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Contribution to AR 2012
The Netherlands
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Rotterdam, the Netherlands

June 2013
1. ASYLUM, IMMIGRATION AND INTEGRATION

1.1 Support to traumatised asylum seekers and survivors of torture

The health of asylum seekers is assessed during the application procedure. Organisation Medifirst, established in 2010, provides social-medical advice to the Immigration and Naturalisation Service (Immigratie- en Naturalisatiedienst, IND)¹ and is the first medical contact for possible victims at the very beginning of the asylum procedure. The medical examination is arranged for all newly arrived persons and is free of charge. It is not designed to identify victims of torture as such but to determine whether applicants have medical problems that would hinder their questioning by the IND. Medifirst merely advises the government and does not provide further treatment in case of mental health problems. For the intake and mental healthcare, asylum seekers are referred to the Healthcare Centre for Asylum Seekers (Gezondheidscentrum Asielzoekers, GCA).

The Institute for Human Rights and Medical Assessment (instituut voor Mensenrechten en Medisch Onderzoek, iMMO) was founded in 2011 and began its operations on 5 March 2012.² The initiative to found iMMO was taken by organisations involved in the medical care of asylum seekers and refugees: Amnesty International NL, Arq Psychotrauma Expert Groep, ASKV/Steunpunt vluchtelingen, Stichting Medisch Advies Kollektief, Pharos, Vluchtelingenwerk Nederland and the Johannes Wier Stichting. iMMO builds on the long experience of these organisations and helps assess suspected victims of torture and inhumane treatment to ensure that medical and psychological problems do not affect their ability to express their case. iMMO also contributes to the transfer of expertise. Its assessment does not form part of the regular asylum procedure but takes place on the request of the asylum seeker, a lawyer or social worker. The medical assessment may serve as supporting evidence in cases where asylum seekers claim to have been victims of torture or inhumane treatment. iMMO also provides assessments and consultations regarding asylum or immigration when there are medical concerns that require an independent report or advice. In case further care is required, iMMO refers asylum seekers to the GCA.

Every asylum centre maintains an information desk on the Dutch healthcare system where asylum seekers can seek information on their own initiative. Alongside these information desks, the Central Agency for the Reception of Asylum Seekers (Centraal Orgaan opvang Asielzoekers, COA) maintains a phone line for the Healthcare Centre for Asylum Seekers (GC A Praktijklijn). People can call with their questions and/or directly make an appointment with a general practitioner. Mental health problems can at first be reported to the general practitioner. Since mid-2010, mental health counsellors from the GC A Praktijklijn have been supporting general practitioners in counselling asylum seekers with mental health complaints such as depression or anxiety. iMMO uses a questionnaire to identify traumatised asylum seekers.³

Treatment by the Mental Health Care service (Geestelijke Gezondheids Zorg, GGZ) is only possible after referral by a general practitioner or another medical doctor or counsellor. Specialised psychological treatment (Tweedelijns GGZ) can only be purchased at certain GGZ institutions with ties to the Medical Centre for Asylum Seekers (Medisch Centrum Asielzoekers, MCA).⁴ Table 1.1 in Annex 1 presents information on the main Dutch

¹ Medifirst (2012), The background and tasks of mediFirst, web page, available at: www.medi-first.nl/Achtergrond/
organisations that provide psycho-social support to traumatised asylum seekers and to survivors of torture.

In 2012, the following reports addressed the ability of domestic organisations to cope with the psycho-social needs of survivors of torture and traumatised asylum seekers:

The Inspectorate for Youth Care (Inspectie Jeugdzorg) examined whether the COA is providing unaccompanied minors with adequate programmes, educational activities and individual guidance. It reports important improvements in the attention paid to the emotional development of individual minors.5

Pharos – the National Knowledge and Advisory Centre on Migrants, Refugees and Healthcare Issues – studied efforts to prevent psychological complaints among asylum seekers. It concludes that prevention activities in reception centres are fragmented and arbitrary and recommends embedding prevention in existing policies.6

Expert advice is sought for the assessment of asylum applications. The Advisory Committee on Migration Affairs (Adviescommissie Vreemdelingenzaken, ACVZ) studied the role of such expert advice.7 Its report underlines the importance of genuinely independent and impartial advice and recommends bringing the Language Analysis Bureau, the Documents Bureau and the Medical Advice Bureau together in a single, independent organisation, possibly with experts working on commission from other bodies. This organisation should not fall under the authority of the minister responsible for admissions. It should also be physically removed from the IND to emphasise its independence and impartiality.

1.2 Monitoring of forced returns

Article 8.6 of the Returns Directive (2008/115/EC) requires Member States to establish an effective return monitoring system. Although it missed the deadline, the Netherlands has implemented this directive.8

In March 2012 the ACVZ published an advisory report on aliens residing illegally in the Netherlands and aliens who have residence rights but no entitlement to benefits and facilities.9

To discourage illegal residence and to prevent settlement by both illegal aliens and those who arrived legally but who have not (yet) been admitted, access to benefits and facilities in the Netherlands is linked to residence status. The linkage principle, combined with holes in the current return policy, means that municipalities in practice are confronted by aliens who are not entitled to services but who are nonetheless in need of assistance.

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5 Netherlands, Inspectorate for Youth Care (Inspectie Jeugdzorg) (2012), Grootschalige opvang van alleenstaande minderjarige vreemdelingen opvang van amv’s op de drie campussen, Utrecht: Inspectie Jeugdzorg.
7 Advisory Committee on Migration Affairs (Adviescommissie voor Vreemdelingenzaken, ACVZ) (2012), Expertise getoetst: de rol van deskundigenadvisering in de asielprocedure, The Hague: ACVZ.
9 Advisory Committee on Migration Affairs (Adviescommissie voor Vreemdelingenzaken, ACVZ) (2012), Right to protection of human dignity. Advisory report on reception and assistance for aliens residing illegally in the Netherlands and for aliens who have residence rights but no entitlement to benefits and facilities, The Hague: ACVZ.
The report concludes that strict application of the linkage principle is leading to friction between the central government and the municipalities and to problems complying with human rights legislation. Another conclusion relates to the Dutch return policy: authorities assume that aliens who have exhausted all procedures and who wish to return to their country of origin can do so. But practice is sometimes more murky. Some aliens are required to leave under the current policy but cannot do so. The ‘not-at-fault-policy’ does not always offer a solution as they cannot always show that authorities in their country of origin will not issue travel documents.

The ACVZ recommends the continued reception of aliens who have exhausted all procedures and who cooperate in their departure, even when they fail to leave within the statutory period. It recommends consistent compliance with European and international obligations in assessing applications for benefits and in offering reception and assistance to vulnerable persons. The ACVZ also recommends specifying that the Benefit Entitlement (Residence Status) Act does not apply to minor aliens and that minor aliens have a right to reception in all circumstances.

Table 1.2 in Annex 1 concerns the monitoring of forced returns by the Supervisory Committee on Repatriation (Commissie Integraal Toezicht Terugkeer, CITT). CITT may inspect and accompany individual and collective return operations or the return procedure as a whole. CITT is composed of three chambers and monitors the phases of pre-return, pre-departure, return operation, and arrival. The pre-return phase is monitored by the Chamber for Return Locations and the Chamber for Return Facilities. The pre-departure phase is monitored by the Chamber for Return Locations. The return operation and arrival are monitored by the Chamber for Expulsion.

The CITT is independent in choosing when and how often removals are monitored. It is especially interested in the removal of vulnerable groups, cases that attract public attention, and cases where it is foreseeable that coercion may be necessary (for example the removal of aliens with criminal and/or violent histories).

The CITT is free to monitor complex return operations more frequently. The state cannot predict the CITT’s decisions; there is no obligation to monitor them more vigorously. The CITT includes physicians and psychologists who can witness the removal of minors and cases where there are medical concerns.

Sporadically, the Ministry of Safety and Justice asks the CITT to monitor a certain flight. In these cases the CITT can decide to do so or not, based on its own evaluation.  

1.3 Legal assistance to persons in return proceedings

Article 13.4 of the Returns Directive (2008/115/EC) provides for free legal assistance to persons in return procedures. In the Netherlands people can get legal advice at the Legal Office (Juridisch Loket), in the beginning free of charge. It does not involve legal representation. If requested, the Legal Office will refer visitors to a lawyer.

The Legal Office has been providing consultation in detention centres since 2008. Research by the consultancy Groen & Heesen (2011), commissioned by the Legal Aid Board (Raad voor de Rechtsbijstand), shows that it has failed.  

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10 E-mail correspondence between Art.1 and CITT.
11 Netherlands, Subsidy Scheme Legal Services Counter (Unofficial translation) (Subsidieregeling Stichting het Juridisch Loket 2005), 22 August 2012.
service; lawyers are seldom motivated to assist aliens in long-term cases. The report recommends improving consultation hours in detention centres, for example by setting up small groups of committed, specialised lawyers in each centre. The State Secretary for the Ministry of Security and Justice stated in his letter of 5 March 2012 that he would monitor the report’s recommendations.  

NGOs throughout the Netherlands are active in providing legal assistance or advice to refugees whose applications have failed. In addition, several Dutch law offices are specialised in migration law. Annex 1 identifies an initiative in the legal education of undocumented migrants and people in return proceedings.

1.4 Alternatives to detention pending removal

There were no legal changes providing alternatives to detention during the reference period (January to September 2012). On 22 December 2011, the Minister of Immigration, Integration and Asylum in a letter to the House of Representatives announced pilot projects on four alternatives to detention (see also Annex 1, Table 1.3).

1.5 Labour rights of migrants in an irregular situation

The Employers Sanctions Directive (2009/52/EC) refers to the labour rights of migrants in irregular situations. Table 1.4 in Annex 1 concerns the implementation of this directive in the Netherlands, especially the transposition of Article 13.4 (Temporary permits issued to victims of particularly exploitative conditions and to children) and Article 6.2 (Facilitation of claims).

An exploratory study revealed that labour migrants in irregular situations are unaware of their right to claim outstanding remuneration under Article 23 of the Dutch Aliens Labour Act (Wet Arbeid Vreemdelingen). Nor were the NGOs, trade unions and labour lawyers who participated in the study aware of this article.

An international conference on social protection and migration – *Access Denied: Working on a New Paradigm* – took place in Amsterdam in March 2012, gathering academics, policy advisers, practitioners, international organisations, NGOs and representatives of migrant interest groups. Selected keynote addresses and workshop papers will be published in 2012 in a special issue of an academic journal. A research group was established during the final working session; follow-up is scheduled.

Several NGOs in the Netherlands, including the LOS Foundation (*Landelijk Ongedocumenteerden Steunpunt*, LOS) and Fairwork, support undocumented migrants. The NGO CoMensha shares knowledge on human trafficking with other organisations. It works in the interests of trafficked persons and has experience in data collection, shelters, (social) assistance, referral mechanisms and legal assistance.

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1.6 Family members of EU Blue Card holders

Family reunification for EU Blue Card holders is allowed for spouses and minor children. The applicant and the Blue Card holder must form a household. The Blue Card holder must have a work contract for at least one year (starting from the date of application) with an annual gross salary of at least €60,000. When family members have been living together as Blue Card holders in another EU Member State, the application can be filed in the Netherlands prior to their move; if not, family members must await the pending procedure outside the country. A residence permit will be issued to family members with the same expiry date as that of the card holder. Once the permit is issued, Blue Card holders and their family members can move freely in other Schengen countries for up to three months.

The Netherlands has a special program for highly skilled migrants (Kennismigranten). Threshold salaries for the Dutch Highly Skilled Migrant Programme are lower than for the EU Blue Card: those aged 30 and above must earn an annual salary of at least €51,239. For those younger than 30, the threshold is €37,575. For foreigners who have studied in the Netherlands, the threshold (valid for one year following their studies) is €26,931. A minimum three-year post-secondary diploma is not a requirement; only the threshold salary must be met, while the agreed salary must conform to market conditions. In general, the admissions procedure for the Dutch highly skilled residence permit is faster than for the EU Blue Card. The decision takes two weeks, while for the Blue Card it can take up to 90 days. If the EU Blue Card employer is also the ‘recognised sponsor’ (required for the Dutch Highly Skilled Migrant Program), the application procedure takes two weeks.

EU Blue Card holders enjoy mobility within the Member States of the European Union after 18 months of legal residence in the first Member State. Blue Card holders and their family members can move to other Member States to pursue highly qualified employment as outlined in the EU Blue Card Directive. The Dutch highly skilled migrant permit is restricted to the Netherlands.

After five years of legal and continuous stay in the Netherlands, all migrants can qualify for a permanent EC long-term residence permit. Blue Card holders can accumulate periods of residence in different Member States to fulfil the five-year requirement, provided they have two years of legal and continuous residence in the Member State immediately prior to application. This possibility is closed to Dutch highly skilled migrants, who cannot interrupt their five-year stay to qualify for the EC long-term residence permit.

Once EC long-term resident status has been acquired, former Blue Card holders can be absent from EU territory for up to 24 months. Former highly skilled migrants are only allowed to be absent from EU territory for 12 months.

Under the terms of Directive 2009/50/EC, family members of highly qualified employees benefit from certain advantages denied to family members of other third-country nationals lawfully residing in EU Member States.

Dutch policies on family reunification have become stricter. The Minister for Immigration, Integration and Asylum decided that the following proposed restrictions will take effect on 1 October 2012.\(^\text{18}\) Family reunification will only be allowed for married partners; for those who (e.g. for legal reasons) cannot get married in their country of origin, a temporary license to

marry will be available. The permit for extended family reunification (e.g. for reunification with parents above age 65 and children above 18) will be abolished, as will the permit for family visits. A permit for continued residency following family reunification will become available after five years (previously this was after three years). A permit for a child born abroad has to be applied for within six months of birth (previously this was nine months). A person who wants his/her partner to migrate to the Netherlands must have been living in the Netherlands for at least one year prior to the partner’s migration (this does not apply to EU Blue Card holders).

Some of these measures may not take effect or may be changed again soon. The coalition agreement Building Bridges (Bruggen bouwen) was unveiled on 29 October 2012 and will guide the policies of the new Dutch government. It contains several plans for reforming immigration law. One is to try to raise the minimum age for family reunification within the EU to 24 years. Another is to allow family reunification for married couples, couples in registered partnerships, and unmarried partners with lasting and exclusive relationships and their minors.

In his letter, the Minister of Immigration, Integration and Asylum announced that from 26 April 2012 the fee for permanent residence permits will be reduced from €401 to €130. This was in response to the 26 April 2012 judgment of the European Court of Justice (HvJEU, C-508/10, r.o. 79) that found the Dutch fees “excessive and disproportionate” and an obstacle to the exercise of rights conferred by EU Directive 2003/109. The minister also stated that a special reduction of fees for families was no longer necessary (in 2011 he had promised to investigate such a possibility). The new cabinet was installed in October 2012. On 28 November 2012, the State Secretary for the Ministry of Safety and Justice announced in his letter to Parliament the changes in fees for family reunification, expected to come into effect in mid-2013.

Family members of Blue Card holders have free access to the Dutch labour market. Their employers do not need to request work permits. The National Focal Point is unaware of specific problems for this group.

1.7 Migrant Integration

Integration is a legal obligation for several groups of migrants under the Civic Integration Act (Wet Inburgering). Newcomers and migrants already living in the Netherlands are obliged to integrate into Dutch society. Migrants who settle in the country must learn Dutch and know how Dutch society works, both of which are tested in a civic integration exam. Candidates who pass the exam are considered integrated. To increase the likelihood of passing, candidates can first take a civic integration course. The Civic Integration Act lays down the knowledge and skills they must possess. The course teaches candidates to read, write, speak and understand Dutch, and familiarises them with Dutch society.

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20 Netherlands, Minister of Immigration, Integration and Asylum (Minister voor Immigratie, Integratie en Asiel) (2012), Letter to the House of Representatives (Tweede Kamer der Staten Generaal), No. 2012-0000387574, 4 July 2012.
22 Netherlands, Civic Integration Act (Wet inburgering), 30 November 2006.
Favourable EU admission rules for EU residents with families settling in other Member States do not apply to Dutch residents. For Dutch residents and non-EU nationals who want to bring their families to the Netherlands, ordinary Dutch admission policies apply.

People who want to come and live in the Netherlands need a temporary residence permit or an authorisation for temporary stay (machting voorlopig verblijf, MVV). The minimum age for obtaining a MVV for family formation or reunification is 21. The partner in the Netherlands must also be 21. Before obtaining a MVV and traveling to the Netherlands, migrants must take the civic integration exam abroad. It tests basic knowledge of Dutch language and society; the result is valid for one year. Failure to pass the exam may result in the MVV application being turned down.

In November 2012 the District Court of Den Bosch found that administering the civic integration exam abroad was not in line with EU directives on family reunification. The case concerned a woman from Azerbaijan who had failed the exam. Her application was turned down and she could not reunite with her husband in the Netherlands. While Member States have leeway in determining the conditions of integration for newcomers, the District Court considered the obligation to pass the exam out of line. 23

Dutch integration policies over the past decade have increasingly turned to compulsion and sanctions, with numerous politicians calling for faster and deeper integration. 24 There is an ongoing debate on whether the requisites for integration, especially those under the Act of Civic Integration Abroad (Wet inburgering buitenland), are in practice restrictions on immigration. 25 The coalition agreement Building Bridges contains plans to raise standards for the integration exam in the Netherlands as well as for the overseas exam for the long stay visa (MVV). 26 It also proposes increasing the term for naturalisation from five to seven years. The new cabinet has placed integration under the Ministry of Social Affairs and Employment.

The House of Representatives agreed with a bill to make changes to the Civic Integration Act on 26 April 2012. The Senate is currently discussing procedures; due to the fall of the former cabinet, when the changes will take effect is unknown. 27 The proposed plans place greater responsibilities on migrants for their own integration into Dutch society. They include the transferring of civic integration from municipalities to a national agency, applying obligations exclusively to new migrants (from outside the EU), and higher requirements for the civic integration exam and for naturalisation. The government will no longer provide integration courses or compensation for their costs (there will be loans instead). The time limit for integration will be three years (instead of 3.5 years) with a possible addition of two years in cases of illiteracy. The government wants to introduce a fine for cases where the time limit has not been met.

23 Netherlands, District Court The Hague (Rechtbank ’s-Gravenhage) (2012), Case No LJN: BY4171, Awb 12 / 9408.
27 Netherlands, Minister of Immigration, Integration and Asylum (Minister voor Immigratie, Integratie en Asiel) (2012), Wijziging van de Wet inburgering en enkele andere wetten in verband met de versterking van de eigen verantwoordelijkheid van de inburgeringsplichtige: Memorie van Antwoord, Policy document to the Senate, Parliamentary document (Kamerstuk), No. 33086, No. E, 29 June 2012.
In July 2012 the Ministry of the Interior and Kingdom Relations published a guideline for municipalities and social organisations to include integration in their policies on education, sports, elderly care and employment. It outlines trends and advises local governments on how they can help non-Western migrants integrate into society.

The Netherlands Institute for Social Research (Sociaal en Cultureel Planbureau, SCP) is a government agency that conducts research on the social aspects of all areas of government policy. Its reports, which include sections on migrant integration, are widely used by government, civil servants, local authorities and academics. The 2011 edition of the Annual Integration Report (Jaarrapport Integratie 2011) focuses on the structural integration of the four largest non-Western migrant groups in the Netherlands, namely people of Turkish, Moroccan, Surinamese and Antillean origin. The emphasis is on education, employment, income, housing and crime.

In 2012, the SCP published a book examining views of integration in 17 European countries, how these are translated into national policy, and national efforts to monitor the integration of migrants and track them over time. While the EU has formulated official definitions (e.g. of ‘migrant’) and outlined central concepts in key aspects of integration, the SCP study shows that countries do not feel bound to use them. Political realities and social sensitivities often lead countries to make their own choices regarding definitions and in interpreting concepts.

The independent NGO Dutch Council for Refugees (Vluchtelingenwerk) periodically publishes the Integration Barometer (Integratiebarometer) for refugees in the Netherlands. Issues contain statistics on the labour participation, income, education and regional distribution of refugees from Statistics Netherlands (Centraal Bureau voor de Statistiek, CBS). Each issue has a different focus; its 2012 edition, which studied local policies, found local governments using very different means to support new migrants. While local governments understand the importance of helping migrants participate in Dutch society, they fear they cannot continue such support in the future.

Since 2011, the central government has been cutting budgets for social participation, funds which municipalities previously used to finance the civic integration of migrants. With further cuts to funding, migrants will become financially responsible for their own integration in 2013. Local governments will no longer offer integration courses. The new coalition agreement makes an exception for migrants with asylum status, who will still receive government assistance. Due to austerity measures targeting education and labour market reintegration, local governments will have fewer resources to guide newcomers to find work.

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32 Netherlands, Minister of Immigration, Integration and Asylum (Minister voor Immigratie, Integratie en Asiel) (2012), Memorie van Toelichting op de wijziging van de Wet inburgering, Parliamentary document (Kamerstuk), No. 33086, No. 3.
34 Regioplan Beleidsonderzoek (2012), Vluchtelingenwerk IntegratieBarometer 2012: een onderzoek naar het lokale integratiebeleid voor vluchtelingen, Amsterdam: Regioplan Beleidsonderzoek.
1.8 Any other significant developments with implications for asylum, immigration and integration, including case law relevant at the national level.

Voluntary return
Some countries re-admit their nationals if their return is voluntary and request declarations from returning nationals that this is the case. Several Iraqi asylum seekers refused to provide this declaration as they still consider Iraq unsafe. Without such a declaration, Iraq does not issue travel documents. In 2012, Iraqi asylum seekers demonstrated in the city of Ter Apel to raise awareness of their situation. In June 2012 the Dutch Minister of Immigration, Integration and Asylum discussed possibilities of return with the Iraqi Minister of Migration.

Traineeships for undocumented students
A conflict occurred in April 2012 between the Municipality of Amsterdam and the Minister of Social Affairs and Employment over undocumented youths enrolling in apprenticeships as part of their education. The municipality planned (as an employer) to offer traineeships to this group of youths. On 4 April 2012 the minister warned the municipality in a letter that employers employing migrants with an irregular migration status (including trainees) could be fined up to €8,000 per case according to the Act on the Employment of Aliens (Wet arbeid vreemdelingen). The House of Representatives supported the Municipality of Amsterdam in this conflict.

Also on 4 April 2012, the Administrative Jurisdiction Division of the Council of State decided on a case between Radboud University Nijmegen and the Minister of Social Affairs and Employment. The case concerned a fine the minister had imposed on the university for offering a traineeship to a dentistry student with an irregular migration status. The Council of State decided that apprenticeships are an integral part of education and that the fines were unjustified.

On 25 June 2012 the Minister of Social Affairs and Employment wrote the House of Representatives concerning the District Court of The Hague’s decision that the state was not allowed to bar students with an irregular migration status from pursuing apprenticeships as part of their education. The former Minister of Social Affairs and Employment wrote that he disagreed with the court and will appeal its decision. The new Minister of Social Affairs and Employment has announced that he will not appeal the decision and that a mechanism will be installed to regulate the issue.

36 Netherlands, Minister for Immigration, Integration and Asylum (Minister voor Immigratie, Integratie en Asiel) (2012), Letter sent to the House of Representatives (Tweede Kamer der Staten Generaal), 2 July 2012.
37 Netherlands, Minister of Social Affairs and Employment (Minister van Sociale Zaken en Werkgelegenheid) (2012), Stage door kinderen die illegaal in Nederland verblijven, Letter to the Municipality of Amsterdam (Gemeente Amsterdam), No. AV/SDA/2012/5514, 4 April 2012.
38 Netherlands, Administrative Jurisdiction Division of the Council of State (Afdeling Bestuursrechtspraak van de Raad van State) (2012), Case No. 201106847/1/V6, Lijn BW0790, 4 April 2012.
40 Netherlands, District Court The Hague (Rechtbank ’s-Gravenhage) (2012), Case No. 403618 / HA ZA 11-2443, Lijn BW4736, 2 May 2012.
Illegal residence to be made a criminal offence
The Dutch government is making illegal residence a criminal offence. In the future, aliens who have entered the Netherlands illegally and who have not left the country again or have not done so by the set time limit, will be committing a criminal offence. Illegal residence will be classified as a minor offence. Persons living in the Netherlands illegally may be sentenced to a maximum of four months’ imprisonment or a fine. Criminal liability does not apply to children, and is confined to illegal residents who are over the age of majority. Being an accessory to illegal residence, for example by providing people with accommodation or food, will not be an offence.43

2. BORDER CONTROL AND VISA POLICY

2.1 Appeal against decisions on refusal / revocation / annulment of a visa

Official statistics on applications for short-term Schengen (type C) visas and appeals can be found in Table 2.1 of Annex 2. These figures concern visa applications to diplomatic posts and appeals to the Consular Affairs and Migration Policy Department (Directie Consulaire Zaken en Migratiebeleid, DCM) of the Ministry of Foreign Affairs. Figures on visa applications to the Immigration and Naturalisation Service (Immigratie en Naturalisatie Dienst, IND) will not be available until March 2013 due to problems with a new computer system.

The DCM has supplied additional figures on applications for type A and D visas and visas for overseas territories until July 2012. The DCM handled 743 airport transit (type A) visa applications, 21,406 applications for authorisations of temporary residence (Machtiging Voorlopig Verblijf), and 13,412 visa applications for Aruba, Curacao, St. Maarten and the BES islands (consisting of Bonaire, Sint Eustatius and Saba).

Statistics for visa applications and appeals for the whole of 2012 will be available in early 2013.

Appeals against decisions on the refusal, revocation or annulment of visas are handled by either the IND or DCM, depending on the type of visit for which a visa is sought. The IND is responsible for visa applications and appeals for tourism, family visits, artists with work permits, interns and fellows. The DCM is responsible for visa applications and appeals for business visits, work visits by installation and service technicians, academic or political visits, participation in conferences or sporting events, and by holders of diplomatic passports.44

A case relating to the refusal of a visa to a Moroccan citizen is contained in Annex 2 under National Case Law, Case 1.

Concerns have been raised by Members of Parliament that appeals must often be made in languages other than Dutch in countries where the Netherlands does not maintain a diplomatic post. This means that Dutch citizens applying for visas for family members may be required to draft appeals in a foreign language. In response, the Minister of Foreign Affairs pointed out that it is not uncommon for visa procedures to require translation. The Minister also pointed out that re-applying for a visa with additional evidence or at the closest Dutch diplomatic post is often less time consuming than lodging an appeal.45

2.2 Immigration liaison officers

The Netherlands currently has 28 immigration liaison officers (ILOs) posted abroad, working under the authority of either the IND or the Royal Netherlands Marechaussee (Koninklijke Marechaussee, KMAR). The Dutch National Contact Point for the European Migration Network reports that ILOs help prevent irregular migration, identity fraud and migration-related crime such as the smuggling of migrants and human trafficking.46 ILOs also provide advice and training to airlines and consular staff on examining documents and the security

44 Information obtained from the Consular Affairs and Migration Policy Department on 3 September 2012.
features of travel and identity documents and visas. The information exchanged by ILOs is confidential. Further information on ILOs can be found in Table 2.2 of Annex 2. No promising practices regarding ILOs were identified.

2.3 Provision of food and water to persons stranded in airport transit zones

Data on the provision of basic services to persons stranded or held in transit zones at Schiphol Airport were gathered from the KMAR and have been added to Table 2.3 in Annex 2. No reports were published in 2012 containing information on access to basic services (food and water) for persons stranded or held at Schiphol Airport. No promising practices were identified.

2.4 Automated border controls

The Netherlands launched its trial of automated border control facilities (ABC gates) in March 2012 and has since increased their number to 36. The requested data on ABC gates have been gathered from the KMAR and are contained in Table 2.4 of Annex 2.

2.5 The Visa Information System

The Visa Information System (VIS) became operational on 11 October 2011 for six North African countries (Algeria, Egypt, Libya, Mauretania, Morocco and Tunisia). Official statistics on Schengen visas with biometric identifiers issued by Dutch diplomatic and consular posts in these countries were requested from the DCM, which indicated that it is impossible to retrieve such data using the current system. A new system is being developed and should be operational in the first half of 2013. The Dutch National Contact Point for the European Migration Network notes high expectations for the Visa Information System in preventing irregular migration through short-term visas. When fully rolled out, the new system will detect people on short-stay visas applying for asylum and visa applicants who have not complied with the obligation to report to the diplomatic post upon return.

The additional information requested about VIS can be found in Table 2.5 of Annex 2. There has been no relevant national case law related to VIS since its introduction.

2.6 Any other significant developments with implications for border control and visa policy, including case law relevant at the national level.

The Royal Netherlands Marechaussee continued its Mobile Security Monitoring (Mobiel Toezicht Veiligheid, MTV) of the country’s borders with Belgium and Germany in 2012. MTV controls have existed since 1994 and serve to monitor illegal migration. After the European Court of Justice (CJEU) ruled that the French variant of MTV was incompatible with the Schengen Borders Code, the Dutch Council of State ruled that additional regulations on the

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48 Information obtained from the Ministry of the Interior and Kingdom Relations on 10 January 2013.
49 Information obtained from the DCM on 14 November 2012.
intensity and frequency of controls were necessary. The Aliens Decree (Vreemdelingenbesluit 2000) was amended on 1 June 2011 to make MTV controls compatible with the Schengen Borders Code. In July 2011 two Dutch courts ruled that even with the new law, this form of border control remained incompatible with the Schengen Borders Code. Further rulings in 2012 revealed that Dutch courts disagreed on this point. Due to the divergent rulings, the Council of State posed preliminary questions to the CJEU. The CJEU subsequently ruled that selective MTV controls do not have the same effect as systematic border controls and are compatible with the Schengen Borders Code. The CJEU’s interpretation was adopted by the Council of State on 3 August 2012 and confirmed in a judgment on 14 September 2012. The relevant national cases from 2012 are summarised in Annex 2 (Cases 2-6).

The @migoboras camera system was introduced on 1 August 2012 to support the MTV controls. Installed along the 15 largest cross-border roads leading to Belgium and Germany, the cameras allow singling out vehicles for further checking. After questioning and receiving answers from the Netherlands, the European Commission indicated that it does not object to the introduction of @migoboras. Nevertheless, there has been much discussion of the cameras’ legality in light of the Schengen Borders Code and rights to privacy. In a letter to the European Commission, the Meijers Committee (the Standing Committee of Experts on International Immigration, Refugee and Criminal Law) argued that the systematic surveillance exercised by the cameras goes against the selective nature of MTV controls. The NGO Privacy First maintains that @migoboras constitutes border control based on total surveillance and profiling.

57 European Union, European Court of Justice (2012), Case No. C-278/12 PPU, 19 July 2012, paras. 61, 81, 85
59 Netherlands, Ministry of the Interior and Kingdom Relations (Ministerie van Binnenlandse Zaken en Koninkrijksrelaties) (2012), @migoboras cameras to be introduced as of 1 August 2012, Press Release, 5 July 2012.
61 Standing Committee of Experts on International Immigration, Refugee and Criminal Law (Permanente Commissie van deskundigen in international vreemdelingen-, en vluchtelingen- en strafrecht) (2012), Letter to Mr Henrik Nielsen Head of Unit for Border Management and Return Policy European Commission regarding the Dutch surveillance system @migoboras, CM1208, 2 April 2012.
62 Privacy First (2012), Privacy First overweegt rechtszaak tegen camerasyeem @migoboras, web page, available at: www.privacyfirst.nl/aandachtsvelden/cameratoezicht/item/571-privacy-first-overweegt-rechtszaak-against-camerasyeem-migo-boras.html
A two-year pilot project was launched on 1 January 2012 to encourage mobility for highly skilled migrants. For those coming to the Netherlands for periods shorter than three months, the labour supply no longer needs to be verified. This shortens procedures for short-stay skilled migrants and creates more alignment with existing procedures for skilled migrants staying in the country for periods longer than three months. The pilot project applies to highly skilled migrants who do not need visas, are in possession of short-term visas, or have obtained long-term visas for other Schengen countries.

The Bill on Modern Migration Policy (Wet Modern Migratiebeleid) adopted on 7 July 2010 has yet to enter into force due to delays with a new IND computer system, INDiGO, expected to be operational by March 2013. Under the new law, applications for a multiple entry visa (D visa) will also serve as an application for a residence permit. Until the law enters into force, preparations and trial projects will continue. These include applying the new resident permit procedures for au pairs, employees of higher education institutions, and highly skilled migrants employed by companies.

The Innovation of Border Management Programme (Programma Vernieuwing Grens管理和) aims to make border controls more efficient through automation and risk-oriented action based on passenger data obtained from airlines before arrival. A new bill is being drafted to allow systematic use of passenger data by the KMAR, which the Minister for Immigration, Integration and Asylum Policy has assured will respect all international obligations and European regulations and be subject to a privacy impact assessment. Measures in preparation of the new legislation include the development of a new information-sharing system, PARDEX (Passenger Related Data Exchange), and a National Information and Analyses Centre on Border Control (Nationale informatie- en analysecentrum grensbeheer).

The impact of the economic crisis and the gender dimension were taken into account during research for this chapter. No relevant information was found.

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64 Information from the IND Information and Analyses Centre (INDIAC) on 31 August 2012

65 European Migration Network (EMN) (2012), *Visa Policy as Migration Channel in The Netherlands*, Rijswijk: EMN, pp. 35-36


3. INFORMATION SOCIETY AND DATA PROTECTION

3.1 Provide data on policy and institutional developments and on legislative developments, including parliamentary debates, for each of the following areas:

3.1.1 EU Data Protection Reform

The Dutch government expressed its views on COM (2012) 10 in a letter to the Senate. It is positive about the choice of instrument, improved enforcement through clearer rules, stronger sanctions, and the obligation of data protection authorities (DPAs) to cooperate. Nevertheless, it finds the extent of detail, the possibility of extended regulation by the Commission, and the estimated costs to violate the principle of proportionality. It notes that the regime for the processing of data in third countries is extended but not yet unassailable, especially in terms of conflicting jurisdictions. It questions the burden on individuals and small and medium-sized companies that process data, as well as for larger companies whose primary activity does not consist of data processing. Exemptions should not focus on the size of companies but on the risks for data protection. The government also wonders whether data processing for statistical and research purposes is sufficiently covered, and opposes legal limitations on camera surveillance.68

Two Senate committees sent letters to the European Commission regarding COM (2012) 1170 and COM (2012) 10.71 72 For COM (2012) 11, the committees sought clarification on, among other issues, the data protection officer, the terms “public authority” and “public body”, the notification duty, and mechanisms to enforce the principles of purpose limitation and proportionality. The committees question the shift of administrative burden to data subjects and suggest dropping administrative exceptions for small companies and government institutions making prior privacy impact assessments. They further suggest that the European Data Protection Board determine the leading national DPA when the main controller/processor cannot be identified.

For COM (2012) 10, the Senate committees asked for clarification on key terms: “the prevention of criminal offences”, “authorities competent to prevent criminal offences”, “fairly” in Article 4a, and the translation of “privacy by default” into practical requirements. They also sought clarification on liability when the controller is an authority immune to prosecution, and the applicability of the regulation and/or directive to cooperative associations. The committees further criticise the lack of a distinct set of rights and obligations for authorities competent to prevent criminal offences, and request greater cohesion between regulation and directive by levelling the general principles, and definitions and obligations of processors and controllers.73

The Commission has yet to respond.

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68 Netherlands, Minister for European Affairs and International Cooperation (Staatssecretaris van Buitenlandse Zaken) (2012), Letter to the President of the Senate (Voorzitter van de Eerste Kamer der Staten Generaal), No. 22112-F1/33169, 2 March 2012, pp. 3-7
70 European Commission (2012), Proposal for a Regulation on the protection of individuals with regard to the processing of personal data and on the free movement of such data, COM (2012)11 final.
71 European Commission (2012), Proposal for a Directive on the protection of individuals with regard to the processing of personal data by competent authorities for the purposes of prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and the free movement of such data, COM (2012)10 final.
73 Netherlands, Senate (Eerste Kamer der Staten Generaal) (2012), Letter sent to the Vice-President of the European Commission, Parliamentary Documents (Kamerstukken), No. 33 169/B, 21 May 2012, pp. 3-4, § 1-7
On 2 March 2012, the Data Protection Authority (College Bescherming Persoonsgegevens, CPB) and the Meijers Committee (Commissie Meijers) sent letters to two standing committees in the House of Representatives. The letters express the views of the Data Protection Authority and the Meijers Committee on COM (2012) 11 and COM (2012) 10. Both bodies welcome the proposed reforms but have remarks and suggestions.

For COM (2012) 11, the DPA proposes restricting the extraterritorial jurisdiction of third countries and exemptions for small third-country companies. It wants clearer rules determining the lead data protection authority in the EU (“one-stop-shop principle”) and finds the shift to ex ante advisory roles for DPAs undesirable, while questioning their obligations to the European Data Protection Supervisor (EDPS). The DPA further requests a minimum budget for itself and to keep at its discretion decisions to act on complaints. It suggests centring legal proceedings on the national DPA of the data subject and wants data that can identify individuals included in the definition of data subject and personal data. Like the government, it urges exceptions for companies to be made on the basis of an impact criterion. The DPA is seriously concerned about the contravention of the purpose limitation principle and would remove separate provisions for governments. It also has several proposals to restrict the Commission’s competence. Finally, it requests the inclusion of general principles on data processing in both instruments, the equalisation of the duties and responsibilities of data processors and the competence of DPAs.

The government agrees with the DPA on small third-country companies, restricting the Commission’s competence, the undesirability of the ex-ante role for DPAs and their degree of discretion, centring legal proceedings, the “one-stop-shop principle” and, for the most part, the levelling of the two instruments. The government finds exceptions to the purpose limitation principle acceptable when other principles are enhanced and when controllers’ responsibilities are clarified. For the problem of extra-territorial jurisdiction, it focuses on preventing the bulk transfer of data.

For COM (2012) 10, the DPA proposes adding safeguards to data transfers to other Member States and especially to third countries, as well as delimiting relevant exceptions. It calls for stronger provisions to distinguish between data subjects and to delimit exceptions for special categories of data and for when the right to information is invoked. The DPA wishes to re-include a provision stipulating that all exceptions should adhere to the ECHR, the EU Charter and the jurisprudence of both European courts; the chosen DPA must be the same for the regulation and the directive. The DPA seeks to include the right of consultation for the European Parliament and to further harmonise sanctions. Other instruments should be brought under the protective scope of the directive within a set term, apart from provisions providing greater protection.

The Dutch government concedes that there should be restrictions to data access when transferring data between Member States. It also agrees that there should be standards for third-country data transfer, a central DPA, and a right of consultation for the European

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76 Netherlands, Dutch Data Protection Authority (College Bescherming Persoonsgegevens) (2012), Letter to the Standing Committee for Security and Justice and the Standing Committee for the Interior (vaste commissie voor Veiligheid en Justitie, vaste commissie voor Binnenlandse Zaken) and appendix pp. 7-10, nr. z2011-01054/z2012-00164, 2 March 2012.
Parliament. The government agrees to bring other instruments under the scope of the directive, and partially agrees with the DPA on sanctions.\textsuperscript{77}

3.1.2 Data Retention

Since last year’s report, no new official or parliamentary documents have been issued concerning the national evaluation of Directive 2006/24/EC.

The digital civil rights organisation Bits of Freedom was invited by the Ministry of Security and Justice to submit a review for the evaluation of the Data Retention Telecommunication Act implementing the directive.\textsuperscript{78} The effects and effectiveness of the directive’s implementation must be evaluated within a three-year period.\textsuperscript{79}

Bits of Freedom points out that neither the Dutch government nor the European Commission have proven that data retention aids the solving of serious criminal cases. It criticises the Dutch government’s input to the Commission’s evaluation as sub-standard, omitting crucial issues such as quantitative data on sentencing. The necessary data are generally lacking or not made public, even when transparency laws are invoked. The number of solved serious criminal cases has not increased, but slightly decreased.

Bits of Freedom stresses the act’s impact on the privacy of practically everybody: suspect or not, the gathered data enables authorities to track a person’s location up to a year ago. It leads to the storage of professionally privileged data that bear on confidentiality. For the most part, data are not stored securely and are frequently not deleted after the term has passed. The right of access for data subjects is hardly ever respected by providers, which often reject requests or grant them only partially. The prosecution and secret services frequently seize data when they lack the competence to do so, without meeting procedural safeguards. The lack of safety measures coupled with massive storage also leads to unlawful access by third parties and large-scale data theft. Bits of Freedom also warns of function creep – the use of data for purposes other than foreseen by law. In conclusion, Bits of Freedom urges the government to critically and thoroughly evaluate the data retention legislation and provides several criteria for doing so, including from European jurisprudence.\textsuperscript{80}

In response to criticism since 2007, the Security and Justice Inspection (Inspectie Veiligheid en Justitie) studied the legality of the police searching the central registry of telecommunications data. The report confirms the criticisms and concludes that existing legal safeguards are not met due to the lack of a national procedure, knowledge and proper documentation. The report urgently recommends systematic auditing and procedural changes. The database was subject to 2.3 million searches in 2011.\textsuperscript{81}

3.1.3 Passenger Name Record (PNR)


\textsuperscript{79} Netherlands, Telecommunication Act (Telecommunicatiewet), 19 October 1998, art. 13.9


This section addresses the proposal for an EU PNR Directive. The directive is part of an ongoing review by the government and Senate, both of which provide information to the House of Representatives. This section also covers additional national legislation drafted alongside the PNR Directive.

The Dutch government supports an EU PNR system. It would help combat the drugs trade, human trafficking and other crimes without physically interfering with most travellers; make more information available for (criminal) investigations; standardise obligations for airports; and provide a uniform level of data protection for passengers. The government sees Advanced Passenger Information (API) and PNR data as complementary and wants the EU instruments to be coordinated and the datasets joined at the national level. It also wishes to use the PNR data to counter illegal immigration and for border control. For data protection, the government wants limited retention terms, access to data, provisions for profiling, and an evaluation of the directive after two years.

In a letter to the government, the Senate’s Standing Committee for Immigration and Asylum expressed concern that the government, through the proposed directive and additional national legislation, is planning to use PNR data for purposes other than the expressly stated aim of countering terrorism and serious crime – namely to combat illegal immigration and for border control. The Senate points out that the directive explicitly limits the use of data gathered on its basis, and to its purpose limitation, subsidiarity and proportionality principles. The standing committee wants to know whether the government, in drafting a national legislative proposal for the use of PNR data, will take into account the proposed regulation and directive concerning data protection (see section 3.1.1).

The government responded that the use of PNR data for the named purposes is necessary and legal – based on the drafting of the directive under chapter 2 (not chapter 4) of the Treaty on European Union, the 28th and 29th recitals of the directive, the Schengen code, the API Directive and the national Aliens Act. The legislative proposal being drafted aims to further implement the API Directive and to enable the wider use of API data for “information-controlled” border management. The proposal is in principle being drafted under the existing legal framework of data protection; it will be researched if and how reforms can be anticipated. The EU PNR proposal will not be taken into account. The aim is to create a border control system in which passenger data are automatically verified prior to border...

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84 Netherlands, Senate (Eerste Kamer der Staten Generaal) (2012), Letter sent to the Minister for Immigration, Integration and Asylum and the Minister of Security and Justice (Minister voor Immigratie, Integratie en Asiel, Minister van Veiligheid en Justitie), Parliamentary Documents (Kamerstukken), No. 32669-G, 16 May 2012, pp. 2-3.

85 Netherlands, Minister for Immigration, Integration and Asylum (Minister voor Immigratie, Integratie en Asiel) (2012), Letter sent to the Senate (Eerste Kamer der Staten Generaal), Parliamentary Documents (Kamerstukken), No. 32669-G, 25 June 2012, pp. 4-6.

86 Netherlands, Minister for Immigration, Integration and Asylum (Minister voor Immigratie, Integratie en Asiel) (2012), Letter sent to the Senate (Eerste Kamer der Staten Generaal), Parliamentary Documents (Kamerstukken), No. 32317-BK, 9 March 2012, p. 3.
crossing, which would enhance efficiency and surveillance, especially for immigration. Questions of data protection will be debated only when the policy has taken its final form.  

The DPA was asked to advise the Minister for Immigration, Integration and Asylum on the proposed decree to change the Aliens Act to enable the collection of more API data, namely on sex, travel document validity, travel route and location of the PNR data set. The decree also gets rid of a previous provision that required an evaluation after two years. The DPA finds motivations concerning necessity and subsidiarity unconvincing; an airport experiment revealed positive results using already available data. It asks how the current data set is insufficient. The DPA also finds insufficient detail on the use of data for assembling risk profiles and is critical about the removal of the obligatory evaluation, which had not been communicated to Parliament and which it advises to reintroduce.

3.1.4 Information and communication technology: ACTA, social networks, Google Street View

ACTA
The ratification process came to a halt with the European Parliament’s rejection of the Anti-Counterfeiting Trade Agreement (ACTA) on 4 July 2012. On 29 May the Dutch House of Representatives rejected a resolution requesting the government to definitively desist from signing the treaty, but adopted a resolution requesting the same for ratification. Another resolution urged the government to make lawful earnings models a cornerstone of its policy on intellectual property. The government agrees with the latter and has pledged not to take any steps towards implementing ACTA. The Ministry of Economic Affairs, Agriculture and Innovation has commissioned research on the stumbling blocks experienced by digital service providers. The government has urged the Commission to simplify licensing procedures for new lawful services on the internet. It does not promise to reject future similar treaties, but will judge each on its merits.

Social Networks
Police investigations (requisitions) within social networks have sparked debate in the House of Representatives and among interest groups. These investigations are part of the government’s “cyber security strategy” which does not honour the privacy of users or procedural safeguards. Citing interests of State – more specifically of criminal justice and the risk of people changing their behaviour on the basis of the data – the government refuses to divulge information on the number of social media requisitions targeting suspects and non-suspects, the obligatory

87 Netherlands, Minister for Immigration, Integration and Asylum (Minister voor Immigratie, Integratie en Asiel) (2012), Letter sent to the Senate (Eerste Kamer der Staten Generaal), Parliamentary Documents (Kamerstukken), No. 32317-BK, 9 March 2012, pp. 1-5.
88 Netherlands, Dutch Data Protection Authority (College Bescherming Persoonsgegevens, CBP) (2012), Letter to the Minister for Immigration, Integration and Asylum (Minister voor Immigratie, Integratie en Asiel) (2012), No. 2012-00458, 5 July 2012, pp. 2-3
91 Netherlands, Ministry of Economic Affairs, Agriculture and Innovation (Ministerie van Economische Zaken, Landbouw en Innovatie) (2012), Letter sent to the House of Representatives, Parliamentary Documents (Kamerstukken) No. 21501-30/294, 10 July 2012

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notification of data subjects, or the judicial control of requisitions. The status of data subjects, notification, and formal objections are not registered. The government has publicly disapproved of a police department that made its statistics public.

The digital civil rights organisation Bits of Freedom has severely criticised the government’s lack of transparency. Confidentiality vis-à-vis Parliament should be strictly limited and exceptional; the motivation underlying this specific case is seen as poor as the publication of similar data on telecommunications is mandatory and some social media already publicise this data themselves. The registration gap calls into question whether data subjects are informed at all. Through several procedures based on administrative transparency legislation, Bits of Freedom has commanded the publication of statistics, refused by all but one police department. Stated motivations for the grounds of refusal resorted to circular reasoning, only repeating that it was in the interests of criminal justice.

The Netherlands’ Ambassador to South Africa, Haspels, was reproached by the Minister of Foreign Affairs for ‘liking’ on his personal Facebook profile a page called “No government with the support of the PVV” (Freedom Party) – the composition of the government in place – after two PVV MPs raised questions. The issue fuelled debate among civil servants. The government branded it as a public act by denouncing “the public expression of such political views”. The Works Council (Ondernemingsraad) of the Ministry of Foreign Affairs sent a memo criticising the issue’s rapid and careless handling, the lack of faith in and repeated public censure of civil servants, and the culture of fear and self-censorship arising from insecurity surrounding expression on social media. The memo called for a more relaxed and modern approach to social media. Although some guidelines were made public, the General Secretary’s answers were not; questions by an MP were only partially answered.

The House of Representatives inquired about Facebook scanning user profiles for criminal activity. The government wrote that the responsibility for inquiring into the lawfulness of Facebook’s methods lies with the DPA of the country where the company is headquartered.

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93 Netherlands, House of Representatives (Tweede Kamer der Staten Generaal) (2012), Parliamentary Questions (Aanhangsel Handelingen), No. 2/1467, 17 November 2011 – 8 February 2012, p. 2
94 Netherlands, House of Representatives (Tweede Kamer der Staten Generaal) (2012), Parliamentary Questions (Aanhangsel Handelingen), No. 2756, 21 May – 21 June 2012, p. 2
96 Netherlands, House of Representatives (Tweede Kamer der Staten Generaal) (2012), Parliamentary Questions (Aanhangsel Handelingen), No. 1495, 7 February 2012.
98 Netherlands, Works Council (Ondernemingsraad) (2012), Memo to the General Secretary of the Ministry of Foreign Affairs, 'Civil Servants and Internet' (Ambtenaren en Internet), 17 February 2012.
(Ireland). Just after these questions were answered, a picture of a historical poster containing nudity was deleted without prior notice from a broadcaster’s Facebook page.

**Google Street View**

On 23 March 2011 the DPA decided to impose administrative penalties on Google after investigating its Street View practices. Google appealed against the decision, which was upheld on 22 July 2011. Against Google’s objections, the decision brought the MAC addresses of Wi-Fi routers combined with location data – and both in combination with SSIDs (the names of Wi-Fi networks) – under the protective header of “personal data” as stipulated in Directive 95/46/EC.

Google subsequently decided to abide by the orders, irreversibly deleting the SSIDs it had registered; informing data subjects about its data gathering using Wi-Fi routers on Street View cars; informing data subjects about the free, effective and permanently available option to opt out; and to report its data processing activities to the DPA as required by law.

The DPA has monitored the process and has found Google to have abided by the orders. The opt-out, available worldwide, allows data subjects to add ‘_nomap’ to the SSID. Google states the irreversible deletion of data has been effected worldwide.

3.2 Any other significant developments with implications for the information society and data protection, including case law relevant at the national level.

**Legislation**

The Telecommunication Act was modified to implement changes in the e-Privacy Directive. The delayed modifications, most of which entered into force on 5 June 2012, are stricter than the directive on several points. The placement of cookies and the like requires the explicit prior consent of the data subject. From January 2013, the burden of proof that tracking cookies do not contain personal data will lie with the processor. From January 2013 the law will also include the principle of net neutrality; exceptions to the prohibition on blocking or impeding services will be limited and functional. Security breaches that affect the protection of data subjects must be reported to the DPA within 24 hours.

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103 Netherlands, Dutch Data Protection Authority (College Bescherming Persoonsgegevens, CBP) (2011), Appeals Decision (Beslissing op bezwaar), No. z2011-00383, 22 July 2011, § 1, pp. 5-10.
104 Netherlands, Dutch Data Protection Authority (College Bescherming Persoonsgegevens, CBP) (2011), Appeals Decision (Beslissing op bezwaar), No. z2011-00383, 22 July 2011, § 1, pp. 2-3.
107 Netherlands, Telecommunication Act (Telecommunicatiewet), 19 October 1998, art. 11.7a(1) (2).
108 Netherlands, Telecommunication Act (Telecommunicatiewet), 19 October 1998, art. 11.7a(1).
109 Netherlands, Telecommunication Act (Telecommunicatiewet), 19 October 1998, art. 7.4a(1).
personal data must be reported to the DPA and to data subjects; these notifications have to meet several requirements.\textsuperscript{110}

The Data Protection Act was altered on 9 February 2012 to lighten administrative burdens and costs for processors of personal data.\textsuperscript{111} Data protection officers are no longer required to submit annual reports.\textsuperscript{112} Data transfers to third countries without adequate protection are allowed when a model contract approved by the European Commission is used.\textsuperscript{113} The processing of sensitive data without the subject’s permission is allowed when it is not possible to request their permission but necessary to protect their interests. This also applies to the DPA and the ombudspserson under strict conditions.\textsuperscript{114} Administrative bodies or bodies with public tasks can cooperate to process criminal data under conditions of necessity and when the subject’s interests are not disproportionally affected.\textsuperscript{115} Data subjects can object to the use of their data for direct marketing and request measures from data processors to end such use. Criminal penalties for violating the notification duty have been increased.\textsuperscript{117}

The DPA has issued advice on a legislative proposal for storing the biometric data (DNA and fingerprints) of individuals acquitted of life crimes. According to the DPA, the current proposal lacks an explicit legal basis; the proportionality test is incomplete and it lacks case-by-case examination.\textsuperscript{118}

Two laws were passed in October 2012 granting authorities far-reaching competences to counter social benefit fraud. From 2013, benefit recipients will be compelled through financial sanctions to cooperate with home inspections, even when there is no suspicion of fraud.\textsuperscript{119} Sanctions for fraud are increased; the exempted amount for minimum subsistence is in principle cancelled.\textsuperscript{120}

\textit{Case Law}

For the first time in the Netherlands, a court ordered an internet filter. On 11 January 2012, the District Court of The Hague summoned two internet providers to block the file-sharing website The Pirate Bay. The plaintiff was a foundation (BREIN) representing the great majority of rights holders in the Dutch entertainment industry. It sued the internet providers after The Pirate Bay ignored several court orders to cease its activities. The court applied the ECJ’s interpretation of internet providers as intermediaries within Article 8(3) of Directive 2001/29

\textsuperscript{110}Netherlands, Telecommunication Act ({\it Telecommunicatiewet}), 19 October 1998, art. 11.3.
\textsuperscript{112}Netherlands, Data Protection Act (\textit{Wet Bescherming Persoonsgegevens}), 6 July 2000, ex. Art. 63(5).
\textsuperscript{113}Netherlands, Data Protection Act (\textit{Wet Bescherming Persoonsgegevens}), 6 July 2000, art. 77.
\textsuperscript{114}Netherlands, Data Protection Act (\textit{Wet Bescherming Persoonsgegevens}), 6 July 2000, art. 23(1) (d) (g).
\textsuperscript{115}Netherlands, Data Protection Act (\textit{Wet Bescherming Persoonsgegevens}), 6 July 2000, art. 22(6).
\textsuperscript{116}Netherlands, Data Protection Act (\textit{Wet Bescherming Persoonsgegevens}), 6 July 2000, art. 41(2).
\textsuperscript{117}Netherlands, Data Protection Act (\textit{Wet Bescherming Persoonsgegevens}), 6 July 2000, art. 75(1) (2).
\textsuperscript{118}Netherlands, Dutch Data Protection Authority (College Bescherming Persoonsgegevens, CBP) (2012), \textit{Letter to the Minister of Security and Justice (Minister van Veiligheid en Justitie) and appendix, No. z2012-00216}, 10 May 2012.
\textsuperscript{119}Netherlands, Regulation in social security concerning the legal consequences of not proving the living situation after a proposed home inspection (\textit{Regeling in de sociale zekerheid van de rechtsgevolgen van het niet aantonen van de leefsituatie na het aanbod van een huisbezoek}), 4 October 2012, e.i.f. 1 January 2013 (Sib. 463).
\textsuperscript{120}Netherlands, Act to Tighten the enforcement and sanctioning of Social Security Laws (\textit{Wet aanscherping handhaving en sanctiebeleid SZW-wetgeving}), 4 October 2012, e.i.f. 1 January 2013.
and ruled that they need not act unlawfully; the use of their services to infringe copyright suffices.\textsuperscript{121}

An academic annotator was critical of the judgment, pointing to the social function of internet service providers and the ineffectiveness of filters. The judgment also made no mention of the freedom to conduct business (Article 16 EU Charter), the broad constitutional freedom of expression and undesirable side-effects.\textsuperscript{122} The House of Representatives responded with a resolution calling on the government to disallow blocking websites by targeting internet service providers in future legislation. It stated that such actions turn internet providers into police officers and violate free expression, privacy and innovation.\textsuperscript{123}

The appeals procedure is under way. Other internet providers have been summoned by BREIN to block The Pirate Bay but all have refused to do so. Internet activity shows that sources for illegal downloading are abundant and are proliferating.\textsuperscript{124}

A judgment with great implications for privacy in the medical profession was delivered on 8 March 2012 by one of the highest administrative courts in the country. The procedure had been on-going since 2007 when the Dutch Healthcare Authority (Nederlandse Zorgautoriteit, NZa) introduced a new declaration system for mental healthcare. The decision led to a mass appeal by several organisations and individual psychiatrists.\textsuperscript{125}

The court, in line with an earlier judgment, found the delivery of individual diagnostic information to insurance companies to be in breach of privacy, medical confidentiality and professionalism. It also noted that client perceptions of the recurrent failures of digital information systems may affect treatment. The court gave these factors great weight. It thus emphasised the rights of both practitioners and clients to not provide to parties uninvolved in treatment information from which diagnostic data can easily be deduced. Patients have the right to refuse the transfer of such data at the start of treatment; healthcare providers must inform their patients of this right. Healthcare providers and patients who do not exchange diagnostic information with third parties may not suffer financial or contractual consequences.\textsuperscript{126}

To meet the court order, the Dutch Healthcare Authority deemed the diagnostics of self-paying clients exempt from both the declaration system and the national database, and designed an opt-out scheme for others.\textsuperscript{127} One of the plaintiffs deems this scheme insufficiently developed and has appealed for a third time.\textsuperscript{128}

\textsuperscript{121} Netherlands, District Court The Hague (Rechtbank ’s Gravenhage) (2012), \textit{BREIN vs XS4ALL/Ziggo, No. 374634/ HA ZA 10-3184, LIN: BV0549}, 11 January 2012.
\textsuperscript{125} Netherlands, Dutch Healthcare Authority (Nederlandse Zorgautoriteit) (2012), Appeals decision (Beslissing op Be\textit{zwaar}), No. rlis/816/3JZ/12/1436, 7 June 2012.
\textsuperscript{127} Dutch Healthcare Authority (Nederlandse Zorgautoriteit), Appeals decision (Beslissing op Be\textit{zwaar}), No. rlis/816/3JZ/12/1436, 7 June 2012.
\textsuperscript{128} Stichting KDVP (2012), Privacy opt-out regeling van NZa onbruikbaar in verzekerde zorg, news release, 5 July 2012.
There were several developments concerning the public transport chip card (OV-chipkaart). The DPA found that the national railway carrier (Nederlandse Spoorwegen, NS) violated data protection legislation when it used information on its passengers to make detailed profiles of their travelling behaviour without permission. Data was also collected on travellers making use of anonymous cards. The NS ended these violations when the DPA published its report.\(^{129}\)

Several public transport companies were investigated by the DPA for their collection and storage of student travellers’ data. The DPA concluded that three companies – the NS, two local companies and the card’s producer – were storing excessive data. All were ordered to change their terms of storage. The NS and another company (RET) received administrative penalties for failing to abide by the order; they had not destroyed data after the storage term.\(^{130}\) After paying their fines, both companies changed their policies and destroyed the data.\(^{131}\)

Since the fingerprinting requirement was implemented in Dutch passports and national ID cards, several objectors have initiated proceedings. Foundation Privacy First, with 21 individual members, has initiated a civil procedure to directly challenge the Passport Act (Paspoortwet). The District Court of The Hague declared the case inadmissible, against which the plaintiffs appealed.\(^{132}\) The civil rights association Vrijbit and the president of the association on personal title have unsuccessfully sought to bring their cases directly before the ECHR.\(^{133}\)

In individual administrative cases, conscientious objectors have demanded travel or identity documents without digital fingerprints out of principle and/or out of concerns about their security. Some also object to the digital face scan. Others object solely to the creation of a central digital biometric database accessible to the prosecution and intelligence. District court (Rechtbanken) decisions have so far all been in favour of the State.\(^{134}\) All but one appellant have appealed. Four emergency applications for a temporary document for the duration of the


\(^{130}\) Netherlands, Dutch Data Protection Authority (College Bescherming Persoonsgegevens) (2012), Decision (Invorderingsbeschikking), No. z2011-00057, 9 March 2012 and, No. z2011-00055, 15 June 2012

\(^{131}\) Netherlands, Dutch Data Protection Authority (College Bescherming Persoonsgegevens) (2012), CBP vordert dwangsom NS in wegens bewaren reisgegevens studenten – NS heft reisgegevens alsnog vernietigd en dwangsom betaald, Press Release 13 June 2012; and ‘CBP vordert dwangsom RET in wegens bewaren reisgegevens studenten – RET heeft reisgegevens vernietigd en dwangsom betaald’, 16 August 2012


\(^{133}\) European Court of Human Rights, Letter to Vrijbit and mrs. Wijnberg, 17 September 2010

procedure have also been denied.\textsuperscript{135} Three individuals have had a joint hearing at the highest administrative court, the Council of State, but it has delayed rendering a judgment for three terms (six months).\textsuperscript{136}

All procedures, including those at the district courts, were put on hold when the Council of State filed two preliminary questions to the ECJ. The first concerned the compatibility of the European fingerprinting and face scan requirements with the privacy requirements of the EU Charter and the ECHR (Articles 7-8 and 8 resp.). The second concerned the purposes for which biometric data can be used in light of the Privacy Directive.\textsuperscript{137} The Council of State doubts the proportionality and necessity of the biometric requirements, particularly in light of security and technical problems.\textsuperscript{138} One applicant has filed for an emergency measure at the Council of State, requesting a temporary document for the duration of the procedure.\textsuperscript{139} Another applicant has filed a complaint with the District Court of Utrecht against the decision to put her case on hold.\textsuperscript{140}

The government has introduced, following a delay of almost one year, a legislative proposal to inter alia change the status of the identity card from a travelling to an identity document in order to exclude it from the fingerprinting requirement. The proposal also alters the permanent registration of biometric data in municipal databases to registration for the duration of the document’s production.\textsuperscript{141} The Council of State has reviewed the proposal and has asked whether European legislation requires the storage of biometric data in the national ID card in the first place, which would partly void the proposal of its purpose.\textsuperscript{142} Urged by stakeholders, the Minister of the Interior has requested the Council of State to review several interim


\textsuperscript{137} Netherlands, Administrative Jurisdiction Division, Council of State (Afdeling Bestuursrechtspraak Raad van State) (2012), Referral, No. 201205423/1/A3, 28 September 2012.

\textsuperscript{138} Netherlands, Administrative Jurisdiction Division, Council of State (Afdeling Bestuursrechtspraak Raad van State) (2012), Referral, No. 201205423/1/A3, 28 September 2012.

\textsuperscript{139} Netherlands, Administrative Jurisdiction Division, Council of State (Afdeling Bestuursrechtspraak Raad van State) (2012), Hearing, 22 November 2012, 11:30.


\textsuperscript{141} Netherlands, House of Representatives (Tweede Kamer der Staten Generaal), (2012), Wijziging van de Paspoortwet in verband met een andere status van de Nederlandse identiteitskaart, het verlengen van de geldigheidsduur van reisdocumenten en Nederlandse identiteitskaarten, een andere grondslag voor de heffing van rechten door burgemeesters en gezaghebbers en het niet langer opslaan van vingerafdrukken in de reisdocumentenadministratie (Wijziging van de Paspoortwet in verband met onder meer de status van de Nederlandse identiteitskaart), Parliamentary Documents (Kamerstukken), No. 33 440 (R 1990)/2, 17 October 2012; Netherlands, Minister of Internal Affairs and Kingdom Relations (Minister van Binnenlandse Zaken en Koninkrijksrelaties), Letter sent to the House of Representatives (Tweede Kamer der Staten Generaal), Parliamentary Documents (Kamerstukken), No. 25764/46, 26 April 2011; Netherlands, House of Representatives (Tweede Kamer der Staten Generaal) (2012), Parliamentary Documents (Kamerstukken), No. 25764/65, 15 June 2012.

\textsuperscript{142} Netherlands, Advisory Division, Council of State (Afdeling Advizering Raad van State) (2012), Parliamentary Documents (Kamerstukken), No. 33 440 (R 1990)/4, 17 October 2012.
solutions for conscientious objectors. The Council of State advised against these for legal and security reasons and the government has followed its advice.\textsuperscript{143}

The DPA has published guidelines for private companies requiring citizens to identify themselves with official documents, in particular their copying and registration. The guidelines were drafted in response to the growing number of companies that demand identification and copy the documents, which has led to breaches of privacy and increased risk of identity fraud.\textsuperscript{144}

*Other*

A report was published on the drafting period of the new Passport Act. The government commissioned the investigation in response to severe political, academic and civil society criticism of the democratic, technical and legal aspects of the introduction of fingerprinting and the face scan.\textsuperscript{145} The criticism, combined with technical difficulties, had already led to the (provisional) cancelling of the central database last year. The report confirmed that the ambition to apply biometry as quickly as possible had led to the national and European legislative initiatives as well as disregard for concerns related to privacy, among others. This tendency was strengthened by both chambers of Parliament and the Council of State failing to fulfil their roles. The DPA’s initial advice was excluded from the process. The report mentions false suppositions about biometry, lack of proper international norms, and accompanying systematic problems such as high error rates. It advised the legislator to provide exceptions for conscientious objectors.\textsuperscript{146}

The civil rights association Vrijbit has filed several complaints with the Elections Council (*Kiesraad*) concerning identification requirements in national elections. Earlier complaints by Vrijbit have led to the possibility to vote with a five-year expired document.\textsuperscript{147}


\textsuperscript{144} Netherlands, Dutch Data Protection Authority (*College Bescherming Persoonsgegevens*) (2012), *CBP Richtsnoeren: ‘Identificatie en verificatie van persoonsgegevens: gebruik van “kopietje paspoort” in de private sector’*, *CBP Richtsnoeren*, July 2012


\textsuperscript{147} Vrijbit (2012), *Letter to the President of the Elections Council (Kiesraad)*, 12 September 2012
4. THE RIGHTS OF THE CHILD AND PROTECTION OF CHILDREN

4.1 Provide data on policy and institutional developments and on legislative developments, including parliamentary debates, for each of the following areas, taking relevant EU measures into account:

4.1.1 Physical, psychological and sexual violence against children, including within the family, in institutional settings and through the use of information and communication technologies (ICTs).

On 23 November 2011, the national Children's Ombudsman sent a letter to the House of Representatives (Tweede Kamer der Staten-Generaal) on child abuse.\textsuperscript{148} In his letter, he advocates the adoption of an integrated and government-wide approach towards the prevention of child abuse, with the contribution of all ministries.

The Minister of and State Secretary for Security and Justice presented the plan 'Kinderen veilig, Actieplan aanpak kindermishandeling 2012-2016' ('Children Safe, Action Plan against Child Abuse 2012-2016') to the House of Representatives on 28 November 2011.\textsuperscript{149} 'Children Safe' is the sequel to the Action Plan 'Children Safe at Home' that was launched in 2008. The Action Plan 'Children Safe' focuses on preventing, identifying, stopping and reducing the harmful effects of child abuse. The plan puts special emphasis on strengthening parenting support and on supporting families with an increased risk of child abuse. One of the goals of this plan is to foster the multidisciplinary approach to child abuse and to bolster the coordinating role of local authorities in addressing child abuse.

The legislative proposal for a mandatory domestic violence and child abuse reporting code (Wetsvoorstel verplichte meldcode huiselijk geweld en kindermishandeling) is still pending. The act is expected to enter into force in January 2013.\textsuperscript{150} It will stipulate that organisations and professionals in six sectors – education, youth healthcare, childcare, youth services, social support and the police and judiciary – must have a reporting code. The Commission for Youth Care (Algemene Commissie voor Jeugdzorg) of the House of Representatives (Tweede Kamer der Staten Generaal) met on 16 December 2011 to discuss the legislative proposal.\textsuperscript{151} In response to this meeting, the State Secretary for Health, Welfare and Sport sent a memorandum to the House of Representatives on 10 April 2012\textsuperscript{152}, recommending that the legislative proposal apply also to refugee centres.

The State Secretary for Health, Welfare and Sport announced in October 2012 that youth care employees must have a certificate of good conduct (verklaring omtrent gedrag, VOG). This

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\textsuperscript{148} Netherlands, Children's Ombudsman (Kinderombudsman) (2011), Letter sent to the house of Representatives (Tweede Kamer der Staten Generaal), 24 November 2011.

\textsuperscript{149} Netherlands, State Secretary for Health, Welfare and Sport & Minister of Security and Justice (Staatssecretaris van Volksgezondheid, Welzijn en Sport & Minister van Veiligheid en Justitie) (2011), Letter sent to House of Representatives (Tweede Kamer der Staten Generaal), No. J-3092758, 28 November 2011.

\textsuperscript{150} Netherlands, Central government (Rijksoverheid) (2012), 'Wanneer treedt de wet in werking?', Nieuwsbrief Meldcode huiselijk geweld en kindermishandeling, Vol.3, No. 7, 26 April 2012.


\textsuperscript{152} Netherlands, State Secretary for Health, Welfare and Sport (Staatssecretaris voor Gezondheid, Welzijn en Sport) (2012), Nota naar aanleiding van verslag, Parliamentary document (Kamerstuk) II, 2011-12, 33 062 No. 7.
requirement is included in the legislative proposal for a mandatory domestic violence and child abuse reporting code.\textsuperscript{153}

Parliament agreed, in October 2012, with the government's plan to provide continuous screening for childcare staff.\textsuperscript{154} This means that as soon as someone comes in contact with the criminal justice system, the Ministry of Security and Justice will investigate whether the employee can continue working in childcare.\textsuperscript{155} The information will be passed on to municipalities and the Municipal Public Health Service, (\textit{Gemeentelijke Gezondheidsdienst, GGD}). New employees will also be continuously screened. The screening will start in spring 2013.\textsuperscript{156}

An online tool (\textit{meldknop} or reporting button) was launched on 7 February 2012. It is available at \url{www.meldknop.nl} and targets children from 11 to 16 years of age. The tool can be used to report abuse, child pornography and other related practices.\textsuperscript{157} The tool is supported by the police and can also be placed on existing websites.

The mandate of the National Rapporteur on Trafficking in Human Beings was extended in May 2012 to include reporting on sexual abuse of children.\textsuperscript{158} Since June 2012, the office is called the National Rapporteur on Trafficking in Human Beings and Sexual Violence against Children (\textit{Nationaal Rapporteur Mensenhandel en Seksueel Geweld tegen Kinderen}).

On 29 May 2012, the Samson Commission (\textit{Commissie-Samson}) presented its seventh public report.\textsuperscript{159} This commission conducts independent investigation into the sexual abuse of minors (including minors with intellectual disabilities) placed in institutions or with foster parents, under the responsibility of the government. The commission presented its final report in October 2012.

In its final report \textit{‘Omringd door zorg, toch niet veilig’} (‘Surrounded by care, still not safe’), the Samson Commission concluded that minors removed from their homes and put into state or state-funded institutions, since 1945, have not always received the protection against sexual abuse to which they are entitled. Minors in residential youth care institutions report significantly more sexual abuse (143 per 1,000) than average Dutch youngsters (74 per 1,000).\textsuperscript{160} The commission estimates that only a fraction of abuse cases are ever detected by the professionals working with the minors. According to the final report, more than half of abuse cases come at the hands of other, often older, children. Abuse by care workers is usually opportunistic rather than carried out by predatory paedophiles.

\begin{itemize}
\item \textsuperscript{153} Netherlands, Ministry of Health, Welfare and Sport (\textit{Ministerie voor Gezondheid, Welzijn en Sport}) (2012), \textit{Staatssecretaris Veldhuijzen-van Zanten verplicht verklaring omtrent gedrag VOG voor jeugdzorg medewerkers}, news release, 8 October 2012.
\item \textsuperscript{154} Netherlands, House of Representatives (Tweede Kamer der Staten Generaal) (2012), \textit{Kinderopvang}, web page, available at: \url{www.tweedekamer.nl/kamerstukken/dossiers/Kinderopvang_oktober_2012.jsp}
\item \textsuperscript{155} Netherlands, Ministry of Health, Welfare and Sport (\textit{Ministerie voor Gezondheid, Welzijn en Sport}) (2012), \textit{Start continue screening in de kinderopvang in 2013}, news release, 11 August 2012.
\item \textsuperscript{156} Netherlands, Ministry of Health, Welfare and Sport (\textit{Ministerie voor Gezondheid, Welzijn en Sport}) (2012), \textit{Start continue screening in de kinderopvang in 2013}, news release, 11 August 2012.
\item \textsuperscript{157} Digivaardig & Digiveilig (2012), \textit{Meldknop.nl geeft jongeren informatie, advies en hulp bij problemen op internet}, press release, 7 February 2012.
\item \textsuperscript{158} Netherlands, State Secretary for Health, Welfare and Sport & Minister of Security and Justice (\textit{Staatssecretaris van Volksgezondheid, Welzijn en Sport & Minister van Veiligheid en Justitie}) (2012), \textit{Regeling van 11 mei 2012, nr. 250/153, houdende instelling van de Nationaal rapporteur mensenhandel en seksueel geweld tegen kinderen}.
\item \textsuperscript{159} Commissie-Samson (2012), \textit{Zevende openbaar bericht van de commissie-Samson}, The Hague: Commissie-Samson.
\item \textsuperscript{160} Commissie-Samson (2012), \textit{Omringd door zorg, toch niet veilig}, The Hague: Commissie-Samson.
\end{itemize}
The report concludes with several recommendations, including requiring social workers to pay closer attention to children’s sexual development, requiring authorities to act more proactively in cases of suspected abuse and requiring care institutions to screen employees more stringently.\footnote{Commissie-Samson (2012), Omringd door zorg, toch niet veilig, The Hague: Commissie-Samson.}

The Commission of Inquiry set up by the Roman Catholic Church (Commissie Deetman) to investigate the sexual abuse of minors within the Roman Catholic Church in the Netherlands in the period 1945 to 2010 published its first report in December 2011.\footnote{Deetman, W. et al (2011), Sexual abuse of minors in the Roman Catholic Church, The Hague: Commissie onderzoek naar seksueel misbruik in de Rooms-Katholieke Kerk.} The main conclusions are: the scale of sexual abuse of minors by persons working in the Roman Catholic Church in the Netherlands (priests, brothers, pastoral workers employed by the church and lay persons) in the period 1945 to 2010 is relatively small in percentage terms, but is a serious problem in absolute numbers. Several tens of thousands of minors have experienced mild, serious and very serious forms of inappropriate sexual behaviour. This figure differs little from the incidence of abuse among non-Catholics in the Netherlands. In many cases, the bishops and other church authorities failed to take adequate action and paid too little attention to victims. This first report does not consider the abuse of girls within the Roman Catholic Church. The commission is now working on a second report investigating the abuse of female minors within the Roman Catholic Church.

The chairs of both commissions, Deetman and Samson, have proposed the continuation of the telephone hotline for victims of sexual abuse. The State Secretary for Health, Welfare and Sport has promised that a new hotline will be hosted by Victim Support Netherlands (Slachtofferhulp Nederland).\footnote{NRC Handelsblad (2012), ‘Nieuw meldpunt voor seksueel misbruik vanaf oktober’, news release, 11 June 2012.} A national telephone number will be launched so that victims can quickly be brought into contact with the appropriate professionals and agencies.

Youth Care Netherlands (Jeugdzorg Nederland) published the Annual Report of the Advice and Report Centres for Child Abuse (Advies- en Meldpunten Kindermishandeling, AMKs) in July 2012.\footnote{Advice and Report Centres for Child Abuse (Advies- en Meldpunten Kindermishandeling) (2012), Jaaroverzicht 2011, Utrecht: Jeugdzorg Nederland.} Individuals can contact these centres for advice and to report cases of child abuse. The AMKs register the number of first contacts and subsequently whether advice was given or an investigation was started (see table 1.1 for figures). The AMKs registered 65,993 contacts in 2011, a rise of 6% compared to 2010. Of these 65,993 contacts, 19,254 were reports of child abuse. Investigations by the AMKs confirmed that 80% of the reports were true. Table 1.2 gives information on the number of investigations by type of abuse.

| Table 1.1 Number of first contacts per year\footnote{Advice and Report Centres for Child Abuse (Advies- en Meldpunten Kindermishandeling) (2012), Jaaroverzicht 2011, Utrecht: Jeugdzorg Nederland.} |
|-----------------|--------|--------|--------|--------|--------|--------|--------|
| Type of Contact | 2005   | 2006   | 2007   | 2008   | 2009   | 2010   | 2011   |
| Advice          | 26,712 | 27,929 | 33,643 | 36,790 | 42,49  | 43,925 | 46,739 |
| Investigations  | 11,340 | 13,815 | 16,932 | 16,156 | 16,587 | 18,076 | 19,254 |
| Total first     | 38,052 | 41,744 | 50,575 | 52,946 | 59,436 | 62,001 | 65,993 |
| contacts        |        |        |        |        |        |        |        |
| Increase on     | 12%    | 10%    | 21%    | 5%     | 12%    | 4%     | 6%     |
| previous year   |        |        |        |        |        |        |        |
Table 1.2 Type of abuse in 2011

<table>
<thead>
<tr>
<th></th>
<th>Investigations started (number)</th>
<th>Investigations that confirmed reports of abuse (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Physical abuse</td>
<td>4,185</td>
<td>65.7%</td>
</tr>
<tr>
<td>Physical neglect</td>
<td>4,227</td>
<td>65.2%</td>
</tr>
<tr>
<td>Psychological violence</td>
<td>5,553</td>
<td>75.6%</td>
</tr>
<tr>
<td>Emotional neglect</td>
<td>6,938</td>
<td>78.5%</td>
</tr>
<tr>
<td>Sexual abuse</td>
<td>1,258</td>
<td>55.6%</td>
</tr>
<tr>
<td>Witness of domestic violence</td>
<td>12,815</td>
<td>93.4%</td>
</tr>
<tr>
<td>Münchhausen-by-proxy</td>
<td>85</td>
<td>78.8%</td>
</tr>
<tr>
<td>Educational neglect</td>
<td>15,893</td>
<td>88.8%</td>
</tr>
<tr>
<td>Genital mutilation</td>
<td>43</td>
<td>58.1%</td>
</tr>
</tbody>
</table>

The Verwey-Jonker Institute published a study in December 2011 examining the reports of child abuse to the AMKs in the period 2003-2009. The main conclusion of this study is that the number of reports of child abuse increases every year and that in comparable municipalities and districts the numbers of reports of suspected child abuse diverge significantly.

4.1.2 Sexual exploitation and child pornography, including the blocking of pornographic websites.

On 6 June 2012, the National Rapporteur on Trafficking in Human Beings presented her First Report on Child Pornography to the United Nations (UN). This report was originally published on 12 October 2011. The main conclusion of this report is that pornography is a form of sexual violence against children and that the Dutch government fails to tackle sexual violence against children.

On 27 January 2012, the Minister of Security and Justice sent a letter to the House of Representatives in which he presents his policy proposals for tackling child pornography. These include more police officers to fight against child pornography crimes, with a total of 150 FTEs committed to the national and regional police forces in 2012.

The new police organisation for dealing with child pornography officially started on 1 October 2012 with 150 police officers, doubling the capacity of the police to tackle child pornography from the previous year. From October 2012, all child pornography cases fall under a tactical steering committee, comprising the police and the Public Prosecutor (Openbaar Ministerie).

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The focus of the unit should shift from relatively light to heavy downloaders, abusers, victims and spreaders. The Minister of Security and Justice presented a report of the Dutch police that outlines a barrier model on child pornography on 27 January 2012. This model describes the process around child pornography, by identifying the activities offenders often undertake. Connected to these activities, it describes ways to give potential victims tools to avoid falling prey to a perpetrator or ways in which authorities can stop child pornographers. The Minister intends to implement this model.

The Minister of Justice and Security also launched a pilot with the Public Prosecutor entitled Indigo. This pilot is used in cases where there are suspects but not enough evidence to prosecute them. In these cases, the authorities issue a verbal caution to the holders of the IP-address involved in transactions of child pornography over the internet, or with the occupant of the domicile in question. In addition, the Public Prosecution issues a warning letter which states that the IP-address holder is registered in the police records.

4.1.3 Trafficking of children for sexual and economic exploitation.

In the Netherlands, CoMensha is the Anti-Trafficking Coordination Centre that coordinates the collection and registration of data of all reported victims of trafficking. In 2011, CoMensha reported 18 victims of trafficking of 14 years and younger and 99 reported victims between 15 and 17 years old. Most of these reported victims were female and Dutch: all victims of 14 years and younger were Dutch and 93 of the 99 victims between 15 and 17 years old were Dutch. The girls are often victims of so-called loverboys: human traffickers who seduce and groom their victims and force them into prostitution or exploit them in other ways. Victims of loverboys are not only minors but also young women of 18 years and older. In the Netherlands, a large number of initiatives have been developed to prevent victimisation and to provide shelter to victims. One study counted 74 initiatives. To tackle the problem of loverboys, the Minister of Justice and Security presented a plan to the House of Representatives on 20 December 2011. In the accompanying letter, the Minister stressed that tackling loverboys is one of the government's top priorities.

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171 Netherlands, Police Netherlands (Politie Nederland) (2011), Barrièremodel kinderporno: Barrières en interventies ten behoeve van de aanpak kinderporno, Politie Nederland.
172 Netherlands, Minister of Security and Justice (Minister van Veiligheid en Justitie) (2012), Voortgangsbericht aanpak kinderpornografie, Letter sent to House of Representatives (Tweede Kamer der Staten Generaal), No. 5716024/11, 27 January 2012.
The Action Plan ‘Aanpak loverboyproblematiek’ (‘Approach loverboy problem’) is prepared using the ‘three Ps’ framework, promoted in the UN and in the European context. This means that to effectively address human trafficking, and therefore the loverboy problem, it is necessary to take measures in the field of prevention, prosecution (investigation and prosecution of perpetrators) and protection (protection and support of victims). The measures in the plan focus on the education of potential victims and those directly involved and on improving the tackling of loverboys by developing innovative methods and making more use of the help of citizens as well as improving care for victims. The plan runs from 2011 to 2014.

4.1.4 Children with an irregular migration status, including asylum-seeking children.

Members of the House of Representatives initiated a bill which gives asylum-seeking children the right to remain in the Netherlands if they are sufficiently rooted in Dutch society. According to the bill, youngsters under 21 years old who have lived for at least eight years as a child in the Netherlands can remain in the country, as can their parents and siblings. The Council of State (Raad van State) gave its advice on the draft bill. On 30 March 2012, the House of Representatives debated this same bill. The Minister of Immigration, Integration and Asylum sent his reaction by letter to the House of Representatives, stating that the conditions required by the bill for these youngsters to remain in the country are unclear at certain points. This makes the terms for possible deportation similarly unclear. The bill is still pending.

In a report released on 8 March 2012, the Children’s Ombudsman elaborated on the psychological damage children suffer due to long asylum procedures. On 14 May 2012, the Children’s Ombudsman made an appeal to Parliament to suspend the deportation of child asylum seekers.

On 31 May 2012, the Minister of Immigration, Integration and Asylum decided not to halt the deportation of families seeking asylum whose children have lived in the Netherlands for eight years or longer. On 6 July 2012, a motion not to expel minors while the new legislation is pending was presented for debate to Parliament. The motion did not pass. In the coalition agreement of October 2012, the new government announces that it will provide a residence

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permit to children of asylum seekers and unaccompanied minors who have lived in the Netherlands for at least five years when they reach the age of 18. To fall under the new system, it has to be shown that the children have not evaded the supervision of the government. The coalition agreement also redefines the definition of family to exclude foster parents, the criteria for family reunification being narrowed to include only biological relations.

See also section 1.8 for traineeships and children with an irregular migration status.

4.2 Child-friendly justice

The State Secretary for Security and Justice presented the criminal justice bill for adolescents on 16 December 2011. The bill proposes a package of sanctions for 15 to 23 year-olds. According to the government, this bill makes possible a coherent approach to the problem of juvenile criminality. The bill has been submitted to various parties for consultation and the response has been critical. The Children's Ombudsman responded positively to the fact that with the new bill, adult criminal law does not necessarily apply to the 18 to 23 year-old group. On the other hand, the new bill means a deterioration of the situation for the 16 and 17 year-old group because they are presently judged according to child criminal law. The Children's Ombudsman is critical, in particular, of the increase in the maximum duration of juvenile detention from two to four years. This increase is inconsistent with the intention of the Convention on the Rights of the Child. According to the convention, detention for children should be applied as a last measure and for the shortest possible duration. The Council for the Administration of Criminal Justice and Protection of Juveniles (Raad voor Strafrechtstoepassing en Jeugdbescherming, RSJ) advised the State Secretary not to introduce the bill. On 6 July 2012, the Council of Ministers (Ministerraad) endorsed the bill. The bill was subsequently sent to the Council of State for advice.

The National Ombudsman and the Children's Ombudsman conducted an investigation following a complaint by the parents of a 15 year-old boy who was arrested at the police station in Ede on suspicion of a serious offence. Contact between the parents and the child could only take place in a room where they were separated by a glass wall, which both found distressing. The National Ombudsman and the Children's Ombudsman recommended in their report to allow unrestricted physical contact between parents and child detainees in police cells during visits. The National Council of Chief Constables said it would look carefully into the

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method of treatment of minors detained in police cell complexes.\textsuperscript{194} The council wants to introduce greater uniformity to provisions and regulations in the treatment of minors by the various police forces.

On 5 July 2012, the Children's Ombudsman published a report on the current possibilities for minors to independently claim their rights and to be heard by a judge.\textsuperscript{195} Under Dutch law, it is possible to appoint a special curator, who can defend the child's interests in judicial proceedings in instances where the interests of the child are not in line with the interests of the parents (who normally represent the child). This study shows that few people are aware of the possibility of appointing a curator, and curators are very rarely nominated. The Children's Ombudsman argues in favour of appointing a curator in all cases when minors get into difficulties.

\textbf{4.3 Child protection reform}

On 28 November 2011, the State Secretary for Health, Welfare and Sport and the State Secretary for Security and Justice sent a policy letter to the House of Representatives outlining a legislative proposal for a new youth care system.\textsuperscript{196} This legislative proposal entails a decentralisation of youth care, from the national and regional authorities to the municipal authorities. Under the new system, municipalities will be able to develop integrated policies and provide specialised care suited to the local and individual situation. 2011-2015 is considered the transition period for the introduction of the new decentralised system. On 19 December 2011, the House of Representatives endorsed the proposal.\textsuperscript{197} In response to this, the two State Secretaries sent a letter to the House of Representatives on 27 April 2012 on the progress of the legislative proposal.\textsuperscript{198} In its shadow report on the implementation of the Convention on the Rights of the Child, the Dutch NGO Coalition for Children's Rights (\textit{Kinderrechtencollectief}) expressed its concern on the changes to the youth care system.\textsuperscript{199} According to this report, the new system does not guarantee that children in all municipalities will be given protection, care and treatment on the same level as in the present system. Many municipalities lack the expertise to provide youth-tailored care to all children.

On 19 October 2012, the Children's Ombudsman expressed his concern about the youth care changes. According to the ombudsman, with the changes to the youth care system, the protection of children is insufficiently secured and the rights of children are not sufficiently taken into account.\textsuperscript{200} At the moment, there are still uncertainties as to how the municipalities

\textsuperscript{194} Netherlands, Children's Ombudsman (\textit{Kinderombudsman}) (2012), \textit{Politie neemt aanbevelingen minderjarige arrestanten over}, Press Release, 3 July 2012.
\textsuperscript{195} Netherlands, Children's Ombudsman (\textit{Kinderombudsman}) (2012), \textit{De bijzondere curator, een lot uit de loterij? Adviesrapport over waarborging van de stem en de belangen van kinderen in de praktijk}, The Hague: Kinderombudsman.
\textsuperscript{197} Netherlands, State Secretary for Health, Welfare and Sport & State Secretary of Security and Justice (\textit{Staatssecretaris van Volksgezondheid, Welzijn en Sport & Staatssecretaris van Veiligheid en Justitie}) (2012), \textit{Letter sent to House of Representatives (Tweede Kamer der Staten Generaal), No. DJ/PS-3114085}, 27 April 2012.
\textsuperscript{200} Netherlands, Children's Ombudsman (\textit{Kinderombudsman}) (2012), \textit{Zorg en bescherming kinderen door rijk onvoldoende verankerd in jeugdwet}, Press Release, 19 October 2012.
should carry out the new tasks and there are not enough frameworks outlining the ways in which they should act. The Children's Ombudsman also believes that youth care should be subject to independent supervision. The draft bill gives municipalities partial freedom to decide the manner in which they will undertake supervision.201

A proposal to amend the Youth Care Act is still under review by the Senate (Eerste Kamer der Staten-Generaal). The proposal delineates the tasks of the Youth Care Bureaus (Bureaus Jeugdzorg), the Child Protection Board (Raad van de Kinderbescherming) and the juvenile courts and it also clarifies the aims of youth care supervision. The Senate received an explanatory reply from the State Secretary for Security and Justice on 27 July 2012 with answers to questions on the proposal asked by members of the Senate.202

No major developments concerning the deinstitutionalisation efforts of children with disabilities or without parental care have taken place.

The Implementation Act on International Child Abduction has been amended to accomplish the abridged procedures per 1 January 2012.203 The amendment states that legal representation in international child abduction is no longer conducted by the Central Authority, but by attorneys.204 The Central Authority will still be involved in these international cases by facilitating and providing information to the parents and organisations and by performing the first intake. With the amendment, the appeal in cassation has been limited to cassation in the interest of law (cassatie in het belang der wet) to accelerate the return procedure and provide clarity as soon as possible on the (habitual) residence of the child.

The District Court of The Hague will cover only repatriation procedures. The juvenile judge in the jurisdiction of habitual residence of the child remains responsible for decisions set out by Article 14 of the Implementation Act on International Child Abduction.

4.4 Participation of children

The Netherlands has an extensive network of youth councils operating at local level. In many municipalities, there are youth councils that are consulted by the local authorities. These councils are peer-led organisations. The Dutch National Youth Council is an umbrella organisation that operates on a national level. It gives governmental bodies and other organisations advice on youth policy. According to the Dutch NGO Coalition for Children's Rights, budget cuts by the authorities may threaten this infrastructure of youth councils and other youth organisations and so undermine the right to participation as laid down in the Convention on the Rights of the Child.205

In 2011, the Children's Ombudsman was contacted 690 times by children, adults and professionals about possible human rights infringements. Of these 690 contacts, 128 were

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202 Netherlands, State Secretary of Security and Justice (Staatssecretaris van Veiligheid en Justitie) (2012), Memorie van Antwoord, Parliamentary documents (Kamerstukken) I, 2011-2012, 32 015-C.
made by children and youngsters below the age of 18.\textsuperscript{206} Figures for the year 2012 are not available.

4.5 Any other significant developments with implications for the rights of the child and protection of children, including case law relevant at the national level.

The Children's Ombudsman published, on 15 May 2012, the first Child Rights Monitor (\textit{Kinderrechtenmonitor}).\textsuperscript{207} The Monitor will be published each year. The Netherlands scores well in numerous international lists: Dutch children are on average happy and live in prosperity. The Child Rights Monitor shows that approximately 85\% of children in the Netherlands are growing up without major problems. However, the Children's Ombudsman is worried about several groups of (vulnerable) children whose rights are being violated, amounting to half a million children. These groups include: children who suffer from abuse, children who live in poverty, alien minors, children in contact with law enforcement agencies and children with disabilities who for some reason do not attend school.

The fourth periodic report of the Dutch government on the implementation of the Convention on the Rights of the Child in the Netherlands was sent to the House of Representatives on 4 July 2012.\textsuperscript{208} In April 2012, the Dutch NGO Coalition for Children's Rights published its shadow report on the implementation of the Convention on the Rights of the Child (see also section 4.3).\textsuperscript{209}

Defence for Children and UNICEF Netherlands published their Annual Report on Children's Rights in the Netherlands in June 2012, examining the situation of children in the Netherlands according to the UN Convention on the Rights of the Child.\textsuperscript{210} It considers in particular the situation of children in the field of juvenile justice, migration, child abuse, exploitation and child welfare. The report concludes that in 2011 little progress has been made in the various policies which affect children. In 2011, 45\% more children were placed in youth care than in 2010. In addition, 5,192 applications were rejected from children abroad wishing to be reunited with their parent(s) in the Netherlands. This is an increase of 10\% compared to 2010.

There are approximately 3,000 children in the Netherlands not in school because there are no suitable schools for them.\textsuperscript{211} After a few years at home as a result of there being no school suitable to teach them, two dyslectic boys aged 13 and 15 decided, with the approval of their parent, to go sailing around the world to draw attention to their right to education.\textsuperscript{212} This action started on 24 August 2012. It urged the Children's Ombudsman to initiate a research

\begin{footnotes}

\textsuperscript{207} Netherlands, Children's Ombudsman (Kinderombudsman) (2012), \textit{Kinderrechtenmonitor 2012}, The Hague: Kinderombudsman.


\textsuperscript{211} Netherlands, Children's Ombudsman (Kinderombudsman) (2012), \textit{Kinderrechtenmonitor 2012}, The Hague: Kinderombudsman.

\end{footnotes}
study to find out why some children do not attend school for such long periods of time. Results of this study are expected in February 2013.


\[\text{Veel reacties op het meldpunt onderwijs, Press Release, 14 September 2012.}\]
5. EQUALITY AND NON-DISCRIMINATION

5.1 Horizontal/cross cutting issues to equality and non-discrimination

The Action Programme ‘Combat Discrimination’ (Actieprogramma ‘Bestrijding van discriminatie’) has not changed since the new action programme was presented on 7 July 2011.215

The Dutch equal treatment laws changed in 2011 to bring the definitions of direct and indirect discrimination in these laws in line with the European Union's directives (for instance, the Council Directive 2000/78/EC of 27 November 2000).216 In addition, on 1 October 2012 the General Equal Treatment Act (Algemene wet gelijke behandeling, GETA) was adapted to facilitate the changing status of the Equal Treatment Commission (Commissie Gelijke Behandeling) which has been integrated into the new Netherlands Institute for Human Rights (College voor de Rechten van de Mens). The integration of the various equal treatment acts in one single Equal Treatment Integration Act (Integratiewet Awgb) has been put on hold after the dissolution of the previous cabinet.217

Since 11 July 2012, the knowledge centre on discrimination, 'Art.1', has come to a partnership agreement with the regional anti-discrimination facility RADAR (see section 8.4). Due to drastically diminished funding on the part of the national government, partly an indirect result of crisis austerity measures, Art.1 had become too small to be able to continue its national and international activities as a self-dependent body. Art.1 secured a number of larger and smaller assignments. Nevertheless, the lack of structural subsidy led to a shrinking of the service package of Art.1. The Art.1 library was dismantled, as well as some of the work in the area of information, advice and training. The partnership includes cooperation and joint housing. RADAR will still be operating as the regional anti-discrimination facility. Art. 1 will continue to fulfil its role as a national expertise centre working to prevent discrimination, focusing on research and information activities. RADAR and Art.1 will cooperate mainly in research activities as well as in activities to prevent discrimination.218

The Annual Integration Report 2011 by Statistics Netherlands (Centraal Bureau voor de Statistiek, CBS) concentrates on the structural integration of non-Western migrants into Dutch society (see also section 1.7). The pace of growth of immigration has slowed in the last two years due to the economic crisis, but the number of immigrants continues to rise. According to the report, the rise is 'almost entirely' caused by immigration from EU Member States,

216 Netherlands, Law Gazette of the Kingdom of the Netherlands (Staatsblad van het Koninkrijk der Nederlanden) (2011), Wet van 7 november 2011 tot wijziging van de Algemene wet gelijke behandeling, het Burgerlijk Wetboek, de Wet gelijke behandeling op grond van handicap of chronische ziekte, de Wet gelijke behandeling op grond van leeftijd bij de arbeid en de Wet gelijke behandeling van mannen en vrouwen (aanpassing van definities van direct en indirect onderscheid en enkele andere bepalingen aan richtlijnterminologie) (Act of 7 November 2011 amending the Equal Treatment Act, the Civil Code, the Act on equal treatment on grounds of disability or chronic illness, the Equal Treatment Act on grounds of age in employment and the Equal treatment Act of men and women (adaptation of the definitions of direct and indirect discrimination and certain other provisions of Directive terminology)), 2 December 2011, no. 554.
especially Poland. A number of positive developments can be observed concerning the situation of non-Western migrants viewed over the longer term. For example, "non-Western migrants are closing the education gap relative to the native Dutch population" and there is a similar long-term trend on the labour market.

On the other hand, Statistics Netherlands states that migrant groups are still vulnerable on the labour market. Unemployment among non-Western migrants has risen much faster than in the native population since the current economic downturn. According to the report, their vulnerable position is due to numerous factors, including overrepresentation in flexible jobs, insufficient qualification, linguistic disadvantage and discrimination. The Minister of Social Affairs and Employment states in a letter to the House of Representatives (Tweede Kamer der Staten-Generaal) that the trend in unemployment emphasises 'the need to stop uncontrolled immigration'. Furthermore, the government is working on legislation to demand proficiency of the Dutch language by persons living on welfare, according to the Minister.

The Netherlands Institute for Human Rights opened its doors on 2 October 2012. The Equal Treatment Commission has been absorbed by this institute. It is however still possible for individuals to lodge complaints about discrimination with the new institute. This institute is funded by the national government. After two years, the government will review whether the budget is adequate. The total budget of the Dutch Human Rights Institute is the budget for the Equal Treatment Commission, added with 900.000 Euro in the first three years (this will be 600.000 from the fourth year.

The Municipal Anti-discrimination Facilities Act will be evaluated in 2012 for its effectiveness. The outcome of the evaluation could have implications for the funding of anti-discrimination agencies by municipalities.

The economic crisis is having an impact on the availability of structural public funding for developments fostering equality and non-discrimination; several organisations are facing budget reductions in 2012 or the years to come. A common reaction to budgetary cuts is to reorganise or shrink, and some programmes are forced to be discontinued.

The Dutch Complaints Bureau for Discrimination on the Internet (Meldpunt Discriminatie Internet, MDI) is another organisation which is funded by the national government. The MDI addresses and registers complaints on discrimination on the internet and asks hosting providers

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222 Minister of Social Affairs and Employment (Minister van Sociale Zaken en Werkgelegenheid) (2012), Letter to the House of the Representatives (Tweede Kamer der Staten Generaal), 6 March 2012.


225 Netherlands, Minister of the Interior and Kingdom Relations (Minister van Binnenlandse Zaken en Koninkrijksrelaties) (2012), Letter sent to the House of Representatives (Tweede Kamer der Staten Generaal), 26 June 2012.
to remove discriminatory expressions. The national government recently announced that it was considering stopping permanent funding of the MDI.

The National Institute for Gender Equality and Women’s History opened its doors on 1 May 2012. This institute is the result of the merger between Aletta, Institute for Women’s History and E-Quality, Knowledge Center for Emancipation, Family and Diversity. E-Quality and Aletta are permanently funded by the national government, using resources from the budget reserved for women’s emancipation policy. In 2012, the budget for both organisations has been reduced by 25%. According to the new institute, “the merger will make it possible to achieve the cost reduction of 25%, which is necessary due to the reduction of the subsidy of both E-Quality and Aletta.”

The structural budget of the national government for LGBT and gender equality is €17.5 million a year in the period 2011-2015. Within this budget, the allocation for LGBT equality increased by €2 million to €5.5 million in 2012. The Dutch COC, representing the interests of LGBT people in the Netherlands, is supported by the national government out of this budget.

The budget of the Dutch Council of the Chronically Ill and the Disabled (Chronisch zieken en Gehandicapten Raad Nederland, CG-Raad) will be reduced from €1.9 million to €1.2 million in 2013. Furthermore, the budget of €3.5 million for long-term programmes such as a programme to strengthen the position of clients (‘Programma Versterking Clientpositie’) and a legal aid programme (‘Programma Juridische Ondersteuning’) will end. As a result, the programmes will be discontinued by January 2014.

The anti-discrimination facilities (and other initiatives, measures and institutions which were mentioned earlier) are financed by the national government. The EU structural funds are supplementary to the national budget. The Netherlands uses, for example, the European Social Fund (ESF) to increase overall employment by focusing on groups that are at the margins of the labour market. These groups include women, people over the age of 55, youngsters and other vulnerable groups, such as non-Western migrants and persons with disabilities. One of the measures to improve the participation in the labour market of vulnerable groups is the ‘Action plan for functional illiteracy 2012-2015’ (‘Actieplan Laaggeletterdheid 2012-2015’). Regional Teaching Centres (Regionale opleidingscentra) could apply for subsidies in cooperation with municipalities to initiate projects to tackle functional illiteracy of adults.

To improve the labour market participation of women, ESF 2007-2013 encourages the re-entry of women to the labour market, for example by making educational activities accessible and

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227 Correspondence between Art.1 and the governing board of the MDI (2012)
available by using ESF grants. Because of the economic crisis, some priorities have changed. The decline of youth unemployment is one of the priorities, according to the Annual Report of 2011. As a result of, for example, company budget cuts in educating their employees and the reform of childcare allowance (see section 5.6), other instruments are needed to encourage the labour market participation of women and the lifetime employability of employees.

The ESF is administered by the Agentschap SZW, which is part of the Dutch Ministry of Social Affairs and Employment. The European Union allocated €830 million of ESF grants to the Netherlands for the period 2007-2013. In 2011, the Agentschap SZW offered 1,408 grants (for more than €418 million).235

European Refugee Fund subsidies are used to carry out projects aimed at the actions which are described in paragraph 5 of the Council Decision of 6 June 2007. According to the ERF multi-annual programme report 2008-2013 by the Ministry of Security and Justice, the Netherlands has taken responsibility for the asylum procedure, the reception and integration of asylum seekers and the resettlement policy; ERF subsidies, however, are used to carry out improvements and to create space for innovative ideas in this area. In recent years (according to the multi-annual report 2008-2013), Dutch organisations carried out various projects in the area of receiving refugees that were financed by the ERF. One of the projects, for example, related to improving the safety of women and girls in reception centres. It is currently possible to apply for projects in ERF III.236


Dutch anti-discrimination facilities recorded a total of 6,391 complaints in 2011, largely on racial discrimination (45.7%), age (12%), gender (8.5%), sexual orientation (7.0%), disability (6.9%) and religion (5.5%). In 2010, 6,074 complaints were recorded. According to the annual report of the agencies, 5% of the complaints concern multiple discrimination. These cases relate to discrimination on two or three different grounds, largely on racial discrimination in combination with other grounds, such as religion or gender.237 For further statistical data, see table 1.

As in previous years, the largest category of complaints relates to discrimination in the area of employment, accounting for 1,909 complaints, 29.9% of the total. Most of these complaints concern recruitment processes or discrimination in the workplace (16.8%). In the area of employment, most complaints relate to discrimination on the grounds of age (33.5%), race (25.8%) or gender (19.4%).238

In areas other than employment, discrimination is reported in the neighbourhood (9.8% of the total number of complaints), access to goods and services (public: 8.7%; private: 8.0%), catering industry (7.6%) and housing industry (2.6%).239 For further statistical data, see table 2. See chapter 6 for more information on racial discrimination.

The Equal Treatment Commission received 719 requests for opinions in 2011. In 2010, this number was 406. According to the annual report of the commission, the increase is 'perhaps caused by the new possibility to make a request on the commission's website'. In 2011, there was an absolute increase of requests on all grounds, with the exception of the grounds of political orientation, belief, and duration of employment. Most of the requests relate to discrimination on the grounds of disability/chronic illness (19%), age (18%) and gender (16%). The distribution of requests across the different grounds of discrimination has remained relatively stable over the last years. In comparison to 2010, there was a relative increase in requests for opinions on possible discrimination on the grounds of disability/chronic illness in 2011. There was a relative decrease in the number of requests on the grounds of age. According to the annual report, 56 requests cover more than one ground (4%). Furthermore, 54% of the requests were related to discrimination in employment (compared to 58% in 2010) and 27% were related to discrimination in the access of goods and services (compared to 16% in 2010).

Table 1 Complaints on discrimination by discrimination grounds, filed with anti-discrimination facilities (2011)

<table>
<thead>
<tr>
<th>Discrimination Ground</th>
<th>Absolute numbers</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Race</td>
<td>2,918</td>
<td>45.7%</td>
</tr>
<tr>
<td>Age</td>
<td>767</td>
<td>12.0%</td>
</tr>
<tr>
<td>Gender</td>
<td>542</td>
<td>8.5%</td>
</tr>
<tr>
<td>Sexual orientation</td>
<td>450</td>
<td>7.0%</td>
</tr>
<tr>
<td>Disability/chronic illness</td>
<td>439</td>
<td>6.9%</td>
</tr>
<tr>
<td>Religion</td>
<td>349</td>
<td>5.5%</td>
</tr>
<tr>
<td>Nationality</td>
<td>252</td>
<td>3.9%</td>
</tr>
<tr>
<td>Antisemitism</td>
<td>134</td>
<td>2.1%</td>
</tr>
<tr>
<td>Political conviction</td>
<td>30</td>
<td>0.5%</td>
</tr>
<tr>
<td>Civil status</td>
<td>26</td>
<td>0.4%</td>
</tr>
<tr>
<td>Belief</td>
<td>18</td>
<td>0.3%</td>
</tr>
<tr>
<td>Duration of employment</td>
<td>13</td>
<td>0.2%</td>
</tr>
<tr>
<td>Permanent or temporary contract</td>
<td>12</td>
<td>0.2%</td>
</tr>
<tr>
<td>Non-legal grounds</td>
<td>724</td>
<td>11.3%</td>
</tr>
<tr>
<td>Unknown</td>
<td>46</td>
<td>0.7%</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>6,391</strong></td>
<td><strong>100%</strong></td>
</tr>
</tbody>
</table>

Table 2 Complaints on discrimination by area of society, filed with anti-discrimination facilities (2011)

<table>
<thead>
<tr>
<th>Area of Society</th>
<th>Absolute numbers</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Employment</td>
<td>1,909</td>
<td>29%</td>
</tr>
<tr>
<td>Neighbourhood</td>
<td>628</td>
<td>9.8%</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Area of Society</th>
<th>Complaints</th>
</tr>
</thead>
<tbody>
<tr>
<td>Goods and services (public)</td>
<td>554</td>
</tr>
<tr>
<td>Goods and services (private)</td>
<td>511</td>
</tr>
<tr>
<td>Catering industry</td>
<td>486</td>
</tr>
<tr>
<td>Housing industry</td>
<td>165</td>
</tr>
<tr>
<td>Press/advertising</td>
<td>124</td>
</tr>
<tr>
<td>Education</td>
<td>339</td>
</tr>
<tr>
<td>Public domain</td>
<td>567</td>
</tr>
<tr>
<td>Police/judicial authorities</td>
<td>342</td>
</tr>
<tr>
<td>Private domain</td>
<td>110</td>
</tr>
<tr>
<td>Public discourse</td>
<td>284</td>
</tr>
<tr>
<td>Sports/leisure</td>
<td>128</td>
</tr>
<tr>
<td>Other</td>
<td>271</td>
</tr>
<tr>
<td>Unknown</td>
<td>15</td>
</tr>
<tr>
<td>Total</td>
<td>6,391</td>
</tr>
</tbody>
</table>

Table 3 Complaints on discrimination by area of society and discrimination grounds, filed with anti-discrimination facilities (2011)\(^{244}\)

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The impact of the Employment Equality Directive (EED) on women and men concerning equal treatment is difficult to bring to light. In the Netherlands, the GETA as well as the Act on equal treatment of men and women (Wet gelijke behandeling van mannen en vrouwen) comply with the EED and the principle of gender mainstreaming. According to the latest evaluation of the GETA, the Equal Treatment Commission did not find any obstacles, not even with respect to some legislative amendments in 2004, though the scope of the evaluation did not stretch to a consideration of the equal treatment implications of the so-called 'single fact construction' (enkele-feit constructie) concerning homosexual teachers and religious schools. The Equal Treatment Commission points out in its Annual Report 2011 that attention is needed in the area of unequal pay for women. For example, according to a research project of the Equal Treatment Commission in 2011, in hospitals in the Netherlands there is no equal pay for men and women for work of equal value. The Equal Treatment Commission developed an instrument (a computer program) which provides insight into the wages which are paid by an organisation. Furthermore, the researchers conducted an in-depth study of a selection of dossiers. The Equal Treatment Commission advises the government and the hospital sector to monitor the situation. As has already been mentioned, the Equal Treatment Commission has been absorbed by the new Netherlands Institute for Human Rights.

In 2012, the Equal Treatment Commission concluded in a few cases that employers were guilty of prohibited discrimination on the grounds of gender. In one case, a female employee was paid less for the same job than one of her male colleagues. According to the Equal Treatment Commission, there was no justification for the difference in salary.

5.3 Multiple Discrimination

The Equal Treatment Commission recommends covering multiple discrimination in legislation, which is not currently the case (neither in equal treatment laws nor during parliamentary debate/legal history). The Equal Treatment Commission puts forward the argument that the gravity of the situation of multiple discrimination is possibly disregarded or largely overlooked at present in court rulings or judgments by the Equal Treatment Commission. The covering of multiple discrimination in legislation would be good for raising awareness of the issue and would increase legal certainty according to the commission. The commission recommends investigation and discussion into the best way to cover multiple discrimination in legislation. The former Dutch cabinet stated in a reaction that it is of the opinion that a change to the legislation in this regard is not necessary to guarantee more legal protection. Legal security and awareness-raising can be achieved within the current legal frameworks according to the letter to the House of Representatives in October 2011.

The Equal Treatment Commission states that it should have the specific authority to give its opinion on cases of multiple discrimination, since it has already done so in practice several times.\textsuperscript{251}

As stated in section 5.2, the Equal Treatment Commission received 56 requests in 2011 which covered more than one ground (4%).\textsuperscript{252} One of these requests relates to a Moroccan man who was denied access to a beach club on a Sunday night. The gatekeeper told the man he was not permitted to enter because he was not accompanied by a woman and because he was part of a group (of other men). A few minutes later, the gatekeeper allowed a group of Dutch men (without women) to enter the beach club. The Equal Treatment Commission concluded in this case that the defendant was guilty of discrimination on the grounds of gender and race, since there was no objective justification for the distinction made between the guests.\textsuperscript{253}

Another request was made by a Moroccan woman who felt discriminated against by her colleagues and her manager. They made jokes about non-Western migrants and bullied the woman because she wore a headscarf. The Equal Treatment Commission concluded in this case that the employer was guilty of prohibited discrimination on the grounds of race and religion by failing to ensure that the workplace was free from discrimination.\textsuperscript{254}

5.4 Age

In 2012, there was ongoing political and public debate concerning the ageing of the population and the increasing pressure on national health services and pension systems. One of the outcomes of the debate is the decision to gradually extend the retirement age from 2013 onwards from 65 to 67.\textsuperscript{255} During this debate, attention was drawn to age discrimination of people over 55 seeking work. Different studies point out that it is more difficult for older people to find a job; discrimination on the grounds of age is one of the contributing factors.\textsuperscript{256}

The objective of the European Year of Active Ageing and Solidarity between Generations is to raise awareness of the contribution of older people to society, according to the Dutch government. Labour market participation is at the core of the agenda.\textsuperscript{257}

One of the initiatives taken in relation to the 2012 European Year of Active Ageing and Solidarity between Generations is that of the Ministry of Social Affairs and Employment to raise the awareness of employers and employees regarding ‘lifetime employability’.\textsuperscript{258} The initiative’s objective is to facilitate and promote the implementation of measures in the workplace to secure the participation of older workers. Companies and organisations that


invest in social innovation and lifetime employability can apply for an ESF subsidy, coordinated by the Ministry of Social Affairs and Employment. More than 4,000 employers have already applied. To receive a subsidy, projects must aim to create a cultural change within the company by stimulating the mobility of employees, the management of working hours and by supporting a healthy, vital and safe working environment as well as promoting the independence of employees. As part of the initiative, the Minister and State Secretary for Social Affairs and Employment talked to 100 employers in the summer of 2012. The experiences of the employers and good practices are brought together in a brochure, which should be useful for other employers according to the State Secretary. Between October 2012 and April 2013, there will be meetings for employers each month to spread information and knowledge concerning lifetime employability and to stimulate employers to take initiatives in this area for their own companies and employees. During the campaign, the knowledge and activities will be available via the Lifetime employability (Duurzame inzetbaarheid) website.

Another initiative of the national government aims to strengthen local approaches to prevent the abuse of older people. This initiative fits the European objective of promoting healthy ageing and independent living.

The Festival of Generations (Festival der Generaties) website provides information on local initiatives set up in relation to the 2012 European Year of Active Ageing and Solidarity between Generations. One of the initiatives is the Zorgvisite (Care visitor) website, a digital platform which collects reviews of visits to nursing homes for the elderly. Another initiative is the national campaign 'Meer bewegen' ('Moving more'), which aims to encourage older generations to engage in physical activity.

The House of Representatives supports the European Disability Strategy 2010-2020 and the realisation of the European Accessibility Act in 2012. This statement was made in a document concerning the accessibility of online audiovisual data.

Since 1 May 2004, the prohibition of age discrimination is regulated by the Dutch Equal Treatment Act in employment age discrimination (Wet gelijke behandeling op grond van leeftijd bij arbeid). The act applies to all different phases of employment, as well as to educational and professional training. Along with the Dutch Equal Treatment Act on the grounds of disability or chronic illness (Wet gelijke behandeling op grond van handicap of chronische ziekte), this act implements European Council Directive 2000/78, insofar as this is not already covered by the GETA. The Dutch act does not prohibit discrimination on the grounds of age in the area of goods and services, which includes the accessibility of public buildings. Dutch anti-discrimination facilities do receive complaints on discrimination in...
The Dutch Council of the Chronically Ill and the Disabled and the umbrella organisation representing the interests of the elderly (CSO) advocate improvements to the accessibility of the built environment. In June 2012, they sent a letter and a report to the Ministry of the Interior and Kingdom Relations (Ministerie van Binnenlandse Zaken en Koninkrijksrelaties, BZK) with a proposal to amend the Building Decree (Bouwbesluit). The AllesToegankelijk (Everything Accessible) website is a cooperation of different organisations, including the Dutch Council of the Chronically Ill and the Disabled and the CSO, but also the Ministry of Health, Welfare and Sport and the Royal Association of Small and Medium-Sized Enterprises (MKB-Nederland). This website gives information about accessibility in all kinds of areas and provides numerous checklists, information about legislation and good practices.

There is not much case law available at domestic level which could contribute to the implementation of the EU Accessibility Act's aims or to the rights of the elderly more generally. The Equal Treatment Commission concluded in one case that a homeowner association was guilty of prohibited discrimination on the grounds of disability or chronic illness because they did not allow a woman to park her mobility scooter in the parking garage (the Equal Treatment Act on the grounds of disability or chronic illness is applicable to the area of housing).

See section 5.5 for information about the extension of the Equal Treatment Act on the grounds of disability or chronic illness (art. 7 and 8) to the public transport sector. The legislative change affects passengers with disabilities, including for example elderly people with reduced mobility.

5.5 Disability

The Convention on the Rights of Persons with Disabilities (CRPD) was signed by the Netherlands in March 2007, but has not yet been ratified. Commissioned by the State Secretary for Health, Welfare and Sport, the Netherlands Institute of Human Rights (Studie- en Informatiecenter Mensenrechten) published an impact analysis in January 2012 on the procedural aspects of the ratification of the convention. As a second part of the analysis, the State Secretary commissioned a study on the financial implications of the ratification. The planned publication date of this study is not mentioned. In the new coalition agreement, it is stated that the Netherlands will ratify the convention, on condition that the implementation process can occur gradually.

In reaction to this commitment, some members of Parliament submitted a motion in which they request the government to send an enactment to the Council.
of State (Raad van State) no later than 2013. This motion was adopted by a majority of the House of Representatives. According to the Ministry of Health, Welfare and Sport, the State Secretary will develop a plan concerning the implementation period in cooperation with the social partners and organisations of people with disabilities.

In January 2012, the draft law on 'working according to capacity' (Wet werken naar vermogen) was presented to the House of Representatives. This new act aims to increase the participation in the labour market of persons on social welfare, including persons with disabilities. There was a lot of resistance to the new act, especially among representatives of interest groups and the labour unions, focusing on issues such as the minimum wage and the instruments used to implement the act (e.g. productivity measurements). The draft law was declared controversial after the government stepped down, meaning that the draft law will not be discussed or passed until a new government is installed.

The Dutch Act on equal treatment on the grounds of disability or chronic illness prohibits discrimination on these grounds in employment, professional and educational training (adult education as well as primary and secondary education), housing and public transport. The prohibition of discrimination on the grounds of disability includes an obligation to provide reasonable accommodation. The act states that effective accommodation must be provided, unless this would mean a disproportionate burden on the addressee. Both material and immaterial adjustments and measures are meant by accommodation. The Social support act (Wet op maatschappelijke ondersteuning) provides financial support and facilitates adaptations to homes, as well as mobility devices, household help and transportation. The act is administered at municipal government level.

The Social support act is also adopted in relation to promoting independent living. This is an important issue for the Dutch cabinet, not only to make it possible for residents to live independently in their own homes for as long as possible, but also to save costs in the healthcare industry. Policies are aimed at separating the spheres of living and healthcare. In 2013, the government will begin a reform of the Exceptional medical expenses act (Algemene wet bijzondere ziektekosten).

In 2012, the Act on equal treatment on the grounds of disability or chronic illness (art. 7 and 8) was extended to the public transport sector. A ministerial decree clarifies the requirements

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274 Ministry of Health, Welfare and Sport (email correspondence).
277 Netherlands, Law of Gazette of the Kingdom of the Netherlands (Staatsblad van het Koninkrijk der Nederlanden) (2003), Wet gelijke behandeling op grond van handicap of chronische ziekte (Act on equal treatment on the grounds of disability or chronic illness), 22 May 2003.
281 Netherlands, Law of Gazette of the Kingdom of the Netherlands (Staatsblad van het Koninkrijk der Nederlanden) (2012), Besluit van 19 april 2012, houdende vaststelling van het tijdstip van inwerkingtreding van de
and enforcement rules. Most of the requirements apply from January 2016 to 2030. For example, 46% of bus stops need to be accessible for people with disabilities by January 2016. Public transport services need to make clear in their terms and conditions how they are going to meet the criteria. The State Secretary for Infrastructure and the Environment informs the House of Representatives of the progress on making public transport accessible for people with disabilities once a year. NS and ProRail, the two main service providers in the area of rail transport, are required to deliver progress reports to the State Secretary.

Several organisations, including the Dutch Council of the Chronically ill and the Disabled, advocate the extension of the act to other areas, especially access to goods and services. According to information of the provisional Dutch government, it has the intention to extend the act, but it is not clear from which date. Comparable to the CRPD ratification process, the State Secretary for Health, Welfare and Sport has commissioned a study on the procedural and financial impact of the extension of the act.

The Dutch Equal Treatment Commission is the organisation tasked with the independent monitoring, which is identified by the government under Article 33. Civil society organisations will be involved in the monitoring activities. These organisations are, for example, the Dutch Council of the Chronically ill and the Disabled, Coalitie voor Inclusie (coalition for inclusion), Platform VG and Platform GGZ (Mental healthcare platform).

5.6 Gender

E-Quality, Knowledge Center for Emancipation, Family and Diversity commissioned a study on the number of men and women in the Dutch Parliament in 2011. According to this study, the political participation of women has been stable or declining in the period 2010-2011. 25% of the Rutte cabinet’s 16 ministers were women, as well as 12% of state secretaries. Women make up 29% of the provincial Executive Councils and 19.2% of Dutch alderpersons in 2010. The Rutte cabinet did not comment on the possible consequences of these numbers on female participation targets, which were set at 45% in 2006.

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artikelen 7 en 8 van de Wet gelijke behandeling op grond van handicap of chronische ziekte en inwerkingtreding van het Besluit toegankelijkheid van het openbaar vervoer (Decision of 19 April 2012 fixing the date of entry into force of Articles 7 and 8 of the Act on equal treatment on grounds of disability or chronic illness and entry into force of the Decision on accessibility of public transport), 19 April 2012.


E-mail correspondence between Art.1 and the Ministry of Health, Welfare and Sport (Ministerie van Volksgezondheid, Welzijn en Sport)


Netherlands, Minister of Social Affairs and Employment (Minister van Sociale Zaken en Werkgelegenheid) (2005), Meerjaren beleidsplan emancipatie 2006-2010, Parliamentary document (Kamerstuk) 93480, 29 December 2005.
After the Dutch Supreme Court (Hoge Raad) ruled in 2010 that the Dutch political party 'Staatkundig Gereformeerde Partij' (SGP) must allow women to stand for election, the SGP took its case to the European Court of Human Rights (ECHR). The SGP is a Christian party which opposes the candidacy of women in elections based on an interpretation of the Bible. On 10 July 2012, the ECHR judged the SGP's complaint to be inadmissible. The court said that "very weighty reasons" would have to be put forward to justify different treatment on the grounds of gender. In a reaction to the court ruling, the Dutch Minister of the Interior and Kingdom Relations stated that she will discuss the implications of the ruling with the representatives of the SGP. Furthermore, the Minister will consider measures according to the Dutch Supreme Court ruling of 9 April 2010, if the SGP does not intend to carry out any actions accordingly.

Since June 2011, a law amending the Civil Code has been implemented. Article 166 of the code obliges larger public and private limited companies to strive for balanced gender representation (at least 30% of each gender) on their management and supervisory boards. There are no sanctions for not meeting the 30% norm. The law enters into force on 1 January 2013 and Article 166 expires on 1 January 2016.

The Dutch 'Female Board Index 2012' shows a survey of female representation on the executive and supervisory boards of 96 Dutch NVs listed on Euronext Amsterdam. According to this survey, 48% of the boards have at least one woman member. Compared to 2011, there is an increase in the number of companies with women on the board (45.6% in 2011). Still, the majority of companies (52%) have no woman on either board. In 2012, 74 (10.4%) of the 711 board members are female, compared to 9.1% in 2011. In 2012, only one company complies with 30% female directors in both executive and supervisory boards.

In 2011, the total percentage of women in senior management positions was 18.5% (compared to 17.8% in 2010) in organisations which signed the 'Charter to the Top'. Since the founding of the charter in 2008, it has been signed by 199 organisations, employing a total of 700,000 employees. The charter is developed by the Talent to the Top Foundation and is a public commitment, a code with agreements regarding the realisation of gender diversity at top and sub-top management levels. The foundation is funded by the Dutch government for the period 2009-2015. The Minister of Education, Culture and Science made it clear that she expects the 30% objective of women on the boards of companies to be achieved. The Ministry of the

290 Council of Europe, European Court of Human Rights (2012), Case No. 58369/10, 10 July 2012.
292 Netherlands, Law Gazette of the Kingdom of the Netherlands (Staatsblad van het Koninkrijk der Nederlanden) (2011), Wet van 6 juni 2011 tot wijziging van boek 2 van het Burgerlijk Wetboek in verband met de aanpassing van regels over bestuur en toezicht in naamloze en besloten vennootschappen, art. 166, 6 June 2011.
294 Netherlands, Law Gazette of the Kingdom of the Netherlands (Staatsblad van het Koninkrijk der Nederlanden) (2012), Besluit van 4 oktober 2012 tot vaststelling van het tijdstip van inwerkingtreding van de wet van 6 juni 2011 tot wijziging van boek 2 van het Burgerlijk Wetboek in verband met de aanpassing van regels over bestuur en toezicht in naamloze en besloten vennootschappen (Stb. 275), 12 October 2012.
In the Netherlands, the pension system consists of the state pension (AOW), supplementary collective pensions and private individual pension products. Supplementary pensions are also called 'occupational pensions'. A member of such a pension scheme builds up future pension rights each year equivalent to a fixed percentage of their salary. All members pay the same contribution. According to Statistics Netherlands, 59% of women over 65 years of age receive a supplementary pension, compared to 92% of men. In addition, the women who receive a supplementary pension generally get half the amount of money given to men. Younger generation women more often have a supplementary pension: in 2010, 27% of 75 to 80 year-old women with a partner received supplementary pensions compared to 45% of women aged 65 to 75. According to a PROGRESS peer review report, the career gap in the Netherlands has become smaller in recent decades. Because pensions are 'mainly deferred payments', the pension gap will decrease as a result of the diminishing career gap.

Regarding the gender pay gap: in 2010, the average annual income in the Netherlands was €50,000 for men and €28,000 for women. According to the study 'Emancipatiemonitor 2010', the average hourly gross wage of female employees in the private sector is 22% lower than that of men. In the public sector, this difference amounts to 15%. According to a study on the gender pay gap, three factors partly account for the difference. Firstly, working women are younger (on average) than working men and have less work experience, which has a negative impact on their wage. Secondly, women tend to work in lower-paid occupations and sectors. Thirdly, women tend to work part-time more often. The pace of career progression of employees who work part-time is often slower, and employees who work part-time are paid lower wages than their full-time counterparts. Statistics Netherlands reports that the gender pay gap is also caused by the fact that women are more often employed in sectors where lower wages are paid (for example in the culture, recreation and other services sector). Adjusted for other background characteristics, such as age, educational background, seniority and economic sector, the pay gap amounts to 9% in the private sector and 8% in the public sector. This adjusted pay gap remains unexplained. Janusch and Vlasblom state that "as pensions...

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are related to the total income earned in life, working fewer hours also lowers the build-up of pensions.\(^\text{308}\)

Statistics Netherlands furthermore reports in 2012 a gender pay gap for the self-employed without staff. The median income from own business in this group was more than €21,000 in 2010. The income of self-employed women without staff was 40% lower than male income. The number of working hours accounts partly for the difference. Among the full-time self-employed without staff, the gap is still one third. According to Statistics Netherlands, this gap is also due to self-employed women without staff working more often in sectors where wages are lower. Men are more often active in the construction and business services sectors, while women relatively often work in the culture and recreation sector.\(^\text{309}\)

E-Quality recommends addressing the occupational differences between men and women (for example by stimulating non-traditional school choices by girls and boys) as well as the impact of career interruptions and childcare to decrease the gender pay gap.\(^\text{310}\) Regarding the pension gap, E-Quality recommends, among other things, improving women's knowledge of pensions.\(^\text{311}\)

In line with the 'LGBT and Gender Equality Policy Plan of the Netherlands 2011-2015' presented by the Ministry of Education, Culture and Science on 31 August 2011\(^\text{312}\), two programmes will be developed to increase the labour market participation of women. According to the plan, the cabinet believes this increase is necessary because of the ageing population and expected shortages on the labour market. It also expects more women to become financially independent. One of the programmes is called the Talent Programme and focuses on more women at the top and flexibility in working hours. The second programme is called the Empowerment Programme and aims to tackle functional illiteracy of women and the empowerment of low-skilled, unemployed women.

Working parents are entitled to childcare allowance (kinderopvangtoeslag). This is a contribution to the cost of childcare. The childcare allowance system has been subject to some changes in 2012. Firstly, the allowance is linked to the amount of working hours of the partner working the fewest hours per week.\(^\text{313}\) Furthermore, the allowance will gradually be decreased over the coming years, especially for higher incomes. The changes to childcare allowance apply to all working parents, including the self-employed.\(^\text{314}\) The changes and proposed budget cuts caused some turmoil in the Dutch public discourse. According to the interest group for childcare, among others, women might stop working as a result of higher costs.\(^\text{315}\) The Minister of Social Affairs and Employment states in a letter to the House of Representatives that he does not expect the changes to the childcare allowance system to have an impact on the labour market participation of women, regarding the developments in the first three months of


2012. The labour market participation of women with young children is stable, according to the Minister. This position is challenged by different political parties (GroenLinks, for example) and the Federation Dutch Labour Movement (Federatie Nederlandse Vakbeweging, FNV) trade union. According to a report by Buitenhek Management & Consult, the number of working mothers is likely to decrease to a greater extent than stated by the Minister due to budget cuts in childcare allowance.

In December 2011, the Equal Treatment Commission launched a campaign about unequal treatment of women, especially in the labour market. The campaign was entitled 'Flauwekulexcuus' ('nonsense excuse'). The Equal Treatment Commission wants to encourage women and employers to discuss discrimination of women.

In 2012, the Equal Treatment Commission published a study on discrimination of pregnant women and mothers in the workplace. The study reveals that 45% of women who became mothers and worked and/or applied for a job in the period 2007-2011 experienced a situation that involved possible discrimination. The survey also reveals that women are not always aware of their rights and responsibilities. Many women who have experienced possible discrimination do not use the term 'discrimination' to describe it and even fewer report their experience. Based on interviews and surveys, the Equal Treatment Commission formulated a number of recommendations for employers, women and authorities. The first recommendation for authorities is to inform female employees about their rights and responsibilities, making them better able to recognise discrimination. The second recommendation is to encourage employees to report complaints about discrimination on the grounds of pregnancy or motherhood and to make it clear to employers that it is also prohibited to disadvantage employees because they have reported discrimination. In a letter to the House of Representatives, the State Secretary for Social Affairs and Employment reports that he will improve the availability of information about the rights and responsibilities of pregnant women and mothers on the national government website. Furthermore, the Secretary of State points to the important role of employers and employees representatives.

5.7 Religion/belief

According to a study on Islamophobia published in 2012 by the University of Amsterdam, there were 117 incidents at Dutch mosques between 2005 and 2010. The incidents include vandalism, the daubing of slogans on walls, arson, telephone threats and hanging a dead sheep on the building. In 99 of the incidents, the people who were responsible were not identified. Furthermore, the incidents took place relatively more often in smaller towns and villages. The research suggests that immigrants are more accepted in large towns, because immigrants and mosques have been part of the community for a longer period of time.

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316 Netherlands, Minister of Social Affairs and Employment (Minister van Sociale Zaken en Werkgelegenheid) (2012), Letter to the House of Representatives (Tweede Kamer der Staten Generaal) No. KO/2012/7989, 4 June 2012.
321 Van der Valk, I. (2012), Islamofobie en discriminatie, Amsterdam: Amsterdam University Press.
Between 2005 and 2010, there were 39 legal non-violent demonstrations against the presence of or plans to build a mosque. The Dutch Party for Freedom (PVV), the supporting party of the former government, posed parliamentary questions to the Minister of the Interior and Kingdom Relations concerning plans to build mosques, in the municipalities of Zoetermeer (October 2011) and Utrecht (June 2012) for example. In both cases the Minister answered that he could understand people’s concerns about changes in their neighbourhood, but that the building of a mosque does not necessarily cause the problems people fear. Furthermore, the Minister does not intend to prevent the building of those mosques. According to the Minister, ‘there is freedom of religion in the Netherlands’. The right to a place of worship forms part of this freedom. The government takes a neutral approach to religions and refrains from substantive judgments due to the principle of separation of church and state.

The Council of State issued its advice concerning a legislative proposal to ban all face-covering clothing in public spaces, including public buildings, educational institutions, hospitals and public transport, in February 2012. The Council of State questioned the necessity of introducing such legislation and issued the advice not to send the draft law to the House of Representatives. Despite the advice of the Council of State, the bill was sent to the House of Representatives and is to be discussed in a parliamentary debate. In the new coalition agreement of the People’s Party for Freedom and Democracy (VVD) and the Labour Party (PvdA), it is stated that clothing that covers the face will be banned in education, the care sector, public transport and in public authority buildings. The police will be authorised to order the removal of such clothing in public places, for the purposes of identification. Finally, individuals who wear face-covering clothing will be excluded from social assistance benefit.

The Dutch House of Representatives passed a law banning the ritual slaughter of animals on 28 June 2011. The legislation states that all animals must be stunned before being killed to prevent unnecessary pain. It was proposed by the ‘Partij voor de Dieren’ (Party for the Animals). The State Secretary for Agriculture and Foreign Trade found a compromise by
means of a covenant that aims to allow Jews and Muslims to perform ritual slaughter of animals while committing to prevent animal suffering (for example, there must be a veterinarian present during the slaughter and the animal must die within 40 seconds). The covenant was signed by the Dutch Association of Slaughterhouses and Meat Producers (‘Vereniging van Slachterijen en Vleesverwerkende bedrijven’), the Contact Committee Muslims and Government (‘Contactorgaan Moslims en Overheid’) and the organisation of the Jewish communities in the Netherlands (‘Nederlands-Israëlitisch Kerkgenootschap’). The covenant was opposed by the Dutch rabbinical council afterwards. The Senate (Eerste Kamer der Staten-Generaal) rejected the proposed law on 19 June 2012. This rejection was met with great relief by the Muslim and Jewish communities. The Party for the Animals plans to propose a new law concerning ritual slaughter and animal well-being.

Besides the debate on the ritual slaughter of animals, the SGP and women electoral candidates (see section 5.6), face-covering clothing and the building of mosques, there is a debate on registrars who refuse to marry same-sex couples (see section 5.8) and the discussion about male circumcision revived because of the German court ruling on circumcision in June 2012.

5.8 Sexual orientation/gender identity

Dutch registrars who refuse to marry same-sex couples have been criticised in the Netherlands for the last couple of years. There is ongoing debate in municipalities and the House of Representatives, according to a Council of State report published in 2012. A parliamentary majority voted in favour of two motions to end the refusal of some registrars on 5 July 2012. In reaction to these motions, the Minister of the Interior and Kingdom Relations stated that this would require a change in the law. Because of the caretaker status of the government, the Minister will not proceed with such a change and will leave this kind of decision to the next cabinet. In August 2012, the political party D66 submitted an initiative-law that makes it impossible for municipalities to appoint registrars who refuse to marry same-sex couples in the future. In the coalition agreement of 29 October 2012, the political parties VVD and PvdA state that new registrars who refuse to marry same-sex couples will no longer be appointed.

The Dutch State Secretary for Security and Justice submitted a draft law to the House of Representatives in August 2012 concerning transgenders. The new law would make it possible for transgender people to change their legal sex, without requirements such as...
sterilisation and genital surgery. According to the coalition agreement of October 2012, the requirement of sterilisation to change legal sex will soon be removed.

According to the LGBT and Gender Equality Policy Plan of the Netherlands 2011-2015 (Hoofdlijnen Emancipatiebeleid: vrouwen- en homo-emancipatie 2011-2015), the Dutch cabinet will continue to support schools in their responsibility for providing a safe school. One of the issues in the cabinet in 2012 was obligatory education on LGBT issues. The Minister of Education, Culture and Science informed the House of Representatives that the changes needed to include LGBT education in the Core Goals (Kerndoelen) (which are used by the government to enforce obligatory educational objectives in primary and secondary schools) have been delayed and will probably be made by August 2013. In the coalition agreement, VVD and PvdA made it clear that they also intend to ban schools from firing homosexual teachers and refusing students because of their sexual orientation. They state that the so-called 'single fact construction' will be taken completely out of the GETA.

On 3 April 2012, the House of Representatives passed a motion calling on the cabinet to force the national blood bank (Sanquin) to change its regulations and allow men who have sex with men (MSM) to donate blood. The Minister of Health, Welfare and Sport states in a letter to the House of Representatives that the motion cannot be passed due to 'safety risks'. The Minister will explore possibilities to allow MSM under certain conditions which safeguard the health of individuals who are recipients of blood.

According to the LGBT and Gender Equality Policy Plan of the Netherlands 2011-2015, in the Netherlands at least 25,000 children grow up in households with same-sex parents. The cabinet submitted a draft act to Parliament in the autumn of 2011 on lesbian parenthood. The draft act sets down that lesbian couples no longer need to go to court to establish the legal parenthood of two mothers. In June 2012, the State Secretary for Security and Justice concluded the draft act, which will be discussed and voted on by the House of Representatives later this year.

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the coalition agreement, the political parties VVD and PvdA state that this law will come into force soon.\footnote{347} Persecution for reasons of sexual orientation is included as grounds for asylum in national asylum legislation in the Netherlands, in application of Article 3 ECHR and the Refugee Convention (see also chapter 1).\footnote{348} Furthermore, Dutch ministers have discretion to give protection when they deem not granting asylum would result in exceptionally severe consequences, which is explained in the Aliens Circular.\footnote{349} According to research by Zembla, a Dutch current affairs television programme, the Minister of Immigration and Asylum Policy did not use this option of discretion in the period October 2010 to April 2012 to the same extent as former ministers over similar periods.\footnote{350} In 2012, the Council of State submitted preliminary questions to the Court of Justice of the European Union concerning the higher appeal cases of three homosexual asylum seekers (from Senegal, Uganda and Sierra Leone).\footnote{351} All three were not granted asylum by the Minister. The Council of State asks the EU Court of Justice to provide clarity about the European Qualification Directive concerning the minimum standards for the qualification of non-EU nationals as refugees.\footnote{352} In July 2012, the Minister of Immigration and Asylum Policy did grant asylum to the Ugandan asylum seeker, because it was pointed out that he had to hide his homosexuality in Uganda for his own safety, which is grounds for protection according to the Dutch policy.\footnote{353} The Minister made a commitment to the House of Representatives on 20 June 2012 to tighten up the rules to make it clear that LGBT asylum seekers cannot be sent home and be told to hide their sexual orientation or gender identity by the Dutch government.\footnote{354}

In 2012, there were no obstacles regarding freedom of expression and freedom of assembly of LGBT persons (including Gay Pride festivals) in the Netherlands. In the Dutch media, a lot of attention was paid to gay couples bullied out of their neighbourhoods. The Ministers for Immigration and Asylum Policy and of Security and Justice discussed the issue with mayors and other representatives of the cities in which these situations occurred. They agreed to use all current opportunities to prevent and stop the bullying of LGBT persons and to explore current possibilities such as the tackling of group defamation, the use of anonymous witnesses and evictions. The government will report on developments in the annual discrimination letter (voortgangsbrief discriminatie) to the House of Representatives in the autumn of 2012.\footnote{355}


\footnote{348} Netherlands, Minister for Immigration, Integration and Asylum (Minister voor Immigratie, Integratie en Asiel) (2012), Letter to the House of Representatives (Tweede Kamer der Staten Generaal), Parliamentary Document (Kamerstuk) No. 5710139/11, 21 March 2012.

\footnote{349} Netherlands, Aliens Circular (Vreemdelingencirculaire) 2000 C2/2.10.2.


\footnote{351} Netherlands, Administrative Jurisdiction Division of the Council of State (Afdeling Bestuursrechtspraak van de Raad van State) (2012), Case No. 201109928/1/T1, 18 April 2012.


\footnote{354} Netherlands, House of Representatives (Tweede Kamer der Staten Generaal) (2012), General meeting, 20 June 2012, Parliamentary Documents (Kamerstuk), No. 19637-1569.

\footnote{355} Netherlands, Minister of Security and Justice and Minister for Immigration, Immigration and Asylum (Minister van Veiligheid en Justitie en Minister voor Integratie, Immigratie en Asiel) (2012), Letter to the House of Representatives (Tweede Kamer der Staten Generaal) Parliamentary Document (Kamerstuk) No.27017/92, 6 March 2012.
5.9 Any other significant developments with implications for equality and non-discrimination, including case law relevant at the national level.

Police offices received 2,802 reports of discrimination in 2011. In 2010, this number was 2,538. According to the report, there may be several causes for this increase in the number of reports. One of the possibilities is an increase in discriminatory incidents. Another possible explanation is the improvement of registration practices, as stated in the report. There were 1,488 reports of incidents of a discriminatory nature (53.1%). The remaining 1,314 reports describe incidents pertaining exclusively to discriminatory expressions. Most of the incidents of a discriminatory nature relate to discrimination on the grounds of race or sexual orientation. The reports of discriminatory expressions are more often related to grounds of sexual orientation, religion/belief and antisemitism. There is no information available on multiple discrimination. 356

Compared to the complaints recorded by Dutch anti-discrimination facilities (see section 5.2), the police offices registered fewer reports of discrimination (6,391 complaints by the anti-discrimination facilities compared to 2,802 reports by the police). In Poldis 2011, the authors refer to the dark number when it comes to discriminatory incidents. In the first place, people often do not file a complaint when they experience discrimination. In the second place, police offices register discriminatory incidents to differing degrees. 357

Most of the reports both the police offices and the anti-discrimination facilities receive describe discrimination on the grounds of race. In contrast, the Equal Treatment Commission received most requests for opinions on the grounds of disability/chronic illness and age. Compared to police office registrations, the anti-discrimination facilities and the Equal Treatment Commission receive complaints and requests on more different grounds. All three organisations received more reports, complaints or requests in 2011 compared to 2010.

6. RACISM AND ETHNIC DISCRIMINATION

6.1 Council Framework Decision 2008/913/JHA on racism and xenophobia

See annex 6.1.

6.2 Racist and bias-motivated crime and violence

There are no new developments in official data collection on bias-motivated crimes to report. In the following, we report the data published in 2012 on complaints pertaining to racism and ethnic discrimination.

Annual reports
Several national Dutch organisations that counter discrimination published their annual report on records of discrimination and racism covering their activities in 2011.

The National Discrimination Expertise Centre within the Dutch Public Prosecution Service has not yet published its 2011 annual report. According to its most recent report from December 2011, there were 170 intakes concerning discrimination-related offences.\(^{358}\) This is an increase of 6% compared to the previous year.\(^{359}\)

The Equal Treatment Commission (Commissie Gelijke Behandeling) received over 700 requests for opinions (see chapter 5). 13% of these requests concerned possible racial equality violations, and in 7% of the requests an alleged distinction was made on the grounds of religion.\(^{360}\) The Equal Treatment Commission publicised 221 opinions in 2011; 22 on racial discrimination, four based on nationality and 17 on religious grounds.\(^{361}\)

The Dutch Complaints Bureau for Discrimination on the Internet (Magenta/Meldpunt Discriminatie Internet) received 1,039 complaints regarding 1,624 alleged situations of discrimination on the internet. The number of alleged situations is greater than the number of complaints because one complaint can refer to more than one discriminatory expression. Magenta differentiates between categories of discrimination and recorded 202 complaints about non-specified ethnic discrimination, 276 complaints of alleged discrimination of Muslims, 414 on antisemitism, 164 based on skin colour/race, 210 of Moroccans, 30 of Roma/Sinti/travellers, 24 of native Dutch and 22 regarding those of Turkish descent.\(^{362}\)

According to the report on police recordings, the level of recorded incidents of discrimination increased by 10% in 2011.\(^{363}\) After data cleaning, the number of reports amounts to 2,802.\(^{364}\) The authors of the report mention two possible reasons behind this increase: the increase in discrimination occurrences and/or a more thorough registration of occurrences by the police.

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Over 900 records (31%) refer to racial discrimination. The data suggest that verbal abuse is the most common type of discrimination (61%) and there are also a considerable number of records that refer to expressions associated with extreme right movements and/or white supremacy (17%).

The Centre for Information and Documentation Israel (Centrum informatie en documentatie Israel, CIDI) recorded 113 incidents of antisemitism in 2011. The number is almost 10% of the number of incidents in 2010, apparently due to a decline in hate mail, whereas vandalism and direct attacks on Jewish people increased in number.

The Dutch anti-discrimination agencies recorded more than 6,300 complaints in 2011. Most complaints refer to possible racial discrimination (45.7%). Other relevant records are those regarding religion (5.5%), nationality (3.9%) and antisemitism (2.1%).

Several local anti-discrimination agencies commissioned a study into the prevalence of discrimination among inhabitants of their city or province. In 2012, several such reports were published. According to a representative quantitative survey carried out in Rotterdam, 16% of the inhabitants of Rotterdam experienced discrimination in 2011. A large number, 40% of the incidents, refer to perceived racial/ethnic discrimination. A study in the province of Overijssel points out that 15% of all inhabitants experienced discrimination in the previous twelve months; 10% of these experiences relate to racial discrimination. The figures of the neighbouring province of Gelderland are similar. 16% of the inhabitants experienced discrimination and 10% of those experiences were related to racial discrimination. In the county of Limburg, discrimination was perceived by 17% of the population, 11% on the grounds of race. These reports are based on surveys carried out among members of a general, non-specific internet survey panel who live in the respective provinces. Per report, between 2,000 and 3,000 respondents participated in the surveys, which were carried out in December 2011, January 2012 and February 2012. The questions posed in the surveys were broad, pertaining to several societal domains and different discrimination grounds.

The anti-discrimination facility in The Hague conducted a study on people's perceptions of discrimination by collecting information on their opinion of exemplary situations and by asking whether they had experienced similar situations/discrimination. Because of the different set-up of the survey, the findings of this study do not directly correspond with previous studies. However, one of its main findings is that the groups under research (both native Dutch and immigrants) feel that the other groups are being privileged at their cost.

Other relevant studies on the prevalence of ethnic discrimination
In January 2012, a study on (racial) discrimination and Islamophobia was published, commissioned by the Euro-Mediterranean Centre for Migration and Development (Euro-Mediterraan Centrum voor Migratie & Ontwikkeling, Emcemo). The study shows that Muslims in the Netherlands face discrimination, prejudice and stigmatisation due to their

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373 Van der Valk, I (2012), Islamofobie en discriminatie, Amsterdam: Amsterdam University Press.
position as an ethnic minority. They have become increasingly vulnerable due to international tensions, Islamist terrorism and the war on terror. According to the study, these developments have had a negative impact on the social climate with regard to Islam and Muslims. Muslims are increasingly isolated, their behaviour is negatively interpreted and they are portrayed as a public enemy. Islamophobia is visible on the internet, both on extreme right websites and on mainstream forums.

**Political parties and groups**

The Dutch far right-wing Party for Freedom (PVV) launched a website in February 2012, through which people could file complaints regarding Eastern and Central European immigrants. Opponents, such as the former Minister of Foreign Affairs and members of the European Parliament, felt such an initiative caused further stigmatisation and was bad for international relations. The initiative influenced diplomatic relations between the Netherlands and Poland and led to several discussions and meetings between Dutch ministers, government and the ambassador of Poland, and to a meeting between the Dutch Prime Minister and the President of the European Parliament.

The anti-discrimination agencies considered the website stigmatising, however not punishable by law. The case was not brought to court.

### 6.3 Implementation of the Racial Equality Directive 2000/43

#### 6.3.1 Healthcare

Present legal and practical obstacles regarding healthcare faced by persons belonging to ethnic minorities including migrants

There are little recent data and research available on the use of healthcare by minorities or on bias, prejudice or stereotypes by professionals in healthcare towards ethnic minorities.

A study published by Pharos, knowledge and advisory centre on questions about the quality and effectiveness of healthcare for migrants, refugees and people with limited health literacy, among elderly immigrants suggests that their health and their perception of health are less favourable than those of native Dutch. This can primarily be attributed to their socio-economic status, but is also influenced by integration issues, history of migration and that the migration has not always turned out as the migrants initially envisaged. Additionally, the situation of refugees is further influenced by negative stress factors such as occurrences in their home country that led to their departure, worrying about and missing relatives still in the country of origin and insecurities about their legal status in the Netherlands.

The Pharos study also indicates large differences in the use of healthcare facilities between elderly migrants and native elderly persons. Migrants visit their General Practitioner more

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often than their native Dutch counterparts, even when differences in social status are taken into account. There are good examples of preventative care reaching migrants with health risks, such as diabetes or influenza vaccination, but this does not apply to the screening for breast cancer.

6.3.2 Employment – Present legal and practical obstacles regarding access to employment faced by persons belonging to ethnic minorities including migrants

Non-Western ethnic minorities are more often unemployed and less frequently have permanent contracts in comparison to native Dutch. In 2011, the unemployment level among native Dutch was 4.2%, 7.1% among first- and second-generation Western migrants and 13.1% among first- and second-generation non-Western immigrants.

Based on a study which measured discrimination directly, an academic paper addressed ethnic discrimination in the recruitment process. For this study, two fictitious job candidates – equal in all respects but their ethnic backgrounds – apply for the same job vacancy. There were no specific minority and majority candidates; their CVs were randomly assigned, with only the name being changed. The study explored whether employers make a distinction between these candidates. Both written and telephone applications were tested. Based on a large number of tests (1,342), the researchers were able to analyse more fine-grained distinctions: discrimination appears to play a larger role for migrant men than for migrant women; highly-educated migrants suffer less discrimination than those in the lower segments of the labour market; and discrimination more often occurs in jobs that involve customer contact.

Specifically, ethnic minority applicants had a 37% chance of being invited for a job interview, compared with 44% for the majority population. The difference was greater for jobs that involve customer contact (9 percentage points) than for others (five percentage points). It was higher among men (9 percentage points) than among women (five percentage points). While the different ethnic groups cannot be compared to one another due to the set-up of the research, the difference in chances between the individual ethnic group and the majority group can be compared. This shows that the difference is highest among applicants with a Surinamese background (8%), lowest among applicants with a Moroccan background (5%), with applicants with Antillian and Turkish backgrounds in between (7%).

Two Master's theses by VU University Amsterdam students suggested that recruitment agencies play an important role in 'passive' discrimination of minority groups. The theses were based on a study whereby 187 agencies were contacted by a fictitious employer with a request for candidates, specifically asking not to be provided with Moroccan, Turkish or Surinamese candidates. The students categorised the answers from the employment agencies, defining whether the agents went along with the request, showed doubt, expressed anger and/or actively expressed their understanding and support for the discriminatory request.

According to the results of the study, 56.7% of employment agents agreed to meet the request and expressed their understanding, another 16% expressed doubt, but went along with the

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request nonetheless. 12.3% of agents rejected the request with recourse to legal arguments and 2.7% of agents rejected the request by expressing their own anti-discriminatory attitude. 7% of agents proposed that the employer make the selection himself, and 5.3% did not make a decision. The studies did not report the results differentiated by ethnic groups.\textsuperscript{384}

The Netherlands Institute for Social Research (Sociaal en Cultureel Planbureau, SCP) found that recruitment agencies discriminate applicants based on their ethnic background. People with Turkish, Surinamese and Antillian backgrounds have lower chances of being offered a job than applicants with a Dutch native background. Moroccan-Dutch applicants have the same opportunities as Dutch applicants and are not discriminated against. When it comes to online applications, recruitment agencies did not discriminate. These conclusions are based on situation testing experiments in which actors with different ethnic backgrounds approached recruitment agencies looking for jobs. In total, 460 tests were carried out, with 20 different actors. While the native Dutch applicants had a chance of 46% of being offered a job, those with a non-Western immigrant background had a chance of 28% of being offered a job.\textsuperscript{385}

In response to the publication of the SCP report, the Federation of Private Employment Agencies (Algemene Bond Uitzendondernemingen, ABU) published the conclusions of a research project it commissioned. In this study, the situation testing carried out by the VU University students was replicated. In contrast with the VU University project, in these situation tests the names of actually existing companies were used in placing a discriminatory request, instead of using a fictitious company name. The results of the ABU study showed that 42.9% of employees of recruitment agencies went along with the discriminatory request of the potential employer.\textsuperscript{386} According to the ABU, this result indicates that recruitment agencies are becoming more aware of their responsibility to prevent discrimination, since the proportion is lower than that identified by the study carried out by the VU University students.\textsuperscript{387}

A survey on working people shows that 5.7% experienced discrimination in the past twelve months. 1% of working people researched experienced racial discrimination.\textsuperscript{388}

Another scientific paper addresses the effects of multiple stigmatised group memberships on employment discrimination.\textsuperscript{389} The ethnic prominence (EP), multiple minority status (MMS) and subordinate male target hypotheses were assessed for the combined effects of ethnic group membership (Arabic), sex, social status, and job type on hiring evaluations. Two correspondence tests in the field and two experimental studies in the lab and in the field were conducted. For the correspondence tests, in total 768 CVs or applications were sent in response to 192 vacancy advertisements, varying the applicants' ethnicity (Dutch vs Arab) and sex (male vs female). Employers' responses (positive and negative) were counted. For the experimental study, 55 recruiters (51% men) were asked to participate in a study for developing an assessment for measuring recruiter competence. In the experimental setting, participants were


\textsuperscript{386} Salomons, A. (2012), Mystery calling, Sint-Martens-Latem: Möbius.


\textsuperscript{388} Koppes, L. (2012), Nationale Enquete Arbeidsomstandigheden 2011: Methodologie en globale resultaten, Hoofddorp: TNO.

asked to rate different CVs (including again Arab and Dutch and male and female applicants) in relation to a fictional vacancy. Seven to ten days after this exercise, respondents were asked to fill in a biographic questionnaire and to respond to a prejudice measure.

The first two studies show evidence for the EP hypothesis when low status jobs were tested. The odds for rejection were four times higher for Arab than for Dutch applicants. Applicants' sex, socio-economic status and external client contact did not moderate findings according to the first study. The effect of applicants' ethnic group membership was further moderated by raters' motivation to control prejudice, according to the second study. The third study, the experimental study, showed evidence for the MMS hypothesis. There was a double jeopardy against Arab women who applied for high status jobs when recruiters' prejudice was controlled. The study findings show that discrimination in CV screening may depend upon the particular intersection of applicant, job and recruiter characteristics.  

6.3.3 Education – Present legal and practical obstacles regarding access to any level of education (from nursery through to university, vocational training and other forms of life-long or informal learning) faced by persons belonging to ethnic minorities, including migrants

Segregation in Dutch schools has been a widely discussed topic for years. The level of segregation is, on the one hand, mainly caused by freedom of education, which makes it possible for parents to choose the school they prefer for their child and which leads to so-called 'white flight': parents of native Dutch children choosing 'white' schools further away from their own neighbourhoods. On the other hand, the level of segregation is caused by the special position accorded to religious school in anti-discrimination law. This allows such schools to refuse pupils whose parents do not subscribe to the religious ideas of the school. This means that non-religious schools are more ethnically diverse than those based on traditional (Christian) belief systems. This system for education has been recently criticised.

The educational level of ethnic minorities falls behind that of native Dutch pupils. A study suggests that the difference in the educational level can be almost fully explained by the level of education of their parents. Discrimination is not believed to play a significant part in explaining the difference in educational level between ethnic and native groups.

A survey among students of intermediate vocational education (Middelbaar beroepsonderwijs, MBO) shows that psychological and physical aggression in schools has increased since 2004, as has the number of pupils who are bullied or discriminated against. The MBO has a two tier system. In the first tier, 8% of pupils experienced discrimination or bullying (no distinction was made between the two). In the second tier, 12% of pupils experienced such behaviour. The study suggests that, per semester, around 10,000 pupils are affected as a result of such

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aggression during their vocational training. Bullying and discrimination occurred to 4.4% of the pupils. There is a gender difference; male students suffer more frequently from such aggression than female pupils (5.2% or 3.1% respectively). In the survey, discrimination was grouped together with bullying and no distinction was made between specific kinds of grounds of discrimination, e.g. ethnic discrimination. In total, 21 institutions in 130 locations distributed the survey among a sample of their students, resulting in a response from over 23,000 participants. The survey was carried out in two phases: in January to February and in May to June.

The Supreme Court (Hoge Raad) ruled in December that universities and other educational institutions may not bar Iranian students and scientists from working or studying in areas related to nuclear activities. This measure was a part of the Sanction Regulation Iran 2007 (Sanctiregelning Iran 2007) in which the Dutch government strived to implement Resolution 1737 of the United Nations Security Council. According to the Supreme Court, the measure, which implies direct discrimination on the ground of nationality, is disproportional to the objective, namely preventing the dissemination of knowledge which can contribute to the nuclear activities of the Iranian state.

There has been political debate over the ruling by the District Court of The Hague that illegal students (from refugee backgrounds) who have a right to education, also have a right to internship or work experience. See section 1.8 for more information on this topic.

### 6.3.4 Housing

Present legal and practical obstacles to access to housing faced by persons belonging to ethnic minorities including migrants

The Annual Report on Integration by the Social and Cultural Planning Office (Sociaal en Cultureel Planbureau, SCP) shows that the housing situation of non-Western ethnic minority groups is less favourable than that of the native Dutch population. Both accommodation and the neighbourhood/environment are of a lesser quality. The older and first-generation minorities never reach the level of their native Dutch counterparts. The housing situation of second-generation migrants is of higher quality (more spacious, sufficiently equipped and maintained). All groups have equal rights to (social) housing. The difference is mostly caused by the economic situation and the amount of money people are able and willing to spend on housing.

In certain urban areas, new tenants are required to have income from work rather than social or health/incapacity benefits to be able to apply for social housing. This principle has been used in Rotterdam over the past five years and other municipalities are considering this.

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399 Netherlands, District Court The Hague (Rechtbank 's-Gravenhage), Case No. 403618 / HA ZA 11-2443, LJN: BW4736, 2 May 2012.
402 Netherlands, Law Gazette of the Kingdom of the Netherlands (Staatsblad van het Koninkrijk der Nederlanden), Wet bijzondere maatregelen grootstedelijke problematiek (Law on special measures for metropolitan problems), Volume 2005, No. 726.
According to a prior opinion from the Equal Treatment Commission, this regulation might result in indirect discrimination of ethnic minorities and people who have special needs and/or disabilities.\textsuperscript{404}

6.4 Any other significant developments with implications for racism and ethnic discrimination, including case law relevant at the national level.

Discussion on discrimination in Parliament
In April 2012, a so-called General Meeting (\textit{Algemeen overleg}) on discrimination with the Minister of Immigration, Integration and Asylum and MPs took place. Several issues related to discrimination were discussed, such as the launch of the PVV website for complaints about migrant workers from Central and Eastern European countries (see section 6.2), discrimination and racism by nightclubs (minorities who are denied entry), discrimination in refugee centres and discrimination by recruitment agencies. A follow-up meeting in April 2012 with the Minister and stakeholders led to an exchange of best practices and effective means to target discrimination by nightclubs. A follow-up meeting was also scheduled by the Minister to tackle discrimination by recruitment and temping agencies, but has not yet taken place.\textsuperscript{405}

The end of target group policies and the discussion on the use of ethnic registration
The Dutch caretaker cabinet (cabinet in charge between the fall of the former cabinet and the accession of the new cabinet) decided to abolish target group policies based on ethnicity, on the belief that general policies should be sufficient to reach all target groups, for instance in education. This means these groups lose their minority status that facilitates support to improve the social or economic position of ethnic minorities.\textsuperscript{406}

The RMO, the Dutch advisory board for the government, published a report suggesting that the government should refrain from making distinctions between the native Dutch ('\textit{autochtonen}') population and the non-native Dutch ('\textit{allochtonen}') population and the use of ethnic categories.\textsuperscript{407} They suggest this should be the logical consequence of the government’s decision to abolish policies based on (ethnic) target groups. Ethnic registration and categorisation is no longer considered justified according to the report, as the positive aim of the registration has been abolished.

Case law: racial discrimination and exclusion of ethnic minority groups in nightclubs
Nightclubs apply rules and regulations with regard to access and the admittance of guests. Some guests are denied access to clubs due to dress code, age or level of intoxication. It is also known that ethnic minorities are more often denied access to clubs than native Dutch guests, sometimes due to stigma and bias. Bouncers seldom admit that certain ethnic minority groups have little or no access and give other reasons as to why their members do not make it through the selection process. This complicates the possibilities of making a successful discrimination

\textsuperscript{403} Netherlands, Minister of the Interior and Kingdom Relations (\textit{Minister van Binnenlandse Zaken en Koninkrijksrelaties}) (2012), \textit{Letter to the House of Representatives (Tweede Kamer der Staten Generaal), 12 July 2012}.
\textsuperscript{404} Netherlands, Equal Treatment Commission (\textit{Commissie Gelijke Behandeling}) (2005), \textit{Huisvestingsbeleid van de gemeente Rotterdam, CGB advies 2005-03}, Utrecht: Commissie Gelijke Behandeling.
\textsuperscript{405} Netherlands, Minister of Immigration, Integration and Asylum (\textit{Minister van Immigratie, Integratie en Asiel}) (2012), \textit{Letter sent to House of Representatives (Tweede Kamer der Staten Generaal) No 0000387398}, 5 July 2012.
case against clubs. The policy of a nightclub in the city of Dordrecht has been tested by mystery guests and well documented by the anti-discrimination facility RADAR. Based on the result of two tests, RADAR asked the Equal Treatment Commission for a ruling on the policy of this nightclub. The Equal Treatment Commission investigated the case and concluded that racial discrimination had taken place. ⁴⁰⁸

7. PARTICIPATION OF EU CITIZENS IN THE UNION’S DEMOCRATIC FUNCTIONING

7.1 European Citizens’ Initiative

As mentioned in the Annual Report of 2011, the Ministry of the Interior and Kingdom Relations (Ministerie van Binnenlandse Zaken en Koninkrijksrelaties) commissioned an investigation into the necessary steps for implementation of the European Citizens’ Initiative (ECI) in mid-2011. Last year, the Dutch government worked on the certification of online systems as well as the verification of statements of support, and expected to complete the implementation of the ECI before 1 April 2012.\(^{409}\)

On 22 May 2012, the Ministry of the Interior and Kingdom Relations announced the implementation of the ECI starting 1 April and that all European citizens had the right to organise an ECI.\(^{410}\) The first initiatives were registered by the European Commission on 9 May 2012. However, the proposed legislation in which the ECI should be implemented has not yet been presented to the House of Representatives (Tweede Kamer der Staten-Generaal). The government, therefore, decided to take the necessary measures and issue a temporary regulation implementing ECI Regulation (EU) 211/2011. As a result, the ministry is authorised to issue certificates according to article 6 and 8 of the regulation and to coordinate the verification of ECI statements of support.\(^{411}\)

On its website, the ministry has published all relevant information regarding the ECI, including a guide book for citizens explaining the procedure for setting up an ECI.\(^{412}\)

The European Commission published a press release on 26 October 2012 announcing the green light for the first ECI: Fraternité 2020 – Mobility. Progress. Europe.\(^{413}\) The same week, the commission decided, by way of exception, to extend the deadline for present initiatives to 1 November 2013, because of the difficulties experienced by some organisations during the preparatory stage.\(^{414}\)

7.2 The right to vote: national-level trends

In June 2012, FORUM, the Institute for Multicultural Affairs, published a factsheet on voting rights in Europe. This factsheet provides an up-to-date overview of the right to vote and stand for election in the Netherlands, on different levels.\(^{415}\) All Dutch nationals aged 18 years or older (on the day of the election) and not disqualified from voting are entitled to vote and to

\(^{409}\) E-mail of the Netherlands, Ministry of the Interior and Kingdom Relations (Ministerie van Binnenlandse Zaken en Koninkrijksrelaties), Department Citizenship and Information Policy (Directie Burgerschap en Informatiebeleid), to Art. 1 of 29 November 2011.

\(^{410}\) Netherlands, Minister of the Interior and Kingdom Relations (Minister van Binnenlandse zaken en Koninkrijksrelaties) (2012), Letter sent to the House of Representatives (Tweede Kamer der Staten-Generaal) No. 2012-0000292914, 22 April 2012.

\(^{411}\) Netherlands, Minister of the Interior and Kingdom Relations (Minister van Binnenlandse zaken en Koninkrijksrelaties) (2012), Tijdelijk uitvoeringsbesluit verordening Europees burgerinitiatief, Regulation, 19 April 2012.


\(^{415}\) FORUM (2012), Factsheet stemrecht in Europa, Utrecht: FORUM.
stand for election to the Lower House. Dutch nationals residing abroad must be registered in the 'Voters outside the Netherlands' register which is kept in the municipality of The Hague. Residents of Bonaire, St. Eustatius and Saba who have Dutch nationality also have the right to vote and stand for election. Dutch nationals residing on Aruba, St. Maarten and Curaçao have the right to vote if they have lived in the Netherlands for at least 10 years or are employed in the public service of one of the three islands.416

Dutch nationals living abroad need to send a voter registration request to the Mayor and Aldermen of The Hague, to the head of the consulate responsible for the place of residence or to the representative of the Netherlands in Aruba, Curaçao or St Maarten. In the same request, they need to clarify whether they will vote by postal vote, by proxy or in person in the Netherlands.417 If a person is unable to vote, for example due to work, holiday or illness, they can designate another person to vote for them by proxy. To do so, voters have to fill in the authorisation agreement (onderhandse volmacht) on the voting card of the voter who is unable to vote. Alternatively, voters can request an authorisation form from their council and thereby be issued with a written authorisation (schriftelijke volmacht).418

Following the fall of the first Rutte cabinet, new parliamentary elections took place on 12 September 2012. In total, 9,462,223 voters participated in the election, casting 9,424,235 valid votes. 48,374 voters non-resident in the Netherlands registered to vote in the election. Of these, 40,493 used the postal vote option, 2,961 requested to vote by proxy and 4,920 were issued with a voting card to vote in person in the Netherlands. The electoral council publishes the outcome of the votes of voters residing in countries outside of the Netherlands separately in its election report, since they do not fall under one of the regional voting districts.419

According to research by ProDemos, the new Parliament chosen on 12 September 2012 has a less diverse representation than the previous one. Fewer women were chosen in the latest parliamentary elections (40.7% in 2010; 38.7% in 2012), and the number of representatives with a migrant background has also decreased (11.3% in 2010; 7.3% in 2012). The average age of the representatives is now 43, young in comparison to other European countries.420

### 7.3 The right to vote and stand as a candidate in municipal elections

In the period under review, only elections for the Lower House were held (on 12 September). Given that no municipal or European elections took place, no new information on the electoral participation of non-national EU citizens can be provided. Below we provide a diagrammatic overview of the right to vote in elections in the Netherlands,431 according to the FORUM Voting Rights in Europe Factsheet mentioned in the previous section.

<table>
<thead>
<tr>
<th>The right to vote in</th>
<th>Lower House</th>
<th>Upper House</th>
<th>Provincial Council</th>
<th>Water Boards</th>
<th>Municipal Council</th>
<th>European Parliament</th>
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416 FORUM (2012), *Factsheet stemrecht in Europa*, Utrecht: FORUM.
421 FORUM (2012), *Factsheet stemrecht in Europa*, Utrecht: FORUM.
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<tr>
<td>Dutch nationals</td>
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<tr>
<td>Dutch nationals residing outside the Netherlands</td>
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<tr>
<td>Non-national EU citizens</td>
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<td>no</td>
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<td>Yes</td>
<td>yes</td>
<td>yes</td>
</tr>
<tr>
<td>Third-country nationals</td>
<td>no</td>
<td>no</td>
<td>no</td>
<td>Yes</td>
<td>Yes, provided they have 5 years' legal residence</td>
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**Diagrammatic overview of the right to stand as a candidate in the Netherlands**
*(Based on FORUM Factsheet: Voting Rights in Europe, 2012)*

<table>
<thead>
<tr>
<th>The right to stand as a candidate</th>
<th>Lower House</th>
<th>Upper House</th>
<th>Provincial Council</th>
<th>Water Boards</th>
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<td>no</td>
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**7.4 Limitation of voting rights in case of disability**

In general, people with physical or mental disabilities are allowed to vote in the Netherlands. People with physical disabilities who are unable to vote independently are allowed to vote with the assistance of another person. This is the result of an exception stipulated in article J28 of the Voting Act (*Kieswet*). People unable to vote independently due to mental disability are not allowed to be assisted, since, in such a situation, they are considered to be unable to determine
their will independently. In general however, people with mental disabilities do have normal voting rights.

The Minister of the Interior and Kingdom Relations, Liesbeth Spies, announced at the beginning of August 2012 that she will appeal to institutions accommodating people with (mental) disability to ensure residents receive their voting cards on time. The Minister will also ask these institutions not to discard voting cards from this year's election. During previous elections, many voting cards belonging to people with disabilities were withheld or thrown away.

Although the voting right is a fundamental right in the Netherlands, people with visual impairment cannot always use this right. Viziris, a network organisation for and of people with visual impairment, reports that not only the reachability and accessibility of the polling station, but also the voting itself and the accessibility of information on the positions of the participating political parties are unsatisfactory. Viziris has asked its members to share their experiences regarding the reachability and accessibility of polling stations.

The Minister of the Interior and Kingdom Relations has launched an investigation into the creation of alternative voting ballots for people with visual impairment and for people with low literacy levels. In a letter to Parliament, the Minister reported that a number of alternative voting ballot designs are being tested. These ballots are also intended to be suitable to be sent to voters digitally to enable distance voting. In the recent parliamentary elections, the Minister publicly participated in one of the tests for the new alternative voting ballots, receiving considerable media coverage.

Commissioned by the Ministry of the Interior and Kingdom Relations, the Project Bureau Accessibility (Projectbureau Toegankelijkheid, PBT) has developed a checklist for polling stations to ensure accessibility for persons with physical disabilities. The list was developed to be used for the parliamentary elections on 12 September 2012. The checklist refers to the four categories of accessibility, namely communication (communicatie), accessibility (bereikbaarheid), enterability (betreedbaarheid) and usability (bruikbaarheid).

7.5 Developments in participatory democracy

In 2009, the Institute for Political Participation, the predecessor of ProDemos, and the Ministry of the Interior and Kingdom Relations, started a monitoring research project on citizen participation in local government. In 2012, the second report on this monitoring project was published, based on research carried out in 2011. The report is based on a digital survey among the 416 municipalities of the Netherlands, the 7 city districts of Amsterdam and the 14

422 Netherlands, Electoral Council (Kiesraad) (2012), Hulp bij stemmen, web page, available at: www.kiesraad.nl/artikel/hulp-bij-stemmen-tk
sub-municipalities of Rotterdam, and covered topics such as formal participation arrangements, referendums, public consultation and organisational arrangements pertaining to citizen participation.429

The results of the survey show that municipalities are increasingly likely to formally enshrine citizen participation in policy documents, but that citizens seem to make less use of participatory opportunities. Public consultation meetings (inspraakavonden) and topical discussion meetings (themabijeenkomsten) are the most popular means of organising citizen participation in the local policy-making process. Municipalities use their websites and local newspapers to communicate about consultation meetings. Increasingly, social media and the internet are used to reach citizens. 42.5% of municipalities do not do anything special to reach difficult target groups despite the existence of such target groups in the municipality. Finally, the impact of budget cuts on participatory arrangements in municipalities is low, as in most municipalities the budget assigned to these kinds of activities remains stable.430

The Association of Dutch Municipalities (Vereniging van Nederlandse Gemeenten, VNG) collects good practices for municipalities in the area of participatory democracy and citizen inclusion in policy making.431 In the first nine months of 2012, four different good practices from the municipalities of Emmen, Lansingerland, Maassluis and Venlo were included in the database. These practices include a handbook on interactive policy-making, two policy programmes and one specific citizen outreach project.432 Other municipalities can use the information provided by the VNG to improve their own participatory practices and efforts in the area of citizen outreach.

7.6 Any other significant developments with implications for the participation of EU citizens in the democratic functioning of the Union, including case law relevant at the national level.

There is currently no new relevant information to report.

8. ACCESS TO EFFICIENT AND INDEPENDENT JUSTICE

8.1 Courts

On 12 July 2012, the Senate (Eerste Kamer der Staten-Generaal) passed a law that restructures the Dutch judiciary. The re-organised judiciary will have 11 (before: 19) Courts (Rechtbanken), 4 (before: 5) Courts of Appeal (Gerechtshoven), 1 Supreme Court (Hoge Raad) and 2 specialised tribunals. The new structure will take effect from 1 January 2013.

The main purpose of this operation is to ensure the quality and efficiency of the judiciary. After discussion in the House of Representatives (Tweede Kamer der Staten-Generaal), an amendment was adopted to split the largest court to be formed. Thus, two smaller courts are created, aimed at facilitating citizens’ access to justice, among other things.\(^{433}\)

In 2011, the Annual Report mentioned the governmental plans to raise court fees and to introduce minimum penalties. Due to the fall of the government in April 2012, this and similar plans aimed at restructuring some of the legal system were either cancelled or frozen. The new government will decide on further steps.\(^{434}\)

On 1 October 2011, a new working method was introduced for the administrative law sections of the courts, called ‘new court proceedings’ (nieuwe zaaksbehandeling).\(^{435}\) Court proceedings are shortened and the judge tries to find a solution rather than legal elements for a verdict. This requires the judge to be more active and interact with both parties. As a result of this new way of working, proceedings should be shorter and better suited to the needs of the parties, also focusing more on dispute resolution.

On 1 July 2012, the law on prejudicial questions came into force.\(^{436}\) This law enables the courts to ask the civil section of the Supreme Court legal questions under certain conditions. Notably, the answer to the prejudicial question should have an effect on a larger number of similar cases with the same legal question. Similarly, a legal question can arise in a combined claim by many claimants (massa vordering). The law is expected to shorten procedures and to strengthen the unity of law.

The Ministry of Safety and Justice proposed a change to the Advocate Law (Advocatenwet).\(^{437}\) The Dutch Bar Association (Nederlandse Orde van Advocaten, NovA) will have an independent supervisory board whose members are not advocates. They will be appointed by the Minister of Safety and Justice. Though independent, the supervisory board will be a body of the Bar Association. A second proposal changes the complaints procedure against bar members. Plaintiffs will have direct access to a disciplinary body, bypassing the dean of a local

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\(^{433}\) Netherlands, Senate (Eerste Kamer der Staten Generaal) (2012), Motie-Beuving (PvdA) c.s. over een meer gematigde vorm van schaalvergroting in Oost-Nederland (EK 32.891, G), 3 July 2012.


\(^{436}\) Netherlands, Law Gazette of the Kingdom of the Netherlands (Staatsblad van het Koninkrijk der Nederlanden) (2012), Besluit van 18 april 2012 tot vaststelling van het tijdstip van inwerkingtreding van de Wet prejudiciële vragen aan de Hoge Raad, Volume 2012, No. 166.

\(^{437}\) Netherlands, Minister of Security and Justice (Minister van Veiligheid en Justitie) (2012), Herziening toezicht advocatuur, Press Release, 6 July 2012.
bar. An administrative fee has to be paid. According to the Dutch Bar Association and the Council of State, there are no good reasons for changing the supervisory structure and it will diminish the independence of advocates. The Council of State advised the government to reconsider the proposal. Despite this advice, the Council of Ministers (Ministerraad) decided to send the legislative proposal to Parliament.  

8.2 Legal standing (locus standi)

Locus standi as such is a rarely used term in Dutch law. A comparative study published in August 2012 by the European Parliament gives an overview of the legal standing/locus standi of selected legal systems, among them the Netherlands. The authors of the Dutch section draw attention to developments in administrative law. In 2010, the temporary Crisis and Recovery Act (Crisis- en herstelwet, Chw) came into force. The Chw shortens legal procedures in spatial planning, making it possible to execute plans faster. Its purpose is to prevent building companies and other companies from bankruptcy during the economic crisis, thus saving jobs and strengthening the economic structure. The Chw introduces the principle of relativity in administrative law. It is not possible to appeal against a decision if the legal norm a plaintiff uses does not protect their interest. For an example, see the case law annex.

The principle of relativity was proposed as a general principle in administrative law. It is one of the changes in the legislative proposal for the alignment of administrative procedures (Wet aanpassing bestuursprocesrecht). The legislative proposal was accepted by the House of Representatives on 27 March 2012 and is now being considered by the Senate.

There is no consensus on the extent to which the relativity principle may also influence the possibilities of interest groups appealing against decisions. An overview of arguments was given in the thesis published on 7 May 2012 by S.M.E. Hoffer and N.T. Molina Espeleta. The authors addressed whether the principle of wide access to justice in the Aarhus convention may be affected by the proposed law.

In Dutch law, amicus curie is unknown. In 2011, the Supreme Court of the United States opened the case of Mrs Kiobel against Royal Dutch Petroleum (Royal Dutch Shell). One of the legal issues is whether a company in the USA can be prosecuted for human rights.

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438 Netherlands, Ministry of Security and Justice (Ministerie van Veiligheid en Justitie) (2012), Memo. Voorstel van wet tot aanpassing van de Advocatenwet c.a., 10 July 2012.
439 Eliantonio, M., Backes, C., Van Rhee, C., Spronken, T. and Berlee, A. (2012), Standing up for your right(s) in Europe. A Comparative study on Legal Standing (Locus Standi) before the EU and Member States' Courts. Study, Strasbourg: European Parliament.
441 On 6 July 2012 the Chw was prolonged: Netherlands, Minister of Infrastructure and the Environment (Minister van Infrastructuur en Milieu) (2012), Kamer akkoord met verlenging werking Crisis- en herstelwet, news release, 6 July 2012.
445 United States, Supreme Court (2012), Esther Kiobel et al vs Royal Dutch Petroleum Co. et al., Docket Nr. 10-1491.
violations abroad. The Dutch, British and Northern Irish governments filed an amicus curie brief at the Supreme Court in support of Royal Dutch Petroleum. The brief raised questions in Dutch Parliament. According to the government, the amicus curie brief served a general purpose. It has concerns that US law may be applicable for activities that are not connected or linked to the United States. In the government's view, no basis can be found in international law for extra-territorial jurisdiction of US law. Dutch citizens and companies may be affected by this ruling. The House of Representatives asked the government in a motion not to intervene in this case and not to support Shell. However, in July 2012 another amicus curie brief was filed by the government, this time not in support of either party.

8.3 Technical tools aimed at facilitating access to justice through innovative solutions

In his letter to Parliament on 31 October 2011, the Minister of Safety and Justice introduced the innovation agenda for the judiciary. He announced that the Ministry in cooperation with the Council for the Judiciary (Raad voor de Rechtspraak) will take steps to make it possible for all civil and administrative procedures to be started digitally from 2015 onwards.

Starting in 2012, on a project basis, the Council for the Judiciary will launch so-called e-courts (e-kantongerechten), according to the annual plan of the Council for the Judiciary. These are not be confused with the private initiative e-court reported about in the 2011 annual report. In a digital procedure, parties may ask the court for a decision, which it then has 6-8 weeks to reach. If this project is successful, the Council for the Judiciary will use it as a model to simplify civil procedures for the whole judiciary. In 2011, we reported on a similar private initiative also called e-court. With this step, the government appears to adopt the idea. The general idea is to make it easier for citizens to apply to the courts and to shorten procedures.

8.4 Non-judicial institutions

On 2 October 2012, the National Human Rights Institution officially opened. The Commission for Equal Treatment will be incorporated into the new institute, transferring its tasks to the Netherlands Institute for Human Rights (see section 5.1).

On 11 June 2012, Art.1, the national knowledge centre on discrimination, and the regional anti-discrimination facility RADAR signed a partnership agreement. See section 5.1 for more information.

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447 Netherlands / United Kingdom, National Governments (2012), Brief amici curiae of Governments of the United Kingdom of Great Britain and Northern Ireland and The Kingdom of The Netherlands as amici curiae in support of the Respondents, 3 February 2012. In case: Supreme Court of the United States, Kiobel vs Royal Dutch petroleum, Docket No. 10-491.
448 Netherlands, Minister of Foreign Affairs (Minister van Buitenlandse Zaken) (2012), Letter sent to House of Representatives (Tweede Kamer der Staten Generaal), Parliamentary Document (Kamerstuk) 5714667/11, 31 October March 2011.
449 Netherlands, Minister of Security and Justice (Minister van Veiligheid en Justitie) (2012), Wetsvoorstel verhoging griffierechten: innovatieagenda en impactanalyse, Letter sent to House of Representatives (Tweede kamer der Staten Generaal), No.5714667/11, 31 October March 2011.
450 Netherlands, Netherlands Institute for Human Rights (College voor de Rechten van de Mens) (2012), Opening College voor de Rechten van de Mens groot succes, news release, 4 October 2012.
An article by Van Gerven-Mandjes, published in the bulletin of the Netherlands Committee of Jurists for Human Rights (Nederlands Juristen Comité voor de Mensenrechten, NJCM), gives an overview of the situation concerning national prevention mechanisms (NPM) under the Optional Protocol to the Convention against Torture (OPCAT).\(^{452}\) The article is based on the author's Master's thesis. The Netherlands will have multiple NPMs. No new body will be established; instead, existing supervising organisations will jointly form the Dutch NPM. The Inspectorate for Implementation of Sanctions (Inspectie voor de Sanctietoepassing, Ist) will be the coordinating body. The others are the Council for the Administration of Criminal Justice and Protection of Juveniles (Raad voor Strafrechtstoepassing en Jeugdbescherming, RSJ), the Healthcare Inspectorate, (Inspectie voor de Gezondheidszorg, IGZ), the Public Order and Safety Inspectorate (Inspectie Orde en Openbare Veiligheid, IOOV), the Commission for Comprehensive Supervision of Repatriation (Commissie Integraal Toezicht Terugkeer, CITT), the Supervisory Commission for Custodial Institutions (Commissie van Toezicht Justitiële Inrichtingen), the Supervisory Commission for Police Cells (commissies van toezicht politiecelen), the Supervisory Commission for Detention Cells, Royal Netherlands Marechaussee (commissie van toezicht detentieplaatsen, Koninklijke Marechaussee). The National Ombudsman (Nationale Ombudsman) has a status as observer. Van Gerven-Mandjes points out that the proposed organisations do not all meet the standards of OPCAT and that for certain situations there are no sufficient provisions. She recommends that government and Parliament take appropriate steps to meet the standards of OPCAT.

For ratification of the Convention on the Rights of Persons with Disabilities, see chapter 5.

8.5 Any other significant developments with implications for access to justice, including case law relevant at the national level.

In a ruling on 13 April 2012, the Dutch Supreme Court decided that the UN is entitled to immunity from jurisdiction and that consequently Dutch courts have no competence to hear plaintiffs insofar as it is directed against the UN. The plaintiffs in this case were the foundation 'Mothers of Srebrenica' et al. The UN had successfully used article 103 and 105 of the UN Charter.\(^{453}\)

The judiciary has standards for lengths of proceedings (doorlooptijdennormen). It identifies 35 types of procedures. The starting point is that the majority of procedures have to be closed within a certain period of time. There may be groups of procedures that take longer due to complications. With a given standard of 85%, there is room for 15% of procedures to take longer. Thus, there is room to take more time in certain cases. Though there has been improvement in the last two years, only half of the 35 procedure types within the system meet the standards.\(^{454}\)

From 2012, the judiciary will have new standards for lengths of proceedings. Following earlier evaluations of the judiciary, the third and fourth best-performing courts will be the points of reference for the others. For the Courts of Appeal, the point of reference will be the best-performing Court of Appeal. From 2012, there will be 14 new types of settlements, each with its own norms, such as procedures concerning custody for instance. The new norm states that


\(^{453}\) Netherlands, Supreme Court (Hoge Raad) (2012), Case no. 10/04437, LJN: BW1999, 13 April.

85% of cases have to be dealt with within one year. This norm is feasible given that some courts already meet this norm.\(^{455}\)

On 5 November 2012, a new government was formed. It will withdraw law proposals concerning court fees and minimum penalties in certain penal cases. In our 2011 report, we described these proposals, which caused debate among Dutch society.\(^{456}\)

On 1 January 2013, a law will enter into force abolishing terms of limitation for crimes that are punishable by more than 12 years’ imprisonment and for serious sex crimes against minors. The terms of limitation for crimes that are punishable by more than 8 years’ imprisonment are extended to 20 years.\(^{457}\)

On 6 November 2012, the Senate asked the Council of State to provide information concerning European policies. This is a provision of the Law on the Council of State. The Senate observes that since the economic and financial crisis in Europe, many inter-governmental and national measures were taken. These concern budget discipline, macro-economic supervision and supervision of the economic sector. Now new, possibly far-reaching policies are proposed towards further economic, budgetary and political European integration. The Senate recognises the urgent need to combat the crises but asks whether there is enough democratic embedding at national and European level, especially in cases when sovereignty is transferred.\(^{458}\)

On 14 December, judges from the Leeuwarden Court of Appeal published a manifesto. They declared their concerns about the way the judiciary is organised, the independent position of judges and the quality of the judiciary. The justices see a gap between the Council of the Judiciary (Raad voor de Rechtspraak) and the daily legal practice, they criticise the way the members of the Council are appointed and they point out that the judiciary is more and more behaving like a company. As a result, according to the judges, the judiciary is reduced to a product that is managed based on production quota and finances. More work must be done with less financial means. Instead of quantity the justices pledge to focus on quality.\(^{459}\)

According to the writers of the manifesto it was supported by hundreds of judges throughout the country. During an intervention in Parliament, the Secretary of State for Security and Justice said that there are no financial problems for the Judiciary at the moment. He acknowledged the importance of a good judiciary. The State Secretary saw the manifesto as a challenge for the Council for the Judiciary to enter into dialogue with the judges.\(^{460}\)


\(^{460}\) Netherlands, House of Representatives (Tweede Kamer der Staten Generaal) (2012), Proceedings, 18 December 2012.
9. RIGHTS OF VICTIMS OF CRIME

9.1 Legal developments relating to the rights of victims of crime

On 1 September 2012, the Act on the extension of the right to speak in court for victims and next of kin during criminal procedures (Wet tot wijziging van het Wetboek van Strafvoeding ter uitbreiding van het spreekrecht van slachtoffers en nabestaanden in het strafproces) came into force. This act extends the categories of persons entitled to speak in court during criminal procedures. The right to speak is extended to any family member with close family ties to the deceased victim. Moreover, the right to speak is extended to parents or guardians of children under age who are not able or too young to speak for themselves.

A legislative proposal to amend the Code of Criminal Procedures was sent to Parliament by the Ministry of Security and Justice on 7 June 2012. The proposal makes it possible to seize the property of a suspect on behalf of the victim. The state can seize property when the victim has suffered damage and it is likely that the suspect will be convicted of a crime of the fourth category. In the Dutch criminal system, fines are categorised into six different categories. Every offence and crime is placed in one of these categories.

9.2 Institutional developments concerning victims

There are no substantial institutional developments to report in the reporting period concerning victims of crime. Some new information has become available regarding the activities carried out by the organisations concerned. This information is reported in the following.

In 2011, the Victims in the Picture (Slachtoffer in Beeld, SIB) project received 1,200 requests for mediation, 11% more than the previous year, according to the annual report published in July 2012. The project facilitates contact between victims and offenders. SIB is a non-state organisation, appointed by the Ministry of Justice and Security in 2007 to arrange contact between victims and perpetrators. A professional mediator who adopts a neutral position supervises the process. Contact between a victim and a perpetrator is always voluntary and both parties have to agree to the mediation. According to the experiences of SIB, young perpetrators especially show remorse and offer apologies in a personal meeting with victims.

The Annual Report of the Violent Offences Compensation Fund (Schadefonds Geweldsmisdrijven), published in March 2012, reports that victims of violent offences received an average of €2,380 compensation in 2011. In total, the fund paid out €10.4 million in

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461 Netherlands, Law Gazette of the Kingdom of the Netherlands (Staatsblad van het Koninkrijk der Nederlanden), Wet van 12 juli 2012 tot wijziging van het Wetboek van Strafvoeding ter uitbreiding van het spreekrecht van slachtoffers en nabestaanden in het strafproces, Volume 2012, No. 345.
462 Netherlands, Ministry of Security and Justice (Ministerie van Veiligheid en Justitie) (2012), Senaat stemt in met spreekrecht, news release, 10 July 2012.
compensation that year.\textsuperscript{467} The fund offers financial support to people who have fallen victim to violent crime during which they suffered serious injuries. It is part of the Ministry of Security and Justice but acts as an independent body (zelfstandig bestuursorgaan). The fund pays one-off compensation for emotional damage inflicted on victims and for material damage on account of injuries, such as medical expenses and loss of income.\textsuperscript{468}

In May 2012, the Victim Support Fund (\textit{Fonds Slachtofferhulp}) set up a website and a smartphone app to guide victims to the right organisation for support.\textsuperscript{469} The Victim Support Fund is a private fund that finances organisations and projects in the field of prevention of (repeated) victimisation, promotion of expertise, provision of direct assistance for victims, innovation of assistance practices, contacts with fellow sufferers, lobbying, influencing and awareness-raising. The fund raises money from private individuals and businesses.\textsuperscript{470}

9.3 Developments with regard to the rights of victims of interpersonal violence in their social proximity: domestic violence, stalking, sexual child abuse

A domestic violence and child abuse reporting code (\textit{Verplichte meldcode huiselijk geweld en kindermishandeling}) was sent to Parliament by the Ministry of Health, Welfare and Sports.\textsuperscript{471} See section 4.1.1 for more information.

The Advice and Support Centres on Domestic Violence (\textit{Advies- en steunpunten Huiselijk Geweld}) and the Advice and Report Centres for Child Abuse (\textit{Advies en Meldpunt Kindermishandeling}) launched a national phone number and address on 1 January 2012. With one access point, it is easier for victims to find help and for professionals to report their suspicions of abuse. Secretary of State Veldhuijzen van Zanten provided resources for preventing and dealing with domestic violence and child abuse amounting to €22 million in 2012.\textsuperscript{472} This budget is used to support the work of the advice centres. Furthermore, a publicity campaign was launched with this budget in which victims of domestic violence and child abuse, bystanders and the perpetrators themselves are encouraged to seek advice and help.\textsuperscript{473}

The Ministry of Security and Justice has issued a legislative proposal to keep sex offenders under longer surveillance after their prison sentence has ended. This proposal is in consultation.\textsuperscript{474}

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\textsuperscript{471}Netherlands, Central Government (\textit{Rijksoverheid}) (2011), \textit{1 loket met 1 telefoonnummer voor geweld in huiselijke kring}, news release, 14 December 2011.
\end{flushright}
9.4 Developments with regard to the rights of victims of trafficking or other severe forms of labour exploitation

The most prominent non-governmental organisation active in the area of rights of victims of trafficking or labour exploitation is CoMensha, the Anti-Trafficking Coordination Centre. Its core task is to act as a national registration point for victims of trafficking. CoMensha oversees the first intake and reception of victims, mostly after filing a report with the police, and guides them in finding the support they need. CoMensha also coordinates local networks against human trafficking.

CoMensha registers the number of victims of human trafficking and the numbers reported to the police. Not all incidents of human trafficking are known to CoMensha; it is estimated that only about half of victims file a report with the police. Between 1 January and 30 August 2012, in total 622 people, of which 529 were women and 93 men, reported to CoMensha that they were victims of human trafficking. These victims asked for advice (72), and in 180 cases shelter was provided to victims. The remaining cases were simply registered.

The Minister of Justice and Security proposed raising the maximum penalty for human trafficking from 8 to 12 years. A legislative proposal was sent to Parliament in February 2012.\(^{475}\)

In May 2012, the Minister of Immigration, Integration and Asylum proposed changes to the procedures concerning the protection of victims of trafficking who cooperate with the Public Prosecution Service. Currently, victims of human trafficking have three months after filing a report with the police to decide whether they want to cooperate with the Prosecution Service in a trial against their traffickers. During this period, victims are provided secure shelter, health insurance and subsistence money. Once victims decide to press charges, they receive temporary residence permits under the condition that they continue to cooperate with the Prosecution Service. The temporary residence permit is initially issued for one year; it can be extended to a maximum of three years as long as the trial lasts.\(^{477}\) In a letter to Parliament, on 11 May 2012, the Minister proposes that these provisions should no longer be applicable to victims who are out of the human trafficking situation for longer than three months. The Minister expects that this will prevent false claims. The National Rapporteur on Human Trafficking has severe concerns about this measure. According to the rapporteur, the proposal is a violation of Article 13 of the Council of Europe Convention on Action against Trafficking in Human Beings.\(^{478}\)

9.5 Developments with regard to the rights of victims of bias-motivated crime

The infrastructure for the support of victims of bias-motivated crime provided by anti-discrimination facilities, the police and the Public Prosecution is still active.

In 2012, the head of the Public Prosecution, Mr H.J. Bolhaar, stressed the importance of extra

\(^{475}\) CoMensha (2012), Maandelijkse rapportage cijfers (mogelijke) slachtoffers mensenhandel, Amersfoort: CoMensha.
\(^{476}\) Netherlands, Minister of Security and Justice (Minister van Veiligheid en Justitie) (2012), Verzamelwet Veiligheid en Justitie 2011 Strafrecht.
attention being paid to victims of homophobic crime in a letter to all local prosecutors.\textsuperscript{479} In the letter, he asks local public prosecutors to contact a representative of the local COC organisation, representing the interests of LGBT people in the Netherlands, and invite the representative to attend meetings of the Regional Consultation Platform on Discrimination (\textit{Regional Discriminatie overleggen}, RDO).\textsuperscript{480} The scope of the Hate Crimes project, supported by the website www.hatecrimes.nl, has been extended to a national outreach, after a test period on a local scale.\textsuperscript{481} The website can now permanently be used to report hate crimes directly to the police.

\section*{9.6 Developments concerning criminal victimisation surveys}

The annual Integral Security Monitor (\textit{Integrale Veiligheidsmonitor}, IVM) 2011, published on 1 March 2012, shows that people in the Netherlands feel less unsafe than before, that the level of common crime victimisation stayed the same and that contentment with the police has increased.\textsuperscript{482} Since 2008, the IVM conducts large-scale research on the public perception of security and victimisation, including quality of life in neighbourhoods, problems in neighbourhoods, disrespectful behaviour, criticism of local security measures and police performance.

A project has been set up to improve the IVM.\textsuperscript{483} This will lead to a shorter questionnaire and more extensive fieldwork carried out by a specialised fieldwork agency. More in-depth interviews will be held. One question added to the questionnaire concerns sexual preference. The question has been added to make it possible to research the connection between victimisation and sexual preference.\textsuperscript{484} There are no other national monitors on victimisation in the Netherlands.

\section*{9.7 Any other significant developments with implications for the rights of victims of crime, including case law relevant at the national level.}

On 6 June 2012, the Secretary of State for Security and Justice was officially presented with the so-called Medical Paragraph (\textit{Medische Paragraaf}).\textsuperscript{485} The Medical Paragraph is a protocol leading to quicker and easier settlement of personal injury claims for crime victims.\textsuperscript{486} The Medical Paragraph is the outcome of cooperation between insurance companies, lawyers and doctors. Its goal is to make it easier for victims to claim compensation in criminal procedures.

\begin{itemize}
\item \textsuperscript{479} Netherlands, Board of Procurators General- Public Prosecution Service (\textit{College van Procureurs-Generaal - Openbaar Ministerie}) (2011), Letter No. PA/B&S/16125, 22 December 2011.
\item \textsuperscript{480} The Regional Consultation Platform on Discrimination (\textit{Regional Discriminatie overleggen} RDOs) were formed in each police region in 2007, as a cooperation between regional police forces, the Public Prosecution and antidiscrimination agencies. In these consultations the partners exchange information on hate crimes and coordinate their efforts.
\item \textsuperscript{482} Statistics Netherlands (\textit{Centraal Bureau voor de Statistiek}) (2012), \textit{Integrale Veiligheidsmonitor 2011}, The Hague: Centraal Bureau voor de Statistiek.
\item \textsuperscript{483} Netherlands, Ministry of Security and Justice (\textit{Ministerie van Veiligheid en Justitie}) (2012), 'De Integrale Veiligheidsmonitor wordt verbeterd', news release, 7 May 2012.
\item \textsuperscript{484} Bureau Veiligheidsmonitor (2012), \textit{Veiligheidsmonitor 2012}, The Hague: Bureau Veiligheidsmonitor.
\item \textsuperscript{486} Netherlands, Ministry of Security and Justice (\textit{Ministerie van Veiligheid en Justitie}) (2012) ‘Slachtoffer beter geholpen met snellere en soepelere afhandeling na ongeval’, news release, 6 June 2012.
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