

european network against racism

ENAR Shadow Report 2006

ENAR SHADOW REPORT 2006

RACISM IN THE NETHERLANDS

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National Bureau Art.1

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Racism is a reality in the lives of many ethnic and religious minorities in the EU. However, the extent and manifestations of this reality are often unknown and undocumented, especially in official data sources, meaning that it can be difficult to analyse the situation and to establish solutions to it. Even where there is extensive official data, NGOs offer a vital alternative data source that comes directly from experiences of those individuals and communities experiencing racism on a daily basis.

The ENAR Shadow Reports are produced to fill the gaps in the official and academic data, to offer an alternative to that data and to offer an NGO perspective on the realities of racism with the EU and its Member States. NGO reports are, by their nature, based on many sources of data, official, unofficial, academic and experiential. This allows access to information which, while sometimes not backed up by the rigours of academic standards, provides the vital perspective of those that either are or work directly with those affected by the racism that is the subject of the research. It is this that gives NGO reports their added value, complementing academic and official reporting.

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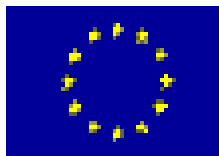


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1. Executive summary

In 2006, Art.1 was established as a new national association to prevent and combat discrimination. The National Bureau of Art.1 (the former National Bureau against Racial Discrimination – LBR) supports its members in their activities, and functions as a national centre of expertise. The services that are offered by its members, the Anti Discrimination Agencies or ADA's, at local and regional levels include: support and advice on making complaints, the organisation of projects, the provision of information, and the registration of complaints and reports of discrimination. As of 2006, the national government provides six million euros yearly to expand and fund the network of local and regional ADA's, so that this network will be nation-wide.

The Ministry of Social Affairs and Employment has commissioned an in depth monitoring report on racial discrimination in the labour market. The first edition of this report will be published in 2007. Additionally, in 2006 the *Monitor Rassendiscriminatie* was published, a monitoring report on racial discrimination commissioned by the ministry of Justice. A follow up to this report is being planned.

Dutch education is strongly segregated. This is partly explained by segregation in housing. Especially in major cities, primary schools have either many more or many fewer migrant children in comparison to the average population of the direct neighbourhood. This segregation is primarily caused by the so-called 'white flight'.

With the election of the new Government in November 2006, some changes in immigration policy have taken place. The most important change is the agreement between the coalition partners in the Government to regularise a large number of asylum seekers. According to the plan, asylum seekers who submitted their asylum request before April 2001, and who have lived in The Netherlands since then, will receive a residence permit on humanitarian grounds.

In the period 2003-2006, insufficient efforts have been made by the police to improve their role in combating discrimination. Data on incidents and reports received by the police is still lacking. The local coalition with the Public Prosecutors Office and Anti discrimination Bureaus remains insufficient for tackling local problems. A more positive note is the recognition by the police of the necessity for improvement. A list of preconditions has been drafted and will be implemented in the National framework of the Dutch police for 2007. The Public Prosecutors Office decided to make discrimination one of its priorities for the coming five years aiming at a more adequate approach on discrimination cases. Also, handbook on discrimination has been made available to all public prosecutors.

After the parliamentary elections in 2006, the National Bureau of Art.1 sent the new Parliament and the new Government a letter with recommendations

concerning anti-discrimination policy in The Netherlands. The most important recommendations considering the developments in 2006 and 2007 are:

- The National Bureau of Art.1 recommends that the Dutch Government provides enough structural funding to provide for the success of the new association Art.1. The Government has stated that it will fund the local and regional Anti Discrimination Agencies with six million Euros yearly, whereas a Government appointed advisory group calculated that twelve million Euros is needed. The National Bureau of Art.1 has to function as the national expertise centre covering all forms of discrimination. The current funding of the National Bureau is not sufficient to achieve this goal.
- The National Bureau of Art.1 recommends that the national government provide local governments and educational institutions with clear guidelines on policies to combat segregation. Those guidelines could be developed by the Equal Treatment Commission (CGB).
- The National Bureau of Art.1 recommends that the national government play an exemplary role with regards to its policies on diversity in the workplace.
- The National Bureau of Art.1 recommends that the Health and Safety Act (*Arbowet*) be renewed to also cover discrimination. This will lead to more effective and consistent anti-discrimination policies in the workplace.

2. Introduction

In 2006, parliamentary elections were held in The Netherlands, leading to a government whose motto is 'to work together, to live together' (Samen werken, Samen leven). It seems that this new government will place more emphasis on the development of real possibilities for ethnic minorities to integrate within Dutch society. In previous years, the focus was placed on the need for ethnic minorities to develop the skills necessary to participate within the receiving society. This year, it seems like the new government is also aware of the fact that the receiving society has a role to play in that process, for example by stimulating the creation of places for internships.

This shadow report gives an overview of the state of affairs concerning racism and racial discrimination in The Netherlands in 2006. It describes manifestations of racism and religious discrimination in areas that are highly important for the integration and participation of ethnic minorities in Dutch society such as employment, housing and education. It looks into new developments in the field of anti-discrimination such as the creation of a professional infrastructure of Anti-discrimination Agencies throughout the country. Furthermore, the report highlights political and legislative developments in the fields of migration and integration, criminal justice (including racism as a crime, counter terrorism and racial profiling) and social inclusion.

In the different chapters data is provided – where available – concerning the occurrence of racism and of racial discrimination. This data is primarily based on the statistics provided by the annual reports of local Anti-discrimination Agencies. Data from the Dutch specialized body, the Equal Treatment Commission, has also been cited. Additionally, the report gives examples of good practice by NGOs in the different sectors and describes measures taken by the government to fight racism and religious discrimination. Finally, it offers a list of recommendations based on recommendations made to the new Government by the newly established association against discrimination, Art.1.

3. Communities vulnerable to racism

Ethnic minorities

The body responsible for collecting data on ethnic minorities in The Netherlands is the Dutch Office of Statistics (CBS). It uses the Dutch term 'allochtoon' or the term 'migrants' to define them and it distinguishes between first generation and second generation migrants. First generation migrants are born outside The Netherlands, while second generation migrants consist of the descendants of first generation migrants. If only one parent is born outside The Netherlands, the child is identified as a second-generation migrant. According to the CBS, on 1 January 2006 there were 3,147,615 migrants of the first and second generation; 1,604,259 first generation migrants and 1,543,356 second generation migrants. The Netherlands has a total population of 16,334,210.¹

The CBS also distinguishes between two groups of migrants: migrants originating from Western countries and migrants originating from non-Western countries. In fact, the difference is not so much between Western and non-Western countries as between industrialized and non-industrialized countries. For example, the CBS considers Japan a Western country. Migrants from Indonesia are also identified as Western migrants because they have integrated successfully in Dutch society ('Moluccans' are the exception). Under these definitions, migrants from non-Western countries are therefore considered ethnic minorities and are target groups for integration policies by the Dutch Government. Non-Western migrants are the most vulnerable to discrimination. On 1 January 2006, there were 1,019,991 first generation non-Western migrants and 700,059 second generation non-Western migrants in The Netherlands.²

The four biggest groups of non Western-migrants are the Turks, the Surinamese, the Moroccans and the Antilleans. On 1 January 2006, there were 364,333 Turks, 331,890 Surinamese, 323,239 Moroccans, and 129,683 Antilleans of both first and second generation. Third generation non-Western migrants numbered 45,000. The Netherlands also has smaller migrant groups from non-Western countries, such as the Chinese (44,000), the Somalis (20,000), the Afghans (37,000), the Iraqis (43,000), the Iranians (28,000), the Cape Verdeans (20,000) and the Ghanaians (19,000).³

There are no official figures on Sinti, Roma or Travellers. Estimates of the number of Sinti and Roma range from 3,500 to 6,000. Travellers are estimated at 30,000.

Religious minorities

¹ Dutch Office of Statistics (CBS). Figures can be found on <http://statline.cbs.nl/StatWeb>.

² Ibid.

³ Ibid.

The largest religious minorities in The Netherlands are Muslims (an estimated 944,000 or 5.8% of the total population in 2004), followed by Hindus (95,000) and Jews (40,000). In 2002, 52% of the Dutch population identified themselves as a member of one of the several Christian churches in The Netherlands and 40% identified themselves as not belonging to any religion.⁴

Refugees and asylum seekers

In 2005, there were 12,350 asylum applications for The Netherlands. The majority of asylum seekers have received a temporary permit to stay in The Netherlands. The number of asylum applications has fallen dramatically over the last four years. In 2000 there were 43 560 applications, in 2001 there were 32 580 and in 2002 there were 18,670.⁵ This decline in asylum applications has been attributed to a new 'aliens law' introduced on 1 April 2001.

Asylum procedures in The Netherlands are extremely slow and numerous asylum applicants have waited years for the decision by the Government on whether they would be granted status. Refugees who have settled in The Netherlands during the last decade are mainly from countries like Yugoslavia, Somalia, Iran, Iraq, Afghanistan, or China.

Discrimination experiences

For the *Monitor Rassendiscriminatie 2005*⁶ report, published in spring 2006, the *Discriminatie-ervaringen 2005* survey was carried out studying people's experiences of discrimination. About 1700 respondents took part in the survey (conducted using questionnaires and in-depth interviews), consisting of Dutch natives and people from the four largest migrant groups: Turks, Moroccans, Antilleans and Surinamese.

According to the survey, more than half of the Moroccans and slightly less than half of the Turks encountered racial discrimination last year on one or more occasions. This means that Turks and Moroccans are confronted on a regular basis with incidents in which they or persons around them feel personally discriminated against. A striking feature is that higher-educated Moroccans claim to experience discrimination more often than lower-educated Moroccans. The percentage of Surinamese and Antilleans who said they had encountered discrimination is slightly lower: 40% and 37% respectively. Approximately 2% of the Dutch natives stated that they had been personally confronted with racial discrimination.

4 Ibid.

5 Ibid.

6 The National Bureau Art.1 (the former National Bureau against Racial Discrimination) compiled the report 'Monitor Rassendiscriminatie 2005' (I. Boog, 2006) together with a number of partners, on behalf of the Ministry of Justice. It is an overview of the state of affairs with regard to racial discrimination in The Netherlands.

4. Manifestations of racism and religious discrimination

4.1 Employment

In 2006 unemployment among non-Western immigrants was more than three times higher than unemployment among the native population. More specifically, 4.3% of the native Dutch working population was out of work, compared with 15.5% of the non-Western working population⁷. Among the non-Western working population, unemployment is highest among Moroccans, and lowest among Surinamese.

There is a consensus among researchers that part of the disadvantage must be attributed to discrimination in the labour market. This conclusion also emerges from the survey report '*Ethnic minorities in the labour market*', commissioned by the Ministry of Social Affairs and Employment and published in April 2005⁸. The survey concludes that negative stereotyping of immigrant workers plays a significant and obstructive role in the recruitment policy of employers. The survey demonstrates that in some cases, a foreign name on a CV is enough to be rejected. The survey report also demonstrates that one third of immigrants have experienced discrimination in the workplace.

The Dutch Anti-Discrimination Bureaus report that 34% of the complaints received in 2006 were related to the labour market. The majority of complaints concerned treatment in the workplace as well as recruitment and selection⁹. While, not all of the complaints were about discrimination on the grounds of race or ethnic origin (some were on age discrimination), race and ethnic origin formed the largest category in the registered complaints.

In 2006 the Dutch ministry of Social Affairs and Employment commissioned the national association Art.1¹⁰ and the Social and Cultural Planning office (SCP – a government research agency) to develop an in-depth study of racial discrimination in the Dutch labour market. In 2007 a monitoring report will be published, followed by a conference where the national government and social partners will discuss the recommendations. In 2009 a follow-up study will be published.

Example of NGO good practice

The predecessor of Art.1, the National Bureau against Racial Discrimination (LBR), published a brochure about discrimination in the workplace: 'Discriminatie, niet in onze organisatie!' ('Discrimination, not in our organisation!'). The brochure contains information and guidelines for

7 Dutch Office of Statistics (CBS). Figures can be found on <http://statline.cbs.nl/StatWeb>

8 Klaver et al, 2005.

9 I. Boog, M. Coenders et al, 2007.

10 Refer to the section on 'Anti-discrimination' under 'Political and legal context' for more information.

employers on how to tackle the problem of discrimination in all aspects of organisations.¹¹

The LBR also published a research report, based on interviews with people who filed a complaint about discrimination in the workplace. It appears that most people who do file a complaint in the end lose their jobs. Victimisation and disturbed relationships with colleagues or employers are risks to be reckoned with when dealing with complaints.¹²

4.2 Housing

Official data on housing comes mainly from the Anti-discrimination Agencies (ADAs) and the Equal Treatment Commission (ETC). Each year the ADAs report the number of complaints of discrimination they received.¹³ Most complaints are about actions, or the failure to act, by landlords or municipal housing services. People also complain about registration, the granting of urgency, mediation and social or technical management of the dwellings. Relatively few complaints (82 in 2005; 2% of the total number of complaints) concern discrimination in the housing sector. Among the complaints received, 50% claim to have been discriminated against because of their race, ethnic origin, or colour; 6.1% because of their nationality; and 3.7% on because of their religion. Housing-related discrimination does not seem to be a structural problem in The Netherlands. Data on discrimination in housing can also be found in the number of requests for rulings registered by the ETC¹⁴ and in the annual compilation of their judgements.¹⁵ In 2006 the Commission received only one request for a judgement in the area of housing.¹⁶

In The Netherlands, most municipalities have a transparent system of housing allocation that is closely regulated by the Government. Freedom of establishment is one of the basic principles of the Housing Allocation Act. The housing supply is publicised via local and regional newspapers and selection of tenants takes place on the basis of objective criteria. Generally speaking, this system gives landlords little opportunity to refuse potential tenants on the basis of their origin. However, research reveals that until 1990s, housing corporations made distinctions between ethnic minorities and native Dutch people in the allocation of housing.¹⁷ Thus even if there is little room for direct discrimination on the basis of origin, the use of certain selection criteria be disproportionately unfavourable to immigrants. For example, the length of time one has been registered at one's present address may play an important role

11 See: www.art1.nl.

12 Ibid.

13 Kerncijfers 2005: Jaaroverzicht discriminatieklachten bij antidiscriminatiebureaus en meldpunten (Key figures 2005: Annual survey of complaints of discrimination filed with Anti-discrimination Agencies and hotlines) – Source: National Federation of Anti-discrimination Agencies and Hotlines - www.lvadb.nl.

14 Jaarverslag CGB 2006 (CGB Annual Report 2006) – Source: Equal Treatment Commission - www.cgb.nl.

15 Gelijke behandeling: oordelen en commentaar 2005 (Equal treatment: judgements and commentary 2005) – Source: Equal Treatment Commission - www.cgb.nl.

16 Oordeel 2006-222 - www.cgb.nl.

17 Bepaalde huisvesting: een geschiedenis van opvang en huisvesting van immigranten in Nederland, 1945-1995 (Allocated housing: a history of the reception and housing of immigrants in The Netherlands, 1945-1995) – Source: Janneke Jansen (2006).

in housing allocation. This residence criterion is problematic for immigrants who have not been living in the country very long. In addition, in some immigrant groups it is customary not to leave one's parents' home until one gets married, so that some young people have less of a chance to build up a residence history of their own.¹⁸

The Government is planning to liberalise the rental housing market. The new rental policy would aim to improve the price-quality ratio of rented homes and to stimulate landlords to invest.¹⁹ It also means that the control on rents would decrease. The Institute for Spatial Research is concerned that a growing free-market system might provoke an emptying-out of certain population groups from certain districts.²⁰ There is a fear that liberalisation would cause rents to rise sharply in the coming years, and that more expensive neighbourhoods will become less accessible to those with lower incomes. In this way, migrant groups who generally have lower incomes and who usually rent their homes can be indirectly discriminated against.

In the property ownership housing market discrimination occurs in the granting of mortgages through 'redlining', or discrimination by postcode. Banks and some financiers appear to distinguish between neighbourhoods in their decision to grant mortgages, as research from the Equal Treatment Commission demonstrates.²¹ Extra conditions are also added for specific areas in large cities, which makes it difficult for many migrant groups to negotiate a mortgage. In addition, it was found that nearly every bank refuses to grant a mortgage to individuals with a temporary residence permit.

In 2006 the Dutch Banking Association added a prohibition on mortgage discrimination to its code of conduct. Banks may not include a surname or postal code in their deliberations when deciding on whether or not to grant a mortgage.²²

Despite improvements in housing for ethnic minorities in recent decades, research carried out by the Ministry of Housing shows that there is still a gap between ethnic minorities, especially Moroccans, and native Dutch, even when they shared equivalent characteristics.²³ It has also been shown that the housing preferences of ethnic minorities generally coincide with those of the native Dutch, while their actual housing situation is less favourable.

Concerning the housing of asylum seekers, research conducted by the Refugee Aid Service demonstrates that almost half of the 200 respondents found it unpleasant to very unpleasant to live in a reception centre.²⁴ In

18 L. Lindner (2002) Ruimtelijke segregatie van afkomstsgroepen in Den Haag. Wiens keuze? (Spatial segregation of ethnic minorities in The Hague. Whose choice?) The Hague: Haaglanden Bureau of Discrimination Affairs.

19 www.vrom.nl Brochure 'Waarom een nieuw huurbeleid?' (Why a new rental policy?).

20 Institute for Spatial Research (2006). Verkenning van de ruimte 2006 (Exploring space 2006).

21 CGB (2006). Risicoselectie op grond van postcode en verblijfsstatus: een onderzoek uit eigen beweging naar onderscheid door hypotheekfinanciers.

22 See: <http://www.nvb.nl/index.php?p=41696>

23 Een Gekleurd Beeld van Wonen, de woonsituatie van niet-westerse allochtonen in Nederland (A coloured picture of housing: the housing situation for non-Western ethnic minorities in The Netherlands) – Source: Ministry of Housing, Regional Development and the Environment (2005)

24 <http://www.vluchtelingenwerk.nl/763-IntegratieBarometer.html>.

addition, it was found that 35% of the 523 Dutch people surveyed objected to the creation of an asylum seeker centre in their neighbourhood.

In 2004, Rotterdam developed the '*Rotterdam presses ahead*' action plan for improving the quality of life in disadvantaged districts. The policy is aimed at attracting privileged inhabitants and reducing the number of underprivileged inhabitants. To reach this goal, home seekers (not including retired persons and students) are required to meet certain requirements having to do with factors such as having an income obtained from work. This proposed dispersal policy based on income has led to indirect discrimination on the grounds of race.²⁵ In 2006 Minister of Housing Dekker gave the city of Rotterdam permission to set income requirements. The aims of the policy, such as strengthening social cohesion and combating illegal habitation and anti-social behaviour, are in and of themselves free of discrimination. The question is whether a housing permit is a suitable and discrimination-free means of reaching this goal. The ETC indicated that there are adequate alternatives, such as building more expensive housing in the city, cheaper housing in the suburbs, and larger and more luxurious dwellings in underprivileged districts. Another option would be an increased effort to take social cohesion into account in the geographic planning of a large city and to discourage isolated areas.²⁶

4.3 Education

Free expression of religion

The growing presence of Muslim pupils and teachers in schools is paired with their demand for freedom to express their religious identity. Sometimes, confrontations occur regarding clothing regulations (headscarves) or general agreements on social behaviour (e.g. the refusal of some orthodox Muslims to shake hands with a person of the opposite gender).

The right of religious freedom is protected in Dutch law, yet this freedom could be restrained by:

1. The freedom to form schools on a religious basis (and therefore exclude pupils and teachers that adhere to other religions); or
2. By practical concerns regarding communication in the classroom or daily interaction with visitors from outside.

Though the judicial implications of the Dutch Law of Equal Treatment are becoming clearer, many schools still neglect the law by making discriminatory clothing regulations or refusing employees or students. In the judgement of the Commission of Equal Treatment (Commissie Gelijke Behandeling, CGB) a

²⁵ On 7 July 2005 the Equal Treatment Commission (CGB) ruled that indirect discrimination was being perpetrated with the policy. Ethnic minority groups in particular were affected by being refused housing permits for dwellings in the designated areas (even though they could afford them) www.cgb.nl - CGB annual report 2005.

²⁶ Also see Graafmans, M. (2006) *Beyond Fragmentation*. Thesis Delft University of Technology

school can in some cases forbid a face-concealing headscarf or refuse to employ a person in a specific function.²⁷

Ethnic segregation

Dutch education is strongly segregated. This can be explained in part by the segregation in housing. In major cities especially, primary schools have many more or many fewer migrant children than the average population of the direct neighbourhood. This segregation is primarily caused by so-called 'white flight'. Research has shown that parents select schools on their 'quality', but that what they call 'quality' is often the ethnic population of the school. The expectation is, 'the more migrant children, the lower the quality', even if this is opposed by the findings of the Education Inspection Department.²⁸ Dutch people believe that the number of migrant children in primary education is a point of concern, because they expect it to lead to less attention for Dutch non-migrant children²⁹. Besides the situation of 'white flight', some 'white' schools and schools of religious denomination are less open to migrant children and are enforcing barriers like high fees or clothing regulations.

The readiness of the Dutch people to place their own children in another school to reduce ethnic segregation in primary education is decreasing. The Dutch Government is responsible for reducing ethnic segregation³⁰, though it finds that this matter is the responsibility of local governments and schools. Local governments and schools sometimes try to 'spread' migrant children by creating separate waiting lists or by using quotas, but are restrained by the Dutch Law of Equal Treatment and the traditional Dutch right for parents to form or choose their own school on religious or pedagogical basis.

Pedagogical climate within the schools

The Dutch Education Inspection Department is concerned about the decrease of safety in schools and highlighted increasing problems regarding bullying and discrimination between pupils and teachers and between the pupils themselves³¹.

According to the 'Onderwijsmeter'³², published by the Dutch Ministry of Education, Dutch people are not satisfied with the attention that is paid to behaviour, ethics, discipline and social skills in education. They believe that behavioural problems (bullying, name-calling) are the responsibility of the school.

Since the 1980s schools are obliged by law to prepare their pupils to live in a multicultural society. A study on intercultural competences of teachers in professional education has shown that many teachers feel positive about the

27 See for example CGB 2002-22 and 2003-40.

28 Metselaar, T., 2005.

29 Onderwijsmeter, 2006.

30 Ibid.

31 Rapport Onderwijsinspectie.

32 An opinion poll in which the population and parents are interviewed about issues like quality of education.

multicultural character of their school, but feel less competent on their level of knowledge and skills in dealing with cultural diversity³³. Even in the present teacher trainings, the emphasis on intercultural awareness seems to be insufficient. In 2006, the law on intercultural education was replaced by a new law containing the obligation to promote citizenship and social integration. The Inspection Department has found that many schools do not feel capable implementing this obligation into teaching practice.

Traineeships

In professional education, it is common for Dutch students to undertake an external traineeship. Many schools find it difficult to find enough places for these students in regular companies and organisations, especially for migrant students. This can be explained in part by the socio-economic status of many of their parents, which deprives them of the social network necessary to access the job market. On the other hand, some companies and organisations explicitly discriminate against migrant students. Prejudices and generalisations based on previous (negative) experiences can lead companies to ask schools for a 'white, non-migrant' trainee. Schools tend to give in to this discriminatory demand for fear of losing another external place for a trainee³⁴.

Awareness of the problem regarding the lack of traineeships for (migrant) students has grown in 2006. Some larger companies have created room for migrant students as a form of corporate social responsibility. Governments and NGOs have organised meetings to tackle prejudice and find new ways of cooperation between companies, schools and students.

In 2006 a total of 211 complaints about discrimination in education were received by the Anti-Discrimination Bureaus. This represents 5.6% of the total number of discrimination complaints. These complaints are primarily related to enrolment, admission, clothing rules, suspension, and the relationship between teacher and pupil and between teacher and parent/guardian.³⁵

Example of NGO good practice

The national Youth Council (Jeugdraad) coordinates the European campaign 'All Different, All Equal'. The campaign emphasizes the positive side of diversity through festivals, on tv and on the radio.³⁶

33 De Beer, 2006.

34 Research commissioned by Dutch political party GroenLinks, 2005.

35 I. Boog, M. Coenders et al, 2007.

36 <http://www.jeugdraad.nl>

4.4 Health

Non-Western immigrants have a higher rate of mortality than the native Dutch population in almost all age groups. The difference is widest in infants. In general, the 'self-experienced' health of immigrants is poorer than that of Dutch natives. This is particularly true for Moroccans and Turks: around 60% in this group say that they feel healthy, while for Dutch natives the proportion is over 80%. This gap between is linked to the poorer socio-economic position of ethnic minorities: lower level of education and lower incomes. The poorer health experienced by immigrants mainly manifests in psychological complaints: they are more likely to feel and have poorer mental health. Older immigrants (Moroccans and Turks in particular) feel physically as well psychologically less healthy than Dutch natives.

Immigrants experience poorer health in comparison to the native Dutch population. Little data is available on the extent to which this leads to a more intensive use of health-care provisions. Nonetheless, the data that is available tends to suggest that immigrants make less use of health-care provisions than Dutch natives. There are two exceptions, however: immigrants visit the family doctor more often and use more prescription medicine.³⁷

The extent to which discrimination plays a role in 'self-experienced' health is unclear and no official figures are available on discrimination in healthcare. While it is likely that the Dutch Anti-Discrimination Bureaus receive complaints relating to healthcare, these complaints are registered under other categories.

4.5 Policing and racial profiling

As the enforcer of public order, the police have an important role to play in combating discrimination. Unfortunately, however the police can at times be a source of discrimination. In 2006, Anti-Discrimination Bureaus received 234 complaints on police conduct; compared to 203 complaints in 2005 and 198 in 2004. Figures do not indicate how many of the complaints were justified, but they nevertheless indicate how citizens felt they had been treated by the police. The complaints entail both acts and refusals to act by police, military police, the Public Prosecutors Office and the Immigration Service. Almost half of the complaints are about the refusal to register a complaint, not responding to a call for help, or the stop, search and apprehension of persons.³⁸

In their work, the police use a variety of profiles that serve as the basis for alerts or action. Officers may develop prejudice on past interaction with members of a particular group and there is a risk that this prejudice will serve as the basis on which they act in certain situations with respect to other members of that group. The attitudes and conduct of police officers has

37 These findings are from various reports published in 2004 and 2005. There is no new data available yet. See for example: Knipscheer, J.W. & R.J. Kleber, 2005 and Mackenbach, J. en E. van der Veen, 2004.

38 I. Boog, M. Coenders et al, 2007.

received some attention in police colleges and training courses. Yet, in practice, more focus could be given to these subjects in order to prevent conduct based on discriminatory presuppositions.

At present, no data is available regarding discrimination complaints submitted in connection with racial profiling as such or more particularly on preventive searches or mandatory identification.

If citizens feel they have suffered discriminatory treatment by the police, they can make use of the police complaints procedure. Yet, due to shortfalls in the registration system, the figures fail to show whether or how many complaints involved discrimination. Complaints about police conduct can also be submitted to the National Ombudsman. In the case of discrimination complaints, the Ombudsman often refrains from pronouncing a judgement when the statements given contradict each other and there are no further facts or circumstances that substantiate one of the statements. According to the List of Pronouncements of the National Ombudsman, in 2006 a pronouncement was made in 5 cases; of which only one was pronounced as founded (2006/307), three others were pronounced unfounded (2006/17; 2006/98; 2006/360) and in one case the ombudsman withheld judgement because of conflicting stories (2006/311).

In addition to the police complaints procedure and the National Ombudsman, it is possible to launch criminal proceedings against police officers against whom a discrimination complaint has been submitted. The Guideline on Discrimination (Aanwijzing Discriminatie) states that in addition to, or instead of, disciplinary measures, criminal proceedings are possible. In 2005, there were no criminal proceedings launched against a police officer on the grounds of discrimination.³⁹

In 2006 a public prosecutor was forced to stand trial on the charge of defamation. The prosecutor had insulted Roma in The Netherlands during a criminal court case against a Romani family. The Public Prosecutors Office had dismissed the case in 2004. However, deciding on a complaint against the dismissal, the court of justice decided that the case had to be put to trial. The prosecutor was found not guilty of defamation.⁴⁰

4.6 Racist violence and crime

Figures from the police and the Public Prosecutors Office are not fully available, though they would be indispensable in giving a full impression of the various manifestations of discrimination. The figures from the Anti-Discrimination Bureaus and hotlines, where people can register complaints and report instances of discrimination, show that in 2006, 2048 complaints of racial discrimination were received. This represents a decrease compared to

³⁹ Based on data from the public prosecutors office. Figures of the year 2006 were at the time of writing not yet available.

⁴⁰ Rb. Amsterdam 23 February 2006, LJN: AV 2447.

the 2116 complaints that were received in 2005. Almost half of the 2048 complaints received in 2006 were on hostile treatment in the workplace, and a comparable number on exclusion from goods and services.

No figures are available from the police on the number of discrimination complaints they received. The Public Prosecutors Office does have some figures, but these are limited to independent discrimination offences and concern discrimination on several grounds. This is because the anti-discrimination provisions of the Penal Code are also applicable to discriminatory grounds other than race. Figures on offences such as violence motivated by racism or discrimination are not available. The Public Prosecutors Office deals with over 200 discrimination cases a year.

In 2005 there were 241 cases received by the Public Prosecutors office. Around 95% of these cases dealt with racial discrimination. An average of around 80% of all discrimination cases entailed defamation, mostly verbal defamation. Around 15% of cases were about incitement to hatred or violence and a remarkable low percentage deal with exclusion from the labour market or goods and services.⁴¹ Exact figures for 2006 are not yet available.

Number of discrimination offences registered by the Public Prosecutors Office in 2000-2004 per article of the law⁴²:

Article	2000	2001	2002	2003	2004	2005
137c	178	167	191	154	165	166
137d	15	11	22	18	29	46
137e	6	19	3	13	15	10
137f	9	1	2	1	0	2
137g	6	0	20	17	5	9
429quater	0	0	4	1	0	8
Total	214	198	242	204	214	241

Data registered by the Public Prosecutors Office indicates where the discrimination offence took place, on which grounds, who the suspect was and in which manner it occurred. In most cases, discrimination occurred on the street or in a public place. It often concerned anti-Semitism, discrimination against Turks or Moroccans, or against skin colour. In the large majority of cases (77%), a white person was responsible for the discriminatory incident. More than half of the perpetrators were younger than 20 years old. These often concerned a verbal utterance and to a lesser extent took place via graffiti, illustrations, written work or in conjunction with violence or threats of violence against persons. Threats of violence were registered in 9% of the cases. In 63% of the cases submitted in 2005, the supposed perpetrator was summoned to appear in court. This represents a small decrease of 2% in relation to the previous year. There is an increase of dismissals from 15%

⁴¹ Cijfers in Beeld 2005, Landelijk Expertise Centrum Discriminatie.

⁴² Landelijk Expertise Centrum Discriminatie (National Centre of Discrimination Expertise).

(2003) to 20% (2005). This percentage is higher than the national average for all cases even though the *2003 Guidelines on Discrimination* emphasize restraint concerning the decision to dismiss. The court pronounced a sentence in 89% of the cases in 2005, mostly suspended sentences or fines. This pattern was similar to the previous year.⁴³

4.7 Access to goods and services in the public and private sector

Discrimination in the access to and supply of goods and services is forbidden and covered by both the civil and criminal legislation. A number of cases registered by the Equal Treatment Commission, the Public Prosecutors Office and the Anti-discrimination Agencies are presented below.

Equal Treatment Commission

In the area of goods and services, discrimination complaints can be submitted to the Dutch specialized body, the Equal Treatment Commission (CGB). The CGB is the enforcement body for the Equal Treatment Act. The Commission acts as a semi-judicial body. It receives complaints, carries out formal investigations, and delivers non-binding opinions.

In 2006, the Commission delivered approximately 20 opinions in the area of goods and services (housing and education not included) on the grounds of race or ethnic origin and religion. The cases varied from the refusal of enrolment to a fitness centre for a woman wearing a headscarf, to a dentist who insisted that a patient spoke Dutch with her son in the treatment room. In the majority of cases, the Commission was not able to find that discrimination has occurred. As in the previous year, there were no cases in the hospitality sector (bars, clubs) in 2006.⁴⁴

One specific case concerned a complaint by a native Dutch family who were made to pay the regular fee for Hepatitis-A vaccinations at the Public Health Office, where Turkish and Moroccan patients were receiving the vaccination free of charge. The local Public Health Office's defence was that they had held a special, time-limited campaign targeting migrant families going on holiday to their native countries since experience had shown that the number of Hepatitis-A patients among migrants grew significantly after the holiday season. In order to induce migrant families to be vaccinated, the vaccination was offered free of cost for people of Turkish and Moroccan origin. The CGB held that this was a case of unlawful discrimination and the Dutch complainants won the case. According to the CGB, there were alternative ways to achieve the same goal. Other Public Health Offices in The Netherlands, which faced the same issue, tried to increase the number of vaccinations among the target groups in other, non-discriminatory ways.⁴⁵

43 Cijfers in Beeld 2004, Landelijk Expertise Centrum Discriminatie.

44 CGB annual report 2006.

45 CGB 28 March 2006, no. 2006-55.

Public Prosecutors Office

Persons confronted with discrimination in access to goods and services may also file a report with the police. The Criminal Code declares discrimination punishable, if it is carried out by a person in his official capacity, profession or business, on the grounds of race, religion or personal beliefs, and sexuality.⁴⁶ The number of cases that the prosecutor receives under these articles is low: 17 cases in 2005.⁴⁷ Among these, a large proportion concerned discrimination in the hospitality sector, such as the refusal of entrance to clubs and bars. Of the 17 cases, 10 were followed by bringing a suspect to criminal court, by applying a fine or by a decision not to prosecute. The other cases were withdrawn for various reasons.

Most people confronted with discrimination are not willing to file a report with the police. Some do not believe that their complaint will result in an action; some are unfamiliar with complaints procedures. With respect to discrimination in bars and clubs, experience over the last decade has shown that reporting cases and incidents to the police or bringing cases in front of the CGB, has not led to a decrease in discrimination in the sector. Local authorities are reluctant to apply administrative sanctions, such as withdrawing licences or applying significant fines. They usually find that evidence of discrimination is difficult to collect.

Complaints Panels have been established in a several towns as an alternative approach. These panels consist of representatives of the local club owners, the local authorities, the police and the Anti-Discrimination Agency. People who feel they were discriminated against can easily file a complaint; the complaint is then investigated and, if found substantiated, the complainant will be allowed to enter the discotheque the next time. An assessment of the effectiveness of these panels has not yet taken place.

Anti-discrimination Agencies

In 2006, the 29 Anti-discrimination Agencies (ADAs) in The Netherlands received 4271 reports of discrimination. These included 2048 on the grounds of race or ethnic origin, 66 on nationality, 283 on religion and 132 on anti-Semitism. The other complaints concerned age, disability, gender and other grounds. A breakdown of the data in the area of goods and services shows that most of the complaints relevant for this report concerned race or ethnic origin, followed by religion. In the majority of the latter cases, reports were of discrimination suffered by Muslims.⁴⁸

46 Articles 137g and 429quater of the Criminal Code.

47 LECD, *Cijfers in Beeld: Discriminatiecijfers 2005*. (Amsterdam: LECD, 2006). Prosecution data for 2006 are not available yet.

48 I. Boog, M. Coenders et al, 2007.

Number of reports registered at ADAs in 2006⁴⁹:			
	Provision of goods and services (excl. housing, education, sports)	Hospitality sector	Sports and recreation
Anti-Semitism	8	3	2
Religion	13	1	10
Race or ethnicity	176	101	37
Nationality	14	3	1

It is important to note that of the 108 complaints about discrimination in clubs and bars, none have been submitted to the Equal Treatment Commission; possibly a limited number have been reported to the police and were prosecuted under art. 137g or 429quater of the Criminal Code. The discrepancy could indicate that either the ADA could not establish a presumption of discrimination, that the case has been settled through the activities of the ADA or that the plaintiff did not want to proceed with his or her complaint.

Research

A number of cases with the Equal Treatment Commission and with the ADAs concerned the financial sector. In order to obtain an overview of the type and extent of discrimination in access to mortgages, the Equal Treatment Commission undertook an investigation of its own initiative. The Commission had received indications that it was difficult, and in some cases even impossible, for members of ethnic minority communities to obtain mortgage financing. The investigation started in 2005 and the report was published in 2006.⁵⁰

The report's main findings were that mortgage lenders exclude applicants with a temporary residence permit for The Netherlands and/or who have not been legally resident in The Netherlands for a minimum number of years, or that they impose restrictive conditions on them. The report also found that that some mortgage lenders refuse to finance housing in Amsterdam, Rotterdam, The Hague and Utrecht or do so only under restrictive conditions. These cities are among the Dutch cities with the largest communities of non-Western ethnic minorities.⁵¹

There was no evidence of direct discrimination in the acceptance policy of mortgage lenders. Yet, the investigation did reveal indirect discrimination based on race and nationality. Indirect discrimination occurred, on the one hand, through exclusion from mortgage financing or through the imposition of

49 Art.1, annual data Anti-discrimination Agencies, 2007.

50 Commissie Gelijke Behandeling, Risicoselectie op grond van postcode en verblijfsstatus. Een onderzoek uit eigen beweging naar onderscheid door hypotheckair financiers (Utrecht: CGB, 2006).

51 Ibid.

onerous conditions with respect to houses below a threshold value varying from €90,750 to €250,000 in Amsterdam, Rotterdam, The Hague and Utrecht, at least for certain postcode areas in these cities. On the other hand, it also occurred by excluding holders of temporary residence permits from the possibility of obtaining mortgage financing.⁵²

In fact, four of nine mortgage lenders interviewed by the Commission applied *redlining*: indirect discrimination according to postcode area. There was no indication that this indirect discrimination could be a general practice among all mortgage lenders. All the nine mortgage lenders interviewed by the Commission practiced indirect discrimination on the basis of residence status. The practice could therefore be qualified as universal. The residence status alone determines whether or not holders of a temporary residence permit would obtain mortgage financing from these lenders, regardless of their financial position and prospects.

The general nature of this discrimination on the ground of residence status not only results in serious consequences for the individual, but on account of the size of the group (235,000 persons) in large-scale social consequences as well.⁵³

The Commission investigated, looking for an objective justification for the lending policies. The aims of the acceptance policy, summarized as limiting the financial risk of both the lender and the applicant, were termed to be legitimate. This applies to the postcode policy as well as to the policy regarding applicants with a temporary residence permit. However, the exact way in which the mortgage lenders pursue their aim of limiting risk is inappropriate and unnecessarily harsh.

Acceptance criteria of other mortgage lenders reveal that there are alternatives through which these aims can be achieved without resulting in discrimination, and which if 'only' additional conditions are imposed on holders of a temporary residence permit result in less discrimination. The Commission recommended the mortgage lenders change their policies. Most have agreed to bring their practices up to par with the equal treatment legislation.⁵⁴

Example of NGO good practice

The predecessor of Art.1, the National Bureau against Racial Discrimination (LBR), published two brochures with guidelines about discrimination in the financial sector. The brochures are aimed at organisations working in non-discrimination and at the general public. A one-day conference for service providers was organized. All activities were part of the EU-sponsored project 'GET-In'. The project was established in collaboration with Caritas Germany and Caritas Poland.⁵⁵

52 Ibid.

53 Ibid.

54 Ibid.

55 See: http://www.getin-online.net/Leitfaeden_en.html#NL

4.8 Media, including the internet

The Anti-Discrimination Bureaus and hotlines received a total of 143 complaints in 2006 concerning media and advertising. This represents 3% of all complaints. Those concerning racist manifestations on the internet are not included in the above figure.⁵⁶

The complaints were related not only to newspaper reports or radio and television programmes, but also to advertising messages, columns and cartoons. An Anti-Discrimination Bureau may submit complaints about newspaper reports to the Council for Journalism. Complaints on advertisements can be submitted to the Advertising Code Committee. Both institutions are associations of members from their respective profession and act on the basis of self-regulation. If one considers the high degree of freedom of expression in The Netherlands, the number of justified complaints against the media could be considered low.⁵⁷

In The Netherlands, reports about racist views on the Internet can be submitted separately to the MDI (Dutch Complaints Bureau for Discrimination on the Internet). In 2006, the MDI received 1135 reports concerning 1789 manifestations of discrimination. Discrimination on the Internet does not appear only on the websites of radical organisations and extremist movements; a large proportion of the reports received by the MDI were specifically about discriminatory views expressed on sites that have nothing to do with organised racism or extremism, such as popular discussion forums and weblogs. This tendency has increased in 2005 and 2006. Most of the reports the MDI receives are now about those interactive websites. The number of reports received by the MDI about expressed views that are probably sanctionable rose from 466 in 2005 to 984 in 2006, mainly because of a small number of popular interactive websites where many discriminatory manifestations were found and reported.⁵⁸

⁵⁶ I. Boog, M. Coenders et al, 2007.

⁵⁷ Key figures 2006. Rotterdam: Art.1, 2006.

⁵⁸ See MDI yearly report 2006: www.meldpunt.nl Also see: I. Boog, M. Coenders et al, 2007.

5. Political and legal context

In 2006, parliamentary elections were held in The Netherlands, resulting in a government whose adagio was 'to work together, to live together' (Samen werken, Samen leven). It appears that this government is going to place more emphasis on the development of real possibilities for ethnic minorities to integrate in Dutch society. In previous years, the impetus was on the need for ethnic minorities to develop the skills to participate in society. It seems now that the new government is also aware of the fact that the receiving society has a role to play in the process, for example by stimulating the creation of places for internships.

5.1 Anti discrimination

In 2006 the Dutch Government announced that it would make six million euros available every year for the realisation and structural funding of a nation-wide network of antidiscrimination facilities. The existing network of Anti-discrimination Agencies (ADA's) covered only 50% of the country.

In the same year it was announced that a new national association against discrimination would be formed. This association, starting in 2007, is established by local and regional Anti-discrimination Agencies and the then National Bureau against Racial Discrimination (LBR), with the support of the ministry of Justice. The name of the new association is Art.1 (pronounced: article 1), referring to the equal treatment article in the Dutch constitution. The national bureau has been created from the former LBR and its members are those of the ADA.

This unique infrastructure was created for the prevention of and to combat all forms of discrimination (race, gender, skin-colour, age, disability, religious belief, sexual orientation, etc).

The National Bureau of Art.1 supports its members in their activities, and functions as a national centre of expertise. Among the services that are offered by its members at a local and regional level are support and advice on making complaints, the organisation of projects, the provision of information, and the registration of complaints and accounts of discrimination.

5.2 Migration and integration

With the election of the new government in November 2006, some changes in the immigration policy have taken place. The most important change is the agreement between the coalition partners in the Government to regularise a large number of asylum seekers. According to the plan, asylum seekers who submitted their asylum request before April 2001, and who have lived in The Netherlands since then, will receive a residence permit on humanitarian

grounds. This group, termed the 'group of 26,000' under the previous Minister for Immigration, will receive their status in 2007. The actual size of the group eligible for regularisation is estimated to be between 25,000 to 30,000 persons. The current Junior Minister for Immigration, Ms. Nebahat Albayrak, announced that she would be strict in returning others to their home countries.

The new government will keep other parts of the asylum and immigration policies unchanged: one of the strictest in the European Union, aimed at discouraging immigrants to come to The Netherlands.

Asylum

The view on the asylum procedure by NGOs such as Vluchtelingenwerk Nederland (*Refugee Council Netherlands*) is still that of a 'derailed asylum law'⁵⁹: under the current procedure, asylum seekers do not have a fair chance to tell their personal refugee story and many run the risk of being returned to their country where they may face persecution. The 'AC-procedure' (*Application Centre procedure*) takes a mere 48 hours from the time someone submits an application. This means that asylum seekers in the application centre (located in the northern town of Ter Apel) receive a decision within 48 hours, after which they are put out on the street. It is possible to make an appeal, but it must be submitted within one week. Given the fact that the applicants have just arrived in The Netherlands, rarely speak the language and are unfamiliar with the rules, it is practically impossible to find a lawyer, within that week, who can examine the case in detail and then submit an appeal. It is also extremely worrying that a procedure with so few guarantees is now being applied by the IND (Immigration and Naturalisation Service) to more than 50% of all applications. Adding to this worrying situation is the impossibility of the courts to test the IND decision on its contents. Courts may only look at the decision by applying a marginal review: did the IND follow the proper procedure or not.

A landmark case at the European Court of Human Rights⁶⁰ will most probably change the judicial procedure for asylum seekers in The Netherlands. In this case, a man of Somali origin, Mr. Salah Sheekh, applied for refugee status in The Netherlands. His application was rejected and he appealed the decision. After the loss of his first appeal at the Regional Court of The Hague, he took his case to the European Court of Human Rights (ECtHR) in Strasbourg, rather than appealing at the Council of State, the highest Dutch court for administrative cases.

The ECtHR was very harsh in its criticism of the legal protection in Dutch asylum cases. Specifically, the court strongly criticised the 'excessive formalism' applied by the Council of State, the act of relying on information from the Ministry of Foreign Affairs and the utter predictability of decisions by the Council. The ECtHR established that there was a risk of the applicant

59 Vluchtelingenwerk Nederland, Jaarverslag 2006 (Amsterdam: Vluchtelingenwerk Nederland, 2007), p. 5.

60 European Court of Human Rights, 17 January 2007, appl. no. 1948/04.

being subjected to treatment in violation of article 3 of the Convention ('no one shall be subjected to torture or to inhuman or degrading treatment or punishment.') upon his return to Somalia and decided that The Netherlands had violated article 3 of the Convention. A request by the Dutch government to have a hearing by the Grand Chamber of the Court was refused in May 2007.

Integration

The portfolio of integration was taken away from the Ministry of Justice and the new government included this policy area in the area of housing and urban policies. The new Minister, Mrs. Ella Vogelaar, will continue the integration policies of her predecessor, Rita Verdonk.

The Civic Integration Abroad Act (*Wet inburgering in het buitenland*)⁶¹ came into force in March 2006. The Act sets an additional condition for obtaining a regular temporary residence permit that requires applicants to first have a basic knowledge of the Dutch language and society before arriving in The Netherlands. Applicants are thus required to take the *Basic Civic Integration Examination* at their country of origin. The Act itself is aimed at foreign nationals who voluntarily choose to permanently settle in The Netherlands and the entry requirement applies only to those persons who must have an authorisation for temporary stay (known as an 'MVV') to enter The Netherlands, and who are obliged as newcomers, under the terms of the Civic Integration for Newcomers Act (*Wet inburgering nieuwkomers*), to participate in a civic integration programme upon arrival. In the view of the Dutch Government, integration in Dutch society is a lengthy process and it is therefore important that newcomers have a basic command of Dutch and some knowledge of the society they will be joining before their arrival in The Netherlands as this will assist them in the integration process.

It is the responsibility of the prospective migrants to prepare for the examination; the Dutch representation abroad does not supply course material, except for a video that can be purchased. The cost to take the examination is € 350. The examination must be taken on the premises of the consular representation of The Netherlands; and involves talking with a telephone to a voice-computer which then decides whether or not the candidate has passed. If the candidates pass the examination, they can apply for an authorisation for temporary stay (MVV), which will then be tested against the normal requirements of the Aliens Act. If the candidates fail the test, the Dutch authorities will not take applications for an MVV into consideration and the candidates must retake the exam.

A monitoring report, carried out by the Immigration Authority (*IND*),⁶² demonstrates that the majority of applicants pass the exam (almost 90%). On

61 Information in English is supplied by the Ministry of Justice of the Netherlands on its website: http://www.justitie.nl/english/Themes/more_themes/Civic_Integration_Abroad_Act/index.asp

62 Ministerie van Justitie Immigratie- en Naturalisatiedienst Stafdirectie Uitvoeringsbeleid IND Informatie- en Analysecentrum (INDIAC), Monitor Inburgeringsexamen Buitenland (Den Haag: Ministerie van Justitie, 2007).

the other hand, because of the introduction of the exam, the number of requests for an MVV has decreased by 20%. Thus, although the exam was introduced to help migrants to prepare for integration in The Netherlands, the effect is a significant reduction of the number of applicants.

The association against discrimination, Art.1, has voiced its concern regarding the fact that exemptions for the compulsory examination are only given to persons from particular nationalities. Citizens of countries for which an MVV is not required are exempt from the requirement, namely the citizens of all EU Member States and of Australia, Canada, Iceland, Japan, Liechtenstein, Monegasque, New Zealand, Norway, the Vatican, the United States and Switzerland. Since the exemptions are predominantly granted to persons from western countries, the Act has the effect of discriminating on the basis of ethnicity.

Examples of good practice

In 2005, the previous Minister for Integration, Rita Verdonk, established an annual competition for best practices in the area of integration: 'Pearls of Integration'. The 'Committee of Pearl Fishers' selects three activities; one in the area of practical initiatives, another in the policy field and a third in the field of research.

In November 2006, the Minister granted the first award to a local project in Zaanstad that aims to discuss domestic violence against women among migrant communities. Both men and women are involved; the use of their own language made it easy for women from different communities to participate.⁶³

The second Pearl was awarded for the local integration policy of the medium sized town of Oss. The mainstreaming aspect was termed to be useful and could serve as an example for other towns.⁶⁴

The third Pearl was given to an organisation for mental healthcare, Altrecht in Utrecht. It had carried out empirical research into the intercultural approach of mental healthcare. The recommendations in the report about expanding the intercultural approach are also useful for sectors outside the healthcare system.⁶⁵

5.3 Criminal justice

5.3.1 Racism as a crime

63 See: http://www.kiemnet.nl/dossiers/Integratie/Religieencultuur/Delicten/Huiselijk-geweld-in-allochtone-kring_1010.html .

64 See: http://www.kiemnet.nl/dossiers/Integratie/Integratiealgemeen/Integratiebeleid-Oss_1366.html.

65 See: http://www.kiemnet.nl/dossiers/Zorgenwelzijn/Geestelijkegezondheidszorg/Interculturele-rentree-Altrect_1013.html .

Prohibition of discrimination

Discrimination can have a deep impact on people's lives. Defamation, incitement to hatred or violence and exclusion can lead to social unrest, inter-racial tensions and even violence. Codification is important to make it clear that discrimination on the grounds of race is not tolerated, and to make its application feasible in practice. As a signatory to various treaties, including the Universal Declaration of Human Rights, the European Convention on Human Rights and the International Convention on the Elimination of all forms of Racial Discrimination, The Netherlands has committed itself to combating discrimination and unequal treatment. To this end, in 1971 the Dutch legislature adopted the prohibition of discrimination in the Penal Code.⁶⁶ The relevant provisions (articles 137c - g and article 429quater) were further tightened in later years and extended to include discrimination on other grounds. The law now makes the following conduct a crime or misdemeanour against public order:

- The defamation of groups of people on the grounds of their race;
- Incitement to hatred, discrimination or violence against persons on racial grounds;
- The dissemination of discriminatory views;
- Participating in or lending support to activities aimed at discrimination;
- Discrimination by persons in their official capacity, profession or business.

The term 'race'

For an explanation of the term 'race', the courts apply the definition as specified in Article 1 of the International Convention on the Elimination of all forms of Racial Discrimination.

Sentence

Depending on the form of discrimination, sentencing may include a maximum punishment of one year or a fine of €6.700. In 2004, an amendment to the criminal code made it possible for the court to impose a higher sentence when a person is guilty of systematic discrimination or when several persons are guilty of discrimination in collusion. The maximum punishment for these cases was raised in order to underline the impermissibility of discrimination and to give the police greater powers of investigation. This increase applies to several forms of racial discrimination. In the case of defamation, incitement to hatred, discrimination or violence, the maximum term of imprisonment has been doubled from one to two years. With regard to the dissemination of discriminatory views and discrimination by persons in their official capacity,

⁶⁶ Law of 18 February 1971, Stb. 1971,96.

profession or business, the maximum sentence has been doubled from six months to one year.

Guidelines on Discrimination

By making discrimination a punishable offence, the police and the Public Prosecutors Office take on an important role in combating this phenomenon. The framework for their interference is the Guidelines on Discrimination (*Aanwijzing Discriminatie*), which sets out protocol for actions for both the police and the Public Prosecutors Office. The effectiveness of the Guidelines is evaluated every four years; afterwards, the Guidelines are amended where necessary and implementation is improved.

In 2006, the current Guidelines were evaluated; the outcome was worrisome. For the period 2003-2006, insufficient efforts have been made by the police to improve their role in combating discrimination. Available data on incidents and reports received by the police is still lacking. The local coalition with the Public Prosecutors Office and Anti-Discrimination Bureaus is still insufficient for tackling local problems. Yet, the police recognised that improvements were necessary. A list of preconditions has been drafted, which will be implemented in the National Framework of the Dutch Police for 2007. The Public Prosecutors Office decided to make discrimination one of the priorities for the coming five years aiming at a more adequate approach of discrimination cases. A handbook on discrimination has been made available to all public prosecutors. Finally, new and improved Guidelines on Discrimination will come into force in the fall of 2007.

5.3.2 Counter terrorism

The war on terrorism ranks high on the political agenda in The Netherlands. This has led to many proposals and measures, stemming in part from agreements made at European and international levels, to counter radicalisation and terrorism. In 2005 the Dutch government announced a variety of measures in this area; some were aimed at broadening the powers of the police and judicial authorities and some even at created new powers. By virtue of the Data Delivery Act (*Act on Powers for Claiming Information*), the police and judicial authorities have increased powers to request personal data, including not only identification but also sensitive and extraordinary data, and to request such data, it is sufficient that 'evidence' exists that someone is planning a terrorist attack.

To enable action to be taken against (possible) terrorist attacks as early as possible, a legislative proposal was made in 2005 to increase the powers of the police and judicial authorities to gather information about groups of persons who might be plotting an attack (*Act for widening the powers for criminal investigation and persecution of terrorist acts*). In 2006, this Act was approved by the Parliament, allowing for investigations to start on the basis of just an indication rather than the reasonable suspicion that was previously necessary. When facts and circumstances or the analysis of the General

Intelligence and Information Service (AIVD) indicate preparation of a terrorist attack, special powers can be used. The Public Prosecutor can also order a preventive search in a certain areas and have vehicles and objects searched. The police can search people, vehicles and objects without the prior consent of the Public Prosecutor in so called safety-hazard-areas in order to prevent an act of terror.

In 2005, in addition to criminal measures, a proposal for legislation on national security measures by the State (the *Administrative Measures on national security* proposal) was made. This proposal would apply to persons suspected of supporting or having links with terrorist activities and entails an obligation to report periodically, as well as a ban on entering certain areas or on consorting with certain persons. This Act is expected to be approved by the Parliament in 2007.

Finally, there has been a proposal to make the '*glorification of terrorist acts*' a punishable offence. According to the Explanatory Memo, this proposal was inspired by the 'significant coarsening of the public debate and the necessity of offering society legal protection against views that far exceed the boundaries of what is acceptable'. The legislative proposal entails criminalising any glorification, extenuation, trivialisation or denial of heinous crimes, if this might constitute a threat to public order. The proposal is not limited to terrorism; it encompasses a broader range of serious crimes. It is still in consultative status, yet could have far-reaching effects on citizens' rights. Indeed, this kind of legislation would mean a limitation of the right to freedom of speech and would entail the risk of discriminatory application. Although the legislative proposals are not discriminatory in intent, there is some danger in their application because the powers are less bound by hard criteria.

In summary, reasonable suspicion has been replaced by mere indication, information about individuals can be far more easily obtained and a public discussion on terrorism might be bound by a ban on the glorification of terrorism. In view of the religious / ethnic component that arises in the current debates on terrorism, there is a high likelihood that the focus will fall on certain sections of the population. In some instances the Government even speaks of 'Islamic terrorism' and individuals of this religion and thereby individuals of a certain ethnicity are obvious targets. Incidents whereby Islamic individuals are wrongfully viewed as a potential threat to public order are therefore not out of the question.

5.3.3 Racial profiling

Racial profiling is a hidden problem. There is no data available on its occurrence. Therefore no legal measures have been taken to prevent it. However, Dutch NGOs are concerned that during identification checks as well as stop and searches, certain groups of people are targeted more than others. Moreover, in the context of current heightened debates on terrorism and security, racial profiling has become a growing issue of concern.

In their work, the police use a variety of profiles that serve as the basis for alerts or action. Officers may develop prejudice on past interaction with members of a particular group and there is a risk that this prejudice will serve as the basis on which they act in certain situations with respect to other members of that group. The attitudes and conduct of police officers has received some attention in police colleges and training courses. Yet, in practice, more focus could be given to these subjects in order to prevent conduct based on discriminatory presuppositions.

With regard to the monitoring of aliens, legal criteria have been established to prevent actions based solely on ethnic identifiers. However, this risk seems to be less well addressed in the exercise of other police powers. A law on preventive searches (also known as Stop and searches) came into force in 2002 (*Wet preventief fouilleren*). This law empowers the police to search persons and vehicles in a designated area and during a designated period for weapons, irrespective of the existence of reasonable grounds for suspicion. Stop-and-search actions have been carried out in various cities. The danger inherent in these actions lies in the selective application of powers. The police may pretend that decisions about who to stop and search are made on a non-selective basis, but this is precisely where scope lies for personal interpretation by police officers, meaning that in some cases prejudices and negative stereotyping can guide their actions. This danger of discriminatory selection also arises in identification checks by the police. Since January 2005, police officers have been empowered to ask persons for proof of identity in the course of their duties and persons must therefore be able to produce proof of identity upon request.

If citizens feel they have suffered discriminatory treatment by the police, they can make use of the police complaints procedure. Complaints about police conduct can also be submitted to the National Ombudsman. In addition to these procedures, it is possible to launch criminal proceedings against police officers against whom a discrimination complaint has been submitted. The Guidelines on Discrimination (*Aanwijzing Discriminatie*) state that in addition to, or instead of, disciplinary measures, criminal proceedings are possible.

Several NGOs in The Netherlands have emphasised the necessity of research on racial profiling in The Netherlands. Data can be used to address deficiencies in national legislation resulting in an insufficient protection against racial profiling.

5.4 Social inclusion

Broad Initiative Societal Bonding (BIMB)

To strengthen the integration of Dutch citizens of foreign descent the government initiated the so-called Broad Initiative Societal Bonding (BIMB - Breed Initiatief Maatschappelijke Binding). The initiative involves social and religious organisations, municipalities and civilians in improving their mutual relations and consists of concrete, appealing, mutual actions in all areas of

society where citizens meet each other: in the office, the playground, night life, on the street, in the neighbourhood, in church and in the prayer room. The goals of the initiative include improving solidarity, safety and tolerance (in the local environment), raising the level of mutual cooperation, informing about best practices (attitudes) and reaching agreements concerning concrete initiatives towards solidarity (behaviour).

Day of Dialogue (DoD)

In the present climate in which the distance between citizens is increasing and the multicultural society is looked upon more and more in a negative way, there is an urgent need for mechanism to help decrease the distance between groups of people and increase the knowledge people have about each other. The Day of Dialogue (DoD) is an instrument which can be used on a city level in a relatively simple way by people from different segments of society to talk with each other about living together in a multicultural city. It stimulates cooperation among citizens, organisations, religious groups, companies, schools, etc. and in this way creates a stronger civil society.

An initiative of citizens and organizations to organise dialogues tables, the Day of Dialogue is a reoccurring event in which a diversity of organisations participate as partners and to which all citizens are invited to participate. At the dialogue tables, 6-8 people are invited to talk with each other about a central theme which is explored in four questions. Local organizations are asked to organise dialogue tables to which they themselves invite people. Due to the diversity of people that get invited, diversity is created at the different tables.

Since a dialogue is a specific way of talking with each other, a facilitator is present at each table who has been trained in the dialogue method beforehand. The dialogue format was specifically chosen as the method of conversation. In the dialogues, participants are asked to postpone judgement. Instead, participants are invited to share their personal experiences and listen to and ask questions about the personal experiences of others to facilitate mutual understanding. It is forbidden to attempt to convince others of your opinion and engage in debates. Listening and sharing is the backbone of a successful dialogue.

The Day of Dialogue is accessible to everyone; high school students can talk with politicians and religious leaders. Everyone is equal in the dialogue. The facilitator needs intensive preparation since most individuals are the dialogue format, instead of arguing, discussing or analysing topics.

In The Netherlands, several organizations including Art.1, have developed and the concept of the Day of Dialogue and successfully organised events for the initiative, on several occasions in Rotterdam and Amsterdam. Due to this success, Art.1 and its project partner Nieuwe Maan are now supporting 15 Dutch cities in the organization of their own Days. This initiative is now in the process of being 'exported' to other EU member states.

6. National recommendations

After the parliamentary elections in 2006, the National Bureau of Art.1 sent the new Parliament and the new Government a letter with recommendations concerning anti-discrimination policy in The Netherlands. The most important recommendations considering the developments in 2006 and 2007 are:

- The National Bureau of Art.1 recommends that the Dutch Government provides enough structural funding to provide for the success of the new association Art.1. The Government has stated that it will fund the local and regional Anti Discrimination Agencies with six million Euros yearly, whereas a Government appointed advisory group calculated that twelve million Euros is needed. The National Bureau of Art.1 has to function as the national expertise centre covering all forms of discrimination. The current funding of the National Bureau is not sufficient to achieve this goal.
- The National Bureau of Art.1 recommends that the national government provide local governments and educational institutions with clear guidelines on policies to combat segregation. Those guidelines could be developed by the Equal Treatment Commission (CGB).
- The National Bureau of Art.1 recommends that the national government play an exemplary role with regards to its policies on diversity in the workplace.
- The National Bureau of Art.1 recommends that the Health and Safety Act (*Arbowet*) be renewed to also cover discrimination. This will lead to more effective and consistent anti-discrimination policies in the workplace.

7. Conclusion

Apart from the worrying and continuing trend in which Muslims and Islam are considered a danger to Dutch society, three positive developments have been noted in 2006.

Firstly, in 2006, Art.1 was established as a new national association to prevent and combat discrimination. The National Bureau of Art.1 (the former National Bureau against Racial Discrimination – LBR) supports its members in their activities, and functions as a national centre of expertise. The services that are offered by its members, the Anti Discrimination Agencies or ADA's, at local and regional levels include: support and advice on making complaints, the organisation of projects, the provision of information, and the registration of complaints and reports of discrimination. As of 2006, the national government provides six million euros yearly to expand and fund the network of local and regional ADA's, so that this network will be nation-wide.

Secondly, the Public Prosecutors Office decided to make discrimination one of the priorities for the coming five years aiming at a more adequate approach to discrimination cases. A handbook on discrimination has been made available to all public prosecutors.

Thirdly, the national government is commissioning research projects to study discrimination in a more comprehensive manner. In 2006 the first edition of the *Monitor Rassendiscriminatie* was published, a monitoring report on racial discrimination. This report was funded by the ministry of Justice. The ministry has made clear that it will commission a follow-up to this report. In 2006 the ministry of Social Affairs and Employment commissioned an in depth monitoring report on racial discrimination in the labour market. The first edition will be published in 2007.

With these developments, the new national association Art.1 has a unique opportunity to improve the quality of its data collection on discrimination, and to strengthen its role as a policy advisor and watchdog. By extending its cooperation with other research institutes, the Public Prosecutors Office, the national and local governments, Art.1 and the whole Dutch anti-discrimination infrastructure can take a significant step forward in the prevention and combat of discrimination in the coming years.

8. Bibliography

Beer, Judith de, 'Daar zouden we het vaker over moeten hebben', Postmaster dissertation (Erasmus Universiteit, Rotterdam, 2006).

Boog, I. (red.), *Monitor Rassendiscriminatie 2005*. (Rotterdam: Landelijk Bureau ter bestrijding van Rassendiscriminatie, 2006).

Boog, I., Coenders, M., Silversmith, J., *Kerncijfers 2006. Jaaroverzicht discriminatieklachten bij antidiscriminatiebureaus en meldpunten*. (Landelijk Bureau Art.1, 2007.)

Campen, C. van and Schellingerhout, R., 'Gezondheid en Zorg', *Sociale staat van Nederland 2005* (Den Haag: Sociaal en Cultureel Planbureau, 2005), 129-153.

Centraal Bureau voor de Statistiek. *CBS Statline*, <http://www.cbs.nl/nl-NL/menu/cijfers/statline/toegang/default.htm>, accessed July 2007.

Commissie Gelijke Behandeling, Risicoselectie op grond van postcode en verblijfsstatus. Een onderzoek uit eigen beweging naar onderscheid door hypothecair financiers (Utrecht: CGB, 2006).

Dutch Monitoring Centre on Racism and Xenophobia, *National Annual Report 2005 The Netherlands*, (DUMC, September 2005), <http://www.dumc.nl>.

European Court of Human Rights, 17 January 2007, appl. no. 1948/04.

Graafmans, M. Beyond Fragmentation. Thesis Delft University of Technology. (Delft: 2006).

Groen Links. *Onderzoek discriminatie stages*. (Groen Links: Utrecht, 2005.)
See: <http://www.groenlinks.nl/2ekamer/nieuws/Nieuwsbericht.2005-08-26.5730>

Het jaar 2006. Jaarverslag Commissie Gelijke Behandeling 2006 (Utrecht: Commissie Gelijke Behandeling, 2006).

Klaver, J., Mevissen, J. and Odé, A., *Etnische minderheden op de arbeidsmarkt: Beelden en feiten, belemmeringen en oplossingen* (Amsterdam: Regioplan Beleidsonderzoek, 2005).

Knipscheer, J.W. & R.J. Kleber, Migranten in de ggz: empirische bevindingen rond gezondheid, hulpzoekgedrag, hulpbehoeften en waardering van zorg. In: *Tijdschrift voor psychiatrie* 47(2005)11.

LECD, *Cijfers in Beeld: Discriminatiecijfers 2005*. (Amsterdam: LECD, 2006).

Mackenbach, J. en E. van der Veen, *Gezondheid in kleur: Nieuwe inzichten uit het onderzoeksprogramma 'Cultuur en gezondheid'*. Aksant: 2004.

Metselaar, T. *Een zwarte of een witte school?* (UvT: 2005).

Ministerie van Justitie Immigratie- en Naturalisatiedienst Stafdirectie Uitvoeringsbeleid IND Informatie- en Analysecentrum (INDIAC), *Monitor Inburgeringsexamen Buitenland* (Den Haag: Ministerie van Justitie, 2007).

Nieuwenhuizen, E., *Factsheet segregatie in het onderwijs* (Rotterdam: Landelijk Bureau ter bestrijding van Rassendiscriminatie, 2006)
<http://www.lbr.nl/?node=2058>.

Vluchtelingenwerk Nederland, *Jaarverslag 2006* (Amsterdam: Vluchtelingenwerk Nederland, 2007), p. 5.

Wendte, Robert, Haufe, Marc and Schieven, Paulien 'Onderwijsmeter 2006', Ministerie van Onderwijs, Cultuur en Wetenschap, Den Haag, 2006).

Wonderen, R. van, *Agressie en geweld in het onderwijs. Eindrapport.* (Leiden: Research voor Beleid BV, 2004).



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