the floor to JP |

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|  |  | R: Well Mr. Pols, go ahead.  JP: Yes, thank you. Yes, your Honourable Judge. *Wo keine Gerechtigkeit ist, ist keine Freiheit, und wo keine Freiheit ist, ist keine Gerechtigkeit.* This is a statement by Johann Gottfried Seume, a German writer from the 18th century, and it goes to the heart of this case. 17.5 million Dutch people have been living without freedom and without justice since last March.  JP: The entire Dutch population is kept in a regime of detention by its own political leaders. A regime that not only violates fundamental human rights and freedoms but also criminalises human behaviour.  JP: A regime that wipes the floor with Christian values, that rewards antisocial behaviour and punishes compassion, love and togetherness. But also a regime that grossly disregards the Constitution and international treaties.  JP: And this is the heart of the matter. It is up to you to bring order to the lawless space in which our decision-makers have been operating for more than a year.  JP: Today we are not discussing whether the State's actions fall within the *margin of appreciation*. So we don't need to have a discussion about viruses, mutants, R numbers and OMT opinions.  JP: Today we are only concerned with the question of whether the COVID-19 Temporary Measures Act is in accordance with the Constitution and binding international obligations. And that question has only one answer. It is unequivocally non-binding. Before I explain that, I will first give a short clarification on the change of requirement. I will skip that for now because we have just discussed it. |
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| 5 | 14m23s to  20ml3s | Interruption of judge and continuation of plea by Jeroen Pols  R: Let's see, then we are at the pandemic, I think? |

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|  |  | JP: Yes, then we come to the pandemic. Because the Conclusion of Reply again deals to a large extent with the OMT recommendations, I would like to make a few brief remarks on this. At the same time, the State reproaches us for not wanting to understand how serious this pandemic is.  This is therefore of little relevance when assessing whether the regulation is unmistakably ineffective, but I would like to make a few comments, because we are in a court of law and we are here to establish facts. It is not our job, nor is it the job of the judiciary, to keep a fiction in the air.  JP: I want to say again that we do not deny that coronaviruses exist and can affect certain groups of people. And if people die, it is tragic. But our point is that every year people die from flu or other viruses and even if this virus were more serious than regular flu, the measures are unacceptable.  2020 is now over, so we can now see from the annual statistics 'was there really anything special going on in 2020? See... The OMT can write reports and juggle with definitions. But in the end, it is the hard figures that determine whether something was going on.  JP: I have included here a graph of mortality rates per 1000 inhabitants in the Netherlands. And if you look at this graph, you will see the evolution of mortality. If you had no knowledge of what happened last year, could you point to the year between 2000 and 2020 when the COVID-19 pandemic raged in the Netherlands? The biggest pandemic in history and, according to Rutte, one of the biggest challenges since the Second World War? Well, our entire country was demolished. But there is nothing unusual in the statistics. The rising death rate due to ageing continues in a straight line.  JP: And then you see this graph, if you look at the numbers below, you see  2017: 8.88 per 1,000 people. 2019 *(red. 2018):* 8.98. 2019: 9,09. 2020, 9,21. Not a single notable development. Then we also take a look at Brazil. The country that the media and also the politicians have been scaring us with for months. The country that hardly took any measures. The same picture there. There is no break in the trend, and since 2009 there has been an upward trend, but people were not dying in droves here. There was nothing different about viral diseases than in previous years. |

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|  |  | And there you can see again the trend of the previous years is just continuing, nothing to worry about.  JP: And the last one is from Belarus. There, too, we have an obstinate leader who refused to go along with the coronado doctrine. Western leaders spoke outrageously, the media soaked our entire population with terrible news. Because there, people may have lived under a dictator, but they were allowed to celebrate together, they were allowed to go to school, the elderly did not have to die in loneliness and the middle class and the catering industry were not driven into massive bankruptcy. What do we see in the mortality figures? Nothing at all. The mortality rate fell compared with previous years.  JP: By the way, this is also the case in the 22 States in the United States where all the measures have now been lifted. After the lifting, nothing happened except that the infection rates went down, so all those disasters that the OMT constantly predicts, they never came true.  JP: Then one more graph to close, because this is to show; what does a real pandemic look like in a graph? I took a graph of 120 years of plague epidemics in London.  JP: Anyone can see at a glance in which years there was an epidemic. In disasters of this kind, hundreds of thousands of people die and they are added to the usual mortality and it doesn't take any convincing. Anyone can see the peaks in those 150 years and that is what a pandemic looks like.  JP: Let me make it clear: the state is presenting a fiction here. By manipulating figures and concepts, a virtual pandemic is created. Hundreds of thousands of positive tests are presented as cases of illness, while 98% have hardly any symptoms at all and are therefore not ill.  JP: Furthermore, we must also ask ourselves why the State simply continues to count coronas dead and sick when we are in a new year? Also in the Conclusion of Reply, the counting continues; the dead and sick of 2019 are simply added to those of 2020. If we were to do that for the flu, we would already have hundreds of thousands of deaths. |

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|  |  | JP: In the Conclusion of Reply, there is also an attempt to question the *infection fatality rate (the ifr)* of 0.15% calculated by loannidis, but this is an average on hundreds of studies. The State argues that this is not explicit in the report, that it can therefore be compared to a normal flu, that is true. But the flu has an equal *ifr,* so it is comparable. |
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| 6 | 20ml3s up to  22m57s | Jeroen Pols deviates from the pleading because of judge's interruption on **number of IC beds** (2,400)  JP: A few remarks about ICU beds. The State accuses us of seeing a different reality regarding the situation and capacity of hospitals. According to the State, this is much lower than we claim in the writ of summons.  JP: Well, the figure of 2,400 that we mentioned is a statement by Minister De Jonge that can be read in parliamentary documents, so that is indeed unreliable information.  R: Was that a goal or a?  JP: No, it was a figure that was said that it could be expanded to 2,400. That is a statement in April (2020), there was no reservation about that.  R: Okay.  JP: Yes, the *bottom line* is that the number of IC beds cannot be the leading factor in this crisis.  JP: Structural mismanagement cannot - and must not - be repaired by stripping an entire population of fundamental rights and freedoms. It is the job of politicians to ensure that there are enough hospital beds. Meanwhile, more than a year has gone by. The measures are still there. The beds are still not there.  JP: For the assessment of the claim today, all this plays a secondary role. |

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|  |  | I come first to  R: Can I ask something?  JP: Yes, yes.  R: In the Conclusion of Answer, I also read something about excess mortality and that there is a certain amount of excess mortality, or is that a figure that you....  JP: That is juggling with definitions and figures. Look... in the end this is what counts: the number of deaths per thousand. Look... it's about the expected death rate. But if I expect a lot less people to die in 2020 or 2019 and more people die than/or the same as normal, then we have excess mortality. That is how definitions are handled.  R: Have they been changed?  JP: In...  R: Yes.  WE: Yes, they have been changed.  R: To come to this result?  WE: That's speculation, but we suspect so... But the way of calculating excess mortality changed in 2020. That's what the CBS did.  R: Yes, good.  GvdC: And the ageing of the population is not taken into account. |

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|  |  | JP: That is why we see an upward trend. For years, yes.  R: But I was thinking about Brazil, would it be the same because they don't have as much of an ageing population, I suppose?  JP: I don't know why so many people have been dying there for years but it is a trend that is not being broken. |
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| 7 | 22m34s to  22m50s | Interruption Willem Engel on **'absolute' figures and ageing Brazil**  WE: If you look at the absolute figures, you see that they are still far below the Netherlands, so it is true that there is much less ageing there, but it is now saturating there so they are catching up with us and will be at the same level in 15 years' time.  R: Good. |
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| 8 | 22m50s to  24ml3s | Continued plea by Jeroen Pols  JP: Then Article 103 of the Constitution and Article 15 of the ECHR. That is the question that has to be answered here. Is the COVID-19 Temporary Measures Regulation unmistakably non-binding? Or is it in conflict with higher regulations?  JP: There is no doubt that this is the case. |

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|  |  | JP: Dutch law provides for a regulation that gives the board extraordinary powers to act in exceptional situations. There can be no exceptions to this regulation, no matter how big a disaster is. Especially in times of crisis, human rights must be respected.  JP: The Government established the extraordinary powers in Chapter Va of the Public Health Act because the available instruments would not be sufficient to fight the "pandemic". The Government thus qualifies the pandemic as a state of exception as referred to in Article 103 of the Constitution.  JP: This means that the Exception Coordination Act applies. |
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| 9 | 24ml3s up to  25ml5s | Question for the court: on what does VW base its claim that the Coordination Act for Exceptional Circumstances applies + follow-up questions for the court  R: What do you base that on? Because I understood the defence to be that the State wants to say: "No, because the test referred to in Article 103 of the Constitution does not apply here and we are acting independently from it".  JP: I have substantiated in the writ of summons that this argument does not hold water, because fundamental rights are indeed being departed from, and even fundamental rights that may not be departed from at all, according to Article 103 paragraph 2 of the Gw.  R: So implicitly, it is also recognised that this state of emergency exists?  JP: No, look, you have to make a distinction between what we think - of course we don't think there is a state of emergency - but the State thinks there is a state of emergency, and if you think that and you want to act against that fictitious state of emergency, then you have to follow the path of Article 103 of the Constitution.  R: Yes, that is how I understand it. But I also understood correctly that the State says: "No, we are not subject to the regime of Article 103 Gw", don't we? |

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|  |  | JP: Yes, well, I'll come to that in a minute. That is not a defence. |
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| 10 | 25ml5s up to  42m01s | Continued plea by Jeroen Pols  JP: The Cabinet and Parliament have no authority to regulate emergency powers outside the system of Article 103 of the Constitution and the Coordination Act for Exceptional Situations.  The Coordination Act contains two lists of emergency powers, which are contained in different laws. List A lists the powers that may be used after the declaration of a limited state of emergency. These powers may not derogate from fundamental rights or rights enshrined in treaties. The extraordinary powers of List B are exclusively available after a general state of emergency has been declared.  The purport of this article implies that, as soon as a crisis leads to the wide application of extraordinary powers contained in emergency laws, a state of exception within the meaning of Article 103 of the Constitution must be proclaimed.  The powers in Chapter Va include some extraordinary List B powers. To use these, a general state of emergency must have been declared, otherwise you simply cannot use them.  The subpoena further showed that all powers were plucked directly from the War Act for the Netherlands and the Extraordinary Powers of Civil Authority Act (Wbbg).  So too is the ban on group formation. This can only be used during a general state of emergency. In that case, there is the power to limit group formation to 10 people. So even if it is war, and I don't know what else, it can only be limited to 10 people and only in a general state of emergency. However, Chapter Va goes much further. At the moment it is forbidden to gather with more than one other person, outside your own home. This right therefore no longer exists. |

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|  |  | This is not a restriction but a deviation from this right, *[ed. it was said the other way around during the hearing; what is the correct statement?]* The subpoena substantiates which other measures from Chapter Va are on List A and List B.  What is very important here - which the State ignores, whether consciously or not - is that the package of measures must be considered as a whole. This was also emphasised in the summons. The State has also ignored this point in its defence.  I refer to the judgments DeTommaso vs Italy and Guzzardi vs Italy of the European Court of Human Rights. These rulings stipulate that freedom-restricting measures must be assessed together. An accumulation of freedom-restricting measures may at some point turn into a detention regime.  These judgements concern conditions imposed on former Mafia members. The combination of measures, such as restrictions in social contacts, prohibition to meet, travel restrictions, prohibition to go to restaurants, entertainment, curfew, cumulates to a detention regime.  So what I just said about a detention regime: that is not meant 'jokingly'; that is based on facts as determined by the ECHR. On the basis of these judgements - if we look at the situation in which Dutch people currently find themselves - the entire Dutch population is in an open penitentiary. Also after the curfew has been lifted.  In fact, current restrictions on freedom go even further than those in these judgments in a number of respects. For example, the mafia members in question were allowed to simply hug the people they met, and were not required to keep a safe distance, nor were they allowed to meet several people at once.  So the total package also constitutes a derogation from Article 5 of the ECHR, namely deprivation of liberty and Article 2 of the Fourth Protocol to the ECHR. That is the freedom of movement. |

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|  |  | The closures of catering establishments and small businesses constitute a derogation from Article 1 of the First Protocol. And again, this is all mentioned in the writ of summons; these are not new things. The measures restrict the possibility of the undisturbed enjoyment of the right of ownership, and this has become meaningless, because owners are deprived of the possibility of running their businesses in such a way that they can still cover their costs, let alone make a profit.  Then there is the entry ban, which is a restriction on Article 1 of the Fourth Protocol. And no, it is not a restriction, it is a derogation, because in principle there can be no derogation from that right.  These are just a few examples of derogations from rights and freedoms contained in the ECHR.  Then there is another problem. And that is the second paragraph of Article 103 of the Constitution, which determines which fundamental rights may be derogated from in an exceptional situation.  The current measures derogate from fundamental rights that are not mentioned in the second paragraph. This concerns the right to property mentioned above, because it also concerns rights that are included in treaties. In the writ of summons, reference was made to Parliamentary Papers from which it appears that even if a right from a treaty is not mentioned in paragraph 2, this does not mean that no derogation is possible. The right to freedom of movement, the free choice of employment (Article 19, paragraph 3 of the Constitution, Article 4, paragraph 2 of the ECHR, Article 15 of the EU Charter, Article 1 of the European Social Charter), the freedom to conduct a business (Article 16 of the EU Charter), the right to return to one's own country and the prohibition of arbitrary deprivation of liberty. These are not 'restrictions' but 'deprivations'.  This has been extensively explained - once again - in the summons. Nor does the State put forward any defence on this point. The State only notes that "in the Netherlands no state of emergency has been proclaimed and therefore no departure has been made from the fundamental rights mentioned in Section 103 or from other fundamental rights." An explanation as to how it arrives at this conclusion is lacking. |

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|  |  | One does not need to have any legal knowledge to know that this is not true. This is a strange reasoning. The fact that a state of emergency has not been declared does not mean that there is no derogation from fundamental rights.  The opposite is the case. Fundamental rights are being violated, so a general state of emergency should have been declared. By not doing so, and by ignoring both Article 103 of the Gw and the Coordination Act, the provisions of Chapter Va are clearly ineffective.  R: That is really the core of your argument?  JP: Yes, exactly!  JP: The State still argues that there are differences between the powers of Chapter Va and the powers that apply in a state of emergency.  JP: This reasoning, too, cannot be followed. Even if only one List B power is used, a general state of emergency must be declared. That does not mean that all powers should be activated with it. The Constitution must simply be followed. Point. There is no discussion about that.  JP: The Constitution is intended to ensure that we do not end up in a situation like the present one. A government that deals with fundamental rights in this way is on a dictatorial path.  JP: Then I come to Article 15 of the ECHR.  JP: It follows from the above that, with the emergency measures, the Netherlands is deviating from fundamental rights and the ECHR and should have declared a general state of emergency. This has also been extensively substantiated in the summons.  JP: The State defends itself only by claiming that it is relying on the usual clauses in the fundamental and human rights provisions. It has done so repeatedly to date. |

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|  |  | JP: According to the State, these restrictions are possible if they serve a legitimate purpose, are provided for by law and are necessary in a democratic society. Until now, jurisprudence has followed this line of reasoning without giving further reasons.  JP: However, this reasoning does not hold water.  JP: There can be no doubt that Article 15 ECHR applies here. This also means that before a state of emergency can be declared, the requirements of this provision must be met.  JP: The literature is clear on this point. An article in the Journal of Law and Biosciences at Oxford Academy (production 17) says the following about the use of the normal clauses in human rights treaties: [[1]](#footnote-1)[[2]](#footnote-2) I quote:  founding text as an 'instrument of European public order'. The Convention contains a list of rights, most of which can be limited for valid purposes including public health. Providing that they are 'necessary in a democratic society', those limitations are acceptable in normal times. 6 However, the COVID-19 crisis is not normal times. In the rhetoric of French President Emmanuel Macron, 'we are at war'. In those particular circumstances, the Convention holds a specific provision authorizing to derogate unilaterally to conventional rights. Article 15, entitled 'derogation in time of emergency' permits States 'in time of war or other public emergency threatening the life of the Nation f..l to take measures derogating from its obligations ... ’. 8 Similar  JP: This is also self-evident. As soon as emergency measures to combat an exceptional situation deviate from fundamental rights, this can only be done via Article 15 ECHR. A different interpretation of |

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|  |  | this provision, would render it completely meaningless. Any other interpretation would be incompatible with the ECHR, which would in itself be a violation of the ECHR.  JP: But here too the State uses reversed reasoning. "The Netherlands has not made use of the option of Article 15 ECHR, so all rights from the ECHR apply in full, but there is no deviation from this either and The Council of State would confirm this with its advice from May last year."  JP: It became clear earlier that several rights of the ECHR are being deviated from. This does indeed mean - and I am not trying to make it (needlessly) complicated, but we do think - that all rights are therefore in full force, because they are ineffective *[ed. JEROEN: WHAT DO YOU MEAN BY "THEY"-ALL MEASURES FROM CHAPTER Va?].* They are in fact ineffective, precisely because the conditions set by Article 15 have not been met. And not, because no appeal is made to Article 15 ECHR.  JP: And again, none of the conditions are met.  JP: There must be a situation *of "ofexceptional and actual or imminent danger which threatens the life of the nation".* This is the case if the entire population is affected and its physical integrity is threatened.  JP: Any measure must be directed against *a real, present or imminent danger and may not be imposed for fear of a* ***potential*** *danger.*  JP: This point, too, was made very clear in the writ of summons and I have not seen any defence by the State. There is no disagreement in the literature on this point either. For example, in a dissertation on the application of Article 15 of the ECHR by El Zeidy we read:2 |

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|  |  | (4) The crisis or danger must be exceptional in that the normal measures or restrictions permitted by the Convention for the maintenance of public safety, health and order, are plainly inadequate. 21  With regard to "actual or imminent", under international law, "states of emergency" of a preventative nature are not justified. Therefore, it is not acceptable for States to derogate from human rights to face possible "exceptional situations that have not yet arisen. The emergency, therefore, must be present or at least imminent. "2^ This was also clarified by the Commission Report in the *Greek* case, when it noted that "with regard to  JP: The subpoena also substantiated this in detail: because there is a fundamental problem here.  JP: All the measures taken by the State - on the basis of the advice of the OMT - are **preventive** measures. The deliberations about mutants, R numbers and contamination in no way constitute a direct and real danger, but (only) a potential danger; I say (in the pleading) threat, but that should be danger.  R: And then you are actually working outside the boundaries of that quote you just read out?  JP: Exactly! Because then you are dealing with potential dangers.  R: I read that in the summons.  JP: And by the way, they have never been released... You could also tell from that that they were not 'imminent'.  JP: So there must be a disaster or an immediate threat of a disaster. Deviations from fundamental rights are only possible if the disaster occurs or is inevitable.  JP: This does indeed mean - because in the previous sessions people were always saying: 'Yes, but do we have to wait until the hospitals are full? - that this is indeed the consequence. Declaring a |

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|  |  | emergency, can only be taken into consideration - in this case, if we stick to the hospitals, regardless of the question of whether you can restrict fundamental rights for a 'self-induced' disaster - but you can only take action if the patients are lined up in rows of three in front of the hospitals and society is indeed in danger of collapsing. That is how it is regulated].  JP: Because what we are overlooking here, and what the State certainly overlooks, is that it is also a disaster if a State takes away fundamental rights from an entire population. After the experiences of the past, this is only allowed in extreme circumstances.  JP: If liberties can be derogated from preventively, any state can take emergency measures at any time. There are always potential dangers to consider. And that is exactly what has been happening for over a year now, because we keep hearing about things that are going to happen but never do: the hospitals have never been full. They have not been much fuller than in other years. Again: that is a consequence of structural mismanagement: there are simply too few IC beds.  JP: Then briefly about the IHR and the other provisions of the Wpg.  The subpoena further substantiated that the measures in Chapter Va are incompatible with the International Health Regulations (IHR) and the Public Health Act itself].  JP: Look, I could talk about this for another half an hour, because (...) it is (...), I will not do that (...), but especially because the State has hardly addressed this. Therefore, the State does not put forward a defence on this point and limits itself to referring to earlier judgments and decisions of the District Court (and the Court of Appeal). The IHR would have no direct effect, nor could it be inferred that the measures may only be used individually, but this defence is incomprehensible.  JP: In the writ of summons, reference was made to the Explanatory Memorandum, which shows the opposite. The IHR is binding. This was also emphasised by Minister Klink at the time, so I find it strange that reference is made to a judgment of a - in an emergency appeal by this court - and that the Explanatory Memorandum that accompanies the law and explains how it is put together can be pushed aside? |

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|  |  | JP: Neither Chapter V nor Chapter Va applies, simply because there has to be an epidemic.  JP: The State has not put forward any defence on this point either. This is despite the fact that the writ of summons provides extensive substantiation as to why there has been no epidemic since April 2020. There must be, there is an epidemic *only if in a short time there is a sharp increase in the number of* ***new patients*** *suffering from an infectious disease belonging to group A, BI, B2 or C.* |
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| 11 | 42m01s to  44m07s | Question Judge definition epidemic + answer Jeroen Pols  R: But I don't think the real definition is to be found anywhere, is it? Because what exactly is an epidemic?  JP: Oh yes, that is article 1 of the Public Health Act. It describes what an epidemic is.  R: Is that where you get the definition from?  JP: Yes. That is this definition. JP: Yes.  JP: And for (chapter) Va, it says that that (definition) applies when there is an epidemic of - I believe - COVID-19, that is indeed correctly mentioned there...  JP: But the State limits itself to referring to OMT reports and descriptions of mutants, R numbers and positive tests. All this is completely irrelevant to determining whether there is an epidemic. It should only be about patients. Positive tests are not patients] and there has been no rapid increase since last April. I would also like to say that when we are dealing with a flu epidemic, we always talk about numbers of patients per hundred thousand inhabitants. I do not hear anyone talking about that any more; all they talk about is 'testing'. |

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|  |  | JP: Nor is COVID-19 a high-lethality disease. Indeed, this brings us to another important point: the disease is not even on List A of dangerous diseases. This too is a prerequisite for the application of the Chapter V and Va powers. On this point, too, the State does not put forward a defence.  JP: Aside from the pleading, a bill was proposed last year in which it would be put on List A and since then it has been lying there, whereas the essence is, of course, to deal with it as quickly as possible in the Lower and Upper Houses so that the bill can be passed, because it gives you special powers to act. And it is of course very strange that this has just been lying there for over a year? And no one can answer why it's not being dealt with, while in the meantime we are demolishing the whole country on the basis of a disease that is not on List A. I mean, there are so many questions in this file: there's no end to it...  R: But I have read this in the summons?  JP: Yes, that's right: this is also in the summons. Yes. |
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| 12 | 44m07s to  48m57s | Conclusion of the plea of Jeroen Pols  I will therefore limit the explanation here to the conclusion that the regulation based on Chapter Va is also ineffective on this ground].  JP: Then I come to my conclusion. It follows from the foregoing that the ministerial regulation is clearly in conflict with both the Constitution and the ECHR. The State has no arguments that could lead to a different conclusion.  JP: Nor does the State have any freedom to override the Constitution or the ECHR on this point. So far, both the State and the judiciary have used an appeal to policy freedom, the *margin of appreciation*, to legitimise action. |

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|  |  | JP: Everyone can understand that there is no such policy freedom.  JP: Just as no one can understand that the State does not have the freedom to destroy a whole country or drive hundreds of thousands of entrepreneurs into bankruptcy or traumatise a whole generation of children. Or to let the elderly die in loneliness. Or to have the freedom to place a whole population in detention.  JP: Nor does the judiciary have any policy to allow this.  JP: The judiciary must apply the law. That also includes the obligation to check for compliance with international law. But also, for example, to check whether the definition of an epidemic has been fulfilled.  JP: And on the basis of the above, only one conclusion is possible. The COVID-19 Temporary Measures Act must be declared ineffective.  JP: As one of the pillars of the trias politica, the judiciary must intervene if parliament and the government fail.  JP: Our current administration is dismantling a system of human rights that we built over 70 years on the ruins of the Second World War. We have an obligation to protect this system. The judiciary also has this obligation. So far the judiciary has failed.  JP: If it does not do its duty, our legal order is definitively at stake. We are rapidly sliding towards a totalitarian state in which human rights no longer have any meaning. I refer to the developments in Germany. That is in the passage that I have just skipped. Last week, a law was passed in Germany whereby people can be imprisoned for up to five years if they break corona rules. This means that if someone shakes hands with you, you can be imprisoned for up to five years. The police have been given the power to enter any home. And I would like to point out that in last year's bill for the Emergency Act, this power was also included. And what happens in Germany, also happens here. And Merkel has openly stated that - as soon as she has the power, because at the moment she is drawing all the powers to herself - she will be very |

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|  |  | Germany will place them in detention for 6 weeks. They will be allowed to leave their homes for 2 hours a week. They are not allowed on their balcony and they are not allowed in the garden. I mean: welcome to the new totalitarian state. And the Netherlands usually follows Germany, so it is not conspiracy theories to think that this is the next step and that it will happen here too.  JP: These are facts and new red lines have been crossed in the last month.  JP: Our government is also committing the worst possible crimes at the moment. I really see this as crimes against humanity; what is happening right now.  JP: However, history shows that totalitarian systems have a limited shelf life. It will be no different now. Everyone must ask themselves whether they are part of the solution or part of the problem. People who facilitate or legitimise this policy will later be called to account. And that will also apply to the judiciary. And, of course, this is *'due process';* when international law is not applied.  JP: The Dutch people have been placed in detention by their political leaders for fourteen months now. This unlawful situation must end immediately. It is your duty to apply the law. I trust that you are doing so. I would therefore ask you to make a provisional ruling today, pending the verdict.  JP: Thank you for your attention. |
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| 13 | 48m36 to  50m26s | Question to the court about the 'whole' system of measures rather than just the curfew  R: I immediately have a question: why hasn't the whole system been subject to the claim before? But only the curfew? |

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|  |  | JP: Well, I can tell you why. The reason is - because we have noticed that judges are very reluctant to make decisions that have too great an impact - but then when you make a ruling about a curfew alone, clearly everything else is also in question. That was the reason. But after we applied for summary proceedings and were given a date that was only after the curfew had been abolished, the situation changed of course; that we thought: well then, let's just amend the demand and get on with it, because that writ of summons is actually built on all the measures.  R: Yes, that is true. Only the case is focused on the curfew.  JP: Yes.  R: Well, thank you for your speech and I will now go to Mr Veldhuis. At least, I assume you are going to speak?  LA: Yes.  R: Do you have a plea note with you?  LA: Yes. |
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| 14 | 50m26s to  53m48s | Start of plea bargain  LA: Mr. Judge, Madam Registrar, the Netherlands is in the third wave of the Corona epidemic. The number of infections has been structurally high for some time now and the pressure on the care is as high as ever. So high, in fact, that at present only 49% of hospitals can provide the critically fragile care as planned. I refer to a report by the supervisory authority, the NZA, which states that. If we are to believe the Virus Truth Foundation, those hospitals are obviously doing this for nothing, because there is nothing wrong. |

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|  |  | LA: On the other hand, the peak of the third wave is expected to have been reached or will soon be reached. In addition, the corona epidemic in the Netherlands seems to have entered a new phase. Through a combination of existing measures and increasing immunity through acquired infections and vaccination, it is expected that the number of infections and also the pressure on care will decrease. For this reason, the State has drawn up an opening plan. So the dark clouds that are outlined on the other side of a dictatorial state, well at least those steps are not included in the opening plan. On the contrary, the opening plan abandons, step by step, the measures taken by the State to combat the Corona epidemic. Everyone yearns for that, and the government first and foremost.  LA: The abandonment of these measures entails epidemiological risks and caution is therefore called for. It remains unclear how the corona epidemic will develop. The OMT explicitly pointed out that there is a great deal of uncertainty about this and that the prognoses depend on a number of favourable assumptions that are not yet certain. These include compliance with current measures, the implementation of the vaccination programme and the long-term efficacy of vaccines against different variants. The consequences of a gradual abandonment of certain measures cannot be predicted exactly.  LA: From an epidemiological security point of view, the OMT advised to take that first step from the opening plan after it has been established that the peak of the third wave is ahead of us. And in doing so, the OMT has emphasised that if the first step is taken, the continuation of the other measures in place at the time will be necessary for the time being. You will also find this in the references to these recommendations; that the OMT says: 'stick to the measures that are currently in force'. You will also find it in the (foot)notes in my pleading.  LA: On 20 April 2021, the Cabinet decided to implement the first step of the opening plan as of 28 April, and in doing so, the Cabinet explicitly took into account the social and economic interest served by taking this first step. So yes, we are a bit used to these kinds of speeches from Virus Truth by now, but if we look at the cabinet's decision-making, we see that on the one hand the epidemiological importance is weighed heavily, but that on the other hand there is also an eye for the economic and social consequences of these measures... |

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|  |  | (Judge interjects country lawyer) |
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| 15 | 53m48s to  55m52s | Question for the court to the state advocate **about VW's statement that the definition of epidemic as referred to in the WPG has not been met**  R: Can I just ask something then? Because it is rather accentuated by the side of Virus Truth that the definition of epidemic in the sense of the Wpg has not been met. I don't know if you will come back to that?  LA: Yes, let me answer that directly. If we look at article 58a Wpg, the following is defined as an epidemic: the epidemic of COVID-19 caused by the virus SARS-COV-2.  R: Yes, but I believe that you also referred to Article 1 of the Wpg and that the concept of an epidemic is somewhat more delineated and defined? So then it's not by definition... As I hear it now, COVID is an epidemic anyway?  LA: Uh, well, when there are indeed high numbers of COVID infections in the Netherlands, then COVID is indeed an epidemic. Yes, it is.  R: And was Article 1 of the Wpg also tested? Or do you only base your assessment on section 58a of the Wpg?  LA: Uh, I'll come back to that in a minute.  R:Ok.  LA: Epidemic is in any case uh, clearly in Article 58a from assume, is epidemic as that is defined in Article 58a *[red. inimitable argument],* but that in the Netherlands there is an epidemic and a pandemic, that has been repeatedly established by your court and also by your court of appeal.  R: Well, that was just brought up for discussion. |

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|  |  | LA: Yes, no, of course that is the core, isn't it? That it is actually said (by VW): "Yes; there is nothing wrong". Yes, the State looks at it differently...  R: Yes, I understand that. Only people say: the bar for an epidemic is higher than it actually is.  LA: Yes, and that is wrong.  R: Well, that was my question too: please explain.  LA: Well, that, that, I'll explain. Uh uh, I'll come back to that, but uh uh.... that may be clear; also from the figures that emerge from the OMT opinions. I will come back to that later, if necessary in my rejoinder, *[ed. inimitable argument].*  R: Please continue. |
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| 16 | 55m52s to  lu02ml4s | Continuation of plea bargain  LA: Yes, so you can see that these social aspects are taken into account and that the epidemiological uncertainty is taken for granted to a certain extent. And part of that first step was also the abolition of the curfew. Even after the decision of 20 April 2021, the epidemiological situation was labelled vulnerable by the OMT. The OMT pointed out that any further relaxation of measures, i.e. going beyond the first step of the opening plan, can only take place once a reduction of at least 10% but preferably 15% in the current 7-day average of the number of new ICU admissions has been achieved.  LA: If we then look at the most recent epidemiological report from the RIVM it states that for week 20 to 27 eh eh April 2021 compared to a week earlier a slight increase in the number of infections, an increase in the percentage of positive tests and virtually the same numbers |

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|  |  | hospital and ICU admissions, 1661 and 347 respectively. And in addition, this report mentions an R value, the reproductive rate, of an average of 1.05 on 12 April 2021, which means that the number of infected persons in the Netherlands is still increasing and, given the high number of eheh infected persons that we still have, that is not good news.  LA: The State - advised by OMT - always checks whether the epidemiological situation in the Netherlands already allows the second step of the opening plan to be taken and this has also been the subject of discussion in recent days with the outcome that further relaxation is not possible. If the foregoing makes anything clear, it is that this is a complicated balancing act in which many different interests are weighed up against each other. This is all the more true now that a yo-yo policy of easing too soon and then tightening again must be avoided. But above all, we must prevent the ship from sinking, especially now that the increasing number of vaccinations means that the port is in sight.  LA: It is equally clear that the central proposition of the plaintiffs, namely that despite the worldwide pandemic in 2020 and 2021, there is nothing special going on and that the risk of death with the Corona virus will not be higher than with an average influenza, is incorrect. That statement lacks factual and scientific support and that has been explained again in the Conclusion of Answer and has also been repeatedly put on the right track and I refer again to the judgment of the Court in which the same discussion took place and in which the Court established that the Netherlands is facing a pandemic, that this has meanwhile spread throughout the world and has caused large numbers of deaths, including in the Netherlands. And that despite far-reaching measures, this virus continues to spread and is mutating into even more infectious variants. And that the way out of this pandemic is therefore sufficient vaccination. This proposition, this central proposition, has been put forward several times and has also been rejected in court.  LA: Then in my pleading, I will go into the good procedural order, the importance of which I will leave for the moment, so I will continue with part 3 of the pleading. |

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|  |  | LA: It is obvious that plaintiffs have not fulfilled their burden of proof with regard to their amended claim other than the general remark that there is no question of a special situation in the Netherlands and that therefore all measures are unmistakably non-binding. It is unclear why the provisions mentioned by plaintiffs are unmistakably non-binding according to them. In addition, productions 2 and 13 received by the State - also only after the submission of the Conclusion of Reply - are incomprehensible and also incomplete. Moreover, it is not clear on what these overviews are based. Moreover, they do not seem to be overviews of the numbers of admissions as is suggested for 2020 and 2019 in the summons. And you can also see that the overviews do not seem to go beyond 6 to 7 March (2021), while the utilisation in the ICU and hospitals has ehh increased. For a correct overview, as you can also see in note 11 of my pleading, for a correct overview of these data with reference to the source this time, the State refers to the Corona Dashboard where you can see all these figures.  LA: And what is important is that those figures about the situation in hospitals, that those are the figures despite the measures taken by the State in March 2020. And so where the State, I mean Virus Truth, says: "Yes it's not that bad". In doing so, he forgets to consider that a large number of measures were taken, of course, precisely to limit the effects of that Corona virus. But even with those measures in place, it is incorrect that those figures do not paint a worrying picture of the situation in the hospitals. And yes, I have said that sentence before, but the Virus Truth Foundation seems to see a different reality there than the State, but also a different reality from the OMT and, perhaps even more importantly, a different reality from the hospitals themselves. Because if you have followed the reports over the past few days, you will have seen that the hospitals are very concerned that regular care will be compromised, but also that there is even a scaling down of critical vulnerable care. And yes, I can't reconcile that, the State can't reconcile that with the statements of the Virus Truth Foundation that there is nothing wrong. |
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| 17 | lu02ml4s to  lu04m42s | Question for the court on the substance of the argumentation VW (mismanagement) + answer state lawyer |

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|  |  | R: Yes, but of course it is said that this is not the core of the argument, because this is the result of mismanagement with regard to the creation of the number of hospital beds. But anyway.  LA: Well, I can respond to that briefly. First of all: if that were the case, if - as Virus Truth asserts - there was too little investment in healthcare, would that now be a reason to let the hospitals flood and deny people care? So, apparently, because it is Virus Truth's view that there has been too little investment, the positive obligation to guarantee access to care must now be set aside? That is an argument that does not hold water. But it is also wrong that there has not been enough investment in care in recent years. This argument, too, has of course been made many times. In 2020 and 2021, an extra 6.7 billion (euros) was made available for crisis measures in care, including 305 million euros for extra IC capacity.  R: In 2020?  LA: In 2020 and 2021. And it is incorrect that the number of IC beds would have decreased in recent years as a result of the policy pursued. That is simply incorrect. That is not based on reality. The actual number of operational beds has remained roughly the same over the past seven years. So yes, that statement is often made, and I respond to it in this way, but there is no further response. So there has been extra investment in healthcare, 6.7 billion, and in the years before that the number of IC beds has not decreased as a result of the policy pursued. Quite apart from the fact that there is no argument for flooding the hospitals. |
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| 18 | lu04m42s to  lu09m54s | Continuation of plea bargain  R: 3.2. |

LA: Yes. 3.2 of the crush memo and 3.2 of the Conclusion of Answer, because I would like to refer to that with regard to those mortality figures, 10% more than expected and that is in spite of the measures, I just note again here. So the State does not recognise this picture that is being sketched and it is not substantiated either (by Virus Truth). The State further points out that in - and then I really go to 3.2. of the pleading - in the petition of the act of amendment of the requirement, all provisions mentioned are included in a ministerial regulation, the Temporary Regulation on COVID-19 measures. The authority to take these measures by ministerial regulation can be found for all these measures in the Wpg. However, the claim from plaintiffs is not directed at those provisions of the Wpg and the State therefore observes that plaintiffs - apparently rightfully - take it as their starting point that the State has the competence in a general sense to take such measures to combat the Corona epidemic. In other words, plaintiffs are only interested in whether - assuming the State's competence to take these measures - the concrete measures as laid down in the provisions of the Temporary Regulation on COVID-19 measures referred to by plaintiffs are unmistakably non-binding. This is not the case. The State refers in this respect in particular to what has been written in chapter 6 of the Conclusion of Answer about the absence of a state of emergency and also the testing against fundamental and human rights. And that there would be a temporary state of emergency is also incorrect. It is not a case of deviating from fundamental or human rights, as Mr Van Zaanen said in the Conclusion of Reply. Fundamental rights are indeed restricted, but that is in accordance with the system laid down in those fundamental rights themselves, so that there would actually be an emergency situation is incorrect, and that too is an assertion that has been litigated on all the way to appeal and in which the Court of Appeal has said, and I quote: 'the emergency situation referred to in that last law - and we are therefore talking about the Coordination Act for Exceptional Circumstances - does not currently exist in the Netherlands, not even factually, as Virus Truth has stated'. And if we look at the judgment anyway... From that judgment, it also appears that Viruswaarheid's proposition that one should only intervene after the proverbial breach of the dike - I'm just quoting him, because that is the metaphor used on appeal - is incorrect, ground 6.11 of the judgment. The State does not have to wait until the damage is done, but can also try to prevent it. In fact, the positive obligation of Article 2 of the ECHR also implies this.

LA: And for the avoidance of that situation - I heard my esteemed counterclaimant say that there would not be an *actual and imminent threat* - but if we look at the plaintiffs' own submissions

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|  |  | production 17, then you will see included therein that there is *no doubt* that the Corona crisis is an *actual and imminent threat to all individuals, right to health and right to life.* Ah, so in that production itself is also included, which is also generally accepted in jurisprudence. And by the way, the proposition that only preventive measures are taken, that too is a proposition that doesn't quite correspond to reality, which is what I started off with... I started my plea with a remark about the state of affairs in hospitals now, so that it is 'all a dark cloud from which rain never emerges'; that is a disregard for the actual situation as it is in the Netherlands and that metaphor, I did not make it up myself, but you can read it in the judgment of the Court of Appeal, legal argument 6.10, in which the Court of Appeal also established that.  LA: So there is no derogation from the Constitution and human rights, fortunately I would say, I think the plea that there should be a state of emergency... Uh... I think I would prefer it if there was no state of emergency and if human and fundamental rights were curtailed, but the conditions set out in the relevant fundamental and human rights provisions were met... |
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| 19 | lu09m54s to  Iul2m37s | The questions of the judge (preceded by the stammering of the State Attorney) as to **whether the correct legal course has been chosen by the government; state of emergency/relationship with treaties/constitution** + answers State Attorney  (Judge interjects country lawyer)  R: That is essentially the discussion of whether these measures remain within the possibilities offered by the treaty provisions for each fundamental right or whether there is an overruling that puts us in this state of emergency. That is essentially the question (...)  (National lawyer interrupts the judge)  LA: You don't get into a state of emergency, you get (...)  (Judge interjects country lawyer) |

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|  |  | R: Well, you end up as Virus Truth puts it: "If you set aside fundamental rights, that is, if you don't just talk about a restriction within the framework of the fundamental rights in question, then you end up in a different..."  (State's Attorney interrupting the judge)  LA: Then you end up in an unlawful situation, because there is no state of emergency.  (Judge takes over)  R: Because there is no state of emergency that legitimises this. That is actually Virus Truth's reasoning.  LA: Yes, but a state of emergency is also a legal concept; it has to be declared, and there is no such thing.  (Judge takes over)  R: That should have been called out, because the curtailment of those fundamental rights is such that it is an override, so you should have taken that route. At least that's how I understand it: the discussion. So that is the core of the problem.  (State's Attorney interrupting the judge)  LA: I think the measures are justified in the view of the State and not in violation of the Constitution.  R: So you don't get to that whole Constitution situation.  LA: And if that is the case, then the judge has to rule on that if the State would do that unexpectedly, but then the solution is not to declare a state of emergency, the solution is to look at that measure carefully.  (The judge interrupted)  R: So then these measures are illegal, in effect? |

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|  |  | LA: Well, suppose one measure is said to violate fundamental rights, then the solution is not to declare a state of emergency, but to look at those measures.  R: Yes, exactly.  LA: That is a different approach and that is the approach that the State is taking, where there is respect for human rights and fundamental rights.  R: That is the standard by which those measures should be judged?  LA: Yes.  R: It is not a question of whether there is a state of emergency, but whether these restrictions are compatible with the fundamental right itself.  LA: Yes.  R: So that's the question I have here.  LA: Yes, and the State says: these measures are not contrary to fundamental and human rights, they are measures that are provided by law. So that brings me back to 3.6 of my pleading. The fixed test to see whether it is in conflict with fundamental or human rights: it concerns measures that are provided for by law and that serve a legitimate goal aimed at protecting public safety, public health and the rights of others. And these measures are also necessary in a democratic society and are also proportionate. |
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| 20 | Iul2m37s to  Iul6m53s | Continuation of plea bargain |

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|  |  | LA: And the latter is evident from the most recent OMT advice in which the OMT emphasises that maintaining the package of current measures is currently necessary to control and combat the epidemic and that there is therefore no room for relaxing the measures. The number of infected persons in the population is high if you look at the advice of 26 April 2021, a total of over 180,000 persons with a reproduction number of over 1. The OMT assesses the situation as very vulnerable in the short term. The predictions based on the modelling for the longer term have not changed, but this expectation has large margins of uncertainty.  LA: Further easing of measures, that is going beyond step 1, in reopening the society, according to the OMT, can only take place when there is a reduction of at least - but preferably more than - 15% on the seven-day average of new ICU and hospital admissions, and there is none.  LA: And it is established case law of both the Preliminary Relief Judge of your court, but also of the Court of Appeal and also of the Amsterdam Preliminary Relief Judge that the State may rely on current advice from the OMT and may, to a very large extent, adapt its policy accordingly.  LA: The question of which measures should be taken to combat the corona crisis and whether those measures are proportionate and subsidiary also primarily requires a political assessment. It is not disputed that this political assessment took place with regard to the introduction of the measures challenged by plaintiffs. I can also hear the other party saying: "Yes, now that the Government and the House of Representatives are not doing their job, it is up to the judiciary to do so". But the point is, of course, that precisely this political assessment did take place and the fact that it turned out differently from what the plaintiffs want does not mean that it is wrong.  LA: The civil judge - and certainly the judge in interlocutory proceedings - must therefore exercise restraint in assessing the choices made by the State within the limits of its discretion and policy.  LA: Only if it is evident that the State is making incorrect choices and the State could not reasonably have chosen the policy pursued or if the State is using a power without a legal basis in the given circumstances, is there room for judicial intervention. |

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|  |  | LA: Moreover, the judge in summary proceedings only has the authority to render the provisions in question inoperative in the event of an unmistakably non-binding regulation. In the opinion of the State, plaintiffs have not made it plausible in any way that this situation applies to the measures challenged by plaintiffs.  LA: In addition to my pleading, I would like to make a few comments on the examples given as to which measures would actually violate which fundamental rights and why; this is not elaborated on except in a general sense. I heard something about the group formation to 1 would be illegal. It is now limited to 4 persons (so that statement is factually incorrect). Moreover, it is not clear why this measure, which is legitimate and has a legal basis, would be unlawful. If we look, for example, at the measures that were mentioned with regard to the catering industry, the regulation of property, Article 1 of the first protocol of the ECHR: that is a fundamental right or a human right that plays a role in this, but the judge in preliminary relief proceedings - also of your court - has already ruled twice that these measures are lawful and proportionate. The measures are therefore not in conflict with fundamental rights, also with regard to Article 1 of the first protocol of the ECHR referred to. The same applies to the measures in respect of shops. This was also mentioned, and the judge in preliminary relief proceedings of your court has also already ruled that - as far as these measures restrict fundamental rights - this restriction is justified.  The interim injunction judge interrupted the State Attorney]. |
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| 21 | Iul6m53s to  Iul8m53s | Interruption of judge on 'intention' of VW: testing system as such against 103 Gw + answer of country lawyer  R: I don't think it is the intention of Virus Truth that we find all kinds of things per individual restriction, but that it is about the system as such.  Virus truth says or nods with yes]. |

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|  |  | R: That is the intention, because we will then test it against Article 103 of the Constitution.  LA: The system as such would be wrong, because fundamental rights would be violated, and I refer to two decisions of the judge of your court in preliminary relief proceedings, in which, with regard to those measures that are specifically mentioned and on which the claim is focused, the court said that they are lawful. That is not a departure from the Constitution.  R: No, but the arrows are now being pointed in a different direction. Viruswaarheid believes that the entire temporary regulation is non-binding, because it contravenes the law and treaty obligations. There is no need to go into the special powers as they are regulated there, because the whole basis is then unlawful, according to Virus Truth's reasoning.  LA: Yes, because these measures would violate fundamental rights, and I refer to two judgments in which the court has established that this is not the case.  R: Yes, well, it's slightly different according to Virus Truth's reasoning. They want to paint a general picture of how a state of emergency should have been declared and it wasn't, so these laws are repealed.  R: You (the country lawyer) do not agree with that and I understand that, but that is Virus Truth's reasoning.  LA: But the reasoning that a state of emergency should be declared is because it allows for derogation from the Constitution.  R: You say: that's not in line with those court rulings that have... *(red. something unintelligible follows)*  LA: Yes, and right (...) |

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|  |  | R: Well, maybe we'll hear about it?  LA: Yes. So there is no derogation from fundamental rights insofar as there is a restriction on that fundamental right, because there is no restriction. Is that restriction justified? |
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| 22 | Iul8m53s to  Iul9m31s | Follow-up plea by State's Attorney on **List A**  LA: Then something was also said about the designation of the coronavirus as group A. I refer to paragraph 7.4. of the Conclusion of Reply from which it appears that on the basis of Article 20 Wpg with the ministerial regulation also referred to in note 69, the virus was designated as such (...), in anticipation of... (allocation of ??? -> something unintelligible follows) |
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| 23 | Iul9m31s to lu20ml8s | Continuation of plea bargain about **curfew**  R: Is part four of the pleading still relevant?  LA: Well, hardly any, except in 4.8 and then I'll finish. I have written down there that the introduction of the curfew on the grounds of 58j Wpg is in violation of the ECHR, from the fact of which we can now read that actually applying all these measures on the grounds of the Wpg would be unlawful. *(ed. incomprehensible sentence -> what is the LA actually saying here?).* This could actually only be maintained if it is in line with the plaintiffs' conviction that there is nothing special going on in 2020 and 2021. And that there would therefore be no need for the curtailment of fundamental rights and that the mortality risk with the coronavirus would not be higher than with an average flu. |
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| 24 | lu20ml8s to  Iu21m57s | Follow-up plea of State's Attorney on petition (technical note; "order to legislate") + reaction of judge  LA: And I have explained in my Conclusion, and also with reference to earlier case law in which the court has also established these facts, that this is incorrect. Of course, the plaintiffs are free to adhere to their own convictions despite these facts, but there is no ground for granting the claims. And then I will close with a somewhat more technical remark. Is that, if we now look at the writ of summons and also at the amendment of claim, that claim is already ineligible for adjudication because it would contain an order to legislate. The court is not permitted to make an order to enact legislation of a certain specific content and granting the claim seeking to order the State to disapply the said provisions constitutes an order to legislate...  R: Because then a KB is needed to...?  LA: Yes.  R: So the judge would never be able to touch it?  LA: Well, the claim will have to be formulated differently. I don't think the State can be ordered to enact legislation to repeal other legislation. That, of course, is the system as outlined by the Supreme Court. That would not be appropriate. The court itself can invalidate provisions but the State cannot be ordered to repeal legislation. That is more of a technical...  R: So then the claim would have to be against the individual provisions of that temporary arrangement?  LA: Yes, it should not be an order to the State.  R: Well, that is indeed a technical detail.  LA: Yes. |

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|  |  | R: Were you at the end?  LA: Yes. |
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| 25 | Iu21m57s to  Iu23ml3s | Ask the court if it can address the issue of **how the IHR should be qualified -> directly binding or only recommendations**  R: Then I have a question. Can you elaborate on the statement how that IHR should be qualified? Is it or is it not directly binding or are they just recommendations, where can I find that?  LA: Yes. Well, the State points to that, in addition to the Statement of Reply, which was of course addressed, but also to the judgment of the Court at para 6.20 where...  R: But there is a reaction to that now? So I don't know whether that reaction...  LA: Yes, but that reaction is the same as what was argued before the Court and does not change that. That the Court says that is not a directly effective provision but that it is also incorrect that it could be inferred from that that there are no individual measures under the Wpg.  R: Collective? *(ed. judge asks here if the LA doesn't mean collective instead of individual?)*  LA: Indeed not individual but collective measures, excuse me. The Court also said: we do not see any fundamental right there... *(ed. fundamental right restriction?)*  R: Good. You stick to your position as formulated by the Court.  LA: Yes. |

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|  |  | R: Good, then we have finished the first round. Then you will have the opportunity for a reply. Mr Engel or Mr Pols? |
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| 26 | Iu23ml3 to  Iu39ml4s | Reply by Jeroen Pols  JP: First of all, I would like to point out again, as you have already mentioned, that we would argue that nothing is wrong... Yes, there is indeed something wrong. There are simply shortages of IC beds, I keep repeating that. It has been said that it has been the same for seven years, but even if it has been the same for seven years, that means a decline because we are dealing with an enormous ageing population and I have already read a report from 2013, I believe, which shows that there really should be substantial investment in those ICUs. That simply has not happened. In fact, in Germany last year, 7 000 ICU beds were even reduced, just to make a comparison.  JP: Then people talk about opening plans and we're going back to normal and I don't know what else, but if you look at those opening plans, it has nothing to do with normalcy. That is a dystopian society that we are heading towards. Where you are only allowed to *participate in society* with tests or with vaccines and proofs, with measures, with distance, with mouth caps.  JP: If you look at that opening that people have - that relaxation that they now have in the catering industry - if you look at it, it has nothing to do with relaxation. It is a system that has been built so that, as an owner, you can still hardly earn anything. This is about a maximum of two people at a table, plexiglass, no music, no entertainment, preventing people from standing around, you name it... It's almost, if it weren't so serious, it would be laughable, when you read that. I've read it and if I were a restaurant owner, I'd be really sad that a government thinks that's a relaxation. So we are not going back to normal and we are not going to relax.  R: You said: dystopian. You mean it is called together in two parts? |

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|  |  | JP: No, that is the opposite of a utopia: a nightmare, a future that looks like a nightmare.  R: Okay.  JP: It is also said of us, somewhat jokingly, that there are dark clouds of a dictatorship *hanging over us.* We do nothing but establish facts. I just told you what is happening in Germany now: that you can get five years in prison if you shake hands. And I am called crazy here, more or less, for calling this a dictatorship. If we just look at what a totalitarian state is, if you read what the definition is, then we are in the middle of it.  JP: And I would also like to add that we all have the responsibility to maintain the system of what we have built up in seventy years and the legal profession also has this duty. With the oath that they have taken, you have to ask yourself whether you are allowed and able to defend this at all. But this is an aside.  JP: That epidemic, that's still the problem. I have yet to hear any substantiation as to why people think it is an epidemic. People keep pointing to infections. The law doesn't stipulate that you have to test entire populations. You just have to look at how many sick people there are, how many reports there are, we've always had a system for that. That's what we've always had a system for. That goes through the GPs and they report how many people with flu complaints there are. And the Mexican flu, the predecessor of this pandemic, which was an exact copy, was also the deadliest disease you could imagine. But later it turned out to be the mildest flu season ever. So those accusations against us, I would say: look at the history and look at the facts. Telling stories does not help us. Facts. Figures.  JP: Then... Equal hospital admissions' it is said. Well, if you look at recent times: nowhere has there been a rapid increase in the number of people ill, and that is the only criterion that is decisive (for the question) whether there is an epidemic or not? And then you can come up with all kinds of OMT recommendations; all mutations, you name it, positive tests, it is all irrelevant. We just have to... We are here to apply the law and the law says simply: there is an |

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|  |  | epidemic if there is a rapidly rising number of patients. The rest is all nonsense. Then there is the 'balancing policy' that is constantly being presented (by the State): *"Because if we do nothing, then... Because we are in this situation... it is all still within limits because we have put the whole country into lockdown because we have taken away all that freedom. And if we were to let go of that, then disaster happens."*  JP: Well, any country that has either not taken measures or has abandoned them: nothing happens there. There is no scientific basis for this whatsoever. On the contrary, scientific studies indicate the opposite. Countries that do nothing do not differ from countries that have done very heavy lockdowns. In fact, there even seems to be an opposite effect.  JP: That also creates confusion in the sense that it would be like us saying, "On the one hand, there is no exceptional situation and, on the other hand, that these measures would therefore not be binding". No: it is two feet that we are sitting on. On the one hand, of course, we believe that there is no situation that can give rise to a state of emergency. But our position is (on the other hand) - even if there were a huge disaster - that the Constitution should still be followed. That is what the constitution is for. The constitution determines how a government may act. And then they (the State) can come up with dozens of recommendations by the OMT 'how terrible it all is and which mutations come from which countries', but this is just the constitution and you have to follow it. And if you think that there is an exception, then you have to prove it. The burden of proof is on the State that there is a disaster and that is more than just spreading fear stories...  JP: Then the other reality, no. We do live in another reality, but we call it the reality. We base ourselves on facts. And I don't hear any facts here, because there are all sorts of disputes. People say "oh it is much more dangerous". Then I say "yes, how dangerous is it? And where does that come from?" The study we are referring to is one of the most renowned scientists in the field. He is world-wide number 200 in publications, he works at Stanford University in America, world-wide renowned. And here it is 'put away' in the sense that the OMT knows better. |

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|  |  | R: Let's see. Do you mean production 14 or 17?  JP: What production is that, what's it called?  R: Two reports I think.  JP: Yes, one report was about the lockdowns. Which shows that the lockdowns don't make any sense. And the other one is about the IFR.  LA: I just pointed out that in production 17, the Covid crisis is seen as an 'actual (..) threat'.  R: That's 17, isn't it?  LA: Yes.  R: Yes, okay.  JP: Yes, that could well be. It's also an older article, when many people still thought that something was really going on, and that's understandable. But the point that comes out of it, if one recognises that, fine. Then you have to follow the path of Article 15 (ECHR), which you did not do, and so the measures are ineffective.  JP: And besides, let's see, is the problem of beds, as it is now being said: "We are (in our rights) - even if it is because of a shortage of beds - we would be allowed to act like this". That is not the case. If you pursue a policy of systematically and structurally not having enough beds, you have made a policy choice. You have made the choice that when there is a crisis like this, you do not have enough beds. Then you cannot, and must not, take away the freedom of 17.5 million people and drive them to the brink of ruin because you do not have the right to a bed. |

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|  |  | have provided enough beds. That is not possible. Nor is it allowed under Article 15 of the ECHR and the Syracuse criteria, which state that 'self-induced disasters' may never be a reason to limit human rights or deviate from freedoms.  JP: Furthermore, it would appear from 3.3 that we recognise that the State has powers to take measures. Yes, I cannot quite follow that, because we do believe that the State may take measures if certain conditions are met and the right path is followed. That is true. But the comment 'that we would agree that this could be included in the Wpg, I would like to dispute that'.  JP: Then came that example of 'we have to wait for the dike to break'. That is indeed correct. That is how it is regulated in international law and, as I explained a moment ago, there are very compelling reasons for this. What was the reason? Firstly, the Second World War. There we also saw that all sorts of crises were invented to gain power, to take away rights. That is the basis of Article 15 of the ECHR: to prevent emergency situations from being misused to take away freedoms. Because the State still does not see that: taking away rights is a disaster. Of course it is a disaster if you have an epidemic and a lot of people die, but it is also a disaster to take away a whole country's freedoms. But that is brushed aside here with: 'Oh well, there is nothing wrong and it is quite normal that we do that'. No, it is not normal.  JP: Mr. (the State Attorney) likes it better too: 'without emergency'. Yes, but this is not about what someone likes better. It is about the question: what does the constitution say and what do the rules say? And the thing is, if you are then forced to declare a state of emergency, then that's just clear to everyone what's going on: because now it seems like we're in a kind of normality, whereas if I give someone a hand, then I get fined a hundred euros. And there are hundreds more rules like that. Actually, for every step you take, you can be fined hundreds or thousands of euros. Giving the impression that we are in some form of 'normality': 'That in itself is worrying... that it is defended here.  JP: And then you get to the point again that everything 'should be seen as a package'. It is indeed about the 'total' and not about 'the individual measures'. However... Even with separate measures, you must |

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|  |  | go and see if there is any deviation, and if there is, then a general state of emergency should simply be declared. Otherwise, it cannot be done. Because I do not hear any substantiation either, and I will come to that in a moment, I believe, yes. People do not understand the problem: "Yes, we have limited group formation to four people. Where is that a deviation?" Well that is a deviation, because in doing so the right to group formation and the right to defence have been restricted to such an extent that they have become meaningless. That is the essence of fundamental rights. If you have the right to form a group, you don't need a State that says: 'Yes, you can, but only up to (a maximum of) four people'. That has nothing to do with freedoms. This is a dictatorship speaking here. If group formation is permitted, it also means that the State does not decide how many people you can meet up with. And he (state advocate Veldhuis) says: 'That is now four (people)'. This also shows what a chaotic situation we are in: because at first it was only allowed to meet one person outside. That seems to have changed again. Yes, I don't follow it all anymore, because it changes from day to day. But these are really serious deviations. They are simply deviations from fundamental rights. In addition: group formation, which is very important, is simply included in List B and the options available there are limited to ten people. Even if there were the biggest nuclear war, the State could only limit it to ten people. Now we just put it in the Public Health Act: that you are only allowed to meet with one person, and we (still) don't call that a deviation? Well, I can't follow that in any case. The same goes for the right to property. If this is about regulating property, but the regulation of property then turns into a meaningless right then (...) If you own a restaurant and you have not been allowed to open it for a year and you have not been able to use your property to make money and you still cannot, then we call that a 'deviation', because the right of ownership becomes (then) meaningless.  JP: Then there is the entry ban and the freedom of movement, the freedom of movement. Also about keeping your distance: as if that is a normal rule; to fine someone in the sense that you get a hundred euro fine if you hug someone in the street? What I mean to say is that it is totally insane that people are saying here 'this should all be normal and it should not be a deviation from fundamental rights'. This is such an enormous invasion of privacy that a State is going to decide who I can be with, who I can touch, who I can shake hands with. This is totalitarian. And I mean... It is also incomprehensible that the State here 'sells all this as normal'. Those were my points for now. 0 yes, one more comment: that is about the IHR and that it has no direct effect. Look, that is not the point |

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|  |  | om. We are not invoking the IHR directly either. We have only said the IHR has been implemented in the Wpg.  R: And so the *Wpg* must answer that?  JP: Yes, so it has to be in line with the spirit of that treaty. You can't make a law based on a treaty and then in the law...  (Judge interjects Jeroen Pols)  R: Then it does make a difference whether you are dealing with recommendations or (..)  JP: It is binding and that is also in the Parliamentary Papers. Those Parliamentary Papers are also included in the subpoena. So there can be no doubt about that: it is simply binding.  R: Okay, good.  JP: That was my comment so far.  GvdC: Then I have a final comment. That was about the statement that the claim as it was formulated would amount to an impermissible legislative order. That is not so. The State can simply be ordered to disapply a law. That is actually how it is worded: 'to render it ineffective in the sense of rendering it inapplicable'. And that must also happen if there is a conflict on the basis of Article 94 of the Constitution. There is a Supreme Court judgement in which this is determined: that an order can be given. That is the Supreme Court 19 May 2000, NJ2001 407. That is the State versus the Dutch union of pig farmers, the case means nothing to me, but I had noted it down in my notes.  R: Yes. Well then, now the State (...) |
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| 27 | Iu39ml4s to Iu42m45 | Reply Willem Engel  WE: May I make a few more comments?  R: You want to say something too?  WE: Yes, if I may?  R: We are in danger of seriously exceeding our speaking time, because (...)  WE: I will keep it very short.  R: You keep it short.  WE: It has already been widely discussed. The hospitals have been fuller in 2019 than in 2020. That again, we are talking about facts here, so let's stick to the facts. That already indicates that we are anticipating rather than fighting a disaster. List A, there is a lot of discussion about that now. In 2013 and 2014 there was a good example of how that normally works: then it was about MERS. That all went as it should; it took eight weeks and then that bill was debated, after which it passed through the House of Representatives and Senate. This (bill) has been waiting for - what is it? - fourteen (!) months and it has still not been debated. That cannot be. We have to conclude that Covid-19 does not belong on List A or Group A.  WE: Occasionally, variants are cited. And I asked before: Have any recipe binding studies been done? Because you can only determine whether a variant is more infectious if you do that study. Now I already know the answer to that, there have not been any. There has been no attempt whatsoever to prove their own assertion that this variant would have been more infectious. All they do is skim over computer models. |

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|  |  | WE: Then perhaps I come to the most important thing: there is talk of 'second' and 'third' waves, and then I come to the definition of epidemic. On what basis, or what criteria are you using, to determine that there is a second or third wave? Because I just see the normal course of SARI: Severe Acute Respiratory Infection. Then you see that respiratory tract infections (in the months that contain the R; from September to April) are increased *(ed. read: increase?).* That there are some fluctuations in this is fine, but I would like to know from the State how they arrived at the definition of the second and third waves? Because then we might find out what definition and what criteria they use for an epidemic. Because I have the feeling that they have their own idea about what an epidemic is. And then I come to the OMT. The OMT is always quoted as saying: 'They don't think it's opportune yet, it's too early, a minimum of 10% must be achieved'. Where in the law does it say that the OMT can determine criteria for policy? In my opinion, this is a complete misinterpretation of what an advice should be. Those were my points.  R: Okay.  WE: Sorry one more point, one more point. The increase in ICUs... What we expect is that this is mainly due to the vaccine damage. Because an experimental drug is being injected, which turns out to be much more harmful than the clinical studies - which were incomplete - showed. So if we see an increase now, I'm afraid it's because of the vaccination campaign and not because of Covid-19.  R: But then you mean one means of the...?  WE: All the resources, they are all...  R: But that is... the premise?  WE: No, we have substantiated that extensively. The mRNA injections are about nerve damage. You have to think about paralysis symptoms, heart attacks. And the vector vaccines are about overtrombosis.  R: Good. |

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| 28 | Iu42m45 to  Iu53m55s | Duplicate national lawyer  LA: Let me begin by contesting that thesis in the sense that vaccinations lead to the further spread of the epidemic, let me summarise. That statement is - in the opinion of the State - incorrect and is also disputed. If we look at the opening plan, in the beginning of the rebuttal a remark was made about this that we are now in step 1, but if you go through all these steps, then we are eventually back to the society as we were used to before Covid-19. A comparison was made of: 'as things stand now, you can't call that a reopening, can you?' That is the first step in the opening plan and if the other steps are also looked at and taken into account, it will eventually lead to there being no measures left. That is the government's ambition and that is the ambition that Parliament also shares.  R: There is also a time frame in this, I believe?  LA: Yes, there is also a timeline in that; with the necessary caveats of course, but that is ultimately the end goal: the abolition of all Covid-19 measures as soon as possible. That is clearly formulated.  LA: If we then also look at the discussion about the definition of an epidemic, as you (the judge in preliminary relief proceedings) also briefly asked about it... The State is primarily of the opinion that we should then look at chapter 5a of the Wpg. That is the chapter on which the ministerial regulation is based, the decommissioning of which is claimed. There the epidemic is defined by the legislator as the epidemic of Covid-19 caused by the virus (Sars-Cov-2). With this the legislator has already said that the situation we are in now, the Covid-19 pandemic, is an epidemic on the basis of which the ministerial regulation may be applied. And if you then look at Section 58b of the Act (Wpg), you will see that it also states that this chapter applies to combating the epidemic or an immediate threat thereof. To the extent that you can discuss this at all, what exactly are we combating? Just the epidemic itself or just the threat of it? I would argue that we are in a global pandemic, but even if you were to say that it is a threat, the law gives powers to do that. |

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|  |  | to combat that. This ties in nicely with what the Court of Appeal has considered in this regard, although this was of course based on the Act on Extraordinary Powers of Civil Authority (Wbbg). But the general principle is that, as a State, you do not have to wait until disaster has struck, but you can also try to avert it. So that ties in with the positive obligations that rest on the State and that also ties in with Section 58b of the Wpg. But even if we were to look at the definition of an epidemic in Article 1 of the Wpg - which is the 'generalis', you might say - an epidemic of an infectious disease is defined as 'a sharp increase in a short period of time of a number of new patients suffering from an infectious disease belonging to group A'. This has been met, as is evident from the OMT recommendations.  LA: The whole discussion about a state of emergency, I think we have said enough about that. I think it is important to distinguish between 'deviation from fundamental rights' and 'restriction of fundamental rights'. That difference seems to be somewhat lost in the argument of Virus Truth Foundation. Precisely where, for example, the formation of groups is concerned, fundamental rights are examined to determine what is necessary and what is proportionate, and that is where the weighing up takes place. This can be tested and then we look at: what is the situation that we are facing, what is necessary for this? And if that is in balance, the provision is deemed lawful. This is what happened with the hotel and catering industry and with the measures as they happened with the shops. And you can actually see this in all the summary proceedings that have been conducted on this subject over the past year. Each time, the following tests were carried out: is it necessary, is it justified and is it proportional? Is it? Then it is lawful, and it is allowed.  LA: If we look at the situation of care. On the one hand, people say: 'perhaps this is not the reason for our claim, this situation', but on the other hand, it does come back. I would like to make a comment on this: if we look at how many Covid patients are in the ICU, there are 804 on Sunday 2 May (2021). That is 68% of the occupied beds, so this is in addition to the regular care. So there are 804 extra beds occupied. Everyone can imagine that this will have consequences for the capacity of care. Certainly if you look at the total capacity of the number of IC beds and the explanation the State has given in the Conclusion of Answer. There is no response to that either. The scaling up of the number of IC beds does not only have to do with making more beds and more resources available, but you also need people to do it. These people in care are at the end of their tether. So you can't just snap your fingers and make sure that ICU beds are available again. |

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|  |  | nurses have been trained and that there are ICU doctors who can actually treat those people. If you look at the Conclusion of Answer in point 3.10, you will also see a very nice little graph which looks at the R precisely, against the background of the high number of infections that we have. A higher number of infections naturally results in more patients and naturally results in more ICU staff. How does an increase in R affect the burden of care? If we then look at healthcare policy, excuse the government's policy, that policy has also been tested repeatedly. What is guiding the measures is, first of all, a more acceptable burden of care. Hospitals must be able to give good care to Covid-19 patients, but regular care must also remain available. Then there is the protection of vulnerable people in society. Then we talk about the mortality rate again and (point) three: keeping an eye on and having insight into the development of the virus and that too is only possible if the spread of the virus is kept under control.  LA: How does the State determine what the epidemiological situation of the Netherlands is and what the effect of certain measures will be? That is indeed what the OMT is for. The OMT consists of the most important scientists in the field, a large group that also includes the relevant literature. They (the OMT members) advise the State on the epidemiological starting point, which is then based as - from an epidemiological point of view - a given. So: if we abandon this measure, it is expected that 'this' will happen with the pandemic. Then the sociological test is applied. This is looked at, in the sense of: we cannot only look at the epidemiological effects, we also have to consider the socio-economic effects. On that basis, measures are drawn up, which are done in close consultation with the Lower House.  R: What is the role of the RIVM in this? Is it also an advisor or is it the provider of facts on the basis of which the OMT operates? How does that work exactly?  LA: The OMT is part of the RIVM and the OMT also conducts its own studies on which the OMT bases its opinion.  R: You also mentioned the WHO in your conclusion. How is that related? Or is that purely informative?  LA: These recommendations are also included in the State's policy, via the OMT, which of course takes note of them. The WHO recommendations are also taken into account by the OMT, as are scientific articles and new developments on the virus, because if one thing is clear, it is that there is uncertainty about this virus. But you can't wait until you have certainty. So estimates are made in the best possible way and the cabinet is advised on that basis. The government allows this to weigh heavily, but of course not 100%. In the end, it is a political consideration which measures are taken.  R: The most direct steering of the policy, comes from the OMT?  LA: As far as the epidemiological part is concerned, yes.  R: Good. Anything else?  LA: No: I wanted to leave it at that.  R: Good, then we are at the end of our discussion. |
|  |  | R: The most direct steering of the policy, comes from the OMT?  LA: As far as the epidemiological part is concerned, yes.  R: Good. Anything else?  LA: No: I wanted to leave it at that.  R: Good, then we are at the end of our discussion.  R: Mr Pols' request to make a statement today remains. I have some difficulty with that. After all, it is a very extensive package containing all kinds of questions and propositions, both of a legal and a factual nature, but mainly of a legal nature. I wanted to take a little more time to look at it seriously. And that is also why I think this is justified, because you have been living with these measures for a long time, so that this is a bit... If this had been announced yesterday, or something like that, it would be different, but we have been living with it for so long that I would say (looking at the clerk): can we do it in one week? No? *(ed. Yes?)* So you will have to be patient for another week before you get a decision, but I think that is wise.  R: I would say that we have reached the end of our session, thank you all for your input and the way it was presented. I will close the session and you will receive the decision through the Registry to the lawyers, so you will be the first to know. Yes? *Everyone: Thank you].*  1 "The ECHR and States of Emergency: Article 15 - A Domestic Power of Derogation from Human Rights Obligations |

1. COVID-19 pandemic and derogation to human rights Audrey Lebret, Journal of Law and the Biosciences, 1-15 doi:10.1093/jlb/lsaa015 Advance Access Publication 4 May [↑](#footnote-ref-1)
2. 2020 [↑](#footnote-ref-2)