



Responding to racism in the Netherlands



europaean network against racism
europaese netwerk tegen racisme

INTRODUCTION

In 2004 the Netherlands amended the General Act on Equal Treatment (AWGB) on the basis of the European 'Race Directive 2000/43/EC'. Part of this amendment is a shift in the burden of proof from the person who deems to have been the victim of discrimination to the alleged discriminator. A precondition is that the complainant must supply facts which, in the opinion of the court, constitute grounds for the presumption of discrimination. The amendment also incorporates protection from victimisation, which now prohibits any adverse treatment of individuals as a reaction to a complaint or to proceedings aimed at enforcing compliance with equal treatment legislation.

A merger is expected to take place in 2006 between the national centre of expertise on racial discrimination (Landelijk Bureau ter bestrijding van Rassendiscriminatie - LBR) and the local and regional anti-discrimination bureaus and hotlines. Besides racial discrimination, the organisation will also concern itself with discrimination on other grounds, as identified within Dutch law.

The focus areas in combating racial discrimination in the Netherlands includes the employment market, the education sector and the police. Racial discrimination is a major cause of the inequality of non-Western ethnic minorities in the employment market. When asked, almost one quarter of employers state that they prefer not to, or will not, employ persons of non-Western origin. Interethnic tensions in the workplace and in schools regularly lead to discrimination. Ethnic minority pupils and students have great difficulty finding a work placement. It is likely that negative stereotypes and discrimination are important causes of this. It still happens on a regular basis that the police refuse to register a report of discrimination, even though the registration of such a report is mandatory.

KEY ACTIVITIES OF ENAR NETHERLANDS

The Dutch National Coordination of ENAR consists of the following organisations: Centre for Information and Documentation on Israel (CIDI), FORUM, Institute for Multicultural Development, National Bureau against Racial Discrimination (LBR), the National Federation of Anti-discrimination Agencies and Hotlines (LVADB) and the Rotterdam Charter Foundation.

The Dutch branch of ENAR informs NGOs of important developments in the field of combating racial discrimination in Europe, and reports on the Netherlands' experience and expertise in this field at the European level. The National Coordination organises informational meetings a few times a year, and contributes to European projects, lobbying activities, campaigns and publications.

OVERVIEW OF ENAR – EUROPEAN NETWORK AGAINST RACISM

ENAR promotes the cause of anti-racism and equal treatment for ethnic minorities and non-EU nationals residing in the European Union.

ENAR is a network of European NGOs working to combat racism in all EU Member States. The NGOs have formed National Coordinations (NCs), which constitute the membership of ENAR and include ethnic minorities, immigrants' associations, information centres, advocacy groups, trade unions, faith based organisations and many others. Democratically elected representatives of each NC attend the Network's meetings where they are consulted on policy and statutory issues. One of the representatives of each NC should belong to an ethnic minority.

ENAR is determined to fight racism, xenophobia, anti-Semitism and Islamophobia, to promote equality of treatment between EU citizens and third country nationals, and to link local/regional/national initiatives with European initiatives.

WHO IS EXPERIENCING RACISM?

Approximately 50% of (Dutch) Turks and (Dutch) Moroccans indicate that they have been personally confronted with discrimination in the past year. This means that Turks and Moroccans regularly face the problem of discrimination, directed not only towards themselves, but also towards persons in their immediate social environment. The percentage of Surinamese and Antilleans who state that they have experienced discrimination in the past year is slightly lower, but nevertheless substantial: 35 – 40%.

Among non-Western ethnic minorities, the higher-educated claim to experience discrimination more regularly than the lower-educated. Higher-educated persons of non-Western ethnicity are also more negative about the public discourse on ethnic minorities, and their opinion of the native Dutch population is also more negative. Younger people among non-Western ethnic minorities report that they are confronted with discrimination significantly more often than older people of non-Western ethnicity. A possible explanation for this is that younger people enter more areas of society: they encounter hostile treatment and exclusion in the education sector, in their social environment and in access to the employment market.

There is evidence of an extremely low willingness to report cases of discrimination. Research shows that fewer than one quarter of those who said they had experienced discrimination in the past year actually reported this to an anti-discrimination bureau, the police or other organisation. A major reason given for not reporting discrimination is that making a report is “pointless”. Other reasons are that the victim did not feel that the incident was important enough, or was unaware of the options available for making such reports.

POLITICAL REALITY: LEGISLATION IN THE NETHERLANDS

Dutch law forbids racism and discrimination. The basis for the statutory regulations can be found in the Constitution: *All persons in the Netherlands shall be treated equally in equal circumstances. Discrimination on the grounds of religion, personal beliefs, political orientation, race, sex, or for any other reason, is prohibited.* The Constitution thereby commands the government not to discriminate. In order to make this rule applicable in the daily interactions among citizens, the prohibition of discrimination is included in separate Acts of Parliament.

In civil law the regulations governing the prohibition of discrimination are laid down in the General Act on Equal Treatment. This Act stipulates that everyone, regardless of ethnic origin, skin colour and such, must be treated equally. It pertains to many areas of social life: work, education, housing and the offer of goods and services.

Individuals who believe they have been treated unequally can file a complaint about this with the CGB [Equal Treatment Commission]. This Commission assesses whether a measure or situation constitutes a form of discrimination.

The regulations governing non-discrimination are largely prescribed by the European Union. In 2000 the EU stipulated that the same regulations on this subject must apply throughout the European Union. The newly implemented regulations include a provision that in some instances, the alleged discriminator must prove that he is not guilty of discrimination. Moreover, it is now laid down that the alleged discriminator may not take adverse measures against someone who has complained about discrimination, such as sacking that person. In addition, the police and Public Prosecutions Department are empowered under criminal law to take action against, for example, racial insults and incitement to hatred and violence.

ORGANISATIONS AGAINST DISCRIMINATION

Persons who are the victim of racism or discrimination on the grounds of race or ethnic origin often experience a feeling of anger, injustice, pain and a loss of trust in society. This can be so upsetting that they call in sick at work or at school. Discrimination is sometimes the consequence of structural abuse that exists throughout the country. Research shows that no less than 45% of the largest ethnic minority groups in the Netherlands has encountered discrimination recently. The nature of this discrimination varies from discriminatory remarks to the refusal of services or violence.

It is therefore important that organisations exist which combat discrimination. It can sometimes be helpful when these organisations provide training or information to remove prejudices. On other occasions, it is better if they lobby for improved legislation; and in some cases it is necessary that, together with the victim, they file a complaint with the CGB or report the matter to the police.

Gathering information in monitoring reports about the nature and extent of discrimination, as the LBR does, is important in order to show where and in which manner measures need to be taken. This benefits not only social organisations, but also government authorities.

With regard to being able to participate in society, education and employment are key areas. Exclusion and discrimination in these areas is therefore especially undesirable. Non-discrimination organisations conduct activities aimed at combating discrimination in several areas of society. One example is the campaign 'Discrimination? Not with me!', which provides information on the various options that are available for combating discrimination.

STRATEGIC LITIGATION

Many anti-racist NGOs have not traditionally engaged in legal processes, often this is for the simple reason that there was little law for them to refer to. However the adoption of the EU Race Directive (see section 'EU and anti-racism') and the development of national law, means that now more than ever litigation has the potential to lead to real change for those who are vulnerable to racism and discrimination.

As anti-discrimination is a relatively new field of law, NGOs have a role to play in raising awareness regarding its potential. Consequently the strategic litigation has come to the fore as a useful advocacy technique NGOs can both directly engage in strategic litigation and support others to do so by gathering data, assessing victims and engaging in advocacy.

“Strategic or impact litigation uses the court system to attempt to create broad social change”

The primary focus of strategic litigation is law or policy change rather than redress for an individual, though these two objectives are not mutually exclusive. Strategic litigation intends to reach beyond an individual case or victim, to create a context of enhanced protection for everyone who is vulnerable to discrimination. By changing law or setting precedents an individual case can have a ripple effect leading to change on a much broader level.

The concept of strategic litigation encompasses the selection of cases, case planning and management, as well as ensuring that favourable outcomes are implemented.

Not every NGO has the mandate or skills to engage in litigation, nor will litigation necessarily be the right strategy in many cases. Nonetheless, it is essential for all anti-racism actors to recognise the importance of strategic litigation as a tool for generating change.

WHERE CAN PEOPLE GO WITH COMPLAINTS ABOUT DISCRIMINATION?

In many cases, those who encounter discrimination will want to do something about it. Bureaus for discrimination affairs or anti-discrimination bureaus (ADBs), which provide assistance to victims of discrimination, are active in all major cities and numerous regions in the Netherlands. People who have witnessed discrimination can report this to ADBs, complaints can be filed there and information obtained. In the majority of cases, ADBs really can do something about discrimination.

The staff at ADBs know the laws and regulations, and are specialised in handling complaints relating to racism or exclusion. They can assess whether it is worthwhile submitting a complaint to a body like the Equal Treatment Commission (CGB) or to the police, and can often achieve a result without recourse to legal action.

Where discrimination in the workplace, in education or by government institutions is concerned, ADB staff applies the principle of hearing both sides of the argument. They then ask the alleged discriminator to respond to the account given by the client, so that they can establish what has occurred. Based on this response, the ADB determines the next steps to be taken, if any, in consultation with the client. These can vary from reaching a solution together with the alleged discriminator to requesting the CGB to issue an opinion on the unequal treatment, or conducting a publicity campaign to raise awareness of the problem. The staff assist clients with the procedures involved in submitting requests to bodies like the CGB.

Where racist actions are concerned, such as insults, incitements to hatred and racially motivated violence, the ADB can help the client to file a report with the police.

Engaging the assistance of an ADB is therefore worthwhile in almost all cases.

EU AND ANTI-RACISM

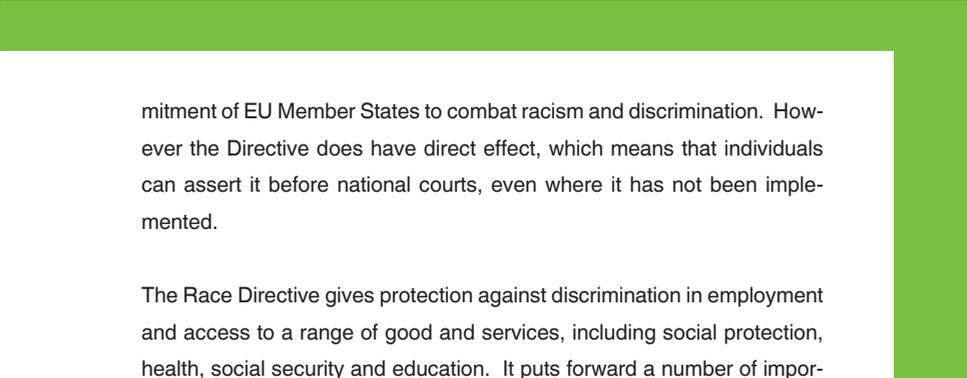
National NGOs working on anti-racism are already seriously overburdened in their work to confront racism and discrimination. Why then should they also be concerned with what is going on in other European countries, and in the institutions of the European Union itself?

Developing an understanding of racism in Europe is essential for two key reasons. Firstly, to promote learning and knowledge about what racism is and how to combat it and secondly to generate common tools across the European Union to combat racism. Experience over the last ten years has demonstrated that national governments can be convinced to take action at a European level, where they may not have been prepared to move forward alone.

Racism has a distinctly European dynamic. Europe's colonial history underlines its role in fostering both historical and contemporary forms of racism; and the 20th century does not cast a positive light on the European legacy. Despite this long history Europe began to take racism seriously relatively recently. Europe has a responsibility both to the people living within its borders, as well as internationally to take a leading role in promoting a vision of a world free from racism.

In 1997, Article 13 of the Amsterdam Treaty gave the European Union a legal base on which to develop 'appropriate measures to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation'. Using these powers the European Union adopted the Race Equality Directive in June 2000 (and later that year the Employment Equality Directive).

While the *Race Directive* was due to be fully implemented by July 2003, at the beginning of 2006 some Member States have failed to implement it. This reality raises questions about the continuing com



mitment of EU Member States to combat racism and discrimination. However the Directive does have direct effect, which means that individuals can assert it before national courts, even where it has not been implemented.

The Race Directive gives protection against discrimination in employment and access to a range of good and services, including social protection, health, social security and education. It puts forward a number of important definitions including: direct and indirect discrimination, harassment, and victimisation. Other significant aspects of the Directive are that it allows for positive action measures, the sharing of the burden of proof, and the establishment of equality bodies.

The principles enshrined in the Race Directive need to become core elements of anti-discrimination law and practice across the European Union. Strategic litigation is a tool to ensure that this happens. To this end, it expressly allows for NGOs to engage in proceedings in support of or on behalf of victims.

While Article 13 of the Amsterdam Treaty provided the context for developments in the field of anti-discrimination, Article 29 of the Treaty on European Union included reference to preventing and combating racism. While the European Commission proposed a Framework Decision against racism and xenophobia (racism as a crime) in 2001, developments in this policy area have been disappointing; the Council has failed to adopt the Framework Decision. In addition the European Union has competence in other policy areas that either directly or indirectly impact on the fight against racism, including: social inclusion, migration and asylum, and education.

The European Union is also involved in a range of other activities, including awareness raising (through the 'For Diversity. Against Discrimination' campaign) and funding of anti-racism projects. In 1997 the EU Monitoring Centre on Racism and Xenophobia (EUMC) was established. While the Centre is likely to be expanded to become a Fundamental Rights Agency in 2007, it will continue to focus on the problem of racism in Europe.

FURTHER INFORMATION AT NATIONAL LEVEL

www.lbr.nl

The National Bureau against Racial Discrimination (LBR) is the national centre of expertise for the prevention of racial discrimination and the promotion of good interethnic relations.

For information, documentation, legal and policy advice, research/monitoring and training.

www.belgelyk.nl

National hotline 0900-BelGelyk or 0900-2 354 354 and website where discrimination can be reported and assistance obtained.

www.cgb.nl

The CGB [Equal Treatment Commission] was established to uphold the equal treatment legislation in the Netherlands. Citizens with complaints about unequal treatment can file these with the CGB.

www.discriminatie.nl

A website with information on all forms of discrimination, provided via articles and news items. Also contains a great deal of information about national and European legislation.

www.cidi.nl

The Center Information and Documentation on Israel combats anti-Semitism and gives information about the position of Israel in the Middle-East.

Complaints about anti-Semitism can be reported to CIDI. The organization publishes yearly the Overview of anti-Semitic Incidents in the Netherlands.

FURTHER INFORMATION AT EUROPEAN LEVEL

EU Monitoring Centre on Racism and Xenophobia: www.eumc.eu.int

European Commission - anti-discrimination and relations with civil society:

www.europa.eu.int/comm/employment_social/fundamental_rights/index_en.htm

European Network Against Racism (ENAR): www.enar-eu.org

European Roma Information Office: www.erionet.org

European Union: www.europa.eu.int

'For Diversity. Against Discrimination': www.stop-discrimination.info

Strategic Litigation of Race Discrimination in Europe: from Principles to Practice:

www.migpolgroup.com/documents/2498.html

Strategies on Litigation Tackling Discrimination in EU Countries: www.solid-eu.org

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