

Dutch government's comments

on the Advisory Committee's third Opinion on the implementation of the Framework
Convention for the Protection of National Minorities

July 2019

1. Introduction

The Advisory Committee on the Framework Convention for the Protection of National Minorities adopted its Opinion on the Netherlands on 6 March 2019. The Advisory Committee monitors compliance with the Framework Convention for the Protection of National Minorities. The Dutch government was invited to respond and this document contains the government's comments on the Opinion.

The Dutch government has noted with interest the Council of Europe's work on the monitoring of the Framework Convention. The government welcomes the Opinion of the Advisory Committee and its compliments concerning the efforts made by both the government and Fryslân provincial authority to protect national minorities. It has taken the Advisory Committee's comments to heart and, where possible, will consider them in the development of government policy.

In addition, a report by the European Commission against Racism and Intolerance (ECRI), and the Dutch government's response to it, were published recently, and the Netherlands has submitted to the Council of Europe its sixth state report on the European Charter for Regional or Minority Languages. These two international agreements overlap in some respects with the Framework Convention for the Protection of National Minorities.

The Dutch government considers the Advisory Committee's main findings below. It has set out its comments under the themes used by the Advisory Committee in its main findings.

2. Monitoring process

2.1 Translation of second opinion

The Advisory Committee welcomes the fact that the second opinion was translated into Dutch and Frisian, and encourages the government to do the same with the third opinion.

The third Opinion was translated into Dutch and Frisian at the earliest opportunity. The English, Dutch and Frisian versions will be published on the government's website, along with the government's comments, as soon as the House of Representatives has been informed on the matter.

2.2 Consultation with minorities

The Advisory Committee expresses its concern regarding the lack of involvement of persons belonging to national minorities and civil-society organisations in the drafting of the third report. The Committee encourages the government to give this group, particularly those working on Frisian minority issues, the opportunity to contribute to the drafting of the fourth State Report.

Fryslân provincial authority, the layer of administration most closely involved, bears primary responsibility for the Frisian language and culture. In this capacity, and in consultation with central government, the provincial authority has fulfilled the role of '*taalskipper*' ('language captain') since 2017. The *taalskipper* coordinates, connects and inspires organisations and individuals concerned with the Frisian language in Fryslân, in consultation with central government. The *taalskipper* takes the lead in bringing together all those concerned at local and regional level. Besides implementing the provisions of the *Bestjoersôfspraak Fryske Taal en Kultuer* (Administrative Agreement on the Frisian Language and Culture, BFTK), central government also has its own responsibility as legislator and signatory to the European Charter for Regional or Minority Languages and the Framework Convention for the Protection of National Minorities.

The third report of the Netherlands includes information from discussions between the *taalskipper* and various parties with an interest in policy on Frisian. If possible and desirable, such input will also be included in the fourth State Report. Fryslân provincial authority, for example, holds regular inter-authority discussions with authorities involved in the Use of Frisian Act. During the term of the new *Bestjoersôfspraak Fryske Taal en Kultuer* (BFTK) 2019-2023, the provincial authority will set up inter-authority discussions with the law courts. The provincial authority will also continue its consultations with stakeholders in the education sector in Fryslân. As *taalskipper* the provincial authority will also take the lead in organising a consultation meeting halfway through the term of the BFTK which will cover the entire range of policy on Frisian. The advisory body DINGtiid, with whom regular inter-authority discussions have been held since its establishment in 2014, will also be involved in these preparations.

3. Implementation of Framework after three monitoring cycles

3.1 Scope of the Framework Convention

The Advisory Committee reiterates its observation from previous Opinions that the criteria drawn up by the Netherlands for the implementation of the Framework Convention remain unchanged, thus excluding other minorities such as Roma and Sinti from protection under the Convention.

The government's views on this point have not changed. In accordance with the criteria defined, the government regards the Frisians as a national minority under the Framework Convention. When the bill for the ratification of the Convention was passed, the government and parliament agreed that the Framework Convention would apply only to Frisians in the Netherlands. Nevertheless, the government described the position of the Roma and Sinti at length in the third report and the subsequent visit by the Advisory Committee.

3.2 Implementation of administrative agreements

The Advisory Committee regards the *Bestjoersôfspraak Fryske Taal en Kultuer* (BFTK) as an important tool for the protection and promotion of the Frisian language and culture by central government and Fryslân provincial authority. The Committee notes that good communication and cooperation will be key to the successful implementation of the BFTK 2019-2023.

The government would like to underline the importance of the administrative agreements for elaborating the responsibility that central government and Fryslân provincial authority share for the Frisian language and culture. The BFTK 2019-2023 was drawn up in close collaboration with the provincial authority in Fryslân. During its implementation regular consultations take place between the provincial authority and the coordinating ministry, the Ministry of the Interior and Kingdom Relations, which in turn liaises with other government ministries involved with the Frisian language and culture. Midway through the term of the BFTK the House of Representatives and Fryslân provincial council will be informed of progress with the implementation of the BFTK in a midterm report.

4. Protection against discrimination

The Equal Treatment Act (AWGB) of 2004 bans discrimination on the grounds of race, which is understood to include language (and therefore also Frisian). The Advisory Committee recommends that discrimination on the ground of language be explicitly included in the legislation.

The Equal Treatment Act gives the courts and the Netherlands Institute for Human Rights (the Institute), which monitors compliance with equal treatment legislation, broad discretion when it comes to interpreting the grounds protected under the legislation. The Institute has consistently held that the concept of race must be interpreted on the basis of the definition given in the International Convention on the Elimination of All Forms of Racial Discrimination. This definition includes the grounds of national or ethnic origin, or colour. Language can also form part of protection afforded by the ground of race. The Institute evaluated the functioning of the Equal Treatment Act for the fourth time in December 2017. The evaluation did not lead to any recommendation by the Institute that the scope of the legislation be amended in the manner recommended by the Advisory Committee. The government therefore sees no reason to change a practice that works well.

5. Integration and intercultural dialogue

5.1 Tolerance and intercultural dialogue

The Advisory Committee concludes that the Netherlands undertakes a broad set of measures to promote tolerance and intercultural dialogue. It also notes that the image of the Netherlands as traditionally open and tolerant towards ethnic and religious diversity has continued to come into question during the monitoring period.

The government values an active dialogue with society on issues associated with diversity and ethnicity. The diversity of the population of the Netherlands has increased sharply in the past few decades. In 1972, the proportion of the population with a migrant background was 9.2%; in 2016 it was 22.1% and this is set to increase further. Migrants themselves are also becoming more diverse as a group. At the moment, one third of people with a migrant background fall under the migrant groups who have traditionally come to the Netherlands, while the rest come from a broad range of other countries of origin. In The Hague and Amsterdam a small majority of residents have a migrant background, at 51.2% and 51.1% respectively. This dynamic process of change underlines the need for and importance of the government's policy of flexible dialogue.

Engaging in dialogue with society also includes being receptive to signals from society. The Ministry of Social Affairs and Employment's Social Stability Expertise Unit maintains relations with key figures in migrant communities and with migrant organisations. It also supports municipal authorities in gathering reliable information.

5.3 Involvement of minorities

The Advisory Committee indicates that it was informed by various minority groups that they would like to make a more active contribution to integration in Dutch society, but that they lack funding for organisations and access.

In its flexible dialogue the government interacts with a range of partners, depending on the subject at hand. This may include professional experts, opinion leaders, members of minority communities and/or representatives of groups. The form discussions take depends on the issue and those involved. There is therefore a great deal of variety in practice. In the context of the Decade for People of African Descent, for example, several roundtable meetings have been held. Representatives of Turkish organisations are involved in studies on Dutch-Turkish people's ties with the Netherlands. Finally, in developing the new civic integration system, input is also obtained from people currently taking part in the civic integration process, such as refugees, family reunification migrants and highly-skilled migrants.

5.3 Policy on Roma and Sinti

The Advisory Committee expresses its concerns about policy on Roma and Sinti. It points out that, though a new policy has been introduced, municipal authorities require support in actually implementing it at local level.

General

Over the past few years, the government has focused within the generic policy framework on a number of issues concerning the integration of Roma and Sinti: preventing school dropouts, the Participation Act, tackling discrimination, the rollout of the tools created as part of the Tackling Roma Child Exploitation programme (2011-2016), the right to individual self-determination (with a particular focus on tackling forced marriage), enhancing the dialogue, international cooperation, and knowledge development and sharing. The government intends to launch a pilot project in 2019 in which mediators will provide support and guidance aimed at participation in education and the labour market. The government has made funding available for projects and activities by NGOs and Roma organisations that directly or indirectly improve the position of Sinti and Roma in Dutch society. The projects must focus on one of the following themes:

- World War II commemoration;
- tackling discrimination and prejudice;
- strengthening representation and lobbying;
- educational incentives, including a bursary;
- job creation;
- respect for culture and identity;

- advice and guidance for intermediaries.

Policy on Travellers

After announcing the new policy in July 2018, the Ministry of the Interior and Kingdom Relations offered to explain it to municipal authorities in the different provinces. Most provincial authorities took advantage of this offer. It became apparent that municipal authorities are struggling with numerous questions associated with policy development and implementation. In order to answer these questions, the Ministry provided funding for a knowledge and learning programme run by Platform 31. Platform 31 allows municipal authorities to learn from each other on this issue, and makes the available data accessible to all municipalities.

The Ministry of the Interior and Kingdom Relations can now provisionally conclude that a number of positive developments are under way as regards housing for Roma, Sinti and Travellers (*woonwagenbewoners*):

- Several municipalities have adopted plans to expand the number of pitches available;
- Many municipalities are assessing demand for pitches at local or regional level, based on which they will decide whether extra pitches are needed.

How municipal policy on Roma, Sinti and Travellers evolves will be followed closely during the Platform 31 programme.

6. Frisian language media

The position of Omrop Fryslân is secured for the next five years under the BFTK 2019-2023. The Advisory Committee welcomes this fact but is of the opinion that Omrop Fryslân's position remains vulnerable because it is not laid down in the Media Act or in the Use of Frisian Act.

There is no reason for the Advisory Committee to be concerned about the position of Omrop Fryslân. The Media Act 2008, the Media Decree 2008 and the Media Order 2008 apply to all regional public broadcasting services, and thus also to Omrop Fryslân. This legislation offers Omrop Fryslân perfectly good protection, guaranteeing matters such as independence, funding, transmission, designation and programming. These guarantees are examined further below.

Independence

This is regulated in section 2.88 of the Media Act 2008. Applied to Omrop Fryslân it means, among other things, that Omrop Fryslân itself decides and is responsible for the form and content of its own media programming.

Funding

Under the Media Act 2008, Omrop Fryslân may request an annual contribution from the central government media budget to provide regional public media services in Fryslân. The contribution available to Omrop Fryslân is a percentage of the overall budget available for the regional public broadcasters. This percentage is laid down in article 4a of the Media Decree 2008. In 2019 Omrop Fryslân is eligible for 7.000% of the overall budget of approximately €147.2 million, or approximately €10.3 million. Omrop Fryslân also receives an extra project grant of €50,000 a year under the BFTK, plus an extra contribution of approximately €1.8 million a year from public broadcasting organisation NPO for Frisian-language national television.

Transmission of Omrop Fryslân

This is regulated by section 6.13 of the Media Act 2008. Under the Media Act 2008, Omrop Fryslân must be transmitted in Fryslân and its neighbouring provinces. In practice, the two biggest service providers in the Netherlands (Ziggo and KPN) transmit Omrop Fryslân nationwide. A dispute that arose between the Province of Fryslân and KPN concerning the transmission of Omrop Fryslân by KPN in provinces other than those bordering on Fryslân (provinces where KPN was not obliged to transmit under the Media Act 2008) was resolved through active mediation. The contract between KPN and the regional public broadcaster has since been amended, and after receiving extra provincial funding, KPN reinstated its nationwide transmission of Omrop Fryslân on 3 July 2018.

Designation of Omrop Fryslân

This is regulated in sections 2.61 to 2.69 of the Media Act 2008. Every five years one regional public broadcasting service is designated for Fryslân. On 26 June 2018 the Media Authority designated Omrop Fryslân for a further five years, from 2 September 2018 to 2 September 2023. Omrop Fryslân will have to submit a new application for designation for the next five-year period.

Omrop Fryslân programming

On this subject, see among other things sections 2.70 and 2.122 of the Media Act 2008. Applied to Omrop Fryslân section 2.70 implies that at least 50% of the Omrop's programming must consist of informative, cultural and educational programmes that refer in particular to the province of Fryslân. Section 2.122 concerns original Frisian-language productions. Article 4 of the Media Decree 2008 is also relevant in this regard. With regard to Omrop Fryslân, at least 50% of its programming must consist of programmes produced or exclusively commissioned by the Omrop itself.

7. Use of Frisian Act

7.1 Frisian in public administration and in the courts

The Advisory Committee observes that the Use of Frisian Act appears to be mostly satisfactory for dealings with the administration at provincial level. It expresses its concerns about the use of Frisian in the courts and at municipal level.

Frisian in the courts

The Use of Frisian Act¹ (WGFT) stipulates that any person who lives in the province of Fryslân and stands trial or speaks before the North Netherlands District Court or the Arnhem-Leeuwarden Court of Appeal may use the Frisian language. In accordance with the BFTK 2019-2023, the provincial authority will consult the North Netherlands District Court and the Arnhem-Leeuwarden Court of Appeal to make additional agreements concerning the use of Frisian in judicial matters. Agreements made between the province and these judicial authorities will be laid down separately. In its role as *taalskipper* the province will annually invite the judicial authorities to an inter-authority meeting to discuss implementation of the Use of Frisian Act, in particular topics including language policy, public information and the added value of Frisian for the quality of judicial decisions. In light of the implementation of sections 12 to 14 of the Use of Frisian Act and the shortage of interpreters, the provincial authority will invite the parties involved to agree measures and collaborate to ensure sufficient interpreters become available during the term of the administrative agreement.

Frisian in public administration

As regards the use of Frisian at municipal level, as a routine part of the procedure for changing municipal boundaries, Fryslân provincial authority asks municipal authorities to indicate how they intend to pursue an active language policy in the newly formed municipality. This is based on the provision in the Charter which states that new or existing administrative boundaries may not pose any obstacle to the promotion of Frisian. However, no municipal boundary changes are planned in the province of Fryslân over the coming period. A funding scheme (*Mei-inoar foar it Frysk*) has been established to help municipal authorities implement the Use of Frisian Act. The provincial authority also chairs an inter-authority meeting three times a year between municipal authorities and other relevant administrative bodies. The agenda always includes the implementation of the Use of Frisian Act.

7.2 Visibility of the Frisian language

The Advisory Committee encourages the authorities to do more to increase the visibility of the Frisian language.

The provincial authority plays the role of *'taalbrenger'* ('bringer of language'), using Frisian as a fully-fledged language of government and promoting the status of the language. It does so not only by setting a good example itself by using Frisian as much as possible, in both spoken and written form, but also by actively ensuring Frisian's visibility. One example of these efforts is the *'Lân fan taal'* initiative developed as part of Leeuwarden's period as European Capital of Culture in 2018. The BFTK 2019-2023 also states that both the provincial authority and central government will endeavour to increase the functional use of Frisian, and thereby also its visibility, in the public space in Fryslân. The exact form of these collaborative efforts will be fleshed out during the term of the BFTK. Within central government, annual working visits to the province of Fryslân will make the language more visible and enhance knowledge of the Frisian language and culture among central government employees directly involved in this policy issue.

¹ <https://wetten.overheid.nl/BWBR0034047/2014-01-01>.

8. Frisian language education

8.1 Decentralisation, *Taalplan Frysk* and the Inspectorate

The Advisory Committee refers to the decentralisation of competencies in education to the provincial authority as a success and an important stepping stone towards a comprehensive education strategy. The Committee expresses its appreciation of the *Taalplan Frysk* (Frisian Language Plan) and the clarification of the role of the Inspectorate of Education in the BFTK 2019-2023.

The government welcomes the Advisory Committee's comments regarding the recent positive developments concerning Frisian language education. As laid down in the BFTK, over the coming period various steps will be taken to achieve further positive results in this area. Based on their joint responsibility and duty of care, central government and the provincial authority share the view that in the longer term the right conditions must be created for balanced provision in the Frisian language at all levels of education, from preschool to PhD. By 2030 Fryslân will be a multilingual province where the Frisian language is a natural and indisputable part of the curriculum, and also a language of communication and instruction in education. Schools in the Frisian language area will no longer be granted any exemptions from the teaching of Frisian.

8.2 Frisian in schools

The Advisory Committee highlights the importance of teacher training and the role of the Inspectorate for the future of Frisian. It also expresses concerns about the lack of bilingual or Frisian preschools.

Teacher training

Further stipulations will be made during the term of the BFTK 2019-2023 concerning the conditions that apply to teaching qualifications in Frisian, how these should be defined and what authorities have competence in this matter.

Inspectorate of Education

The BFTK 2019-2023 stipulates that over the next few years the Inspectorate of Education will focus on the quality of Frisian in education, on the basis of its own role and in a manner that enhances quality. If there is any evidence or indication that Frisian language teaching is inadequate, the Inspectorate may decide to investigate the quality of Frisian language teaching in its verification or risk assessments.

Bilingual or Frisian preschool

The Childcare Act stipulates that Dutch must be used as the official language of communication at day nurseries in the Netherlands. In areas where Frisian or a regional language is also spoken, that language may also be used as a language of communication some of the time. Those who run day nurseries may therefore use Frisian as a language of communication some of the time, but they are not obliged to do so under the Childcare Act. Childcare provision is a commercial activity.

9. Participation

The Advisory Committee recommends that the authorities establish a consultative structure for dialogue between organisations involved in the Frisian language and culture and Fryslân provincial authority.

The provincial authority has already established several permanent consultative structures for consultation with various actors involved in policy on Frisian. They include the *Mei-inoar foar it Frysk* inter-authority discussions where municipal authorities and other administrative bodies meet with the province three times a year to discuss implementation of the Use of Frisian Act. Once every three years a consultation takes place between the provincial authority and the advisory body DINGtiid. Talks at official level are also held on a regular basis between Fryslân provincial authority and the Ministry of the Interior and Kingdom Relations.

The provincial authority also meets regularly with parties that receive funding for implementing Frisian language policy, such as language promotion institute Afûk, to discuss progress.

During the term of the administrative agreement, the provincial authority will step up work to establish regular administrative consultations with the education sector. During the course of this year, it will institute inter-authority discussions with the North Netherlands District Court. Where possible the provincial authority will involve organisations like the Ried fan de Fryske Beweging, de Fryske Akademy etc. in the development of new policy, such as for the BFTK. During the process of drafting reports for the Council of Europe roundtable discussions are always held with various stakeholders involved with the Frisian language. The annual working visits by central government employees to Fryslân will also provide an opportunity for talking to various organisations and individuals involved in policy on Frisian. On the last working visit, for example, discussions took place with secondary school students and secondary vocational teachers.

The plan is that, halfway through the term of the new administrative agreement, the provincial authority will arrange a consultative meeting, in consultation with central government, for the entire Frisian policy domain. DINGtiid, the advisory body for the Frisian language whose goal is to bring together and connect parties, will also be involved.