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## **EUROPEAN SOCIAL CHARTER**

8<sup>th</sup> National Report on the implementation of  
the European Social Charter

submitted by

### **THE GOVERNMENT OF THE NETHERLANDS**

- Article 7, 8, 16, 17, 19, 27, 31  
for the period 01/01/2010 – 31/12/2013
- Complementary information on Articles 3§4 and  
12§1 (Conclusions 2013)

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Report registered by the Secretariat on  
13 November 2014

**CYCLE 2015**



**THE EUROPEAN SOCIAL CHARTER**

**The Netherlands' Twenty-seventh Report**

for the period 1 January 2010 - 31 December 2013



## **Report**

For the period 1 January 2010 to 31 December 2013, made by the Government of the Netherlands in accordance with Article C of the Revised European Social Charter, on the measures taken to give effect to the accepted provisions of the European Social Charter.

This report does not cover the application of such provisions in the non-metropolitan territories to which, in conformity with Article L they have been declared applicable.

In accordance with Article C of the revised European Social Charter, copies of this report have been communicated to:

- Netherlands Trade Union Confederation FNV
- National Federation of Christian Trade Unions in the Netherlands CNV
- Trade Union Federation for middle classes and higher level employees MHP
- Netherlands Council of Employers' Federations RCO



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## **Article 7 – The right of children and young persons to protection**

With a view to ensuring the effective exercise of the right of children and young persons to protection, the Parties undertake:

1. to provide that the minimum age of admission to employment shall be 15 years, subject to exceptions for children employed in prescribed light work without harm to their health, morals or education;
2. to provide that the minimum age of admission to employment shall be 18 years with respect to prescribed occupations regarded as dangerous or unhealthy;
3. to provide that persons who are still subject to compulsory education shall not be employed in such work as would deprive them of the full benefit of their education;
4. to provide that the working hours of persons under 18 years of age shall be limited in accordance with the needs of their development, and particularly with their need for vocational training;
5. to recognise the right of young workers and apprentices to a fair wage or other appropriate allowances;
6. to provide that the time spent by young persons in vocational training during the normal working hours with the consent of the employer shall be treated as forming part of the working day;
7. to provide that employed persons of under 18 years of age shall be entitled to a minimum of four weeks' annual holiday with pay;
8. to provide that persons under 18 years of age shall not be employed in night work with the exception of certain occupations provided for by national laws or regulations;
9. to provide that persons under 18 years of age employed in occupations prescribed by national laws or regulations shall be subject to regular medical control;
10. to ensure special protection against physical and moral dangers to which children and young persons are exposed, and particularly against those resulting directly or indirectly from their work.

### **Article 7§1**

- 1) *Please describe the general legal framework. Please specify the nature of, reasons for and extent of any reforms.*
- 2) *Please indicate the measures taken (administrative arrangements, programmes, action plans, projects, etc.) to implement the legal framework.*
- 3) *Please provide pertinent figures, statistics or any other relevant information, if appropriate.*

No new developments.

### **Article 7§2**

- 1) *Please describe the general legal framework. Please specify the nature of, reasons for and extent of any reforms.*
- 2) *Please indicate the measures taken (administrative arrangements, programmes, action plans, projects, etc.) to implement the legal framework.*
- 3) *Please provide pertinent figures, statistics or any other relevant information, if appropriate.*

No new developments.

**Article 7§3**

- 1) *Please describe the general legal framework. Please specify the nature of, reasons for and extent of any reforms.*
- 2) *Please indicate the measures taken (administrative arrangements, programmes, action plans, projects, etc.) to implement the legal framework.*
- 3) *Please provide pertinent figures, statistics or any other relevant information, if appropriate.*

No new developments.

**Article 7§4**

- 1) *Please describe the general legal framework. Please specify the nature of, reasons for and extent of any reforms.*
- 2) *Please indicate the measures taken (administrative arrangements, programmes, action plans, projects, etc.) to implement the legal framework.*
- 3) *Please provide pertinent figures, statistics or any other relevant information, if appropriate.*

No new developments.

**Article 7§5**

- 1) *Please describe the general legal framework. Please specify the nature of, reasons for and extent of any reforms.*
- 2) *Please indicate the measures taken (administrative arrangements, programmes, action plans, projects, etc.) to implement the legal framework.*
- 3) *Please provide pertinent figures, statistics or any other relevant information, if appropriate.*

No new developments.

**Article 7§6**

- 1) *Please describe the general legal framework. Please specify the nature of, reasons for and extent of any reforms.*
- 2) *Please indicate the measures taken (administrative arrangements, programmes, action plans, projects, etc.) to implement the legal framework.*
- 3) *Please provide pertinent figures, statistics or any other relevant information, if appropriate.*

No new developments.

**Article 7§7**

- 1) *Please describe the general legal framework. Please specify the nature of, reasons for and extent of any reforms.*
- 2) *Please indicate the measures taken (administrative arrangements, programmes, action plans, projects, etc.) to implement the legal framework.*
- 3) *Please provide pertinent figures, statistics or any other relevant information, if appropriate.*

No new developments.

**Article 7§8**

- 1) *Please describe the general legal framework. Please specify the nature of, reasons for and extent of any reforms.*
- 2) *Please indicate the measures taken (administrative arrangements, programmes, action plans, projects, etc.) to implement the legal framework.*
- 3) *Please provide pertinent figures, statistics or any other relevant information, if appropriate.*

No new developments.

**Article 7§9**

- 1) *Please describe the general legal framework. Please specify the nature of, reasons for and extent of any reforms.*
- 2) *Please indicate the measures taken (administrative arrangements, programmes, action plans, projects, etc.) to implement the legal framework.*
- 3) *Please provide pertinent figures, statistics or any other relevant information, if appropriate.*

No new developments.

**Article 7§10**

- 1) *Please describe the general legal framework. Please specify the nature of, reasons for and extent of any reforms.*
- 2) *Please indicate the measures taken (administrative arrangements, programmes, action plans, projects, etc.) to implement the legal framework.*
- 3) *Please provide pertinent figures, statistics or any other relevant information, if appropriate.*

No new developments.

## **Negative conclusions of the European Committee of Social Rights**

### *Paragraph 3 – Safeguarding the full benefit of compulsory Education*

A. *The Committee concludes that the situation in the Netherlands is not in conformity with Article 7§3 of the Charter on the grounds that:*

- *children aged 15, still subject to compulsory education, are not guaranteed the benefit of an uninterrupted rest period of at least two weeks during summer holidays;*
- *it is possible for children aged 15, still subject to compulsory education, to deliver newspapers before school from 6 a.m. for up to 2 hours per day, 5 days per week.*

### **Ad 1. Working hours**

Children aged 15 may work up to eight hours a day or 40 hours a week in the school holidays, for a maximum of six weeks a year. They may only undertake light, paid work in these six weeks. A maximum of four of the six weeks may be worked consecutively. Each year children aged 15 have at least 12 weeks' holiday in total, which breaks down into:

One week in the autumn

Two weeks at Christmas

One week in the spring

A minimum of eight weeks in the summer

Accordingly, children aged 15 will always benefit from an uninterrupted rest period of at least two weeks during the summer holidays. They may not work for more than half of their total annual holidays. This is in compliance with the EU Directive on the protection of young people at work.

### **Ad 2. Newspaper delivery**

Children aged 15 may deliver newspapers before school from 6 a.m. This is an exception to the general rule that children aged 15 may not work before 7 a.m. However, no exception is made to the rule regarding maximum daily working hours. The limit is set at two hours on school days, the same as for other work carried out by children aged 15. Newspaper delivery is not physically demanding work, as the newspapers are transported by bike in a bicycle bag.

In late 2003, a study was carried out into whether working hours of this kind adversely affect how children experience school and perform academically. No evidence was found that delivering morning papers detracts from children's academic performance. Children who worked did not attain lower marks than those who did not. Nor were children who worked more likely to be held back a year.

On the contrary, the research showed that children with newspaper rounds were in better physical and mental condition than their peers. They felt more rested and were able to concentrate better. Generally speaking, they were also more ambitious and enterprising than other children of their age. Children with newspaper rounds enjoyed school more than the control group. It was therefore concluded that children aged 15 with a newspaper round were able to derive maximum benefit from their schooling and that their extracurricular activities did not detract from this.

It should also be noted that the practice of newspaper delivery by children is monitored closely by the Dutch Labour Inspectorate.

Our research shows that newspaper delivery by children aged 15 has no detrimental effect on their academic achievement. The Netherlands regrets the fact that ECSR does not recognise this.

*In conclusion: the Netherlands are convinced that the situation in our country is in compliance with article 7.3 of the ESC. Parents, schools, trade unions nor the EU perceivethe legislation and practice on these points as problematic.*

*Paragraph 5 – Fair pay*

*B. The Committee concludes that the situation in the Netherlands is not in conformity with Article 7§5 of the Charter on the ground that:*

- young workers' wages are not fair; and*
- apprentices' allowances are not fair.*

All employees aged between 15 and 65 are entitled to receive the statutory minimum wage and minimum holiday allowance. This is laid down in the Minimum Wage and Minimum Holiday Allowance Act (*Wet minimumloon en minimum vakantiebijslag*). The minimum wage is adjusted every six months on the basis of the average increase in the basic rates of pay agreed upon through collective bargaining in the private and public sectors. The actual wage is agreed between the employer and employee, often on the basis of a collective agreement.

Most people aged 22 and younger are in education rather than work. Those who do work generally have minor part-time jobs in addition to their education. The majority of people aged 22 and younger do not have children. They generally live with their parents or – as applies to most students – alone or with a partner who does receive an income. Accordingly, only very few young people need to ‘earn a living’ from the statutory minimum wage for young workers.

Apprentices form a different category: they are not regular young workers but, effectively, students. The main objective of their apprenticeship is learning on-the-job, not productive work. Work undertaken as part of an apprenticeship is an investment in the future. It would be unrealistic for an apprentice to receive a regular young worker's wage, especially in the present labour market conditions of high youth unemployment and scarcity of apprenticeships.

Generally speaking, young people are less productive than more experienced workers and require more supervision. In order to become a skilled employee they need to acquire work-specific, and general, experience. This is why a lower minimum wage is justifiable, and why workers aged 22 and younger are entitled to a given percentage of the minimum wage for employees aged 23 and older.

The level of the minimum wage for young people is set with two government policy objectives in mind.

Firstly, it is the government's policy to ensure that young people remain in education for as long as possible and do not drop out of school (i.e. leave school without basic qualifications). Substantially raising the minimum wage could encourage them to drop out of school to try to find work, even though they lack the skills the labour market requires.

Secondly, it is important to preserve and create employment for those young people who do enter the labour market. An unduly high minimum wage could result in job losses for this

group, as wage costs would no longer be proportional to output. Demand for young workers would then decline sharply, causing a rise in youth unemployment.

In 1982, the Netherlands adopted a policy of moderate wage development. This has proved to be successful: compared with other EU countries, we have relatively low youth unemployment levels. After six years of economic crisis, combating youth unemployment is a top priority for the Dutch government. We do not believe that higher statutory minimum wages for young workers would improve their employment prospects.

*In conclusion: the Netherlands is convinced that the situation in our country is in compliance with article 7.5 of the Charter.*

*Paragraph 6 – Time spent on vocational training*

*C. The Committee concludes that the situation in the Netherlands is not in conformity with Article 7§6 of the Charter on the ground that it has not been established that the great majority of young workers have a right to remuneration for time spent on vocational training with the consent of the employer.*

The Working Hours Act (*Arbeidstijdenwet*) provides that the work performed by young workers must be arranged in such a way that they are able to participate in education or training as required by law and that any time spent by them in education or training is treated as working time (Working Hours Act, section 4:4, subsections 1 and 2). The aim of the Act is to ensure that young workers are able to take a vocational training course in so far as they are obliged to do so by law. As it has now been provided that time spent in education or training is treated as working time, young workers are also protected from stress and an excessive daily or weekly workload. In our view the Netherlands has thus fulfilled the obligation under article 7§6 of the Charter.

Various collective agreements in industries in which many apprentices receive their workplace training, contain a supplementary and more general provision that time spent on training should be treated as working time. The training time is not linked to the training days required by law and can therefore also relate to training that goes beyond the statutory minimum.

Current Dutch legislation does not oblige employers to continue paying wages when employees receive vocational training outside the workplace. However, the social partners may agree in the collective agreement for the industry or business concerned that training time will be remunerated.

Under the European Social Charter, the Committee advises the member states to stipulate in their national legislation that the time spent by an employee in vocational training is treated as normal working time and remunerated as such. This also applies to vocational training that involves employees spending one or two days per week away from the workplace and the rest of the time performing their normal work.

In the Dutch system, this type of training is undertaken as part of block or day release (BBL) schemes, which are covered by the Adult and Vocational Education Act (*Wet Educatie en*

*Beroepsonderwijs*). According to Statistics Netherlands (CBS), 152,710 employees in the Netherlands took part in such a scheme in 2012-2013.<sup>1</sup>

The Council of Europe has asked the Netherlands to address the following issues in the 2014 Charter report:

1. In how many collective agreements and in which economic sectors are employees' wages paid during time spent in vocational training outside the workplace? Are any ages specified?
2. To how many employees does this apply?
3. How many employees continue to get paid while in training even though this is not stipulated in the collective agreement?

Collective agreements are a source of information regarding the first question. It has been investigated whether, under the collective agreement in force, employees are remunerated while on block or day release outside their normal workplace. No empirical data are available about whether wages continued to be paid in practice.

To answer the second question about the actual number of employees doing vocational training on a block or day release basis, with continued payment of salary, requires empirical data that are not available to the Ministry of Social Affairs and Employment. Statistics Netherlands does not seem to have these figures either, but can provide statistics on the number of block or day release trainees, broken down by economic activity.<sup>2</sup> However, there is no information on whether this training is paid.<sup>3</sup>

It is not possible to answer the third question either, as no figures are available.

Regarding the first question about remuneration of employees on a block or day release scheme, the following information was found in collective agreements:

**Table 7.1 Number of collective agreements containing arrangements for block or day release (BBL) and remuneration, 2014**

<b>BBL provision</b>	<b>Number of collective agreements</b>
Yes	55
With remuneration	33
Full remuneration	25
Partial remuneration	8
No remuneration	22
No	45
<b>Total</b>	<b>100</b>

<sup>1</sup> Statline: <http://statline.cbs.nl/StatWeb/publication/?VW=T&DM=SLNL&PA=71798NED&D1=0-5&D2=4&D3=15-65&D4=O&D6=O&D7=I&HD=131111-0943&HDR=G%,G4,G3,G1,G6,T&STB=G2>.

<sup>2</sup> Statistics Netherlands' breakdown of block or day release schemes by economic activity cannot be traced back to collective agreements, however.

<sup>3</sup> The economic activity breakdown applied by Statistics Netherlands cannot be traced back to the economic sectors used when examining the collective agreements either. The data provided by Statistics Netherlands are shown in Appendix V. Based on a recalculation, the distribution of block and day release schemes in 2012-2013 over regular economic sectors is also given.

Block or day release arrangements are mentioned in 55 of the 100 largest sectoral and company collective agreements examined; these are included in the random sample of collective agreements that the Ministry of Social Affairs and Employment generally uses for this purpose (an estimated 85% of employees are covered by such an agreement). This concerns 74% of all workers employed under a collective agreement. Forty-five of the 100 agreements examined contain no such arrangements.

In 33 of these 55 collective agreements, salary continues to be paid during the training: in full in 25 out of 33 cases, and in part in 8 cases (24%). Where remuneration is partial, an average of 50% (unweighted) is received. Compared with 2010, the percentage of collective agreements containing arrangements about full or partial remuneration rose from 25% to 33%.<sup>4</sup>

In 22 of the 55 collective agreements with block or day release arrangements, employees are not paid for the time they are in training.

To investigate whether the provisions made in collective agreements for this specific kind of training and remuneration differ depending on economic sector and type of collective agreement (sectoral or company), the following two tables have been compiled.

**Table 7.2 Collective agreements broken down by economic sector, block or day release (BBL) scheme and remuneration (% of collective agreements)**

economic sector	number of collective agreements	With BBL	with remuneration
Agriculture	3	2 (67%)	2 (67%)
Industry	16	10 (63%)	6 (38%)
Construction	3	3 (100%)	2 (67%)
Wholesale/retail, hotel & catering	26	18 (69%)	11 (42%)
Transport	11	3 (27%)	1 (9%)
Business services	18	7 (39%)	2 (11%)
Other services	23	12 (52%)	9 (39%)
<b>Total</b>	<b>100</b>	<b>55 (55%)</b>	<b>33 (33%)</b>

The sectors agriculture, industry, construction and wholesale/retail, hotel & catering appear to have an above-average ‘density’ of collective agreements with block or day release arrangements, while transport, business services and other services are below average. With regard to continued payment of salary in collective agreements with block or day release arrangements, the transport and business services sectors have a below-average score, with agriculture and construction coming out on top (67%).

<sup>4</sup> Autumn report on arrangements in collective agreements 2010, p. 33.



The table below gives an indication of the difference between sectoral and company collective agreements in terms of the number of such agreements with block or day release arrangements and corresponding remuneration.

**Table 7.3 Collective agreements broken down by type, block or day release (BBL) scheme and remuneration (% of collective agreements)**

Collective type	agreement number collective agreements	of which BBL	with remuneration
sectoral	74	48 (65%)	27 (36%)
company	26	7 (27%)	6 (23%)
<b>total</b>	<b>100</b>	<b>55 (55%)</b>	<b>33 (33%)</b>

Arrangements concerning block or day release are more common in sectoral than in company collective agreements. Employees covered by sectoral agreements are also more likely to be remunerated for time spent in training.

See also Appendix 1: examination of collective agreements for remunerated block or day release schemes

In conclusion, although time spent in vocational training is deemed to be working time, this does not necessarily mean it should also be remunerated as such. The Netherlands does not share the ECSR's interpretation of the Charter that time spent in vocational training should in all cases (including training outside the workplace) be paid as normal working time. This is not required by article 7§6 of the Charter.

We therefore believe that the situation in the Netherlands is in compliance with article 7§6 of the Charter.

#### *Paragraph 9 – Regular medical examination*

- D. The Committee concludes that the situation in the Netherlands is not in conformity with Article 7§9 of the Charter on the grounds that:*
- *there is no general mandatory medical examination for workers under 18 years of age;*
  - *it has not been established that regular medical examination of young workers is guaranteed in practice.*

In addition to the Netherlands' contribution to the 23rd report, the following brief comments can be made.

Dutch policy on occupational health and safety requires employers to perform a risk assessment, with specific attention to young workers. This exercise may highlight the need for a medical examination. If so, the employer must offer an occupational medical examination.

In 2011, 20 collective agreements specified an age for undergoing periodic work-related medical examinations. In four of these, young workers under 18 were also mentioned as an age category eligible for this examination. Of these four collective agreements, three are in the construction sector, covering a total of 210,000 employees (all age categories). The fourth deals with horticulture in glasshouses and covers 44,000 employees (all age categories). No

data are available on the actual use of periodic medical examinations by workers under 18 years of age.

Looking at the question in a broader perspective, access to general health care for young people, including young workers, is ensured by the collective system of health insurance and by the public health system (Municipal Health Service and public healthcare facilities). In some sectors, like construction, the social partners have agreed on regular medical check-ups for all workers.

**Non-recurrent general question to all State Parties re paragraph 1:**

*Do unlawfully present children have access to shelter and medical care for as long as they are in the jurisdiction of the State Party concerned, and if so what is the legal basis?*

Further to a national court judgment in January 2011 the Netherlands established ‘family locations’. Families with children under the age of 18 are housed in these locations ahead of their repatriation. The Supreme Court ruled on 21 September 2012 that the State has an obligation to protect the rights and interests of children in its jurisdiction, including children unlawfully present in the Netherlands.<sup>[1]</sup> On the basis of this judgment, children – and their parents – are provided with shelter so that they do not find themselves in an urgent humanitarian situation as a result of their parents’ decisions.

Unaccompanied minor asylum seekers who have exhausted all legal remedies have the right to stay in the reception facility until they reach the age of majority.<sup>5</sup> Unaccompanied minor asylum seekers who are found living in the Netherlands illegally will be placed in a Young Offender Institution, under the care of the Central Agency for the Reception of Asylum Seekers or with a foster family.

All aliens unlawfully resident in the Netherlands are entitled to necessary medical care (section 10 of the Aliens Act 2000).

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<sup>[1]</sup> ECLI:NL:HR:2012:BW5328, consideration 3.7.2.

<sup>5</sup> Asylum Seekers and Other Categories of Aliens (Benefits) Order.

**Questions from the European Committee of Social Rights** arising from the Netherlands' previous report (23rd)

*Paragraph 2 – Prohibition of employment of children subject to compulsory education*

a. *The Committee notes the report of 2008, of the Labour Inspectorate, on the high incidence of accidents with farm machinery involving children under 16. It asks that next the report contains an update on the findings of the Labour Inspectorate.*

No new information is available.

*Paragraph 7 – Paid annual holidays*

b. *The Committee notes that in 2007, the majority of infringements involved, among others, breaches of rules on rest periods, for which fines were imposed. The Committee asks whether this comprises also breaches of rules on annual paid holidays for young workers.*

### **Inspections involving children**

#### **Holiday work and part-time jobs**

One-third of young Dutch people work in retail as shop assistants, shelf stockers or on the checkout. Others are employed as waiters in the hospitality industry or as cleaners in the homecare sector; other jobs include delivering newspapers and brochures or working in horticulture harvesting vegetables or cutting flowers. The Social Affairs and Employment Inspectorate implemented a programme geared specifically to children and young people between 2009 and 2011. Under Dutch legislation, a distinction is made between two age categories: children (13- 14- and 15-year-olds) and young people (16- and 17-year-olds). Inspections of holiday and part-time jobs mainly looked at the suitability of the work for young people (not too strenuous, not in the vicinity of hazardous substances or machinery, not too much responsibility) and their working hours and rest periods.

The sectors to be inspected were selected based on inspection results in previous years, trends in compliance and sectoral developments. A total of 717 inspections were carried out in various sectors in 2010, broken down as follows:

#### **Number of inspections per sector (2010)**

<b>Sector</b>	<b>Number</b>	<b>Percentage</b>
Hotel & catering	315	44%
Supermarkets	140	20%
Agriculture and horticulture	127	18%
Other retail trade	58	8%
Wholesale trade	37	5%
Other	40	5%
<b>Total</b>	<b>717</b>	<b>100%</b>

In the agricultural and horticultural industries, the inspections focused on re-entry into glasshouses or fields containing crops after they have been treated with plant protection products. Children aged 13, 14 or 15 are not allowed to work among or with crops that have been treated with a protection product within the past two weeks.

#### **Inspection results**

Compliance with the rules varies considerably between the various sectors (see the table below).

**Compliance/non-compliance percentage per sector (2010)**

<b>Sector</b>	<b>In compliance</b>	<b>Not in compliance</b>
Hotel & catering	40%	60%
Agriculture and horticulture	50%	50%
Supermarkets	54%	46%
Other retail trade	62%	38%
Wholesale trade	73%	27%
Other	70%	30%
<b>Total</b>	<b>52%</b>	<b>48%</b>

In all, 718 enforcement instruments were used during these inspections.

Almost half of the infringements (46%) concerned the working conditions, working hours and rest periods of 13-, 14- and 15-year-olds, and 18% related to the working hours and rest periods of 16- and 17-year-olds. Fines were imposed in cases where children aged 15 and young people were found to be working after 7 pm and 11 pm respectively, in violation of their working hours and rest periods. Furthermore, 14% of the companies inspected did not keep proper records and 15% did not conduct a comprehensive risk identification and assessment. Twelve companies were fined for the latter infringement. Children sometimes performed prohibited tasks, such as manning a till on their own, operating industrial dishwashers or entering glasshouses where they could come into contact with plant protection products.

Compliance with the rules for employing 16- and 17-year-olds is fairly good in the sectors inspected, but there is room for improvement in the case of 13-, 14- and 15-year-olds.

Working hours and rest periods in holiday and part-time jobs are the main problem in the retail trade and hotel & catering industry, particularly children's working hours.

Working conditions were good on the whole. Breach of the re-entry rules was the key issue in the agricultural and horticultural industries.

Until 1 July 2011, 15-year-olds were permitted to work until 7 pm. A number of amendments have since been made to the detailed rules on child labour. One concerns how late 15-year-olds may work in the evening. The limit has been extended to 9 pm but only during the holidays, and the corresponding rest periods have of course been adjusted accordingly.

*Paragraph 10 – Special protection against physical and moral dangers*

*c. According to ECPAT, the sexual exploitation of children, including child sex tourism, should be addressed in the curricula of various training courses, such as those for social workers, educators, health professionals and law enforcers. The Committee asks what measures are taken to reduce risks of sexual exploitation relating to sex tourism.*

- In 2012 the mandate of the National Rapporteur on Human Trafficking was extended to include sexual violence against children.
  - Workshops organised by the organisation ‘M’ (*Meld Misdaad Anoniem*), in collaboration with the police, on ways of reporting crime anonymously have been offered to social workers and health professionals in the four major cities. These professionals possess a great deal of information about child victims of sexual exploitation, but are still insufficiently familiar with the facilities available to pass it on anonymously. In so doing, they could help to detect human trafficking without harming the interests of the victims.
  - Consultations are provided free of charge and, if so desired, anonymously by the Municipal Health Service for young people in all parts of the country. Emphasis is placed on sexual assertiveness and sexual violence.
  - The outpatient clinic for sexually transmitted diseases is also vigilant when it comes to identifying the signs of youth prostitution.
  - Training in the area of youth prostitution is provided by NGOs to workers involved in prevention, police officers, local and provincial government officials, social workers and schools.
  - The ‘Appearances can be Deceptive’ (*Schijn bedriegt*) campaign is being carried out by ‘M’ on behalf of the Ministry of Security and Justice. This campaign resulted in 76% more crimes being called in between June 2012 and May 2013, including a noticeable increase in potential minor victims: one in four calls about human trafficking involved this group.
  - During the parliamentary committee meeting on 4 July 2013 to discuss child pornography, the Minister of Security and Justice said he was committed to continuing to use the entrapment (*lokpuber*) method to track down and prosecute people seeking to contact minors over the internet in order to sexually abuse them. This involves a police officer posing as a minor and creating an online profile to lure these ‘groomers’ before they can actually abuse or exploit adolescents. Using this approach, offenders can be identified and caught before they can claim any victims.
- d. *The Committee notes from ECPAT that structured and continuous awareness raising among children on how to use internet communication safely is needed. Ideally, according to ECPAT preventing sexual exploitation should be incorporated in the school curriculum, with sex education and assertiveness training, beginning at primary school. The Committee asks what measures are taken in this respect.*
- The Ministry of Education, Culture and Science, together with municipalities, ran the ‘We Can’ Youth Campaign (*We Can Jongeren campagne*) between 2012 and 2014. ‘We Can’ is an international initiative aimed at combating violence against women. As part of the campaign, young people are being trained to become active as ‘change makers’. This is being achieved, partly through social media, by seeking to bring about a shift in culture among young people. The intention is to increase their sexual resilience and to uphold and respect individuals’ boundaries.
  - The Ministry of Security and Justice commissioned the film *De mooiste chick van het web* (‘The most beautiful chick on the web’) to alert children, parents, friends and teachers to the risks of social media. The film can be viewed at [www.mediawijzer.net](http://www.mediawijzer.net). The Ministry also tasked Codename Future with developing an active learning package for schools based on the film. The target group is secondary school pupils in Years 1 and 2. Schools were informed about the package in September 2013 and 45 signed up for it in the first week alone.
  - The Ministry of Education, Culture and Science revised the core objectives for primary, special and secondary education in 2012 in order to devote attention to sexuality and

sexual diversity. This is an important step in order to promote sexual resilience among pupils, as well as a safe environment in schools.

- Websites (such as [www.helpwanted.nl](http://www.helpwanted.nl)) have been set up where young people can chat with social workers or receive e-coaching on topics such as 'loverboys'<sup>6</sup>, online sexual abuse or relationships.

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<sup>6</sup> The term 'loverboy' is used in Dutch to designate pimps (often members of an ethnic minority) who recruit new girls by feigning romantic interest in their victims, while fostering an emotional and financial dependence that ultimately leads to prostitution.

## **Article 8 – Right of employed women to protection of maternity**

With a view to ensuring the effective exercise of the right of employed women to the protection of maternity, the Parties undertake:

1. to provide either by paid leave, by adequate social security benefits or by benefits from public funds for employed women to take leave before and after childbirth up to a total of at least fourteen weeks;
2. to consider it as unlawful for an employer to give a woman notice of dismissal during the period from the time she notifies her employer that she is pregnant until the end of her maternity leave, or to give her notice of dismissal at such a time that the notice would expire during such a period;
3. to provide that mothers who are nursing their infants shall be entitled to sufficient time off for this purpose;
4. to regulate the employment in night work of pregnant women, women who have recently given birth and women nursing their infants;
5. to prohibit the employment of pregnant women, women who have recently given birth or who are nursing their infants in underground mining, and all other work which is unsuitable by reason of its dangerous, unhealthy, or arduous nature and to take appropriate measures to protect the employment rights of these women.

### **Article 8§1**

- 1) *Please describe the general legal framework. Please specify the nature of, reasons for and extent of any reforms.*
- 2) *Please indicate the measures taken (administrative arrangements, programmes, action plans, projects, etc.) to implement the legal framework.*
- 3) *Please provide pertinent figures, statistics or any other relevant information to demonstrate that the level of maternity benefit is adequate.*

No new developments

### **Article 8§2**

- 1) *Please describe the general legal framework. Please specify the nature of, reasons for and extent of any reforms.*
- 2) *Please indicate the measures taken (administrative arrangements, programmes, action plans, projects, etc.) to implement the legal framework.*
- 3) *Please provide pertinent figures, statistics or any other relevant information, if appropriate.*

No new developments

### **Article 8§3**

- 1) *Please describe the general legal framework. Please specify the nature of, reasons for and extent of any reforms.*
- 2) *Please indicate the measures taken (administrative arrangements, programmes, action plans, projects, etc.) to implement the legal framework.*

No new developments

**Article 8§4**

- 1) *Please describe the general legal framework. Please specify the nature of, reasons for and extent of any reforms.*
- 2) *Please indicate the measures taken (administrative arrangements, programmes, action plans, projects, etc.) to implement the legal framework.*

No new developments

**Article 8§5**

- 1) *Please describe the general legal framework. Please specify the nature of, reasons for and extent of any reforms.*
- 2) *Please indicate the measures taken (administrative arrangements, programmes, action plans, projects, etc.) to implement the legal framework.*

No new developments



**Questions from the European Committee of Social Rights** arising from the Netherlands' previous report (23rd)

*Paragraph 1 – Maternity leave*

- a. *The Work and Care Act entitles employees to sixteen weeks of maternity leave. The Working Hours Act prohibits employees from working during the four weeks before childbirth and six weeks after childbirth. The Committee asks confirmation that this also covers women employed in the public sector.*

We can confirm that the Work and Care Act also applies to women employed in the public sector. This derives from section 1:1 (b) of the Act, which defines an employee as a person performing work for an employer under a contract of employment or by *appointment to a post in the public sector*. The Working Hours Act applies to all employees, regardless of the sector they work in. It therefore also applies to women employed in the public sector.

- b. *As regards conditions which must be fulfilled for receipt of maternity benefits, the Committee notes from another source<sup>1</sup> that if you are employed in the Netherlands and are insured in your own right, you are entitled to maternity benefits. The employee must apply through the employer to the Executive Institute for Employee Insurances at least 2 weeks before maternity leave. The Committee asks whether the same framework applies to women employed in the public sector.*

Section 3:11, subsection 1 of the Work and Care Act states that female employees or persons equated with employees who wish to be eligible for maternity benefits must apply through their employer to the Employee Insurance Agency (*Uitvoeringsinstituut Werknemersverzekeringen*; UWV) for such benefits no later than two weeks before the date on which they wish the benefits to start. The same applies to women employed in the public sector. Section 3:6, paragraph 1 (a) of the Act states that 'employee' means an employee as referred to in section 1:1 (b) of the Act, defined as a person performing work for an employer under a contract of employment or by *appointment to a post in the public sector*.

*Paragraph 2 – Illegality of dismissal during maternity leave*

- c. *The employee, after the expiry of two months, may bring action for manifestly unreasonable dismissal before the District Court and can apply for compensation and reinstatement. The Committee asks again whether in such cases there are any limits to the amount of compensation that may be awarded by the court, in particular if there is no reintegration.*

*If there is, it asks whether this upper limit covers both pecuniary and non-pecuniary damage or whether unlimited non-pecuniary damage can also be sought by the victim through other legal avenues (e.g. antidiscrimination legislation).*

As stated in the previous report, in the case of manifestly unreasonable dismissal there is no upper limit to the amount of compensation the courts can award. Compensation is based on the degree of damage demonstrated by the employee.

The second question need not be answered as there is no upper limit to the amount of compensation the courts can award.

- d. *It also asks whether both types of compensation are awarded by the same courts, and how long it takes on average for courts to award compensation. Should the next report not provide the information requested, there will be nothing to establish that the situation is in conformity.*

The limited jurisdiction sector of the district court (*kantonrechter*) decides during the same proceedings whether the dismissal in question was manifestly unreasonable and on the amount of compensation to be awarded. The employee may appeal against this decision.

	Average length of proceedings		
	2011	2012	2013
<b>Average length of proceedings (in days) in cases involving manifestly unreasonable dismissal</b>	<b>230</b>	<b>216</b>	<b>199</b>

Length of proceedings is defined as the total amount of time between ‘inflow’ and ‘outflow’. Inflow is based on the date on which the court is notified of a case, while outflow is disposal of the case in any of the following ways: withdrawal, being struck off the list, final judgment and service of the judgment. It is also possible for a case to be incorrectly registered or referred to another organisation.<sup>7</sup>

*e. The Committee asks whether the same regime regarding dismissals applies to women employed in the public sector.*

It applies in the same way to government personnel who are employed under a civil-law contract of employment, i.e. those employed in special education. The limited jurisdiction sector can award them compensation for dismissal just as it does to people employed in the private sector.

The rules governing dismissal and compensation that apply to personnel employed on the basis of a public-service appointment (in public-authority schools and government service) are contained in public-law instruments regarding legal status which are based on the Central and Local Government Personnel Act. The legal remedies of objection, application for review to the administrative sector of the district court and appeal to the Central Appeals Court for Public Service and Social Security Matters are available to any female civil servant who is dismissed during maternity leave. The administrative court may either reverse the dismissal (while possibly directing that the legal consequences of the quashed decision will stand) or uphold it. In certain circumstances it may award extra compensation on the basis of a formula established by the Central Appeals Court for Public Service and Social Security Matters in 2013. A public servant may be entitled to this extra compensation if he or she is dismissed on ‘other grounds’ as a result of which there has been an irretrievable breakdown in the relationship with the employer or it has reached an impasse, largely through the actions of that employer. The calculation of the amount of the extra compensation is based on the degree of responsibility (once it exceeds 51%) borne by the administrative authority for the breakdown (falling into one of three bandwidths), the amount of the employee’s monthly salary and length of service. The extra compensation is not subject to a statutory maximum. So although compensation for public servants who are dismissed during maternity leave is, legally speaking, awarded in a different way and on a different basis, this compensation is nevertheless comparable to that which they would receive if they worked in the private sector.

<sup>7</sup> Figures supplied by the Council for the Judiciary.

*Paragraph 3 – Time off for nursing mothers*

- f. *The Working Hours Act entitles employees who are breastfeeding a child up to nine months to paid breaks of up to a maximum of 25% of their working hours. The Committee asks whether this also applies to women employed in the public service.*

Yes, this also applies to women working in the public sector.

*Paragraph 4 – Regulation of night work*

- g. *The Committee asked whether a medical check-up is carried out before an employee is assigned to night work, allowing for a transfer to daytime work for health reasons. This question appears to be of particular relevance for pregnant women, women having recently given birth and those who breastfeed their children.*

The Working Conditions Act provides for a medical check-up before employees begin night work.

- h. *In addition, the Committee asks how courts interpret the above-mentioned notion of "weighty reasons". It underlines that should the next report not provide this information there will be nothing to establish that the situation is in conformity on that point.*

In the Netherlands the prohibition on night working for pregnant employees is laid down in section 4:5, subsection 5 of the Working Hours Act. ‘A pregnant employee may not be obliged to work night shifts unless the employer can make a plausible case that it cannot reasonably be expected not to require this’. Under the Dutch legislation ‘weighty reasons’ are thus implied in the formulation of the text: a pregnant employee cannot be obliged to work night shifts unless it cannot reasonably be expected of the employer that it exempt her from night work.

As far as we can ascertain, the Dutch courts have delivered virtually no judgments on this issue.

We have found only one judgment, a ruling given by the Supreme Court in 1995. This concerned a pregnant woman who was employed as a kennel worker. The owner of the kennels was disabled, so that there always had to be one employee on site at night performing a standby shift. Because she was moving house, the pregnant employee was allowed to do fewer night shifts but according to her employer, that did not mean she was exempted from working nights. When she was four months’ pregnant she refused to do a night shift because she had stomach pains. However, she did not call in sick and the owner was unable to find another employee to take over the shift. The court hearing the facts of the case weighed the interests of the employer and employee and concluded that in these specific circumstances it could not reasonably be expected of the employer that she exempt the pregnant employee from performing standby shifts at night. The Supreme Court upheld this judgment.

It is impossible on the basis of a single judgment to comment specifically on how the Dutch courts interpret ‘weighty reasons’. A more general conclusion would be that in the Netherlands, a pregnant employee does not, in principle, have to perform night work, unless the employer has weighty reasons preventing it from exempting her from such work. There is thus in each case a comparative weighing of the interests involved: those of the employee and those of the employer.

- i. *The Committee asks whether the same regulation applies to women employed in the public sector.*

Yes, this applies to the public sector as well.

*Paragraph 5 – Prohibition of dangerous, unhealthy or arduous work*

- j. *The Committee notes from the above-mentioned Decree that if the employee's work represents a risk to her health that is not avoidable by changing her working conditions or hours, or if she cannot be temporarily transferred to another work, she is exempt from her duties while the risk persists. The Committee asks whether in such cases her leave will be paid and whether she has a right to reinstatement when her condition permits it.*

Yes, in such cases her leave will be paid and she has a right to reinstatement when her state of health permits it.

- k. *The Committee asks whether this also applies to women employed in the public sector.*

Yes, this also applies to women working in the public sector.

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## Article 16 – The right of the family to social, legal and economic protection

With a view to ensuring the necessary conditions for the full development of the family, which is a fundamental unit of society, the Parties undertake to promote the economic, legal and social protection of family life by such means as social and family benefits, fiscal arrangements, provision of family housing, benefits for the newly married and other appropriate means.

- 1) *Please describe the general legal framework. Please specify the nature of, reasons for and extent of any reforms.*
- Temporary Domestic Exclusion Order Act (Wet tijdelijk huisverbod), which entered into force in 2009. Under the provisions of this Act, a perpetrator of domestic violence may be excluded from his or her home, so that the victim can remain in the home.
  - Mandatory Reporting Code (Domestic Violence and Child Abuse) Act (Wet Verplichte meldcode huiselijk geweld en kindermishandeling), which entered into force on 1 July 2013. Under the provisions of this Act, organisations in certain sectors must have a step-by-step plan for dealing with signs of domestic violence and child abuse. Organisations also have a duty to provide information about and promote the use of the reporting code.
  - Revised Social Support Act (Herziene Wet maatschappelijke ondersteuning), which will enter into force on 1 January 2015. Dealing with domestic violence features prominently in this Act.
  - Youth Act (Wet Jeugd), which will enter into force on 1 January 2015. This act specifically delegates addressing child abuse and providing victims with support and assistance to the municipalities.

Description of marital property regime:

General community of property is the system enshrined in Dutch marital property law. This concept, set out in book 1, article 93, of the Civil Code, refers to the legal community which exists between spouses by operation of law from the moment the marriage is concluded and between registered partners from the moment of registration, insofar as they have not elected to deviate from this principle by means of a prenuptial agreement. The community of property includes all current and future property of either or both spouses. The community of property also includes all debts. The following, however, is not included:

- inherited or gifted goods, which the testator or donor has determined must be excluded from the community;
- the usufruct of an estate (or parts thereof), the establishment of which may be claimed by a surviving spouse under articles 4:29 and 4:30 of the Civil Code against the heirs or beneficiaries of the deceased spouse;
- goods or debts which are specifically attached to one spouse, insofar as that attachment precludes their inclusion in the community;
- pension rights (these are divided under the Pension Sharing (Divorce) Act (*Wet verevening pensioenrechten bij scheiding*) in the event of divorce).

- 2) *Please indicate the measures taken (administrative arrangements, programmes, action plans, projects, etc.) to implement the legal framework.*

The government's approach to domestic violence is based on three pillars:

1. strengthening the position of victims and potential victims (prevention, recognition of signs of abuse, shelter, help and aftercare);
2. a targeted approach to perpetrators;

3. breaking the cycle of violence for future generations. This concerns all types of violence, such as child abuse, intimate partner violence, sexual violence, elder abuse, female genital mutilation, honour-related violence and forced marriage.

The central-government approach is coordinated by the Ministry of Public Health, Welfare & Sport, in collaboration with the Ministries of Security & Justice, Education, Culture & Science, and Social Affairs & Employment. It focuses on the entire chain of prevention, recognition, ending the violence, and aftercare. One of the priorities is to enhance the role of the municipalities. The aim of the current approach is to create a future-proof system to deal with domestic violence at local and regional levels for all victims regardless of age, gender, sexual preference or ethnic background.

The Temporary Domestic Exclusion Order Act has provided a great impetus to the cooperation between all parties involved (domestic violence support centres, care providers and the police). In the first four years after the entry into force of the Act, 11,692 domestic exclusion orders were imposed. The evaluation carried out in 2013 showed that following a domestic exclusion order domestic violence is less likely to reoccur than in similar situations where no exclusion order has been imposed.<sup>8</sup>

To facilitate the introduction of the Mandatory Reporting Code (Domestic Violence and Child Abuse) Act, the Ministry of Public Health, Welfare and Sport developed a basic training course on working with a reporting code, as well as several e-learning modules for the various professions. These and other training courses are available in the reporting code training database, which was developed with a grant from the Ministry of Health, Welfare and Sport. There is also a toolkit with aids for professionals and municipalities, and a special app.

Prior to the introduction of the Revised Social Support Act and the Youth Act, a project entitled 'Dealing with domestic violence' was set up, to run from the summer of 2012 to the end of 2014. The project is primarily being carried out by the Association of Netherlands Municipalities (*Vereniging van Nederlandse Gemeenten*, VNG) and the Federation of Shelters (*Federatie Opvang*). Other parties involved include the MO Group (*MOgroep*) (the professional association for welfare and social services), the Public Health and Safety Association (*Vereniging van Publieke Gezondheid en Veiligheid*) and the Employers' Association for the Youth Care Sector (*Jeugdzorg Nederland*). The project focuses on all types of violence related to the home or family, including domestic violence, honour-related violence and child abuse. The aim is to enhance the policy approach to this violence, for instance by establishing regional visions (policy plans), which include municipal policy on matters such as child abuse and domestic violence. This contributes to enhancing coherence in efforts at local level.

As of 1 January 2015, the municipalities will be responsible for establishing a Domestic Violence and Child Abuse Advice and Reporting Centre (*Advies- en Meldpunt Huiselijk geweld en Kindermishandeling*, AMHK). The current domestic violence support centres and child abuse advice and reporting centres will be merged. The Social Support Act will be amended for that purpose. In April 2013, a support programme started, under the auspices of the Association of Netherlands Municipalities.

A new publicity campaign on domestic violence was started in 2012. The campaign consists of radio and television adverts about child abuse, intimate partner violence and elder abuse, a

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<sup>8</sup> House of Representatives, parliamentary year 2013-2014, 28 345, no. 128.

website ([www.vooreenveiligthuis.nl](http://www.vooreenveiligthuis.nl) – in Dutch) and a toolkit with materials for municipalities, domestic violence support centres and child abuse advice and support centres.

On 14 November 2012, the Netherlands signed the Council of Europe Convention on preventing and combating violence against women and domestic violence (the Istanbul Convention). The legislation process for approval has since started. The bill is expected to be submitted to the Dutch parliament in 2014.

3) *Please provide pertinent figures, statistics or any other relevant information to show that Article 16 is applied in practice, including information on domestic violence, information on child care arrangements and housing for families, the level of family benefits, the number of recipients as a proportion of the total population, as well as information on tax benefits and other forms of financial assistance for families.*

Domestic violence is a major problem. Every year, approximately 220,000 adults are subjected to serious and ongoing domestic violence, and around one million adults suffer incidental domestic violence.<sup>9</sup> An estimated 119,000 children are abused every year.<sup>10</sup>

Almost 75 per cent of the cases of manifest domestic violence involve *physical violence* (65%) or *sexual violence* (8%). *More women than men* are victims. Although the percentage of male victims is higher than previously thought, there are still more female victims (60%) than male (40%). The vast majority of suspected perpetrators are male (83% men – 17% women).

More than two-thirds of manifest domestic violence is committed by *partners or ex-partners*. Women are the victims of violence committed by partners or ex-partners more often than men.<sup>11</sup> Men are more often subjected to violence by a brother or another person in the home or family.

For facts and figures with regard to young people, please refer to the Youth Monitor of Statistics Netherlands: <http://jeugdmonitor.cbs.nl/nl-nl/>. It provides facts and figures on five core domains (youth and family, health and welfare, education, work and security and justice). It also includes figures on child abuse. There is a condensed version in English: <http://jeugdmonitor.cbs.nl/en-GB>.

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<sup>9</sup> Veen, H.C.J. van der, Bogaerts, S. (2010), *Geweld in huiselijke kring in Nederland. Overkoepelend syntheserapport van het vangst-hervangst- slachtoffer- en daderonderzoek 2007-2010*. The Hague: WODC. This excludes the victims of forced marriage, desertion and honour-related violence, for which there are no figures available.

<sup>10</sup> Alink, L., IJzendoorn, R. van, Bakermans-Kranenburg, M., Pannebakker, F., Vogels, T., Euser, S. (August 2011), *Kindermishandeling in Nederland anno 2010. De Tweede Nationale Prevalentiestudie Mishandeling van Kinderen en Jeugdigen (NPM-2010)*, Leiden attachment research programme & TNO child health, Leiden: Casimir Publishers.

<sup>11</sup> Especially in cases involving physical violence and stalking.

**Questions from the European Committee of Social Rights** arising from the Netherlands' previous report (23rd)

- a. *As the notion of the 'family' is variable, the Charter applies to every family according to the definition of this notion in domestic law. The Committee asks that the next report indicate how the 'family' is defined in domestic law.*

There is no unequivocal definition of 'family' in Dutch law. The term 'family' has various definitions and it would be impossible to give a comprehensive overview.

In the context of article 16 of the European Social Charter, what is mainly relevant is the term 'family' in social security legislation. In that domain, there are no specific definitions of the 'family'; it varies depending on the purpose of the legislation in question.

There is, however, a definition in the context of the Work and Social Assistance Act (*Wet werk en bijstand*, WWB). The WWB defines 'family' as:

- 1 the spouses together;
- 2 the spouses and their dependent children;
- 3 a single parent and his or her dependent children.

- b. *The Committee asks for up-to-date information on family counselling services to be included in the next report.*

According to the [Social Support Act](#) (website in Dutch) municipalities have five functions in providing support and care to children, young people and their parents:

- providing information and advice;
- identifying problems related to growing up and parenting;
- ensuring children, young people and their parents receive appropriate assistance and support;
- providing educational assistance;
- coordinating care.

Various organisations within the municipalities may provide this support and care. This is usually done through the [Youth and Family Centre](#) (*Centrum voor Jeugd en Gezin*, CJG (website in Dutch)).

The Netherlands introduced Youth and Family Centres (CJGs) in 2008. The centres are easily recognisable, accessible agencies where parents and young people can get answers to questions about child development and parenting and obtain appropriate, relevant and coordinated assistance. They also serve as central points for professionals and are responsible for fulfilling two tasks:

1. providing a comprehensive supply of basic information and general and preventive support in relation to child development and parenting, including youth healthcare;
2. ensuring a comprehensive system, so that risk and problems surrounding health, development, growing up and parenting are identified and dealt with effectively and at an early stage.

The professionals employed by or affiliated with the CJGs work collectively towards the following goals:

1. Promoting children's general health, optimal upbringing and broad development. This involves enhancing the capacity of parents and other people involved in raising children, improving health, increasing participation of children and adolescents in education and society, and involving more adults in the upbringing of young people.



2. Preventing problems related to the health, development and upbringing of young people. To this end, the centres provide screening, information, educational prevention programmes and parenting courses.
3. Resolving or mitigating problems which may have a negative effect on young people's health and development. This involves providing support and/or intensive assistance at an early stage, or mobilising assistance in such a way that young people and their parents or guardian are subsequently able to continue without it.

The development of the CJGs began in 2007, under the Interministerial Programme for Youth and Families. By 2012, almost every municipality had a CJG.

If the low-threshold support offered by the CJG is not enough, parents and young people can go to the nearest Youth Care Office (*Bureau Jeugdzorg*). Youth Care Office staff have different statutory powers from their CJG counterparts, including:

- carrying out a needs assessment (finding the right assistance for children or parents);
- carrying out the tasks of the [Child Abuse Advice and Reporting Centre](#) (*Advies- en Meldpunt Kindermishandeling*, AMK – website in Dutch);
- implementing youth protection measures (guardianship, family supervision);
- providing guidance to young people who have been convicted of an offence or are suspected of committing one ([youth probation service](#) (*jeugdreclassering* – website in Dutch)).

Every province has a Youth Care Office. The metropolitan regions of Amsterdam, Rotterdam and The Hague also have their own Youth Care Offices. The Youth Care Offices are monitored by the [Youth Care Inspectorate](#) (*Inspectie Jeugdzorg*).

Families with mental health problems are referred to the mental health services. An example of a family-oriented intervention within the mental health services, involving cooperation between four core aspects of the life of a young person (the young person himself, the parents, the family and external social factors, such as school, work and free time) is Multidimensional Family Therapy (MDFT). MDFT is an intensive family therapy for adolescents aged 12 to 18 with various problems, such as behavioural problems, drug addiction, psychological problems, involvement in crime, etc. MDFT contains elements of active intervention, and also looks at social relationships (systems) outside the family which are important to the young person. Arrangements are made and alliances forged with representatives of these systems. The aim of MDFT is to help the young person lead a life in which problem behaviour decreases or disappears, allowing social participation. The therapist aims to help the young person function better in the family, at school, at work and in the neighbourhood, and promotes age-appropriate leisure activities and healthy relationships with peers.

- c. *To ensure that families' views are catered for when family policies are framed, the authorities must consult associations representing families. The Committee asks for information in the next report on the participation of relevant associations representing families in the framing of family policies. The Committee asks for up-to-date information on family counselling services to be included in the next report.*

Family associations consulted:

- *LOC Zeggenschap in zorg*: the largest client organisation in youth care, mental healthcare (including mental healthcare for young people), social care, addiction care, care and nursing, home care and welfare. LOC encompasses 1,500 client councils, which together represent around 600,000 clients.
- LCFJ: the national youth care client forum (part of *LOC Zeggenschap in zorg*).

- *Landelijk Platform GGz* (national mental health services platform): the umbrella organisation for and by 20 client and family organisations. Together they represent the more than one million people in the Netherlands who make use of the mental health services every year. They aim to improve the position of this vulnerable group of people.
  - *LPGGz*: a national platform for 20 patient and family organisations in the mental health care sector. *LPGGz* promotes the interests of all people with psychological problems and their families. This organisation is an important consultation partner for the Dutch Association of Mental Health and Addiction Care (*GGZ Nederland*).
  - *Zorgbelang Nederland* (National Care Interest Organisation): there are 13 active care interest organisations in the Netherlands. They promote the interests of people who need care in their region and work to improve the quality of care. They are linked to each other and to the national patient organisations via *Zorgbelang Nederland*.
  - *Nederlands Jeugdinstituut* (Netherlands Youth Institute): knowledge institute for professionals in the youth sector.
  - *Stichting Opvoeden.nl* (Opvoeden.nl Foundation): institute for validated information on parenting and development for parents and young people.
  - *Nationale Jeugdraad* (National Youth Council): association of youth organisations.
  - *Ouders Online* (Parents Online): digital magazine for parents and various forums.
  - *MEE Nederland*: *MEE* provides support to people with disabilities. They can contact *MEE* with questions about parenting and development, learning and work, society and living, and regulations and money matters. *MEE* comprises 22 regional *MEE* organisations throughout the country. All *MEE* organisations are members of the *MEE Nederland* professional organisation.
  - *FOSS*: Dutch Federation of Parents of Hearing Impaired Children and Children with Speech and Languages Difficulties.
  - *FODOK*: Federation of Parents of Deaf Children.
  - *BOSK*: an association for people with physical disabilities and their parents.
  - *Cerebraal*: an association for people with acquired brain injuries and their families.
  - *Stichting Downsyndroom* (Down's Syndrome Foundation): for parents of children with Down's Syndrome.
  - *Helpende Handen* (Helping Hands): movement which brings together, helps and supports people with a reformational background who have long-term or permanent disabilities.
  - *KansPlus*: association for people with mental disabilities, their parents, siblings and other loved ones.
  - *PhiladelphiaSupport*: Christian-inspired association for people with disabilities and their networks.
  - *NVA*: Dutch Autism Association.
  - *Balans*: association for parents of children with learning and/or behaviour-related developmental disorders, including ADHD, dyslexia and PDD-NOS.
- d. *According to the report, a motion has been tabled in Parliament to investigate which Sections in titles 6 to 8 of Book 1 of the Civil Code concerning community of property should be amended. The Committee asks for information in the next report on the amendments.*

During the debate in the Senate on the bill to amend the statutory community of property, a motion brought by Cathrijn Haubrich-Gooskens and others was adopted (Parliamentary Papers I 2009/10, 28 867, G (reprint)). The motion requested that it be investigated which articles in titles 6 to 8 of Book 1 of the Civil Code needed to be amended following the Anker amendment, which was adopted during the debate in the House of Representatives (Parliamentary Papers II 2007/08, 28 867, no. 14). The result of this amendment is that goods that are part of an estate or gift, and to which no exemption clauses apply, belong to the

statutory community of property. This is contrary to the original bill which determined that goods that are part of an estate or gift did not belong to the statutory community of property.

Following this motion, a recommendation was made at the request of the then Minister of Justice by lawyers P. Neleman and Professor A.J.M. Nuytinck (Parliamentary Papers I, 2010/11, 28 867, H). This recommendation was adopted and an amending bill was introduced to this effect (Parliamentary Papers II 2011/12, 32870).

Under the amending bill, only the spouse who receives assets as an heir, beneficiary or donee is entitled to dispose of the assets that were part of that estate or gift. The same applies to legacies in the sense of articles 4:115 and 4:117 of the Civil Code and charged benefits (article 4:130 of the Civil Code).

Both acts entered into force on 1 January 2012.

*e. The Committee asks for information in the next report on access to family mediation services, whether they are free of charge, how they are distributed across the country and how effective they are.*

The professional group for mediators has set standards for education, experience, number of mediations etc. It has also instated a right of complaint, disciplinary rules and a code of conduct.

A government-funded mediator may be appointed to persons wanting to make use of mediation whose income is below a certain threshold. A personal contribution towards the costs is charged for this service on the basis of income. Professional legal workers are familiar with this scheme and it is used often. Courts regularly refer people to a mediator. The success rate is around 60%. Most legal insurance policies cover the costs of mediation.

*f. The Committee considers that, in order to comply with Article 16, child allowances must constitute an adequate income supplement, which is the case when they represent a significant percentage of median equivalised income. According to MISSOC1, in 2009, the amounts of the basic universal child allowance were different for children born before and after 1995. The monthly allowance for the children born after 1995 was 64.99 € (up to 6 years), 78.92 € (6 to 11 years), and 92.85 € (12 to 18 years). The Committee notes that these amounts per month correspond to 3.9%, 4.7% and 5.5% of monthly median equivalised income. It also notes that the allowance for families with children up to 6 and children aged 6-11 is low (3.9% and 4.7%) and it therefore asks that the next report contain detailed information on the impact of other types of benefits and tax reliefs for this group of families.*

Besides the General Child Benefit Act (*Algemene Kinderbijslagwet, AKW*), which provides for the payment – under certain conditions – of an allowance (child benefit) to people who are supporting and raising a child under the age of 18, there are 10 other statutory schemes in the Netherlands for children (and their parents).

### **1. Child budget (*Kindgebonden budget, KGB*)**

The child budget is a statutory contribution to the costs of raising a child. Depending on their income and assets, parents of children under the age of 18 may be eligible for a child budget. Eligibility also depends on the number of children under 18: the more children, the higher the allowance. If the parents' income is less than €26,147 per year, they receive the maximum

amount. The higher the income, the lower the amount. The amount also depends on the parents' combined assets. If they exceed €80,000 they are not eligible for the allowance.

The maximum child budget (calculated as on 31 December 2013):

- a. if the entitlement is for one child: €1,017 per year;
- b. if the entitlement is for two children: €1,553 per year;
- c. if the entitlement is for three children: €1,736 per year;
- d. if the entitlement is for more than three children: €1,736 per year for the first three children, plus €106 for every following child.

Parents are entitled to the following supplements starting from the calendar month following the month in which the child reaches the age of 12:

- for a child aged over 12 but under 16: €231 per year;
- for a child aged 16 or 17, starting from the calendar month following the month in which the child reaches the age of 16: €296 per year.

The child budget is paid out by the Social Insurance Bank (*Sociale Verzekeringsbank, SVB*).

## **2. Allowance for the Upkeep of Disabled Children Living at Home (*Tegemoetkoming ouders van thuiswonende gehandicapte kinderen, TOG*)**

The TOG is an allowance for parents of children with mental or physical disabilities living at home who require constant care. To qualify for a TOG allowance, the parents must present proof that the child is eligible for an average of ten hours of care per week under the provisions of the Exceptional Medical Expenses Act (*Algemene Wet Bijzondere Ziektekosten, AWBZ*). On 31 December 2013, the allowance amounted to €1,460 per year. The allowance is not taxed and does not affect regular child benefit allowances. The TOG is paid out by the Social Insurance Bank.

## **3. Childcare benefit (*Kinderopvangtoeslag, KOT*).**

The Childcare Benefit is an allowance for children who are cared for outside the home. Entitlement to this allowance depends on income and the number of hours per week that the applicant and his partner work. An applicant qualifies for the allowance if both partners either work, study, are receiving help finding a job or are attending a citizenship course.

The amount received depends on income, the number of children being cared for outside the home, the number of hours the children are cared for outside the home and the costs of the care.

The maximum amounts covered are (as on 31 December 2013):

- Day care at a childcare centre: €6.46 per hour
- Out-of-school care at a childcare centre: €5.17 per hour
- Day care by a childminder: €5.17 per hour
- Out-of-school care by a childminder: €5.17 per hour

Costs which exceed these amounts are not covered. If the costs are lower, the allowance is reduced accordingly.

The allowance is paid out by the Tax and Customs Administration (*Belastingdienst*).

## **4. Free school books**

The following school books and learning materials are distributed to secondary school pupils free of charge:

- textbooks, work books, project books and formula books, exam training papers and learning materials;
- learning materials issued by the school;
- learning materials for pupils with reading difficulties, for instance pupils who are visually impaired or have dyslexia.

### TAX MEASURES

**5. Fees and Educational Expenses (Allowances) Act (*Wet tegemoetkoming onderwijsbijdrage en schoolkosten, WTOS*)**

Allowance for parents on low incomes. The allowance is reduced for incomes from €34,000 upwards. The allowance is €324 per child per year for secondary school pupils and €659 per child per year for students in secondary vocational education.

**6. Supplementary single parent tax credit (*Aanvullende alleenstaande-ouderkorting*)**

Allowance in the form of a tax credit for parents of children under the age of 18. It consists of a basic allowance of €947 and a supplementary allowance for working single parents with children under the age of 16. The maximum allowance is €1,319 for parents with an income of around €31,000.

**7. Income-related combined tax credit (*Inkomensafhankelijke combinatiekorting*)**

A tax credit for working single parents, or the parent with the lowest income, of children under the age of 12. The maximum tax credit is €2,133 for incomes of around €33,000.

**8. Tax allowance for the upkeep of children (*Aftrek levensonderhoud kinderen, LOK*)**

Parents who pay for the upkeep of children but do not receive any child benefit, and whose child does not receive any form of student grant, may be entitled to a tax allowance of between €1,200 and €1,400, depending on their income.

**9. Parental leave tax credit (*Ouderschapsverlofkorting*)**

This is a tax credit for parents who take parental leave. It amounts to 50% of the statutory minimum wage per hour of parental leave taken (€4.24 per hour).

**10. Supplement to guaranteed minimum income for single parents (*Aanvulling op sociaal-minimumuitkeringen voor alleenstaande ouders*)**

For single parents who receive benefit. The maximum supplement is around €3,200.

- g. States' positive obligations under Article 16 include implementing means to ensure the economic protection of various categories of vulnerable families, including Roma families. The Committee consequently asks what measures are taken to ensure the economic protection of Roma families.*

Measures taken to ensure the economic protection of Roma families in the Netherlands

The Dutch government has taken a set of comprehensive measures to ensure the economic protection of Roma families:

- School absenteeism among Roma is a major concern for the Dutch government. Municipalities are increasingly aware of this problem. Children are required to attend school from the age of five. Municipalities are responsible for enforcing the law and they employ school attendance officers to ensure compliance with this requirement. Parents bear primary responsibility for complying with the Compulsory Education Act (*Leerplichtwet*). If children, Roma or otherwise, are persistently absent the school

attendance officer takes action – legal action if necessary – to ensure they go to school. The Roma monitor has reported that there have been positive effects on school absenteeism at primary schools. Several Dutch municipalities have set up projects to involve Roma and Sinti (as well as other minority groups) in the school system. As part of these projects the municipalities employ assistant teachers from minority groups (for instance from the Sinti, Iranian or Chinese community). This reduces school drop-out rates among children from these minority groups and has proven successful.

- The Netherlands employs various measures to help people find jobs. The measures are aimed at all job seekers, regardless of their background. Unemployment has risen in recent years due to the financial crisis. The Roma monitor has shown that unemployment among Roma is still very high. Important reasons for this high level of unemployment include school absenteeism and lack of starting qualifications.
- The ban on risk-based selection in the Healthcare Insurance Act (*Zorgverzekeringswet*) ensures that nobody, including members of the Roma community, is excluded from insurance cover for health or financial reasons. The Roma monitor has reported that access to health care has improved.
- For the Roma who came here in 1978/1979 under a general pardon, housing was provided by municipalities. Anyone who resides legally in the Netherlands and is eligible for social housing on account of their low income has access to the social housing market, and this includes Roma. Housing associations are explicitly charged with the task of providing housing for vulnerable groups and have a large supply of subsidised rented houses for that purpose. Some municipalities work with housing regulations to ensure housing is allocated fairly, in which case the systems in use allocate housing without regard for the ethnic background of potential tenants. The Roma monitor has reported that in general housing conditions are fairly good, though some Roma stated that municipalities do not provide enough places for caravans.
- Assistance is available to Roma who encounter discrimination. The Municipal Anti-Discrimination Services Act (*Wet gemeentelijke antidiscriminatievoorzieningen*) makes it easy for anyone to report discrimination or suspected discrimination, or request advice and assistance, locally. In the Netherlands the law protects everyone from discrimination, which is banned by article 1 of the Constitution. The government opposes all forms of discrimination, be it on the grounds of ethnic origin, religion, belief, sex, sexual orientation or any other grounds. Discrimination is at odds with the concept of citizenship: it is a barrier to engagement in society and stops people participating and investing in the community. To combat discrimination citizens need to report incidents of discrimination to a municipal anti-discrimination service or lodge a criminal complaint with the police. However, the Roma monitor has reported that Roma feel that they are still being discriminated on the labour market. The government is considering a general campaign to combat discrimination.
- The ‘Integrated Services’ programme of the Ministry of the Interior and Kingdom Relations (Directorate-General for Housing and Building) supports municipalities in implementing transformations and innovations in the social field. Sometimes municipalities struggle with multiple problems among groups such as Roma and Sinti with regard to education, safety, school attendance, violence, debts and health issues. The ‘Integrated Services’ programme provides knowledge to municipalities and organisations and expert meetings are being organised in cooperation with the Association of Netherlands Municipalities (VNG), the Ministry of Social Affairs and Employment, the Police College and the Roma Platform, for the purpose of sharing knowledge.

- h. The Committee asks if nationals of other non-EU/EEA states party residing or working lawfully in the Netherlands enjoy equal treatment with regard to the payment of family benefits.*

Under the provisions of the General Child Benefit Act, parents who reside legally in the Netherlands or are required to pay tax on income earned from legal employment in the Netherlands are entitled to child benefit. Nationality is not a factor, so nationals of non-EU/EEA states who reside or work legally in the Netherlands are equally entitled to child benefit.

**ARTICLE 16: THE RIGHT OF THE FAMILY TO SOCIAL, LEGAL AND ECONOMIC PROTECTION**

*‘With a view to ensuring the necessary conditions for the full development of the family, which is a fundamental unit of society, the Contracting Parties undertake to promote the economic, legal and social protection of family life by such means as social and family benefits, fiscal arrangements, provision of family housing, benefits for the newly married, and other appropriate means.’*

This following answers relate to the Caribbean part of the Netherlands: the islands of Bonaire, St Eustatius and Saba.

***General: New constitutional relationship***

The Kingdom of the Netherlands has been through a process of constitutional reform. The Netherlands Antilles, consisting of the islands of Curaçao, St Maarten, Bonaire, St Eustatius and Saba, ceased to exist as a country on 10 October 2010. Curaçao and St Maarten became countries within the Kingdom, with the same status as Aruba. Aruba has been a country within the Kingdom since 1986. Since 10 October 2010, the Kingdom of the Netherlands has therefore comprised four equal countries. Aruba, Curaçao and St Maarten are not overseas dependencies of the country of the Netherlands but are fully fledged partners along with the Netherlands in the Kingdom. Each country has a high degree of internal autonomy. The three other islands, Bonaire, St Eustatius and Saba, opted for a direct link with the Netherlands and constitute ‘the Caribbean part of the Netherlands’. This link was legally formalised by granting the islands the status of public body within the meaning of article 134 of the Constitution. Their position is broadly equivalent to that of a Dutch municipality, with allowances being made for their small size, distance from the Netherlands and location in the Caribbean. Most of the laws of the Netherlands Antilles remain in force for the public bodies and all Dutch nationals on the islands are now entitled to vote for the House of Representatives as well as for the European Parliament. However, they have no right to vote in provincial elections as the public bodies are not part of a Dutch province.

**Question A**

*Please mention if the legislation in your country provides specifically for the legal protection of the family, bearing in particular on equality in law between spouses, on family relationships and on marital conflict, and also any special measures to facilitate solutions other than divorce to such conflicts.*

*Please describe the marital property regimes existing in your country.*

General community of property exists between spouses by operation of law from the moment a marriage is concluded, in so far as they have not elected to deviate from this principle by means of a prenuptial agreement. The community of property includes all current and future property of the spouses with the exception of goods that are inherited, willed or gifted during the community of property. The community does not include goods that are excluded by a testator’s final will and testament. The community also includes all debts of each of the spouses. Goods and debts that are specifically attached to one of the spouses are included in the community only in so far as their attachment permits.

**Question B**

*Please describe the economic measures taken on behalf of the welfare of the family in your country:*

— *by the award of benefits in cash (e.g. family allowances) which ensure, permanently, financial compensation, at least in part for family expenses, indicating the manner and the levels in*





The island authorities are responsible for after-school care. Where appropriate they can use funds provided for integrated measures to tackle socioeconomic problems. The Ministry of Social Affairs and Employment has information on after-school care only. No other information on childcare is available.

In mid-2012, the following after-school care was available:

<u>Bonaire</u> (3,477 children, 4-20-year-olds)	
<u>After-school care:</u>	<u>Reach/parental contribution/grant</u>
Jong Bonaire (12-18-year-olds)	Reach: 250 registered children, 150 children per day. Parental contribution: USD 10 to USD 100 per child per half school year Grant: USD 113,698
Fesbo (4-12-year-olds)	Reach: 460 children Parental contribution: USD 5 per child per school year Grant: USD 449,816
<u>St Eustatius</u> (704 children, 4-20-year-olds)	
<u>After-school care:</u>	<u>Reach/parental contribution/grant</u>
Buzzy Bees (4-12-year-olds)	Reach: about 56 children Parental contribution: USD 100 per month for 7-12-year-olds Grant: yes, amount unknown
Mega D Foundation (4-13-year-olds)	Reach: 20 children Parental contribution: USD 30 per month Grant: yes, amount unknown
<u>Saba</u> (289 children, 4-20-year-olds)	
<u>After-school care:</u>	<u>Reach/parental contribution/grant</u>
Elka Charles (4-12-year-olds)	Reach: about 20 children Parental contribution: USD 85 per child per month Grant: no

Initiatives have also been taken that are not defined as after-school care but do provide organised activities for young people. An exhaustive list is not available and cannot be readily compiled on account of the changing nature of the activities. The organisations that provide after-school care usually have limited financial means and use many temporary staff (work placement trainees). Parents sometimes have difficulty paying their contributions. Some centres have to use temporary locations. Church organisations play an important social role on the islands and sometimes help provide care.

#### Question D

*Please indicate if the legislation in your country provides for family representation on advisory or administrative bodies with a view to defending family interests.*

A special curator can be appointed to represent children both at law and otherwise. A curator is compulsory in cases concerning parentage. Furthermore, the court of first instance appoints a special curator in cases where a parent or guardian's interests conflict with a child's interests

in matters relating to the child's care and upbringing or property. It will do so if it thinks it is necessary given the nature of the conflict of interest.

Question E

*Please indicate what measures have been taken to promote the construction of family housing, and supply full statistics of the work accomplished.*

All the public bodies have a housing strategy for 2011-2015 that takes account of the existing stock and future demand. The housing strategy underpins the policy to increase the housing stock. To encourage the construction of new social housing, the Ministry of the Interior and Kingdom Relations provided grants in 2011 through two European Dutch housing associations that have a cooperation agreement with the housing associations on the islands. Thanks in part to these grants, 101 new dwellings (mostly social housing, a few owner-occupied) have been built on Bonaire and 20 on Saba (social housing only). The Ministry undertook to provide more grant funding in 2013 to build 75 new dwellings on Bonaire, 7 on St Eustatius and 20 on Saba. The houses on Saba and in the near future on St Eustatius will be built by a European Dutch association that will remain the owner; they will be managed by a local housing association. Funds have also been provided from the 10th European Development Fund for the 20 social housing units on Saba.

Question F

*Please indicate the measures taken in the field of family planning information.*

Youth and Family Centres provide current and prospective parents with comprehensive information on starting a family and raising children.

Question G

*If your country publishes official statistics concerning the composition of the family and its economic and social position, please provide a summary of the latest available statistics. In so far as the socio-economic position is concerned, describe the manner in which socio-economic categories are classified in your country.*

Before the transition on 10 October 2010 no systematic records were kept of youth care. Steps have since been taken with a view to compiling statistics. The collection of basic data across a broad field of care and youth services in cooperation with Dutch organisations is being studied.

**Negative conclusions of the European Committee for Social Rights:**

*The Committee concludes that the situation in the Netherlands concerning the Netherlands Antilles is not in conformity with Article 16 of the 1961 Charter on the ground that the system of family benefits does not cover the entire population.*

See answer to question B.

(It should be emphasised that, this report concerns only the Caribbean part of the Netherlands.)

**Questions from the European Committee of Social Rights** arising from the previous report

*a. As the notion of the 'family' is variable, the Charter applies to every family according to the definition of this notion in domestic law. The Committee asks that the next report indicate how the 'family' is defined in domestic law.*

The legislation of the Caribbean part of the Netherlands provides several definitions of the term 'family'. It would be impractical to provide a comprehensive summary here. In the context of article 16 of the Charter, the term family is particularly relevant in social security legislation. There are no specific definitions of family in this field. It differs from one scheme to another depending of the scheme's objectives. A definition is given for social assistance purposes. The Social Assistance (BES) Decree defines family as:

- persons who share a joint household;
- persons who share a joint household and their dependent children;
- single parents and their dependent children.

*b. The Committee recalls that in order to comply with the Charter, Legal protection for persons threatened by eviction must include:*

- *an obligation to consult the parties affected in order to find alternative solutions to eviction;*
- *an obligation to fix a reasonable notice period before eviction;*
- *accessibility to legal remedies;*
- *accessibility to legal aid;*
- *compensation in case of illegal eviction*

*To enable it to assess whether the situation is in conformity with Article 16 as regards access to adequate housing for the families, the Committee asks for information in the next report on all the aforementioned points.*

There is no threat of eviction on Saba and St Eustatius. On Bonaire, the FCB housing association and the public body have adopted a protocol to prevent eviction. The protocol sets out all the steps that must be taken before a tenant is evicted as a last resort. The protocol is intended to prevent eviction, to agree alternative solutions with residents, etc. The FCB and the Bonaire public body also run a joint project to create payment plans for rent arrears and provide other kinds of help to families with rent arrears.

*c. The Committee points out that states must ensure that affordable, good quality childcare facilities are available to its citizens (where quality is defined in terms of the number of children under the age of six covered, staff to child ratios, staff qualifications, suitability of the premises and the size of the financial contribution parents are asked to make).*

*The report does not provide any information on this point. According to another source<sup>1</sup>, the UN Committee on Economic, Social and Cultural Rights has expressed concern at the inadequate number of childcare facilities, particularly on the Windward Islands. The Committee asks for information in the next report on childcare facilities.*

See answer to question C.

*d. Families must be able to consult appropriate social services, particularly when they are in difficulty. States are required in particular to set up family counselling services and services providing psychological support for children's education. The Committee asks for information to be included in the next report on family counselling services.*

The local government, local institutions and the Youth Care Inspectorate have together made considerable improvements to the services in recent years: Youth and Family Centres have been set up, recreational facilities for the over-12s have been improved, youth care services (peripatetic, foster care and residential care) and family supervision have also been improved[1]. Professionals have been trained in positive parenting (Triple P). Families with parental access problems can turn to the Youth Care Inspectorate for the Caribbean Netherlands.

Now that the services and personnel are in place, various parties (including the police, the Public Prosecution Service, the Expertise Center Education Care, Youth and Family Centres, the Guardianship Council, and Youth Care and Family Supervision Office) are working together to resolve serious problems such as child abuse. On the initiative of the Youth Care and Family Supervision Office, all three islands held conferences under the slogan 'Doing nothing is not an option' in 2012 for all the parties involved in this field to share their experiences and set priorities to take their child abuse strategies forward. Working groups were established to formulate a comprehensive strategy and initiatives were taken to raise awareness by means of publicity campaigns and to formulate and adopt a response protocol; training courses were also held on St Eustatius and Saba.

*e. To ensure that families' views are catered for when family policies are framed, the authorities must consult associations representing families. The Committee asks for information in the next report on the participation of relevant associations representing families in the framing of family policies.*

Before the transition there were virtually no youth care services and no associations representing families. As noted in the answer to question d, in the past year the Caribbean Netherlands has concentrated primarily on setting up services, ensuring they operate effectively, adopting prevention strategies and promoting cooperation among the various parties involved in youth care. Associations representing parents still have to be established.

*f. The report states that children born out of wedlock who are acknowledged by their fathers have the same rights as children of married parents. Under a new bill, it will be possible for a court to establish a child's paternity at the request of the mother, the child or the Guardianship Council even if the father has not acknowledged the child. A claim for determination of paternity may be brought even if the child or the father has died. It takes effect retroactively from the child's date of birth once a final judgment has been given. This makes the child in question an intestate heir. The Committee asks for information in the next report on the implementation of this bill.*

The previous report related to the Netherlands Antilles, which comprised Bonaire, St Eustatius and Saba together with Curaçao and St Maarten. The Netherlands Antilles ceased to exist as a country on 10 October 2010 and the islands of Bonaire, St Eustatius and Saba have since been part of the Netherlands. The situation in the Caribbean Netherlands is as follows. Owing to the new constitutional position of Bonaire, St Eustatius and Saba, the Civil Code of the Netherlands Antilles was converted into the BES Civil Code. On the adoption of the consolidated version of the BES Civil Code on 27 September 2010, three old articles in Book

4 were reintroduced by error. These articles make a distinction between legitimate and illegitimate children in inheritance law, a distinction that was abolished in 1985. In practice, however, no distinction is made between children born in or out of wedlock in the Caribbean Netherlands in inheritance cases. The text of Book 4 will be corrected by means of an amendment to the Security and Justice (Miscellaneous Provisions) Act (Bill 33 771), which is currently before the Senate.

*g. The Committee points out that states are required to set up family mediation services. The Committee asks for information in the next report on access to such services, whether they are free of charge, how they are distributed across the country and how effective they are.*

See answer to question d.

*h. According to another source[2], the UN Committee on the Elimination of Discrimination against Women (CEDAW) has noted the recent establishment of a system for the collection of data on domestic violence and a bill on temporary domestic exclusion orders. The Committee asks for the next report to provide a comprehensive description of measures taken to combat domestic violence against women (measures in law and practice, data, judicial decisions).*

The Committee asks what measures have been taken to combat domestic violence in the Caribbean Netherlands. The Netherlands has carried out a fact-finding survey of the islands' approach to domestic violence. The report was published in May 2014. It states that the islands' registration of domestic violence is not optimal. Compared with the Netherlands, however, it is felt that serious domestic violence of a physical nature is more frequent on the islands. Domestic violence also takes many forms. It is persistent because it is closely related to the poverty and housing problems on the islands. According to the report, the current approach to domestic violence is fragmented and low key.

The report also explains that domestic violence is closely related to other social problems. Poverty, for example, makes victims and perpetrators financially dependent on each other and is a source of conflict. Housing problems can lead to tension when several people live in a confined space. The approach to domestic violence should therefore not be seen in isolation from the broader approach to combat social problems. Only when progress is made in this field will an investment in combating domestic violence lead to lasting improvements. Good agreements on a robust and comprehensive approach are necessary to combat, together with the islands' executive councils, domestic violence (and sexual violence)

*i. In its previous conclusion (Conclusions 2006), the Committee noted that family benefits were only paid to civil servants and teachers. It notes that this was also the finding in another source<sup>3</sup>. The current report does not contain any information on family benefits. The Committee asks for up-to-date information in the next report on the amount and number of beneficiaries of family benefits. In the meantime it reiterates its finding of non-conformity.*

See answer to question B.

*j. According to another source[4], the UN Committee on Economic, Social and Cultural Rights has expressed concern about the situation of single-parent families, which it regards as particularly difficult in view of the absence of sufficient benefits. The Committee consequently asks what measures are taken to ensure the economic protection of single-parent families.*

The various socioeconomic policy fields are so closely intertwined that we have opted for an integrated approach to tackle the islands' problems. The main objectives are to stimulate socioeconomic development, combat poverty and strengthen children's rights. The public bodies are strong supporters of this approach. Several ministries, including the Ministry of Social Affairs and Employment, have committed themselves to it and have provided budgets to finance projects in the Caribbean Netherlands.

Single parents are a key target group of the integrated approach, for example in projects to help them find work, improve neighbourhoods, and in social work and childcare projects.

*k. The Committee asks for a detailed explanation in the next report on the situation of nationals of other States Parties to the 1961 Charter and the Charter with regard to the award of family benefits so that it can assess whether equal treatment is guaranteed.*

The answer to question B shows that there is currently no universal child benefit scheme to provide financial support to insured persons with children under the age of 18. However, a tax allowance scheme is available for resident taxpayers. Resident taxpayers are people who live on one of the BES islands. No distinction is made by nationality.

The social assistance scheme does not discriminate by nationality either. Article 6 of the Social Assistance (BES) Decree lays down that all legal residents of a public body who do not have the resources to meet essential living costs and comply with the duty to seek work are entitled to social assistance from the government.

- 1 CESCER, Observations related to Netherlands Antilles, 38th session, 30 April-18 May 2008 (<http://www.universalhumanrightsindex.org>)
- 2 CEDAW, Observations related to Netherlands, 45th session, 18 January-5 February 2010
- 3 CESCER, Observations related to Netherlands Anti/les, 38th session, 30 April-18 May 2008 (<http://www.universalhumanrightsindex.org>)
- 4 CESCER, Observations related to Netherlands Antilles, 38th session, 30 April-18 May 2008 (<http://www.universalhumanrightsindex.org>)

## Article 17 – The right of children and young persons to appropriate social, legal and economic protection

With a view to ensuring the effective exercise of the right of children and young persons to grow up in an environment which encourages the full development of their personality and of their physical and mental capacities, the Parties undertake, either directly or in co-operation with public and private organisations, to take all appropriate and necessary measures designed:

1. a. to ensure that children and young persons, taking account of the rights and duties of their parents, have the care, the assistance, the education and the training they need, in particular by providing for the establishment or maintenance of institutions and services sufficient and adequate for this purpose;
  - b. to protect children and young persons against negligence, violence or exploitation;
  - c. to provide protection and special aid from the state for children and young persons temporarily or definitively deprived of their family's support;
2. to provide to children and young persons a free primary and secondary education as well as to encourage regular attendance at schools.

### Article 17§1

- 1) *Please describe the general legal framework. Please specify the nature of, reasons for and extent of any reforms.*

No new developments.

- 2) *Please indicate the measures taken (administrative arrangements, programmes, action plans, projects, etc.) to implement the legal framework.*

On 1 July 2013, the State Secretaries of the Ministries of Health, Welfare & Sport and Security & Justice sent the bill for the Youth Act (*Jeugdwet*) to the House of Representatives. This was an important step in creating the framework for a new youth care system. Under the new legislation, the municipalities will be responsible for all youth care. It is scheduled to enter into force on 1 January 2015.

The youth care system is aimed at enabling all children to grow up safely and in good health, and to participate in society as independently as possible, taking into account their individual levels of development. Parents bear primary responsibility in this respect. If they need help, the authorities step in, in which case the youth care system must be adequate, quick to respond and tailored to the situation. This is also in line with the UN Convention on the Rights of the Child. As the current youth care system shows several shortfalls, a transformation is required which will lead to the following:

- prevention, and building on the strengths of young people, parents and the social network;
- less tendency to medicalise, with more focus on sharing the burden and normalisation;
- tailored care in place more quickly for vulnerable children;
- integrated assistance, with better cooperation among the parties assisting a family: one family, one plan, one manager;
- more space for youth professionals and reduction of the regulatory burden.

The new Youth Act gives municipalities administrative and financial responsibility for all youth care and for implementing child protection measures and youth probation. This decentralisation enables the municipalities to provide care that is better tailored to the local situation and to connect with care, education, social support, work and income, sport and



safety. Removing barriers between budgets enables better cooperation among the parties involved in assisting families.

For more information on the new Youth Act, please refer to <http://www.youthpolicy.nl/yp/downloadsyp/Publications-The-decentralisation-and-transformation-of-the-Dutch-youth-care-system.pdf>. or [www.nji.nl/nl/Factsheet-Hoofdlijnen-wetsvoorstel-Jeugdwet.pdf](http://www.nji.nl/nl/Factsheet-Hoofdlijnen-wetsvoorstel-Jeugdwet.pdf) (in Dutch).

- 3) *Please provide pertinent figures, statistics or any other relevant information, in particular on the number of public and private schools, their geographical distribution in urban and rural areas, average class sizes and the ratio teacher per pupil; figures on primary and secondary school enrolment; on the number of children in the care of the State, the number placed with foster families and in institutions, the number of children per unit in child welfare institutions; on the number and age of minors in pre-trial detention or imprisoned or placed in a disciplinary institution.*

#### *Number of schools*

There are 7,265 primary schools (including special schools) and 645 secondary schools (each usually consisting of several locations).

#### *Geographical distribution*

As the Netherlands is one of the most densely populated countries in the world, there are hardly any rural areas without school facilities. The geographical distribution of schools is in line with the population density. Now that the minimum number of pupils has been adapted, it is easier to establish and maintain schools in less densely populated areas.

#### *Class sizes*

The average class size in primary education is currently 22.8. This will be measured again at the end of 2014. The average class size in secondary education is unknown.

#### *Pupil-to-teacher ratio*

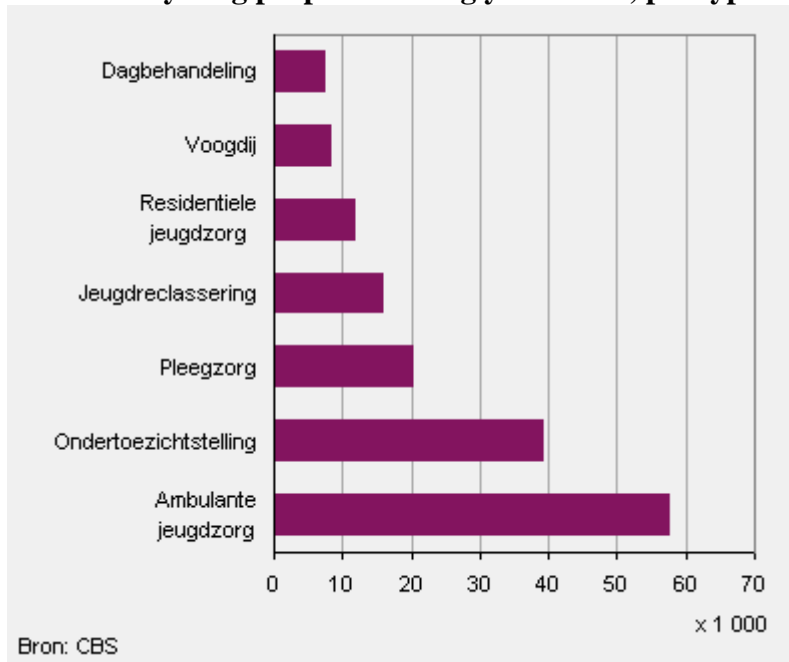
The pupil-to-teacher ratio in primary education is 18.8 (2012) and in secondary education it is 15.3 (see under 'Education at a glance').

#### *Enrolment*

Enrolment in primary, secondary and special education is 100% of the relevant age categories.

In 2012, a total of 1,918 young people were placed in young offender institutions (*justitiële jeugdinrichtingen – JJI*) for the purpose of pre-trial detention or youth detention, or under a court order for placement in a youth protection and custody institution (PIJ measure). Of that total, 87 (4.5%) were girls, of whom 27 were in youth detention and one was placed under a court order while in a young offender institution. Of the 1,831 boys, 204 were in youth detention and 52 were placed under a court order.

### Number of young people receiving youth care, per type of care, 2012



[terms in chart]

Day treatment

Guardianship

Residential youth care

Youth probation

Foster care

Placed under a supervision order

Non-residential youth care

Source: Statistics Netherlands

There are no details available on group sizes in youth care.

### Article 17§2

1) *Please describe the general legal framework. Please specify the nature of, reasons for and extent of any reforms.*

No new developments.

2) *Please indicate the measures taken (administrative arrangements, programmes, action plans, projects, etc.) to implement the legal framework.*

No new developments.

3) *Please provide pertinent figures, statistics or any other relevant information, in particular on the number of children failing to complete compulsory schooling dropping out of education without qualifications and on measures to combat absenteeism.*

*(Measures to combat absenteeism)*

Our priority is to focus on children and young people who are not attending school at all (either not enrolled or absent without permission for more than four weeks). There are two very important factors in ensuring these children and young people go back to school:

1. A regional approach, with municipalities, school attendance officers, schools and

partnerships working to provide pupils a place in a school that is suited to them.

2. Comprehensive registration, so that the whole group is visible and absenteeism can be tackled according to the method developed for this purpose (VSV method).

### *Dropout rates*

#### ***Aims***

Education policy is aimed at providing high-quality education which allows young people to get the best out of themselves and develop their talents. Obtaining a basic qualification (senior general secondary education (HAVO), pre-university education (VWO) or secondary vocational education (MBO) level 2 and higher) is the main priority. The Netherlands focuses primarily on reducing the number of new early school leavers.

A lower dropout rate means there are more well-educated young people finding their place on the labour market and contributing to society. The Rutte I government tightened the targets for tackling the dropout rate at schools. The aim is to reduce the number of new early school leavers to 25,000 by 2016. In 2012-2013, there were 27,950 new early school leavers (provisional figures), more than 8,500 fewer than the year before. The national percentage of early school leavers has dropped to 2.1 per cent. In secondary education, the percentage dropped to 0.6 per cent and in secondary vocational education it dropped to 5.7 per cent.

#### ***New approach to early school leavers, 2012-2015***

These more stringent targets call for a new approach to early school leavers. The guiding principles are a focus on results, simple administrative processes, continuity and guaranteeing continuation of this approach after 2015. As of the 2012-2013 school year, performance-based grants are awarded based on the percentage standards that each school and education level need to achieve. This means looking at the number of early school leavers compared to the number of pupils. An improved measurement system was also implemented in the same year. Using more precise methods provides an even better picture of which young people have actually dropped out. This allows schools and municipalities to target their efforts better.

Table: National figures for new early school leavers: total numbers and percentages

	2002	2006/07	2007/08	2008/09	2009/10	2010/11	2011/12	2012/13
Total number (x 1,000)	71.0	50.9	46.8	41.8	39.9	39.1	36.6	27.9
Percentage of early school leavers	5.5	3.9	3.6	3.2	3.0	3.0	2.8	2.1

Source: *Kerncijfers* (Key Figures) 2009-2013, Ministry of Education, Culture and Science, pp. 28-29. This document will be available in English in July 2014.

**Negative conclusions of the European Committee of Social Rights:**

*Paragraph 1 – Assistance, education and training*

A. *The Committee concludes that the situation in the Netherlands is not in conformity with Article 17 of the Charter on the ground that all:*

- *prison sentences for minors may be up to 30 years;*
- *young offenders may be held in adult detention facilities;*

The Netherlands has a separate juvenile criminal law system with separate penalties, and separate facilities to serve these penalties. Since the introduction of an adolescent criminal code on 1 April 2014, juvenile criminal law also applies to young adults under the age of 23.

Minors are always tried by a children's judge. It is indeed the case that juveniles who are aged 16 or 17 when they commit an offence may be given an adult criminal law sentence. The children's judge may decide this on the basis of the exceptional gravity of the offence, the circumstances of the offence or the perpetrator's personality. This is pursuant to article 77b of the Penal Code. As a consequence, in accordance with the current system the enforcement of the sentence or measure will in principle take place within the adult system. Life imprisonment is ruled out in these cases, but the maximum temporary custodial sentence of 30 years may be imposed. Such a long custodial sentence has never been handed down by a children's judge, however.

The above-mentioned situation may occur, for instance, if the perpetrator can be considered equal to an 18-year-old in terms of his development, has committed an offence together with older perpetrators to whom adult criminal law applies, *and* the offence is particularly serious, for instance homicide. The court exercises its power to sentence juveniles under adult criminal law very circumspectly and there has been a strong decrease in these numbers, from 163 juveniles in 2002 (2.6% of the total group) to 50 and 56 juveniles in 2012 and 2013, respectively (0.8% and 1.2% of the total group). In these cases, the maximum 30-year prison sentence is only a theoretical possibility. In the vast majority of cases, the length of the sentence remains within the maximum under juvenile criminal law, i.e. two years.

When it introduced the adolescent criminal code, the Dutch government considered abolishing the option of imposing an adult sentence on juveniles aged 16 or 17, but decided against it. This option, which is used very rarely as stated above, contributes to the support in society for the existence of a separate, less severe and more correctional juvenile criminal law and adolescent criminal law system. The 'extra option' of imposing adult sentences removes the necessity to introduce disproportionately harsher juvenile sentences across the board, in order to maintain sufficient options for adequate treatment or a credible judicial response to particularly serious offences.

*- unlawfully present children are not provided with shelter for as long as they are in the jurisdiction of the Netherlands.*

Further to a national court judgment in January 2011 the Netherlands established 'family locations'. Families with children under the age of 18 are housed in these locations ahead of their repatriation. The Supreme Court ruled on 21 September 2012 that the State had an obligation to protect the rights and interests of children in its jurisdiction, including children unlawfully present in the Netherlands.<sup>12</sup> On the basis of this judgment, children – and their parents – are provided with shelter so that they do not find themselves in an urgent humanitarian situation as a result of their parents' decisions. It is relevant to note that the

<sup>12</sup> ECLI:NL:HR:2012:BW5328, consideration 3.7.2.

Supreme Court ruled that children cannot be held responsible for their parents' conduct. The Dutch parliament was informed accordingly on 24 October 2012. Unaccompanied foreign nationals under the age of 18 are entitled to shelter in the Netherlands until they reach the age of 18.

**Questions from the European Committee of Social Rights** arising from the Netherlands' previous report (23rd)

*Paragraph 1 – Assistance, education and training*

*a. The Committee notes from the report that as of 2013 there will be two recognised professions in youth care institutions, that of 'youth care worker' and 'behavioural scientist specialising in youth care'. The Committee wishes to be informed about these developments.*

### **Professionalisation**

In anticipation of the introduction of the Youth Act, professionalisation of occupations in the provincial youth care sector is being stimulated. A separate bill has been submitted to the House of Representatives for this purpose. The approach adopted to get this professionalisation process off the ground enjoys broad support from the parties in the field. Their involvement has facilitated the development of the bill and will ensure its broad practical implementation. This will lead to further professionalisation of the sector and the skills of professionals in youth care, providing a significant quality improvement. A standard requiring a balanced division of work, and with it the obligation to employ registered youth professionals, was developed over the past year with parties involved in provincial youth care. This will be implemented more widely under the new Youth Act.

*b. All clients in youth care, including children themselves and their parents, may lodge a complaint. The Committee asks what follow up has been given to these complaints.*

All youth care institutions have a complaints committee consisting of people who do not work at the institution in question. This independent committee can assess complaints and make decisions on them. Each institution has information available regarding the complaints regulations and the complaints committee. The Youth Care Advice and Complaints Office (*Advies- en Klachtenbureau Jeugdzorg – AKJ*) has confidential advisers with whom complainants can talk about problems concerning youth care. They provide advice and support to young people lodging a complaint with the committee and if necessary accompany them to a meeting with the institution in question. In the end, it is up to the management board to decide whether a complaint is founded. The management board will also indicate what measures, if any, are to be taken as a result of the complaint. Anyone who is not satisfied with the way their complaint has been dealt with can contact the National Ombudsman. The Ombudsman may conduct an investigation and then issue a report with recommendations. As this complaints procedure and the measures taken are tailored to fit each individual situation, no single follow-up procedure can be described which applies to all complaints.

*c. The Committee asks what are the criteria for the restriction of custody or parental rights and what is the extent of such restrictions.*

The criteria for youth protection measures (guardianship and supervision) are laid down in the Dutch Civil Code (*Burgerlijk Wetboek*). The Child Protection Board (*Raad voor de Kinderbescherming – RvdK*) investigates care or parenting situations if they suspect the child's fundamental right to healthy and harmonious development is being violated.

Infringing upon the parents' right to bring up their own children is only allowed if there is a serious threat to the safe development and upbringing of the child, the parents are unable to remove that threat and they will not voluntarily accept help. If this is the case, a supervision order will be requested on the basis of a report by the Child Protection Board. After the children's judge has made a decision on that request, a family supervisor will start working with the family. The focus will be on restoring the family's control over the child's upbringing – if possible with help from their own social network – and enabling them to resume their parenting responsibilities as soon as possible. The Child Protection Board has the authority to petition the court to impose a child protection measure if the investigation gives cause to do so.

A civil children's judge rules with regard to child protection measures for a maximum of one year. The judge requires access to all relevant information in order to make a decision. The investigation report of the Child Protection Board forms the main basis. The judge will also want to talk to the child and the parents. Children aged 12 and above are always invited to an interview with the judge. Younger children may be called up or may request an interview with the judge.

*d. It also asks what are the procedural safeguards to ensure that children are removed from their families only in exceptional circumstances.*

Only a civil children's judge may issue a care order. The process is described under c) for child protection measures. A child can only be taken into care by the Youth Care Office (*Bureau Jeugdzorg – BJZ*) on the basis of a care order. The Youth Protection Board also has a statutory task in assessing a decision by the Youth Care Office to extend or prematurely terminate a care order.

*e. It further asks whether the national law provides for a possibility to lodge an appeal against a decision to restrict parental rights, to take a child into public care or to restrict the right of access of the child's closest family.*

The civil children's judge makes a decision. An appeal may then be lodged with the Court of Appeal, which reviews the case and makes a decision. The case is usually reviewed by three justices (appeal court judges). The Court of Appeal's decision in family cases takes the form of a court order. In some cases, an appeal in cassation against the court order can be lodged with the Supreme Court. Unlike the district court or the Court of Appeal, the Supreme Court does not look at the facts of the case. It only assesses whether the law (legislation and procedure) has been applied correctly by the Court of Appeal.

*f. The Committee notes that the number of juveniles order to be held in pre-trial detention decreased from 2,319 in 2007 to 1,852 in 2009. The Committee asks what is the maximum length of pre-trial detention.*

The following should be noted with regard to the maximum duration of pre-trial detention. The hearing in first instance must take place inside the maximum of 110 days<sup>13</sup> of pre-trial detention. If the case is not brought before the court within 110 days, there is no legal basis for further detention of the suspect.

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<sup>13</sup> 110 days = maximum of 2 x 3 days remanded in police custody + maximum of 14 days remanded in custody + maximum of 90 days' detention by court order.

The public prosecutor can apply to the court to suspend the examination in court for a certain period. Pre-trial detention can continue during that suspension. The trial may be suspended for a set period or indefinitely. Pursuant to article 282 of the Code of Criminal Procedure the court generally sets the suspension to last no longer than a month. If there are compelling reasons, the period may be longer, but it may not exceed three months. A new hearing must take place within that period, or there is no longer any legal basis for pre-trial detention.

Pre-trial detention ends when the detention order expires if it has not been extended. Pre-trial detention may also be suspended or discontinued, and ends after the criminal court's judgment becomes final and unappealable.

*Paragraph 2 – Free primary and secondary education – regular attendance at school*

*g. The Committee asks whether children from vulnerable families receive any assistance to guarantee their effective access to free compulsory education.*

Education is free for children who are required to attend school under the Compulsory Education Act (*Leerplichtwet*). Their parents are required by law to send them to school. If they do not comply, they may be fined. Vulnerable children receive assistance to guarantee their effective access to education. Free textbooks are made available for all secondary school pupils. In addition, parents who incur necessary costs which they cannot cover themselves may apply for special funds from the municipality.

*h. The Committee asks what are the drop out and absenteeism rates and what measures are taken to reduce them. It further asks whether vulnerable groups, such as unaccompanied children have a right to education.*

Children aged 5 to 17 must attend school under the Compulsory Education Act. This includes unaccompanied minor asylum seekers and failed minor asylum seekers. A child who starts an education course before reaching the age of 18 may complete it, unless their return can be effected before the course is completed. This is in line with the Reception Conditions Directive (Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers).

Absenteeism and dropout rates: see the answer to article 17.2, question 3.

## Article 19 – The right of migrant workers and their families to protection and assistance

With a view to ensuring the effective exercise of the right of migrant workers and their families to protection and assistance in the territory of any other Party, the Parties undertake:

1. to maintain or to satisfy themselves that there are maintained adequate and free services to assist such workers, particularly in obtaining accurate information, and to take all appropriate steps, so far as national laws and regulations permit, against misleading propaganda relating to emigration and immigration;
2. to adopt appropriate measures within their own jurisdiction to facilitate the departure, journey and reception of such workers and their families, and to provide, within their own jurisdiction, appropriate services for health, medical attention and good hygienic conditions during the journey;
3. to promote co-operation, as appropriate, between social services, public and private, in emigration and immigration countries;
4. to secure for such workers lawfully within their territories, insofar as such matters are regulated by law or regulations or are subject to the control of administrative authorities, treatment not less favourable than that of their own nationals in respect of the following matters:
  - a. remuneration and other employment and working conditions;
  - b. membership of trade unions and enjoyment of the benefits of collective bargaining;
  - c. accommodation;
5. to secure for such workers lawfully within their territories treatment not less favourable than that of their own nationals with regard to employment taxes, dues or contributions payable in respect of employed persons;
6. to facilitate as far as possible the reunion of the family of a foreign worker permitted to establish himself in the territory;
7. to secure for such workers lawfully within their territories treatment not less favourable than that of their own nationals in respect of legal proceedings relating to matters referred to in this article;
8. to secure that such workers lawfully residing within their territories are not expelled unless they endanger national security or offend against public interest or morality;
9. to permit, within legal limits, the transfer of such parts of the earnings and savings of such workers as they may desire;
10. to extend the protection and assistance provided for in this article to self-employed migrants insofar as such measures apply.
11. to promote and facilitate the teaching of the national language of the receiving state or, if there are several, one of these languages, to migrant workers and members of their families;
12. to promote and facilitate, as far as practicable, the teaching of the migrant worker's mother tongue to the children of the migrant worker.

### Article 19§1

- 1) *Please describe the general legal framework. Please specify the nature of, reasons for and extent of any reforms.*

The Netherlands defines four different forms of labour migration: from within the European Union, from outside the European Union – which also includes migration of highly skilled workers ('knowledge migration') – and the migration of self-employed workers. National admission policy does not apply to EU citizens, who are allowed to seek and find employment in the Netherlands without the need for a prior assessment of whether the Dutch labour



market needs their labour. Croatian workers currently form (within the framework of relevant EU-legislation) an exception to this rule, however.

Before the Employee Insurance Agency (UWV) can issue a residence permit to a migrant worker from outside the EU, it must first evaluate whether there is a shortage of qualified personnel in specific sectors and whether priority labour is available in the Dutch or EU labour market. With the exception of highly skilled migrants, few non-EU citizens are admitted to the Netherlands for employment purposes, because often an alternative solution can be found.

The prevention and combat of exploitation of migrant workers is one of the priorities of the present Dutch government. Important instruments in this respect are cooperation among EU-member states (a subject which has been tabled by the Dutch Minister of Social Affairs and Employment in the Employment and Social Policy Council of the EU) and new national legislation, which is currently being prepared in the Netherlands.

The website of the Social Affairs and Employment Inspectorate warns about the risk of exploitation of migrant workers ([www.inspectieszw.nl](http://www.inspectieszw.nl)), and information is also available on this site: [www.newinthenetherlands.nl](http://www.newinthenetherlands.nl)

Highly skilled migrants are exempt from the labour market assessment. Employers must ensure that foreign nationals receive a competitive salary, in line with the reference amounts shown in the table below (2013 figures).

	<b>Reference gross annual salary</b>
Highly skilled migrant over the age of 30	€52,010
Highly skilled migrant under the age of 30	€38,141
Highly skilled migrant (foreign student who graduated in the Netherlands)	€27,336
Blue Card (EU-wide work permit)	€60,952

In the case of people coming to the Netherlands to work on a self-employed basis, their business must serve a Dutch interest.

Full details about the various options and requirements can be found on the website of the Immigration and Naturalisation Service (IND) of the Ministry of Security and Justice ([www.ind.nl/en](http://www.ind.nl/en)).

2) *Please indicate the measures taken (administrative arrangements, programmes, action plans, projects, etc.) to implement the legal framework.*

The Ministry of Security and Justice is not actively involved in recruiting foreign workers and highly skilled migrants. The introduction of the Modern Migration Policy Act (*Wet modern migratiebeleid*) on 1 June 2013 simplified the procedures, however.

3) *Please provide pertinent figures, statistics or any other relevant information, including the patterns of emigration and immigration between States party for employment purposes.*

See article 19§2, answer to question 3.

**Article 19§2**

1) *Please describe the general legal framework. Please specify the nature of, reasons for and extent of any reforms.*

The introduction of the Netherlands' modern migration policy has speeded up the admission process. Migrant workers from countries subject to a visa requirement can now follow a Single Admission and Residence procedure, meaning that they apply for authorisation for temporary stay (MVV), which, if granted, entitles them to receive a residence permit. Once the foreigner has arrived in the Netherlands, he/she can collect his/her residence document from an IND office within 10 days. Before the Modern Migration Policy Act came into effect, an application for a residence permit had to be submitted upon arrival in the Netherlands in a separate procedure.

2) *Please indicate the measures taken (administrative arrangements, programmes, action plans, projects, etc.) to implement the legal framework.*

No new developments.

3) *Please provide pertinent figures, statistics or any other relevant information, including the patterns of emigration and immigration between States party for employment purposes.*

Number of immigrants and emigrants for employment purposes, including patterns between States Parties to the Charter

Statistics Netherlands (CBS) provided the following immigration and emigration figures:

**Table 19.1 Immigration<sup>14</sup> for employment purposes by people not born in the Netherlands**

2007	2008	2009	2010	2011
31,738	41,478	37,499	41,176	47,311

Source: © Statistics Netherlands (CBS), The Hague/Heerlen 13-5-2014

**Table 19.2 Emigrant workers<sup>15</sup> from the Netherlands (all origins)**

2007	2008	2009	2010	2011
33,500	34,700	31,100	31,300	32,100

Source: © Statistics Netherlands (CBS), The Hague/Heerlen 13-5-2014; figures rounded to the nearest thousand.

As the titles indicate, tables 1 and 2 are not equivalent and cannot simply be compared. Table 1 relates to immigration with the aim of securing employment, but immigrants do not necessarily already have a job. Dutch citizens are not included in Table 1, as immigration does not apply to them. Table 2 concerns emigrants (including Dutch citizens) who are already in employment.

<sup>14</sup> Immigrants in the Netherlands whose names have been entered in the municipal population registers and who expect to stay in the country for at least four months.

<sup>15</sup> Emigrant workers are workers whose main income 90 days before departure came from gainful employment. This relates only to people who have deregistered from the municipal population registers and who expect to remain abroad for at least eight months.

Patterns between the different countries party to the Charter are difficult to discern, not least because no records of emigrants' destinations are kept. More information is available about immigration for employment purposes, such as the country of origin (based on native country) of immigrants who came to the Netherlands in 2011 for this specific reason (see Table 3, which is a breakdown of the 2011 figure in Table 1).

**Table 19.3. Immigration by people not born in the Netherlands; by area of origin and gender (2011 figures)**

Native country	Total	Men	Women
<b>Europe (total)</b>	39,792	23,843	15,948
<b>(of which: European Union)</b>	38,166	22,760	15,406
<b>Africa (total)</b>	665	482	183
<b>Americas (total)</b>	1,783	1,214	570
<b>Asia (total)</b>	4,839	3,982	857
<b>Oceania (total)</b>	232	166	66
<b>Total for all native countries</b>	<b>47,311</b>	<b>29,687</b>	<b>17,623</b>

Source: © Statistics Netherlands (CBS), The Hague/Heerlen 13-5-2014

The table below presents an overview of selected specific countries of origin and States Parties to the Charter.

**Table 19.4 Immigration by people not born in the Netherlands; by country of origin and gender (2011 figures). States Parties to the Charter are highlighted in blue.**

Native country	Total	Men	Women
Afghanistan	4	1	3
Algeria	12	11	1
Angola	11	7	4
Australia	163	123	40
<b>Austria</b>	<b>287</b>	<b>180</b>	<b>107</b>
<b>Belgium</b>	<b>1,017</b>	<b>574</b>	<b>443</b>
Brazil	176	123	53
<b>Bulgaria</b>	<b>3,089</b>	<b>1,817</b>	<b>1,271</b>
Canada	183	137	46
China	1,487	1,248	239
Colombia	73	38	34
Congo (Democratic Republic)	3	2	1
<b>Czechoslovakia (former)**</b>	<b>1,059</b>	<b>611</b>	<b>448</b>
<b>Denmark</b>	<b>179</b>	<b>134</b>	<b>45</b>
Dominican Republic	24	13	10
Egypt	55	51	4
Ethiopia	9	4	5
<b>Finland</b>	<b>219</b>	<b>150</b>	<b>69</b>
France	1,568	938	630
<b>Germany</b>	<b>3,403</b>	<b>1,835</b>	<b>1,568</b>
Ghana	47	31	17
<b>Greece</b>	<b>1,484</b>	<b>874</b>	<b>610</b>
Guinea	3	3	-
<b>Hungary</b>	<b>1,929</b>	<b>1,052</b>	<b>877</b>

<b>India</b>	1,898	1,631	267
<b>Indonesia</b>	39	18	21
<b>Iran</b>	116	82	34
<b>Iraq</b>	8	6	2
<b>Ireland</b>	389	256	132
<b>Italy</b>	1,897	1,278	619
<b>Japan</b>	453	383	70
<b>Morocco</b>	106	87	20
<b>Nigeria</b>	53	37	15
<b>Norway</b>	200	78	122
<b>Pakistan</b>	60	54	6
<b>Philippines</b>	65	46	19
<b>Poland</b>	13,077	7,952	5,125
<b>Portugal</b>	928	545	383
<b>Romania</b>	1,558	766	792
<b>Sierra Leone</b>	1	1	-
<b>Somalia</b>	4	3	1
<b>South Africa</b>	189	126	63
<b>South Korea</b>	162	128	34
<b>South Sudan</b>	-	-	-
<b>Soviet Union (former)*</b>	2,008	1,207	801
<b>Spain</b>	1,868	1,017	852
<b>Sri Lanka</b>	17	12	6
<b>Sudan</b>	3	2	1
<b>Suriname</b>	14	8	5
<b>Sweden</b>	361	249	112
<b>Switzerland</b>	188	115	73
<b>Syria</b>	6	5	1
<b>Taiwan</b>	112	91	21
<b>Thailand</b>	26	11	16
<b>Turkey</b>	469	375	94
<b>United Kingdom</b>	2,343	1,641	703
<b>United States of America</b>	976	662	313
<b>Vietnam</b>	19	14	5
<b>Yugoslavia (former)</b>	138	96	42
<b>Rest of Africa</b>	169	116	52
<b>Rest of Americas</b>	339	231	107
<b>Rest of Asia</b>	366	254	112
<b>Rest of Europe</b>	132	103	30
<b>Rest of Oceania</b>	69	42	27
<b>Total for all native countries</b>	<b>47,310</b>	<b>29,685</b>	<b>17,623</b>

Source of numbers of immigrants for employment purposes: © Statistics Netherlands (CBS), The Hague/Heerlen 13-5-2014. The native countries listed were selected by CBS.

\* The Russian Federation has ratified the Charter.

\*\* The Czech Republic and Slovenia have ratified the Charter.

Source of States Parties to the Charter:

[http://www.coe.int/t/dghl/monitoring/socialcharter/Presentation/Overview\\_en.asp](http://www.coe.int/t/dghl/monitoring/socialcharter/Presentation/Overview_en.asp)

### **Article 19§3**

- 1) *Please describe the general legal framework. Please specify the nature of, reasons for and extent of any reforms.*
- 2) *Please indicate the measures taken (administrative arrangements, programmes, action plans, projects, etc.) to implement the legal framework.*
- 3) *Please provide pertinent figures, statistics or any other relevant information, including the patterns of emigration and immigration between States party for employment purposes.*

No new developments

### **Article 19§4**

- 1) *Please describe the general legal framework. Please specify the nature of, reasons for and extent of any reforms.*
- 2) *Please indicate the measures taken (administrative arrangements, programmes, action plans, projects, etc.) to implement the legal framework.*
- 3) *Please provide pertinent figures, statistics or any other relevant information, in particular concerning the number of migrant workers, if possible, which have had access to subsidised housing.*

No new developments, see figures elsewhere presented in this chapter.

### **Article 19§5**

- 1) *Please describe the general legal framework. Please specify the nature of, reasons for and extent of any reforms.*
- 2) *Please indicate the measures taken (administrative arrangements, programmes, action plans, projects, etc.) to implement the legal framework.*
- 3) *Please provide pertinent figures, statistics or any other relevant information, if appropriate.*

No new developments

### **Article 19§6**

- 1) *Please describe the general legal framework. Please specify the nature of, reasons for and extent of any reforms.*

The following are eligible for family reunification: (1) migrant workers from within the EU, (2) migrant workers, including highly skilled workers, from outside the EU and (3) self-employed individuals. EU citizens derive their right to live with their family members directly from Community law. The conditions that apply to them are different to those for employees and self-employed people from outside the EU.

Family reunification is permitted subject to the following requirements: proof of a family connection must be provided, both partners must be 21 or over, the migrant worker or highly

skilled migrant must have an independent income amounting to at least the statutory minimum wage and he/she may not rely on public funds.

Since employment is regarded as a temporary residence purpose, family members of migrant workers, highly skilled migrants and self-employed people are exempt from taking the compulsory civic integration examination normally required to obtain authorisation for temporary stay (MVV). If they wish to obtain a permanent residence permit, however, they must sit this exam. Family members' retain their right of residence for the term of the migrant worker's employment contract and right of residence.

In the case of migrant workers, highly skilled migrants and self-employed people from outside the EU, there is no requirement that the host (i.e. the applicant who has to fulfil the conditions) must have had legal residence status in the Netherlands for a year before being able to apply to have his/her family members join him/her.

2) *Please indicate the measures taken (administrative arrangements, programmes, action plans, projects, etc.) to implement the legal framework.*

No new developments.

3) *Please provide pertinent figures, statistics or any other relevant information, in particular on the number of applications for family reunion, and the percentage of applications which were granted and turned down, respectively.*

See figures presented under 'Questions from the ECSR', under i.

#### **Article 19§7**

- 1) *Please describe the general legal framework. Please specify the nature of, reasons for and extent of any reforms.*
- 2) *Please indicate the measures taken (administrative arrangements, programmes, action plans, projects, etc.) to implement the legal framework.*
- 3) *Please provide pertinent figures, statistics or any other relevant information, if appropriate.*

No new developments

#### **Article 19§8**

- 1) *Please describe the general legal framework. Please specify the nature of, reasons for and extent of any reforms.*

Foreign nationals residing lawfully in the Netherlands cannot be expelled as long as they are entitled to lawful residence. The expulsion process can only be initiated if there is a specific reason to terminate lawful residence, such as failure to comply with the conditions of the residence permit, in which case the foreign national is asked to leave the country within 28 days. If he/she fails to do so and is discovered to be residing unlawfully in the Netherlands, he/she may be placed in detention pending possible expulsion.

Conviction for a serious breach of the public order can also lead to expulsion. This must always be based on a court ruling; additional factors that should be taken into consideration

include the length of time the person has resided in the Netherlands, the severity of the penalty imposed and other criteria such as family ties with the Netherlands.

- 2) *Please indicate the measures taken (administrative arrangements, programmes, action plans, projects, etc.) to implement the legal framework.*

No new developments.

- 3) *Please provide pertinent figures, statistics or any other relevant information, in particular on the number of migrant workers nationals of States party served with an expulsion order.*

If an alien's application for a residence permit is refused, the applicant is ordered to leave the Netherlands. Table 4 shows the number of denied applications submitted by labour and highly skilled migrants.

**Table 19.5. Number of denied residence permit applications submitted by labour migrants and highly skilled migrants**

	2010	2011	2012	2013
<b>Number</b>	600	600	900	600

Source: IND. Figures have been rounded to the nearest hundred.

An unlawfully present foreign national who previously resided in the Netherlands as a labour migrant or highly skilled migrant may likewise be ordered to leave the country. Since these individuals and their original migration purpose are not registered, no figures are available for this category.

### **Article 19§9**

- 1) *Please describe the general legal framework. Please specify the nature of, reasons for and extent of any reforms.*
- 2) *Please indicate the measures taken (administrative arrangements, programmes, action plans, projects, etc.) to implement the legal framework.*
- 3) *Please provide pertinent figures, statistics or any other relevant information, if appropriate.*

No new developments

### **Article 19§10**

- 1) *Please describe the general legal framework. Please specify the nature of, reasons for and extent of any reforms.*

No new developments

- 2) *Please indicate the measures taken (administrative arrangements, programmes, action plans, projects, etc.) to implement the legal framework.*

No new developments

- 3) *Please provide pertinent figures, statistics or any other relevant information, if appropriate.*

Self-employment figures

**Table 19.6. Number of applications for a residence permit submitted by self-employed individuals**

	2010	2011	2012	2013
<b>Total</b>	2,290	2,060	2,480	2,000

Source: IND. Figures have been rounded to the nearest ten. Nearly 60% of the above applications were submitted by EU citizens.

### Article 19§11

- 1) *Please describe the general legal framework. Please specify the nature of, reasons for and extent of any reforms.*
- 2) *Please indicate the measures taken (administrative arrangements, programmes, action plans, projects, etc.) to implement the legal framework.*
- 3) *Please provide pertinent figures, statistics or factual information, in particular on how migrants are being taught the national language of the receiving State.*

The Dutch government supports migrants seeking to learn Dutch in a variety of ways, for instance by making a self-study pack available in 21 languages. In addition, it provides up-to-date information online for migrants about learning the language. The Netherlands also subsidises various activities to help migrants improve their level of proficiency, such as ‘language buddy’ projects and the free website oefenen.nl, which contains exercises for practising Dutch. There is also a list of the nationally certified Dutch language courses available, and an overview of all formal and informal language courses in the Netherlands. Finally, under a social lending scheme, migrants can take out loans with favourable terms to pay for language training.



## **Negative conclusions of the European Committee of Social Rights**

### *Paragraph 6 – Family reunion*

- A. *The Committee concludes that the situation in the Netherlands is not in conformity with Article 19§6 of the Charter on the grounds that:*
- *the exclusion of the 'welfare support benefits' from the calculation of the income level is likely to hinder family reunion rather than facilitate it;*

Under Dutch immigration policy, an immigration applicant is required to have sufficient independent and stable financial means to support his/her family and must not be claiming any social assistance financed from general tax revenues. This policy complies with the European Directive on the right to family reunification (2003/86/EC). However, an exception is made if the applicant receives social assistance on the grounds that he/she is considered to be unable to work, in which case reunification with his/her family is not denied on financial grounds. Applications are accordingly assessed on their individual merits, including in cases where the applicant's only source of income is social assistance. Migrants who are lawful residents are entitled to claim social benefits. The question of whether a lack of independent means will have consequences for the residence status of family members is determined on a case-by-case basis, in accordance with article 8 of the European Convention on Human Rights.

- *the imposition of a language and integration test is likely to hinder family reunion rather than facilitate it.*

Since employment is regarded as a temporary residence purpose, family members of migrant workers, highly skilled migrants and self-employed people are exempt from taking the compulsory civic integration examination normally required to obtain an authorisation for temporary stay (MVV). If they wish to obtain a permanent residence permit, however, they must sit this exam.

### *Paragraph 8 – Guarantees concerning deportation*

- B. *The Committee concludes that the situation in the Netherlands is not in conformity with Article 19§8 of the Charter on the ground that a migrant worker's family members who have settled in the Netherlands as a result of family reunion may be expelled when the migrant worker is expelled.*

The question of whether a migrant worker and his/her family may be denied continued residence depends on their immigration status. Only in situations where the worker has an authorisation for temporary stay (MVV) and loses his/her job will this have consequences for his/her own legal status and that of his/her family. After five years of temporary residence a worker can apply for a more permanent status.

Family members who have joined the migrant worker for the purpose of family reunification can, if the worker has a non-temporary residence permit, apply for independent residence after a period of three years. It is possible for family members to receive an independent residence permit within three years, but only if the relationship with the worker has ended within the previous three years and if there are serious humanitarian issues involved.

### *Paragraph 10 – Equal treatment for the self-employed*

- C. *The Committee concludes that the situation in the Netherlands is not in conformity with Article 19§10 of the Charter on the same ground for which the situation is not in conformity with paragraphs 6 and 8 of the same Article.*

Dutch policies and practice regarding means testing in the case of family reunification and family formation and in the case of residence depending on the partner are exactly the same for migrant employees and self-employed migrants. Please see the comments above.

**Questions from the European Committee of Social Rights** arising from the Netherlands' previous report (23rd)

*Paragraph 1 – Assistance and information on migration*

a. *Free services and information for migrant workers: The Committee notes from the report that there have been no changes to the situation, which it has previously considered to be in conformity with Article 19§1 of the Charter. It asks that the next report provide a full and up-to-date description of the situation.*

No new developments (and therefore no need to repeat the same information)

*Paragraph 2 – Departure, journey and reception*

b. *The Committee asks that the next report provide a full and up-to-date description of the situation.*

See tables under article **19§2**

*Paragraph 3 – Co-operation between social services of emigration and immigration States*

c. *The Committee asks that the next report provide a full and up-to-date description of the situation.*

No new developments (and therefore no need to repeat the same information)

*Paragraph 4 – Equality regarding employment, right to organise and accommodation*

d. *Remuneration and other employment and working conditions: The Committee asks that the next report provide a full and up-to-date description of the situation, including the measures taken to implement ECRI recommendations.*

On 16 May 2014 an action plan was presented to the House of Representatives, outlining proposed government measures to tackle discrimination in the labour market, including on the grounds of race and nationality. One such measure is to investigate the incidence of discrimination during the recruitment and selection phase. This research is shortly due to start and the government has undertaken to repeat it in two years' time to see whether there has been any change.

Another measure specifically concerns the involvement of the Social Affairs and Employment Inspectorate in cases of discrimination in the workplace. This Inspectorate monitors compliance with legislation on health and safety at work, including the Working Conditions Act (*Arbeidsomstandighedenwet*). Responsibility lies with the employer to identify the risks that are specifically relevant to the company, together with appropriate measures to address them. This provides scope for a tailored approach. Consequently, in response to an individual discrimination complaint, the Inspectorate can investigate whether the employer's policy on discrimination in the workplace is adequate. For instance, if it is found that the company does not have a discrimination policy, this constitutes an infringement. If the employer's approach is deemed unsatisfactory, the Inspectorate either demands improvement or issues a warning, and if re-inspection indicates that the situation has not been rectified, a fine is imposed.

The Netherlands Institute for Human Rights knows from experience the companies and sectors in which discrimination is more common. An agreement has been reached with the Institute that the Social Affairs and Employment Inspectorate will analyse the information available to the Institute (including decisions) concerning labour market discrimination and, where appropriate, instigate a compliance investigation under the Working Conditions Act.

*e. Membership of trade unions and enjoyment of the benefits of collective bargaining: The Committee asks that the next report provide a full and up-to-date description of the situation.*

Dutch equal treatment legislation (the Equal Treatment Act - *Algemene wet gelijke behandeling*) prohibits discrimination on the grounds of nationality in the context of labour relations and trade union membership.

*f. Accommodation: The Committee asks that the next report provide a full and up-to-date description of the situation concerning the implementation of article 19§4 c., including the measures taken to implement ECRI recommendations.*

Migrant workers have the same rights and obligations as Dutch people when it comes to seeking subsidised rented accommodation. In allocating housing, landlords may not discriminate on the grounds of the tenant's nationality. Some cities experiencing a housing shortage have a waiting list, which makes it difficult for migrant workers in urgent need to find rented accommodation in the short term. The vast majority of migrant workers usually come to the Netherlands for a short period of time or move around the country, which means that they need flexible forms of housing. Renting a room or living in lodgings are therefore more common options. The longer migrant workers live in the Netherlands, the more similar their housing requirements are to those of Dutch people.

Temporary migrant workers make a positive contribution to the Dutch economy. Often there is also a demand for accommodation close to the place of employment. The Netherlands still has a shortage of suitable flexible housing, resulting in overcrowding and illegal subletting of property. This is often a significant nuisance factor for local residents, making the area less attractive to live in. Temporary employees often have to put up with overpriced poor-quality housing.

Municipalities have a legal responsibility to inspect housing. For instance, they are required to check safety aspects, including fire safety, and investigate for overcrowding and illegal subletting. Central and local government, housing associations, and employers and trade unions in various sectors (temporary employment, agriculture and horticulture, and meat processing) reached agreements in 2012 on increasing the supply of good temporary accommodation for EU workers, with a total of 17 stakeholders signing a National Declaration.

The signatory parties to this Declaration are taking active steps to tackle this problem by creating more and better temporary housing at both local and regional level. The guiding principle is the housing standard that employers' and employees' associations have developed with central and local government: the quality mark of the foundation for flexible housing standards (*Stichting Normering Flexwonen SNF*). The parties involved will also ensure that migrant housing is maintained to the proper standard.

The scope of the National Declaration and the associated Flexible Housing Programme covers nine regions with the most migrant workers: the Rotterdam urban area, the Haaglanden metropolitan district, Greenport Aalsmeer, West-Brabant, Noord-Limburg, Noord-Veluwe and the regions of West-Friesland/North-Holland Noord, Holland Rijnland and the Eindhoven conurbation.

In addition to the above-mentioned administrative agreements, Platform 31, which studies innovative housing projects for migrant workers, is supervising various pilot schemes on behalf of the Ministry of the Interior and Kingdom Relations. The main aim of this initiative is to speed up the completion of housing projects and share the knowledge acquired in the process with other parties.

More good-quality accommodation is needed to cope with the influx of EU migrant workers arriving in the Netherlands in recent years. With this in mind, administrative agreements have been reached in nine regions between local and regional stakeholders, such as municipalities, employers and landlords. Often the accommodation required in these cases is for a relatively short rental period. One common solution is shared housing, which is ideal for single migrant workers.

Another form of housing comprises multi-room units with their own facilities, which are more suitable for families with children staying in the Netherlands for a relatively short time. One example is the recently opened Irenehof complex in Panningen (Limburg) belonging to housing association Wonen Limburg<sup>[1]</sup>: this temporary housing project is for people requiring an urgent, short-term solution until they find other, more permanent accommodation. The idea behind the agreements concerning additional, good-quality accommodation for EU migrant workers is to reduce and prevent substandard housing conditions, which can also be a source of public nuisance and degeneration. This is particularly important when families with children are involved. Migrant workers wishing to remain in the Netherlands long term can make use of the regular housing market to rent or buy property.

The Ministry of the Interior and Kingdom Relations does not have a specific housing policy with respect to migrant workers' children. In cases where families are entitled to housing, however, the following aspects could be taken into consideration.

*Based on the UN Convention on the Rights of the Child (CRC), the BLOEM model has been devised to ensure that accommodation for children in asylum seekers' centres meets standards of international law. The Dutch acronym BLOEM (literally meaning 'flower') stands for **B**escherming (Protection), **L**eeftbaarheid (Quality of Life), **O**mgeving (Environment), **E**igenwaarde (Sense of Dignity) and **M**ateriële opvang (Material Conditions). These five components are relevant to housing for children of asylum seekers; the model is, however, also applicable to boarding schools, juvenile detention centres or other types of long-term accommodation for children.*

*If a child's home is to offer quality of life, it must be a place where the child can enjoy privacy and family life (art. 16, UN Convention). The child must also be able to rest and engage in play and recreational activities there (art. 31). The house must also form a stable point in the child's life as far as possible. To achieve that stability, it is important that children should not be constantly moved from one place to another.*

*A number of material requirements also need to be met if children are to be able to enjoy all the rights specified in the CRC. To guarantee health, housing must provide adequate access to safe drinking water and sanitary facilities (art. 24). The existence of separate rooms facilitates the right to privacy without parents and children sharing bedrooms, unless they want to. If separate rooms are not possible, the shared space should at least be large enough*

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[1]

[http://www.peelenmaas.nl/Inwoners/Wonen/Arbeidskrachten/Nieuwsarchief/Project\\_Irenehof/Demontabel\\_appartementengebouw\\_Irenehof\\_in\\_Panningen\\_geopend](http://www.peelenmaas.nl/Inwoners/Wonen/Arbeidskrachten/Nieuwsarchief/Project_Irenehof/Demontabel_appartementengebouw_Irenehof_in_Panningen_geopend)

*to give the child the freedom to play (art. 31). As regards homework, measures should be taken to ensure that the child has somewhere to study quietly without interruption (art. 28). In addition, the physical appearance and atmosphere of the home should make the child feel secure.*

*Paragraph 5 – Equality regarding taxes and contributions*

*g. The Committee asks that the next report provide a full and up-to-date description of the situation.*

Article 1 of the Dutch Constitution states: ‘All persons in the Netherlands shall be treated equally in equal circumstances. Discrimination on the grounds of religion, belief, political opinion, race or sex or on any other grounds whatsoever shall not be permitted.’ To put it briefly, everyone is entitled to equal treatment in equal circumstances and discrimination is prohibited. Accordingly, migrant workers living or working lawfully in the Netherlands are liable to pay employment taxes, contributions and dues under the same conditions as Dutch citizens. No distinction is made on the grounds of nationality.

*Paragraph 6 – Family reunion*

*h. The Committee asks the next report to describe the relevant procedures and provide information on their implementation in practice.*

See under ‘Information to be submitted’.

*i. The Committee wishes to be informed on the number of applications for 'family reunification' and 'family formation' rejected for lack of means.*

No records are kept of which condition (such as ‘lack of means’) has not been met in the case of rejected applications.

<b>Family formation/reunification</b>	<b>2013</b>	<b>2012</b>
Applications (19,630 TEV* + 8,700 VVR**)	28,330	28,130
Decisions (18,730 TEV* + 8,380 VVR**)	27,110	26,740
Approvals (TEV*: 76% / VVR**: 84%)	78%	73%

\*TEV: Single Admission and Residence Procedure

\*\*VVR: residence permit

Source: IND Annual Report 2013, <https://ind.nl/EN/Documents/AnnualresultsIND2013.pdf>

*j. The Committee asks that the next report provide up to date information on the impact of the language and integration tests on the number applications for family reunion.*

These figures are not available.

*Paragraph 7 – Equality regarding legal proceedings*

*k. The Committee refers to its interpretive statement in the general introduction and asks for the next report to state whether domestic legislation makes provision for migrant workers who are involved in legal or administrative proceedings and do not have counsel of their own choosing to be advised to appoint counsel and, whenever the interests of justice so require, be provided with official counsel, free of charge if they do not have sufficient means to pay the latter, and whether migrant workers must have the free assistance of an interpreter if they cannot properly understand or speak the national language used in the proceedings. and have any necessary documents translated.*

The basic principle of the Legal Aid Act (*Wet op de rechtsbijstand*) (section 12(1)) is that legal aid is to be granted to any natural person whose financial capacity, in respect of legal interests governed by the law of the Netherlands, does not exceed the limit stipulated in the Act. The litigant's nationality is therefore not relevant for the purposes of invoking this legislation. In other words, the conditions for entitlement to state-funded legal aid are identical for both migrant workers and Dutch citizens. The same basic principle is applied with regard to the assistance of an interpreter or translator. To be eligible, a migrant worker must meet the same requirements as a Dutch person.

Anyone who is involved in legal proceedings and is not proficient in Dutch is entitled to free assistance from an interpreter (and translation of the relevant court documents). In matters relating to criminal law, this right is established in the European Directive on the right to interpretation and translation in criminal proceedings, which has been enacted in Dutch legislation.<sup>16</sup> With regard to cases involving immigration law, this right is likewise covered by European legislation. Litigants are also entitled to legal aid for both kinds of proceedings.

If civil or administrative proceedings require the assignment of counsel under the Legal Aid Act, the interpreting or translation costs are also eligible for reimbursement by the Legal Aid Council.

Under the aforementioned Act, counsel may be freely chosen but attorneys must be registered with the Legal Aid Council to be able to work on legal-aid cases. Pursuant to sections 14 and 15 of the Act, the Council can stipulate registration conditions. In 2013 the total number of attorneys registered with the National Bar Council was 17,298, of whom 7,591 provided subsidised legal aid.

In special circumstances (section 16 of the Act), the Legal Aid Council may decide that legal aid may be provided by an unregistered attorney. The following may be deemed to constitute special circumstances: a desire explicitly expressed by a litigant to be assisted by a specific attorney, citing grounds for this (for example, because the same attorney has rendered assistance to the litigant previously) or the need for legal aid to be provided by an attorney who has specific expertise in a certain field of law.

*Paragraph 11 – Teaching language of host State*

1. *The Committee asks the next report to provide information on measures in place to facilitate the teaching of the national language to migrant workers children of school age.*

The Dutch government supports migrants seeking to learn Dutch in a variety of ways, for instance by making a self-study pack available in 21 languages. In addition, it provides up-to-date information online for migrants about learning the language. The Netherlands also subsidises various activities to help migrants improve their level of proficiency, such as 'language buddy' projects and the free website oefenen.nl, which contains exercises for practising Dutch. There is also a list of the nationally certified Dutch language courses available, and an overview of all formal and informal language courses in the Netherlands. Finally, under a social lending scheme, migrants can take out loans at favourable terms to pay for language training.

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<sup>16</sup> Directive 2010/64/EU.

## **Article 27 – The right of workers with family responsibilities to equal opportunities and equal treatment**

With a view to ensuring the exercise of the right to equality of opportunity and treatment for men and women workers with family responsibilities and between such workers and other workers, the Parties undertake

1. to take appropriate measures:
  - a. to enable workers with family responsibilities to enter and remain in employment, as well as to re-enter employment after an absence due to those responsibilities, including measures in the field of vocational guidance and training;
  - b. to take account of their needs in terms of conditions of employment and social security;
  - c. to develop or promote services, public or private, in particular child day care services and other childcare arrangements;
2. to provide a possibility for either parent to obtain, during a period after maternity leave, parental leave to take care of a child, the duration and conditions of which should be determined by national legislation, collective agreements or practice;
3. to ensure that family responsibilities shall not, as such, constitute a valid reason for termination of employment.

### **Article 27§1**

- 1) *Please describe the general legal framework. Please specify the nature of, reasons for and extent of any reforms.*

The Act of 23 March 2012 amending the Work and Care Act and the Working Hours Act for the purpose of implementing Council Directive 2010/18/EU of 8 March 2010 implementing the revised Framework Agreement on parental leave concluded by BUSINESSSEUROPE, UEAPME, CEEP and ETUC and repealing Directive 96/34/EC came into force on 12 April 2012.

Under this act, the Working Hours Act and the Work and Care Act are amended as follows.

Amendments to the Working Hours Act

#### **Section 4:1 b Temporary adjustment in working time patterns after parental leave**

- 1. The employee has the right to submit a request to his employer for changes to his working time patterns for a period of one year, or another period agreed on by the employer and the employee, after using his full allocation of parental leave, as defined in Chapter 6 of the Work and Care Act.
- 2. The request must be made in writing at least three months before the end of the period of parental leave.
- 3. The employer must decide on the request no later than four weeks before the end of the period of parental leave.
- 4. A collective scheme may derogate from subsections 2 and 3. Any provision which derogates from subsection 2 or 3 otherwise than stated in the first sentence is null and void.

Amendments to the Work and Care Act

#### **Section 6:1a Protection against less favourable treatment**

The employer may not disadvantage an employee for exercising at law or otherwise their statutory right to leave, as referred to in section 6:1, or for assisting others to do so.

## Childcare

### **Policy changes from 2010 up to and including 2013**

- From 2010 compulsory registration in the National Childcare and Playgroups Register (LRKP) applies to all childcare providers, including childminders, for all the locations where care is provided. In order to be registered in the LRKP, childcare facilities must meet statutory quality standards. This is checked every year by the Municipal Health Services (GGD). During their inspections, the GGD also checks the professional qualifications of childcare workers.
- From 2010, childminders must hold appropriate qualifications (at least a level 2 secondary vocational certificate as assistant social/care worker and a first aid certificate), and their work methods and the locations where they mind children must also meet certain requirements. All this serves to boost childminders' professionalism. The GGD supervises childminders directly, rather than focusing exclusively on childminding agencies.

Other changes aim to improve the safety of children in childcare. The 2013 Act amending the Childcare Act introduced the following measures:

- Childcare workers are subject to continuous screening as per 1 March 2013. In order to obtain a baseline measurement, all childcare staff were required to apply, once only, for a new certificate of conduct, to establish whether they have a record of criminal offences.
- Work placement trainees, temporary agency workers and volunteers must present a new certificate of conduct every two years, as they do not fall under the continuous screening scheme.
- Other individuals who are physically present at the location when children are being cared for there and who are aged 12 years and older may be required to supply a certificate of conduct if the supervisory body has reason to suspect the individual of having committed a serious criminal offence, such as physical assault or sexual abuse.
- Childcare employers must contact a confidential inspector at the Education Inspectorate if they have any indication that an employee may be abusing a child, sexually or otherwise.

### **The childcare benefit system (situation at the end of 2013)**

Childcare benefit is an income-dependent allowance paid to parents to help cover the cost of childcare. The amount of childcare benefit is equal to a certain percentage of the total cost of childcare, subject to a maximum hourly rate. It also depends on household income, the number of hours of childcare purchased, the number of children in the household attending childcare facilities, and the hourly rate charged.

The percentages paid per category of household income can be found in the childcare benefit tables. There are separate tables for the first child, i.e. the child spending the greatest number of hours in formal childcare, and for other children in the household.

The percentages in the table for the first child are lower than for other children. In addition, the benefit is based on a maximum hourly rate for childcare. There are different maximum rates for the different types of childcare (day nursery, out-of-school care and childminding).

In the last quarter of 2013, childcare benefit was paid for about 626,000 children in the Netherlands.



- 2) Please indicate the measures taken (administrative arrangements, programmes, action plans, projects, etc.) to implement the legal framework.

There have been no new developments.

- 3) Please provide pertinent figures, statistics or any other relevant information, if appropriate.

#### Women in the workforce

The gross labour participation rate<sup>17</sup> of women increased from 63.4% in 2010 to 65.4% in 2013. The percentage of working mothers with children aged 0 to 12 years increased from 70.6% in 2010 to 71.5% in 2012.

Parents with children under the age of four are busiest, spending just over 60 hours a week on paid and unpaid duties. In 2011, in 56% of households made up of two working parents and children under the age of 18, one parent worked full-time and the other part-time. The percentage of households with this full-time/part-time combination increased between 2001 and 2009, during which time the number of single-earner households (one parent working full-time and the other taking on all duties at home) declined. In couples without children, either both partners work full-time (38%) or one works full-time and the other part-time (37%).

The percentage of women continuing to work the same number of hours after their first child is born increased from 50% in 2009 to 54% in 2011. The percentage of first-time mothers reducing their working hours declined from 40% to 35% during the same period. One in ten women quits working after her first child is born.

Women who have just had their first child spend an average of 28 hours a week in paid employment. This falls to about 24 hours after the birth of a second or third child. Mothers' participation increases slightly after their youngest child starts secondary school.

#### Number of maternity benefits awarded under the Work and Care Act<sup>18</sup>

	2010	2011	2012
Employees (average)	137,000	136,000	134,000
Self-employed (average)	7,400	7,600	9,900

#### Number of benefit payments awarded for adoption leave<sup>19</sup>

	2010	2011	2012
Employees (average)	1,300	1,200	1,100

#### Childcare benefit<sup>20</sup>

	2010	2011	2012
Average number of households receiving childcare benefit	461,000	475,000	458,000

<sup>17</sup> The gross labour participation rate: the percentage of the potential labour force that is available for work (includes both the employed and unemployed).

<sup>18</sup> Data: Employee Insurance Agency (UWV)

<sup>19</sup> Data: Employee Insurance Agency (UWV)

<sup>20</sup> Calculated by the Ministry of Social Affairs and Employment based on data provided by Statistics Netherlands and the Tax and Customs Administration

Average number of children	715,000	738,000	709,000
Percentage of children aged 0 to 4	52%	52%	48%
Percentage of children aged 4 to 12	21%	23%	23%

### Article 27§2

1) *Please describe the general legal framework. Please specify the nature of, reasons for and extent of any reforms.*

Under article 27§1, see ‘Amendments to the Work and Care Act’.

2) *Please indicate the measures taken (administrative arrangements, programmes, action plans, projects, etc.) to implement the legal framework.*

There have been no new developments.

3) *Please provide pertinent figures, statistics or any other relevant information, if appropriate.*

More mothers take parental leave than fathers (49% vs. 27%).

### Parental leave: uptake and duration

sex	category	2010	2011	2012	2013
Total men and women	Eligible for parental leave	258,000	265,000	261,000	247,000
	Total no. of times parental leave taken up	83,000	101,000	97,000	100,000
	Paid parental leave	48,000	53,000	50,000	50,000
	Duration of parental leave, in months	12	14	14	13
	Hours of parental leave per week	9	9	9	10
<b>men</b>	Eligible for parental leave	136,000	137,000	129,000	124,000
	Total no. of times parental leave taken up by men	31,000	37,000	27,000	29,000
	Paid parental leave	18,000	20,000	13,000	15,000
	Duration of parental leave, in months	14	18	17	16
	Hours of parental leave per week	8	8	7	8
<b>women</b>	Eligible for parental leave	122,000	128,000	132,000	124,000
	Total no. of times parental leave taken up by women	52,000	63,000	70,000	71,000
	Paid parental leave	30,000	32,000	37,000	35,000
	Duration of parental leave, in months	11	12	13	12
	Hours of parental leave per week	10	10	10	10

**Article 27§3**

- 1) *Please describe the general legal framework. Please specify the nature of, reasons for and extent of any reforms.*

Under article 27§1, see ‘Amendments to the Work and Care Act’.

- 2) *Please indicate the measures taken (administrative arrangements, programmes, action plans, projects, etc.) to implement the legal framework.*

There have been no new developments.

- 3) *Please provide pertinent figures, statistics or any other relevant information, if appropriate.*

As such cases are not registered separately, it is not possible to provide pertinent figures or other relevant information in this regard.

**Questions from the European Committee of Social Rights** arising from the Netherlands' report (23rd)

*Paragraph 1 – Participation in working life*

a. *The Committee asks if there exist any placement, counselling, or training programmes for workers with family responsibilities, and if so to describe these in the next report.*

The government is not aware of any special programmes.

b. *Article 27§1 requires State Parties to take account of the needs of workers with family responsibilities in terms of social security. The Committee asks in this respect whether such workers are entitled to social security benefits under the different schemes, in particular health care, during periods of parental/childcare leave.*

Workers are entitled to health care during periods of parental/childcare leave.

c. *The Committee also wishes to know to what extent periods of leave due to family responsibilities are taken into account for determining the right to pension and for calculating the amount of pension.*

Leave due to family responsibilities does not affect an individual's entitlement to general old age pension (AOW). In the case of workplace (supplementary) pensions, it depends on the scheme in question whether or not an individual's entitlement continues to accumulate during periods of parental leave.

d. *The Committee recalls that staff working in nurseries should be suitably qualified (Conclusions 2006, Lithuania). It notes from the report that the Act has introduced stricter requirements for registered childminders. It asks in this respect how qualifications of personnel and the quality of childcare services in general are monitored*

- From 2010 compulsory registration in the National Childcare and Playgroups Register (LRKP) applies to all childcare providers, including childminders, for all the locations where care is provided. In order to be registered in the LRKP, childcare facilities must meet statutory quality standards. This is checked every year by the Municipal Health Services (GGD). During their inspections, the GGD also checks the professional qualifications of childcare workers.
- From 2010, childminders must hold appropriate qualifications (at least a level 2 secondary vocational certificate as assistant social/care worker and a first aid certificate), and their work methods and the locations where they mind children must also meet certain requirements. All this serves to boost childminders' professionalism. The GGD supervises childminders directly, rather than focusing exclusively on childminding agencies.

*Paragraph 2 – Parental leave*

e. *The Committee asks which are the concrete regulations which ensure the right of workers who have taken parental leave to return to the same job.*

Since 12 April 2012, employees who take up parental leave are protected by law against less favourable treatment by employers.

*Paragraph 3 - Illegality of dismissal on the ground of family responsibilities*

*f. The Committee asks if employees are also protected against dismissal because of obligations with respect to other members of the immediate family (elderly parents, for example) that require care.*

Under the Work and Care Act an employee may also take up short-term leave or extended leave to care for a first-degree blood relative other than a child. In other words, employees caring for a parent are also protected against dismissal.

*g. The Committee asks whether there is a ceiling to the amount that can be awarded as compensation in the event of an unlawful dismissal. If so, it asks whether this upper limit covers both pecuniary and non-pecuniary damage or whether unlimited non-pecuniary damage can also be sought by the victim through other legal avenues (e.g. anti-discrimination legislation).*

No, there is no upper limit to the amount of compensation that can be awarded.

*h. It also asks whether both types of compensation are awarded by the same courts, and how long it takes on average for courts to award compensation.*

See the report on Article 7 of the European Social Charter.

## **Article 31 – The right to housing**

With a view to ensuring the effective exercise of the right to housing, the Parties undertake to take measures designed:

1. to promote access to housing of an adequate standard;
2. to prevent and reduce homelessness with a view to its gradual elimination;
3. to make the price of housing accessible to those without adequate resources.

### **Article 31§1**

*1) Please describe the general legal framework. Please specify the nature of, reasons for and extent of any reforms.*

There are two aspects to making housing of an adequate standard available to those without adequate resources to buy their own homes: access and legal certainty, and quality.

### **Housing quality**

Housing quality is laid down in the Buildings Decree. The Buildings Decree contains minimum technical requirements that all [buildings](#) in the Netherlands, such as [houses](#), [offices](#) and [shops](#), must satisfy. Renovations are also subject to the Buildings Decree. The Decree applies to all categories of housing: rented, owner-occupied, social and private.

The Buildings Decree contains requirements for safety, health, functionality, energy efficiency and the environment. The Buildings Decree 2012 is summarised below. In most cases its rules apply to both new and existing buildings. Municipalities are responsible for supervising compliance with the Decree.

The Buildings Decree entered into force in 1992 and is periodically updated. No major reforms are currently planned. The contents of the Decree are summarised below to show which aspects of housing are regulated.

### Chapter 1 General provisions

*§ 1.2 Application of standards and certification and inspection schemes*

### Chapter 2 Safety requirements

#### Chapter 3 Health requirements

*Part 3.1 Protection from external noise, new buildings*

*Part 3.2 Protection from noise from installations, new buildings*

*Part 3.3 Limitation of resonance, new buildings*

*Part 3.4 Soundproofing between rooms, new buildings*

*Part 3.5 Damp-proofing*

*Part 3.6 Ventilation*

*Part 3.8 Supply of combustion air and extraction of flue gas*

*Part 3.10 Protection from rats and mice*

*Part 3.11 Daylight*

#### Chapter 4 Functionality requirements

*Part 4.1 Habitable floor areas and rooms*

*Part 4.2 Toilets*

*Part 4.3 Bathrooms, new buildings*

### Chapter 5 Energy efficiency and environmental requirements, new buildings

#### Chapter 7 Requirements for the use of buildings, open areas and grounds

Article 7.18 Overcrowding

Article 7.20 Dilapidation

#### ***Legal certainty and access***

The legal position of tenants is laid down in the Civil Code. An important element is rent protection. A landlord can terminate a rental contract on only a limited number of legal grounds. Conflicts between tenants and landlords are resolved in court. Disputes over rent are heard by the Rent Tribunal, an accessible dispute settlement body whose members are appointed by the government.

- 2) *Please indicate the measures taken (administrative arrangements, programmes, action plans, projects, etc.) to implement the legal framework.*

A Bill to strengthen the enforcement instruments in the Housing Act was submitted to parliament at the end of 2013. The Bill is intended to improve the municipalities' enforcement of the Buildings Decree. To make enforcement more effective, municipalities will be able to impose fines instead of only demanding restitution.

- 3) *Please provide pertinent figures, statistics or any other relevant information to demonstrate effective access to adequate housing, including the length of waiting periods.*

In 2012 there were 2.9 million households in the Netherlands with an annual income of less than €33,000. These households were eligible for social housing with a regulated maximum rent. The stock of social housing was 3 million. Nationally there was therefore enough social housing for the target group.<sup>21</sup> There may have been regional shortages, however. The social housing stock had a market value of about €120 billion. The waiting time for social housing could be as high as eight years in areas with a shortage.

### **Article 31§2**

- 1) *Please describe the general legal framework. Please specify the nature of, reasons for and extent of any reforms.*

Under the Social Support Act, 43 municipalities in the Netherlands are responsible for providing community shelter services to people who are voluntarily or involuntarily homeless and cannot look after themselves. Community shelter services are accessible nationwide.

Under the Social Support Bill 2015, which is currently before the Senate, municipalities will also be responsible for providing peripatetic counselling services, certain sheltered housing services and drop-in mental health services as of 1 January 2015. They will then be in an even better position to provide a full range of services to vulnerable people, including those who are homeless or roofless or in danger of becoming so .

- 2) *Please indicate the measures taken (administrative arrangements, programmes, action plans, projects, etc.) to implement the legal framework.*

In 2006, the government and the four largest cities (Amsterdam, Rotterdam, The Hague and Utrecht) drew up an action plan. Its five-year target is to have all the homeless people in these municipalities participate in counselling programmes leading to housing, income and work or daytime activities. The action plan's second phase began in 2011 with a focus on mobility out of sheltered housing and the prevention of homelessness.

The action plan was launched in the four largest cities and has since been rolled out in the 39 other municipalities that provide sheltered housing under the name 'Urban Compass'. All 39 municipalities have a similar action plan.

The action plan ended at the end of February 2014. Its implementation and results were monitored each year by the Trimbos Institute. This year the Institute also evaluated the action plan as a whole. The lessons learned will serve as policy input for the municipalities that already provide community shelter services and will provide sheltered housing as from 1 January 2015. The municipalities have agreed to use the same policy instrument used in the action plan for community shelter services to formulate their policies on community shelter

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<sup>21</sup> The available housing is actually greater as more than 1 million households with an annual income of less than €33,000 live in owner-occupied dwellings.

services and sheltered housing for 2015 and later years. A study conducted by the Trimbos Institute last year found that the national access provided by law was inadequate in practice.

A study published by the Trimbos Institute in summer 2013 found that the current system inadequately guaranteed national access to community shelter services. Improvement is possible in several areas, for example in the documentation of policy and objection procedures, the agreements reached between municipalities and shelters, and staff training. In response, the responsible members of the municipal executives have committed themselves to guaranteeing national access to community shelter services in practice. The Ministry of Health, Welfare and Sport is also funding a project to improve access the community shelter services, which is being carried out by the Association of Netherlands Municipalities and the shelters' umbrella organisation.

- 3) *Please provide pertinent figures, statistics or any other relevant information on the number of homeless, emergency and longer-term measures for homeless, as well as evictions.*

See answer to question j.

### **Article 31§3**

- 1) *Please describe the general legal framework. Please specify the nature of, reasons for and extent of any reforms.*

Affordable housing is guaranteed as follows:

- The government sets rules for the rent that may be charged for 'regulated stock'. It uses a property valuation system to determine whether a dwelling should be included in the regulated stock or can be let on the private market. It also uses this system to set the maximum rent at the beginning of a rental contract and the maximum annual rent increase after a contract commences. The rules are laid down in various parts of the Civil Code.
- The government sets rules to protect tenants in both the regulated and private markets. Landlords are not allowed to unilaterally terminate a rental contract on grounds other than those specified by law. All the grounds are named in the Civil Code.
- Regulated rented housing is allocated preferably to households that earn less than €34,678. Housing associations must allocate at least 90% of their rental stock to households below this income ceiling. They are free to allocate the remaining 10% to resolve imbalances in the private rental market. As supply in the private rental market is limited, the income ceiling will temporarily be raised to €38,000.

- 2) *Please indicate the measures taken (administrative arrangements, programmes, action plans, projects, etc.) to implement the legal framework.*

Under the Housing Act, municipalities can set rules to allocate regulated rented housing and affordable owner-occupied housing as efficiently and as fairly as possible.

The Housing Act also lays down allocation criteria:

- municipalities may decide who is eligible for a dwelling, e.g. home seekers with a local connection (such as people who work locally);
- they may decide how the available dwellings are allocated to home seekers by type, size and price (e.g. single-family homes to families, affordable homes to people on low incomes). The Act also requires housing benefit recipients to be housed in affordable



- stock wherever possible;
- they may decide which home seekers have priority in urgent cases.

In practice, many municipalities ask housing associations to allocate the available housing. No national data are available on waiting times for social housing. Data are available, however, from some municipalities. In 2011, the average waiting time (registration time) for first-time tenants was 8.3 years in Amsterdam and 6.9 years in Utrecht. Waiting times, however, give a distorted view because many households on waiting lists are not in urgent need and are not actively seeking a home. The time spent by people actively seeking a home gives a better indication. In Amsterdam it was 4 years and in Utrecht 4.3 years.

To reduce excessive waiting times for vulnerable groups, municipalities may prioritise urgent cases. The waiting times for such home seekers are considerably shorter. No individual data are available on them, however.

More generally, the government believes that waiting times in the regulated rental market are the outcome of the incorrect allocation of affordable housing: part of the stock is rented by people on high incomes (high income social tenants). To rectify this situation, the government has launched a reform of the rental market (see below).

The second Rutte government has made several reforms to discourage high income social tenants and so reduce waiting times for social housing and provide affordable housing to people on lower incomes faster. To this end, the price of rented housing has been linked more closely to its popularity and the property valuation system has been adapted so that higher rents can be charged for more popular dwellings. Furthermore a higher annual rent increase is permitted for higher earners. These measures provide high earners with more incentive to move or to pay more for their homes.

- 3) *Please provide statistics or any other relevant information on construction of social dwellings and housing allowances (number of applicants and of recipients, criteria to fulfil to benefit from the allowance).*

Housing associations were granted 8,785 building permits in 2012. In the same year, 1,445,000 households had an income that entitled them to housing benefit. Of this number, 1,357,000 lived in a home that entitled them to housing benefit. The entitlement to housing benefit is determined by income and the level of the rent. The precise amount is determined by income, the rent level and family composition.

## **Negative conclusions of the European Committee for Social Rights:**

### *Paragraph 2 - Reduction of homelessness*

- A. *The Committee concludes that the situation in the Netherlands is not in conformity with Article 31§2 of the Charter on the ground that there is no legal requirement to provide shelter to children unlawfully present in the Netherlands for as long as they are in its jurisdiction. This ground of non-conformity is the one which led to the finding of violation in DCI v. the Netherlands.*

Further to a national court judgment in January 2011 the Netherlands established ‘family locations’. Families with children under the age of 18 are housed in these locations ahead of their repatriation. The Supreme Court ruled on 21 September 2012 that the State had an obligation to protect the rights and interests of children in its jurisdiction, including children unlawfully present in the Netherlands.<sup>22</sup> On the basis of this judgment, children – and their parents – are provided with shelter so that they do not find themselves in an urgent humanitarian situation as a result of their parents’ decisions. The Supreme Court took the view that children could not be held responsible for their parents’ behaviour. The Dutch parliament was informed of this judgment on 24 October 2012. Unaccompanied alien children have a right to shelter until their 18th birthday.

**Questions from the European Committee for Social Rights** arising from the previous Netherlands’ report (23<sup>rd</sup>)

### *Paragraph 1 – Adequate housing*

- a. *The Committee recalls that for the purpose of Article 31§1, the notion of adequate housing must be defined in law. It asks if such a definition exists and requests that the next report indicate in which legal text.*

See the answer to the first question above on article 31§1. Quality is defined in the Buildings Decree.

- b. *The standards of adequate housing must be applied not only to new constructions, but also gradually to the existing housing stock. They must also be applied to housing available for rent as well as to owner occupied housing (Conclusions 2003, France). The Committee asks the next report to specify if this is the case in the Netherlands.*

See the paragraph on the quality of housing in the answer to the first question on article 31§1.

- c. *The Committee asks that the next report include relevant figures and statistics concerning adequacy of dwellings as well as information on resources invested to guarantee the right to adequate housing.*

See the answer to question 3 on article 31§1 regarding the stock and value of social housing.

- d. *The Committee requests the next report to clarify how the balance between the general interest of improving the quality of housing in certain areas and the interest of specific vulnerable groups is taken into account.*

See the answer to question 3 on article 31§1 regarding the stock and value of social housing.

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<sup>22</sup> ECLI:NL:HR:2012:BW5328, consideration 3.7.2.

- e. *The Committee asks for details in the next report about the powers of the Housing Agreements Monitor. In particular it asks whether it may carry out inspections and how often, and whether its decisions have binding force.*

Until 2010 the required building programme was agreed between central government and the municipalities in construction agreements. The agreements were monitored by central government. The agreements are no longer made and house building targets are now a matter for the municipalities, not central government.

- f. *The Committee asks how else (other than through the Monitor referred to above) adequacy of housing is monitored.*

The government monitors the quality and accessibility of the housing stock by means of a national housing survey held every three years. The most recent survey was published in 2013. It looked at the quality of the housing stock, changes in rent levels and the incomes of various groups of tenants.

- g. *The Committee also asks whether rules exist imposing obligations on landlords to ensure that dwellings they let are of an adequate standard and to maintain them and how public authorities supervise such rules.*

The Buildings Decree applies to all landlords, both private landlords and housing associations. Private rentals must also comply with the quality standards set out in the Buildings Decree. The municipalities are responsible for enforcing the Buildings Decree.

- h. *The Committee underlines that it attaches particular importance to legal protection of the right to housing. The effectiveness of the right to adequate housing requires its legal protection through adequate procedural safeguards. Occupiers and tenants must have access to affordable and impartial legal and non-legal remedies. Any appeal procedure must be effective (Conclusions 2003 France). Given the lack of information in this regard, the Committee asks for detailed information in the next report on all the above-mentioned points.*

Municipalities are responsible for ensuring that all households in the Netherlands have appropriate housing. Municipalities can take steps to reduce shortages of one or more categories of housing. Housing associations, moreover, are required by law to house low-income households. They can also invest in appropriate housing for the elderly and disabled. In regions with a housing shortage, usually in the more affordable sector, municipalities can pass a bye-law to alleviate the shortage. Low-income households then have more opportunity to move into affordable housing. At present, about half the municipalities in the Netherlands have passed such a bye-law. It allows tenants to lodge an objection or application for review with the municipality if they disagree with an allocation decision. There is also a general prohibition on discrimination in the Netherlands and cases of perceived discrimination can be taken to the Netherlands Institute for Human Rights.

- i. *The Committee requests the next report to include information on progress made to meet the demand for more halting sites and better quality caravans. Meanwhile, it reserves its position as regards effective access to adequate housing for the Roma, Sinti and Dutch Travellers.*

There are more than 16,000 halting sites for caravans in the Netherlands (2012). As there are no figures on previous years, it is impossible to say whether progress is being made.

*Paragraph 2 - Reduction of homelessness*

- j. The Committee asks the next report to provide detailed information, including relevant figures, about the results achieved through the measures already taken and to indicate whether other measures are planned to improve the situation.*

Since the action plan was launched at the end of 2012, 15,764 individual projects have been started in the four largest cities to make housing, income and care and support as optimal and stable as possible. In total there are 70 rough sleepers on average per night in the four largest cities. In 2006 there had been 10,000. In the other 39 municipalities that provide community shelter services, the number of rough sleepers is measured per year. There were an estimated 7,900 rough sleepers in 2011-2012, in comparison with 9,700 in 2009-2010. Owing to differences in records and definitions, no information is available on the number of people taking part in individual projects in the other municipalities that provide community shelter services.

The results of the action plan to provide community shelter services are evaluated by the Trimbos Institute.

- k. The Committee asks additional information on whether legal aid is offered to those who are in need of seeking redress from the courts, and whether compensation for illegal evictions is foreseen by law.*

The Dutch Legal Aid Act provides a solid basis for access to justice for those who cannot pay legal fees themselves. Under Dutch law, a court order served by a court bailiff is necessary to evict someone. An eviction has to be a proportionate and subsidiary measure and is always seen (by courts, municipalities and bailiffs) as a last resort. If the eviction is not in accordance with the law, for example if no court order was obtained, compensation can be claimed for a wrongful act (article 6:162 of the Civil Code). The victim can request material and immaterial compensation by proving that the actual and potential damage was due to illegal eviction.

- l. The Committee also asks whether there is an obligation to fix a reasonable notice period before eviction.*

Even if a court order is obtained, thereby providing legal grounds for an eviction, reasonable notice is required (under case law, not by statute) before a tenant can be evicted. A period of at least two weeks is generally considered reasonable. Sometimes this period is stated in the court order. Otherwise, it is set by the court bailiff. Bailiffs and municipalities usually take longer than two weeks to prepare for an eviction, so a reasonable period serves the interests of both the debtor and the creditor.

- m. Finally the Committee also asks about the rate of judicial decisions of forced eviction and their implementation.*

Housing associations sought 23,100 judicial decisions in 2013, which led to 6,980 evictions.

- n. The Committee asks for the next report to clarify whether:*
- shelters/emergency accommodation satisfy security requirements (including in the immediate surroundings) and health and hygiene standards (in particular whether they are equipped with basic amenities such as access to water and heating and sufficient lighting);*

Under the Social Support Act, certain municipalities are responsible for providing community shelter services. Their policy plans must state the quality assurance measures applicable to shelters in the community. Shelters must be decent and safe. (It goes without saying that they have access to water, heating and sufficient lighting.) Municipalities are also responsible for deciding whether and how shelters are supervised.

- *the law prohibits eviction from shelters or emergency accommodation.*

The law does not prohibit eviction from community shelters.

*Paragraph 3 - Affordable housing*

- o. States parties to the Charter must show not the average affordability ratio required of all those applying for housing, but rather that the affordability ratio of the poorest applicants for housing is compatible with their level of income (European Federation of National Organisations working with the Homeless (FEANTSA) v. Slovenia, Complaint No. 53/2008, decision on the merits of 8 September 2009, § 72). The Committee thus requests that the next report contain the relevant information to enable it to assess the situation in this regard.*

The average net rent-to-income ratio in 2008 was 25%. The average ratio in the lowest income quintile was 32%. The average ratio in 2012 was 26%. The average ratio in the lowest quintile in 2012 is not known.

- p. The Committee asks that the next report up-date it on any cases raised following the adoption of this Code of Conduct.*

In 2007-2013 the Netherlands Institute for Human Rights gave six opinions on discrimination relating to the granting of a mortgage. Four cases involved illegal discrimination; two did not.

Exact figures on the number of cases between 2007 and 2014 are not known. In 2013, about 10 cases relating to the granting of a mortgage were brought in the following categories:

- mortgage not granted because the applicant was a benefit recipient;
- mortgage not granted because the applicant was too old for a 30-year mortgage;
- mortgage not granted because the applicant or his/her partner was not a Dutch national, even though he/she had a valid residence permit and satisfied all other requirements.

- q. The Committee asks that the next report provide concrete examples of the requirements municipalities may impose on prospective residents and under which conditions.*

Under the Housing Act, municipalities may set rules for the allocation of regulated rented housing and affordable owner-occupied housing so that the allocation of affordable housing is as efficient and as fair as possible.

- r. The Committee also asks for information on any complaints concerning allocation of housing to the most disadvantaged.*

Municipalities that have a housing bye-law (see question h) usually designate certain housing specifically for the disabled. This housing is allocated only to households with at least one disabled person. No information is available regarding complaints about the allocation.

- s. Moreover, the next report should contain relevant figures concerning social housing demand.*

In 2012, 1,636,000 households had an income below the ceiling for social housing and were living in housing association property with rents below those in the private sector.

- t. The Committee notes from the report that there is no national record of waiting time for home seekers. It however also notes from the report that the Association of Dutch municipalities keeps statistics on waiting times in some municipalities. It therefore asks that the next report contain relevant figures from such records.*

In 2012 1,636,000 households had an income below the ceiling for social housing and were living in a housing association property with rents below those in the private sector. No figures are available on waiting times.

- u. The Committee recalls that legal and non-legal remedies must be available when waiting periods are excessive (ATD v. France, § 131). It therefore asks the next report to provide information to enable it to assess the situation in this respect.*

As noted above, municipalities in the Netherlands use the instruments provided by the Housing Act if there is a scarcity of, for example, affordable rented property. Affordable housing is offered to low-income households. Housing allocation is driven by supply: housing is advertised when it becomes available and home seekers can apply for it. If more than one applicant is eligible, the municipality or landlord applies criteria to allocate the property. Common criteria are the length of time a person has been living in the municipality or has been registered as a home seeker. The more popular the dwelling, the longer a person must have lived or have been registered in the municipality. The criteria for less popular dwellings are not as strict. As a result, there is no single waiting time. The more active a person is, the more likely he/she is to find a home. Most systems also have separate rules for urgent cases. Someone needing a home immediately can apply for all available housing. Municipalities can also give priority to urgent groups.

- v. The Committee recalls that it attaches great importance to legal safeguards in this area. It therefore asks for the number of refusals of housing benefits for the next reference period, whether reasons are given and on what grounds housing benefits are generally refused.*

230,000 housing benefit applications were rejected in 2011 (when the first checks were made, when changes were made or when a final decision was taken), usually because the applicant's income was too high. No information is available on the period as a whole. 2011 is the most recent reliable year.

- w. The Committee also asks how many appeals have been lodged against refusals and with what outcomes.*

Systematic records are not kept of the reasons for objections. This information is therefore not available.

## Information required on Conclusions 2013

### Article 3.4 European Social Charter

*The Council of Europe's Committee of Social Rights (ECSR) has concluded that the situation in the Netherlands is not in conformity with article 3.4 of the Charter, on the ground that it has not been established that there is a strategy to progressively institute access to occupational health (osh) services for all workers in all sectors of the economy.*

### Reaction of the Netherlands

#### I. The Dutch strategy concerning osh-services

The Committee states that, given the perceived lack of reply to its earlier requests for information, it is not in a position to conclude that there is a strategy concerning osh-services. The Netherlands does not share the Committee's conclusion. Therefore we shall present below the Dutch strategy. This strategy consists of a legal framework, the availability/accessibility of expert osh-service, sustaining facilities and supervision.

#### II. Working Conditions Act

The Working Conditions Act (WCA) provides the legal basis for occupational safety and health (osh) in the Netherlands (English text, see [https://osha.europa.eu/fop/netherlands/en/legislation/index\\_html](https://osha.europa.eu/fop/netherlands/en/legislation/index_html) ). This law applies to all economic sectors. As far as arrangements for expert support are concerned, especially the articles 12, 13, 14, 14a and 18 bear relevance.

Article 12, puts the obligation on employer and employees to work together to implement the osh-policy in the company. This includes discussions and cooperation with the Works Council or the employees involved, in case of absence of a Works Council. This obligation to work together applies as well to internal as to external osh-experts.

Article 13, stipulates that the employer has to organize support for osh-prevention and osh by means of one or more expert employees (so-called 'prevention workers').

Article 14, has to do with the situation in which the employer chooses to organize osh-care within the company. In this case the employer must organize support by osh-experts (of whom at least one has to be an occupational physician) or an internal osh-service .

Article 14a, concerns the situation in which the employer chooses to outsource osh-care to an external certified osh-service.

Article 18 of the law bears relevance as well. It states that the employer is obliged to give the employee periodically the opportunity to have a medical check up for reasons of prevention.

Summary: The law stipulates that employers and employees must cooperate and have consultations about osh and (moreover) provides rules for the (support of) expert osh-services. Expert osh-care for the company can be organized internally, in which case the employer is supported by a specific employee whose task is osh-prevention and by an oh-physician or an internal osh-service. In the Netherlands this way of organizing osh-care is referred to as 'the tailorcut-modus'. The idea is that osh-prevention is organized as much as possible within the company. However, if and when an employer chooses not to organize osh-care internally, he is obliged to enter into a contract with an external expert osh-service. This is referred to as 'dragnet- modus'.

### III. OSH-service

An osh-service is a legal, certified, private and independent service organization in the field of osh. In order to operate legally, it needs to acquire a certificate, that is formally granted by the Minister of Social Affairs and Employment. In order to obtain a certificate an osh-service must apply at a certifying institute, named by the minister. This independent certifying institute checks the expertise, organizational set-up and quality of the osh-service. More specifically it checks whether the osh-service has sufficient and qualified personnel available in order to provide expert services to companies in an adequate way.

The tasks of an osh-service are as mentioned in the WCA:

- testing the risk assessment;
- execution of occupational health check-ups ( the employer has to provide for the opportunity for the employee to periodically have a medical check-up);
- execution of medical examinations prior to an appointment (i.e. in case an employer wishes such examinations);
- assist, advice and support employers and employees to comply with their osh-obligations;
- advice the employer on how to deal with sickness absence and guidance.

Every osh-service must have at least 1 expert on each of the following fields of expertise, the so-called ‘key disciplines’, i.e.: occupational health (occupational physician), occupational hygiene (occupational hygiene expert), occupational safety (occupational safety expert) and occupational/organizational expertise (e.g. occupational psychologist).

The key osh-experts (usually) have an academic training. The occupational physician is a medical specialist, who is registered according to the ‘Law on professions in the individual Health Care’. In addition to the key osh-experts, other experts may participate in an osh-service, e.g. occupational nurses, social workers, ergonomists etc.

The Netherlands are nationwide covered by osh-services (see [www.arbo-advies.nl](http://www.arbo-advies.nl) and [www.zorgkaartnederland.nl/arbodienst](http://www.zorgkaartnederland.nl/arbodienst)). It is also worth mentioning that it occurs that social partners have taken action on branche level to secure osh-service, usually by means of collective bargaining arrangements. Some branches sometimes offer services by themselves and there are others that enter into a contract with external osh-services.

Summary: Access to key expert osh-care is organized and necessary provisions are made to ensure availability of osh-care. Furthermore, there are high quality training and education facilities for those who want to gain osh-expertise or become an osh-expert. Moreover osh-service can be obtained nationwide.

### IV. Sustaining facilities

Part of the Dutch strategy, in connection with regulation and the availability of expert services, is based upon taking measures to help companies, especially sme’s, to improve their osh-care.

In this respect, several actions have been taken, such as:

- the development of simple and userfriendly digital tools that enable sme companies to make a risk assessment and deal with their risks. Meanwhile more than 160 tools are developed and available to branches (see [www.rie.nl](http://www.rie.nl) ). OSH-services were involved in the development of these tools. The Dutch tools have been the basis for the Online Interactive Risk Assessment tool (OIRA) of EU-OSHA;
- the digital risk assessment tools are managed by the ‘Servicepoint for risk assessment tools’ of the social partners and they are financed by the government. The Servicepoint offers assistance to branches and aims at increasing the use of the digital tool. For that reason a virtual game is being developed for companies;
- the development of osh-catalogues, i.e. methods, techniques and solutions agreed upon by social partners within a branche to deal with their risks. These catalogues are checked by the ‘Inspection-SZW’ (the former Labour Inspectorate);



- the website [www.arboportaal.nl](http://www.arboportaal.nl) provides relevant information to employers, employees and prevention-workers on osh and relevant links;
- the attempts of social partners to stimulate the policies within the company to tackle the risk of dangerous substances, are sustained by the government. This has resulted in a website [www.stoffenmanager.nl](http://www.stoffenmanager.nl) that aims at providing information about dangerous substances and occupational exposure limits;
- a stimulus for safety at work, by means of an ‘Actionprogram safetyculture witin companies’. By means of a subsidy policy sme employers have been given the opportunity to implement projects to promote a safety culture in companies in order to reduce occupational accidents. Last year one of these projects won the European good practice award at the EU-OSHA conference in Dublin;
- in 2011 The Netherlands initiated the program ‘Sustainable Work’, in cooperation with the social partners and other stakeholders, in order to stimulate that workers can reach their pension in good health. Part of this programme is the project ‘Healthy Company’, that particularly aims at supporting and advising sme-companies how to work in a responsible way.

## **V. Supervision**

Supervision on osh-services is organised as follows. First an osh-service is not allowed to operate without a positive assessment by a certifying institute. Secondly, an osh-service may loose its certificate when it does not live up to its tasks. Furthermore, the way osh-expert support in the company is organized is an item that must have endorsement from the Works Council. Therefore the employee participation has the opportunity to assess the contract (or the extension of it) with an osh-service. And of course it can also put on the agenda the performance of the osh-service. Finally it is always an option that the ‘Inspection-SZW’ puts forward a demand to the employer to comply with the law, when the expert osh-support is not functioning well in his company.

## **VI. Conclusion**

*The Netherlands have a legal obligation for all employers to enter into a contract with either an occupational physician, an internal or external expert osh-service. Thus access to and availability of osh-care is guaranteed. An osh-service must have a certificate. Furthermore, a nationwide system of certified osh-services has been realised. Sustaining facilities have been organized in order to support companies to bring about adequate expert osh-care on the workfloor. Finally, there are provisions for supervision.*

*Therefore the Netherlands are convinced that we do comply with article 3.4 of the Charter.*

## **Article 12, paragraph 1 European Social Charter**

*The ECSR concludes that the situation in the Netherlands is not in conformity with Article 12.1 of the Charter on the ground that it has not been established that there is a reasonable initial period during which an unemployed person may refuse unsuitable job offer without losing his/her unemployment benefit.*

### **Reaction of the Netherlands**

An employee receiving an unemployment benefit, has( among others) the obligation to seek and accept suitable employment. Work that is not suitable for him or her, may be refused.

The *directive suitable work 2008* contains standards concerning the definition of ‘suitable work’.

According to the directive, during the first half year of the unemployment period, the employee has the right to search for a job responding to the qualifications he or she has acquired through study and/or work experience. After the first passed half year of unemployment, one is obliged to search for work that is qualified one level lower than the level of the preceding half year. The Unemployment Law (WW) prescribes that after one year of employment every level of employment is considered to be suitable. However, the fact remains that work is not considered to be suitable in the case that accepting it is not required due to physical, mental or social circumstances.

The Netherlands consider the initial period of one year as a reasonable period during which an unemployed person may refuse an unsuitable job offer. The ‘directive suitable work 2008’ is based on standing case law regarding the concept of ‘suitable work’.

The policy of the Netherlands concerning ‘suitable work’ within the framework of the Unemployment Law is considered –by the ILO and the Council of Europe- to be in compliance with the European Code of Social Security of the Council of Europe.

This leads to the conclusion that, in the vision of the Netherlands, we do comply with article 12.1 of the Charter.