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## **EUROPEAN SOCIAL CHARTER**

Comments by Dutch section of the International  
Commission of Jurists  
on the 14<sup>th</sup> National Report on the implementation of the  
European Social Charter

submitted by

**THE GOVERNMENT OF THE NETHERLANDS**

Articles 11,12,14 and 30

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# Contribution to the ECSR on health, social security and social protection

**To:**

Department of the European Social Charter  
Directorate General Human Rights and Rule of Law  
Council of Europe

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## **Introduction**

By way of this report, the Dutch Section of the International Commission of Jurists (NJCM) wishes to provide additional information on the implementation and compliance of the Dutch State with the articles under thematic group 2 of the European Social Charter. The NJCM, an association of jurists, was established in 1974. It has grown into an authoritative organisation that is committed and has successfully contributed to the protection of human rights in the Netherlands and Dutch foreign policy. The NJCM has approximately 1,100 members.

The NJCM believes that socio-economic human rights are an integral part of the human rights framework. Accurate and elaborate reporting on the obligations posed by these rights is imperative to the protection of all human rights. We recognise that the level of socio-economic rights protection is relatively high in the Netherlands. Nevertheless, there still is room for improvement. This report focuses on articles 11, 12, 14 and 30 of the European Social Charter. The NJCM will comment, per article, on the reply of the Dutch State to a given question and/or provide the Committee with additional information we believe to be relevant for this consultation.

## 2. Article 11

### Additional information

The Netherlands remains succinct in its answer, referencing disaggregated data based on gender and presenting some limited data on the relationship between an ageing population and particular health issues. The NJCM believes that the Netherlands has omitted relevant data, in particular relating to rural/urban divides.

#### 2.1 Life expectancy in rural regions

The Netherlands is a small and densely inhabited country, which makes it difficult to consider what areas qualify as 'rural'. Therefore, it is useful to use a categorisation made by the Dutch government of so-called '*krimp*'-regions or 'shrinking regions', nine regions on the periphery of the country which are confronted with specific demographic and socio-economic challenges.<sup>1</sup> These areas are characterised by a simultaneously declining and ageing population. Employment opportunities are scarce for highly-educated individuals, who largely relocate to urban areas. The life expectancy in these *krimp*-regions is somewhat lower than elsewhere in the Netherlands.<sup>2</sup> Especially in the regions of Groningen and Zuid-Limburg the life expectancy is 1 to 2 years lower than in urban regions.<sup>3</sup>

#### 2.2 Rural areas and health experiences

Data from 2015 show that around 26,2% of people living in these *krimp*-regions consider their health as 'not good'.<sup>4</sup> Moreover, the number of people considering their health to be poor is growing; it is expected that in 2025 around 42,7% of people in *krimp*-regions will consider their health as bad. These numbers have been explained by the relatively poor socio-economic situation of people in *krimp*-regions.<sup>5</sup>

#### 2.3 Prevalence of particular diseases in rural areas

In *krimp*-regions there are more people with high blood pressure or obesity, more people smoke, and more people are at risk of depression or anxiety disorders.<sup>6</sup> These numbers are especially high in the provinces of Zuid-Limburg and Zeeuws-Vlaanderen.<sup>7</sup>

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<sup>1</sup> At: <https://www.rijksoverheid.nl/onderwerpen/bevolkingsdaling/krimpgebieden-en-anticipeergebieden>.

<sup>2</sup> Verweij A en F van der Lucht, Gezondheid in krimpregio's: verdiepingstudie (RIVM, 2014).

<sup>3</sup> At: <https://www.volksgezondheidenzorg.info/onderwerp/levensverwachting/regionaal-internationaal/bij-geboorte#node-levensverwachting-bij-geboorte-ggd-regio>

<sup>4</sup> K6, *Nederland in Balans: een nieuwe koers voor krimpregio's* (2017), p. 6, available at: <https://vng.nl/publicaties/nederland-in-balans-een-nieuwe-koers-voor-krimpregios>. K6 is a collective of 6 Dutch provinces affected by population decline.

<sup>5</sup> Verweij A en F van der Lucht, Gezondheid in krimpregio's: verdiepingstudie (RIVM, 2014).

<sup>6</sup> K6, *Helemaal Nederland: te klein voor grote verschillen* (2020), p. 24, available at: <https://www.kennisvoorkrimp.nl/nieuws-over-krimp/helemaal-nederland-te-klein-voor-grote-verschillen>.

<sup>7</sup> Batenburg R, T Wiegers, W Ruizendaal, R Verheij en D de Bakker, *De NIVEL Zorgmonitor Krimpgebieden: Resultaten van Een Quick Scan En Conceptueel Monitorontwerp* (NIVEL, 2015).

## 2.4 Accessibility of health services in rural areas

The demand for health care is higher in *krimp-regions* than in the rest of the Netherlands.<sup>8</sup> At the same time, there are some concrete problems with the accessibility of healthcare in *krimp-regions*.

The first problem is the availability of health professionals and facilities. Many health facilities are unable to stay open in rural areas because of a lack of funding. Some examples: in Oost-Drenthe, the emergency care and pediatric care units of the hospital closed.<sup>9</sup> In Oost-Groningen, hospitals closed in Delfzijl and Winschoten, and the hospital in Stadskanaal is having difficulties staying open.<sup>10</sup> There is also a lack of general practitioners and other health professionals in *krimp-regions*.<sup>11</sup> There is a particularly high demand for so-called 'first-line' care, like general practitioners.<sup>12</sup> However, the number of patients per general practitioner is systematically higher in *krimp-regions* than in the rest of the country.<sup>13</sup> Moreover, due to the ageing population, there are fewer informal carers available in *krimp-regions*.<sup>14</sup>

Second, the available facilities and professionals are difficult to access physically. For the Northern *krimp-regions*, there is specific data available about the proximity of healthcare facilities. The average distance to a general practitioner in the Netherlands is 6,2 kilometre. In some *krimp-regions* this goes up to 17 or 34 kilometres.<sup>15</sup> Moreover, pharmacies can be up to 10 kilometres away. The average distance to a hospital in the Netherlands is 4,8 kilometre. In some *krimp-regions* this distance can be 17 to 29 kilometres.<sup>16</sup>

The physical distance is also problematic for health professionals that need to see patients in their homes. Due to the long distances professionals have to travel, the health care costs tend to go

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<sup>8</sup> Verweij A en F van der Lucht (n 2); Engbersen R en M Uyterlinde, Regionale Verschillen Geduid: Exploratief Onderzoek Naar Hoog Voorzieningengebruik in het Sociaal Domein (Platform31, 2017); Ooms I, K Sadiraj en E Pommer, Regionale Verschillen in Het Sociaal Domein : Voorzieningengebruik Nader Verklaard Regionale Verschillen in Het Sociaal Domein (Sociaal en Cultureel Planbureau, 2017).

<sup>9</sup> Birch, *Derde voortgangsrapportage Actieplan Bevolkingsdaling* (2019), p. 25, available at:

<https://www.rijksoverheid.nl/documenten/rapporten/2019/12/04/derde-voortgangsrapportage-actieplan-bevolkingsdaling>.

<sup>10</sup> *Derde voortgangsrapportage Actieplan Bevolkingsdaling*, p. 43.

<sup>11</sup> Actieplan bevolkingsdaling (2016), p. 39, available at:

<https://www.rijksoverheid.nl/documenten/rapporten/2016/03/18/actieplan-bevolkingsdaling>; Nederland in Balans, p. 7; M de Klerk, D Verbeek-Oudijk, I Plaisier en M den Draak, *Zorgen voor thuiswonende ouderen: kennissynthese over de zorg voor zelfstandig wonende 75-plussers, knelpunten en toekomstige ontwikkelingen* (Sociaal en Cultureel Planbureau, 2019), p. 58 & 59.

<sup>12</sup> Verweij A en F van der Lucht (n 2).

<sup>13</sup> Verweij A en F van der Lucht (n 2).

<sup>14</sup> M de Klerk, D Verbeek-Oudijk, I Plaisier en M den Draak, *Zorgen voor thuiswonende ouderen: kennissynthese over de zorg voor zelfstandig wonende 75-plussers, knelpunten en toekomstige ontwikkelingen* (Sociaal en Cultureel Planbureau, 2019), p. 82.

<sup>15</sup> Rijksinstituut voor Volksgezondheid en Milieu, Factsheet Leefomgeving, Gezondheid en Zorg in de Noordelijke Krimpregio's (RIVM, 2015).

<sup>16</sup> Rijksinstituut voor Volksgezondheid en Milieu (n 15).

beyond the budget provided for by insurances.<sup>17</sup> Patients who have to travel to visit health facilities often experience problems due to the decreasing availability of public transport.<sup>18</sup>

Third, in terms of economic accessibility, the NJCM is concerned about the growing costs for healthcare in *krimp-regions* and the budget problems experienced by municipalities in these areas. In *krimp-regions* the costs for healthcare are higher than in the Netherlands on average, also when the effects of age and gender are not taken into consideration.<sup>19</sup> *Krimp-regions* fear that these growing costs and the relatively low spending capacity of inhabitants harm the accessibility of healthcare.<sup>20</sup>

## 2.5 Equality of access to health in rural vs urban areas

Equal accessibility is one of the key components of the accessibility of healthcare. The NJCM is worried that inequality in the accessibility and availability of healthcare might exist or will exist between rural and urban regions in the Netherlands. This worry is based on the growing inequality between these regions, illustrated by the concrete challenges posted above and the lack of central oversight and guarantees on the level of healthcare in the Netherlands. This lack of oversight and guarantees has become prevalent during the decentralisation of social care in 2015. Municipalities are now responsible for affecting many socio-economic rights, including (at least partially) the right to health. Municipalities are responsible for healthcare at home, healthcare for young people and specific vulnerable groups. Despite decentralisation, in the case *The Central Association of Carers in Finland v. Finland*, the ECSR held that there must be reasonable uniformity in the level of care provided across a nation.<sup>21</sup> The NJCM is worried that the Dutch State lacks oversight on the availability and accessibility of healthcare in rural regions and the possibility of inequality in the accessibility of healthcare depending on where you live in the Netherlands. This is illustrated by the lack of data available from official Government channels and the failure to report on this issue when requested by the Committee.

## 2.6 Conclusion

The NJCM wishes to draw the Committee's attention to the particular health situation in rural areas in the Netherlands and the growing gap in this respect between rural and urban regions. The NJCM believes that these numbers should be considered in light of the recent reorganization of many aspects of the health care system in the Netherlands. In 2015 the Act on social assistance, which includes aspects of health care (often serviced in house), was decentralized to the municipal level.<sup>22</sup> This allows for differentiation in healthcare policies between municipalities, which is not prohibited as such but warrants the guarantee of a 'uniform level of protection' across the State. The NJCM worries about the extent to which such a uniform level can be guaranteed or maintained given the

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<sup>17</sup> Actieplan Bevolkingsdaling (n 11), p. 38.

<sup>18</sup> Actieplan Bevolkingsdaling (n 11).

<sup>19</sup> E Pommer en J Boelhouwer, Overall rapportage sociaal domein 2015: rondom de transitie (Sociaal en Cultureel Planbureau, 2016); Helemaal Nederland (n 6), p. 27; Rijksinstituut voor Volksgezondheid en Milieu (n 15), p. 21.

<sup>20</sup> Helemaal Nederland, p. 27.

<sup>21</sup> ECSR 4 December 2012, nr. 70/2011 (*The Central Association of Carers in Finland v. Finland*), para 58.

<sup>22</sup> Wet maatschappelijke ondersteuning, at: <https://wetten.overheid.nl/BWBR0035362/2020-07-01>.

increasing health problems signalized in rural areas and the substantive budgetary issues experienced by municipalities everywhere in the Netherlands, but particularly in rural regions, in relation to the provision of health services under the 2015 Act on social assistance. The NJCM advises the Committee to ask the Netherlands how the State, as the party ultimately responsible for equal and uniform protection across the Netherlands, plans to address this issue.



### 3. Article 12 and article 14

#### Additional information

With regard to articles 12 and 14, the NJCM would like to provide additional information outside of the direct scope of the questions asked by the Committee to the Dutch State. This is necessary because of recent large-scale problems detected in the organisation of welfare distribution. We would like to bring these problems to the Committee's attention, since these issues directly threaten the enjoyment of a number of rights enshrined in the European Social Charter. Below we will highlight three issues.

#### 3.1 Fraud prevention, no hardship clause and discriminatory AI systems

##### 3.1.1 Child care benefits scandal

First, there have been huge problems with inaccurate accusations of fraudulent behaviour of parents receiving childcare benefits. On 17 December 2020, the parliamentary report '*Ongekend onrecht*'<sup>23</sup> ('Unprecedented injustice') was published, which details the malversations of various parts of the Dutch government in its efforts to control fraud with childcare benefits (*'Kinderopvangtoeslag'*) in the period between 2009 and 2020.

This means-tested child care benefit was introduced in 2004 to support parents in covering the high costs of childcare organised by commercial parties, which they otherwise could not bear due to insufficient income.<sup>24</sup> Yet, already early on, certain uses of the benefits were perceived as fraudulent, such as the use of the system by parents or caretakers that did not take part in paid labour or the use of the benefits to pay grandparents. Hence, the Dutch government introduced further conditions and coupled the right to receive benefits with the working hours of both (all) parents and caretakers and decided that care must be provided by certified professionals (and not e.g. grandparents).

In the same period, a system of fraud prevention was set up within the Dutch tax authority (*Belastingdienst*). For this purpose, special teams were created to look for fraudulent activities, and automated data systems (AI systems) were used to analyse all sorts of personal data to look for indicators of possible fraudulent activity. This automated system relied on (illegal) ethnic profiling and used indicators such as double nationality.<sup>25</sup> Parents were not informed about flaggings by this system or the reasons thereof. Furthermore, such flaggings by the automated system often remained unchecked, meaning that parents were labelled as fraudulent in various government systems such as the child care benefit system or the income tax system (without their knowledge).

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<sup>23</sup> Parlementaire ondervragingscommissie Kinderopvangtoeslag, [Ongekend onrecht](#) (pdf) (17th December 2020).

<sup>24</sup> In the Netherlands, child care for children under 4 years old and between 4 and 12 (in the hours before and after elementary school) is provided by commercial parties. The involvement of commercial parties led to an increase in the availability of child care services. It also means that parents must pay significant amounts of money to the providers of child care (hourly rate of about € 7,50 per child (2020) e.g. € 1.360,-- per month per child under 4 years of age that obtains childcare on 4 full days per week/€ 16.320,-- per year).

<sup>25</sup> Sociaal Raadsliedenetwerk, Letter dated 21 March 2021 to Minister Van Huffelen, available at: [https://www.taxlive.nl/media/4840/reactie\\_losr\\_op\\_niet\\_toepassen\\_beslagvrije\\_voet\\_bij\\_verrekenen\\_toeslag\\_undef.pdf](https://www.taxlive.nl/media/4840/reactie_losr_op_niet_toepassen_beslagvrije_voet_bij_verrekenen_toeslag_undef.pdf).

Starting from about 2009, under pressure from Parliament and considerable parts of public opinion, the policy concerning fraud became increasingly stringent. If parents were unable to file sufficient proof of fulfilling all conditions set by law, the *Belastingdienst* started to reclaim all benefits that had been paid, leading to enormous claims for repayment. Many parents were unable to repay these amounts as these amounts were provided to those parents that did not have sufficient income in the first place. In addition, if a parent was labelled as fraudulent, the *Belastingdienst* would offer no payment arrangement. Also, when reclaiming the benefits and/or fines, the *Belastingdienst* did not verify whether individuals would fall below the subsistence minimum, meaning that in many cases the income dropped below the subsistence level.<sup>26</sup> Finally, in many cases, parents were not granted legal aid, as the legal disputes were deemed to be simple.<sup>27</sup> And those parents that did pursue legal remedies were confronted with the fact that courts ruled that the law did not allow for any hardship clause to be applied.<sup>28</sup>

As of 2012, the policy was changed, allowing for administrative fines amounting to up to 100% of the sum that had to be repaid. When in 2013 it became public that Bulgarian migrants were unlawfully obtaining childcare benefits, the policy was made more stringent again, and the *Wet aanpak fraude toeslagen en fiscaliteit* was introduced.

Although the Ombudsman reported the unreasonable consequences of the laws and policies on several occasions<sup>29</sup> and several parliamentarians did their utmost to obtain information (which was not provided by Government), to control the Government and to remedy the situation, the policy was continued until 2019. It is estimated that 26.000 parents and 80.000 persons (including the family members) fell victim to the unlawful and/or unreasonable demands for repayment of the *Belastingdienst*, leading to many families being severely indebted, families breaking up due to the constant financial and psychological stress and thousands of children growing up in poverty.

After the publication of the parliamentary report, the Dutch government resigned. Compensation measures were announced, and their application has started. However, due to the complexity of the problem and its duration, the lack of documentation on the authorities' side and the lack of workforce, compensation efforts are stricken with problems, and full compensation may take years to realise.

### 3.1.2 SyRI: Using AI-systems for fraud detection in low-income areas

The NJCM also has serious concerns about the use of AI systems to detect welfare fraud in general. In particular, we worry about the disproportionate effect of AI systems on people living in low-income

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<sup>26</sup> Persons in need of professional legal aid but unable to (fully) bear the costs (being below a certain income threshold), are entitled to call upon the provisions as set down in the Legal Aid Act.

<sup>27</sup> 'Nationale Ombudsman, Fraude valt mee', (NOS 11 December 2013), available at <https://nos.nl/artikel/585386-ombudsman-fraude-valt-mee.html>; W Van den Berg, M Alhadjri, M Mulder, *Geen powerplay maar fair play* (Nationale Ombudsman, 9 Augustus 2017), available at: [https://www.nationaleombudsman.nl/system/files/onderzoek/Rapport%202017-095%20Geen%20powerplay%20maar%20fair%20play\\_0.pdf](https://www.nationaleombudsman.nl/system/files/onderzoek/Rapport%202017-095%20Geen%20powerplay%20maar%20fair%20play_0.pdf).

<sup>28</sup> Ongekend onrecht, p. 7 and 21.

<sup>29</sup> Ongekend onrecht, p. 8

areas. In recent years, the Dutch government has used an instrument called SyRI, explained below, until the District Court of the Hague prohibited it in 2020. However, the government is currently discussing a new law to grant itself more powers in fraud detection.

SyRI (*Systeem Risico Indicatie*) was an artificial intelligence system created by the Ministry of Social Affairs and Welfare. It consisted of an automated algorithmic system created to detect and analyse welfare fraud. The system combines an unknown number of datasets on individuals and, based on an unknown algorithm, sets out to measure the likelihood of misusing the benefits system by certain individuals. SyRI, an instrument based on Section 64 and Section 65 of the Dutch SUWI Act<sup>30</sup>, was used to prevent and combat abuse of social security provisions, tax and contribution fraud and non-compliance with labour laws.

In 2014, a coalition of civil society organisations, including the NJCM, initiated strategic litigation on SyRI against the Dutch State. With this lawsuit, the coalition aimed to stop SyRI. The manner in which the Government used SyRI against its citizens and thus processed large amounts of data was unprecedented, undemocratic and subject to severe human rights objections. Therefore, the Dutch Council of State and the Dutch Data Protection Authority had advised negatively on the SUWI Act, particularly regarding to the large amounts of personal data that could be processed and the significant invasion of privacy by SyRI.<sup>31</sup> According to the coalition, SyRI damaged citizens' confidence in the Government, and its working method had an inhibiting effect on citizens' willingness to communicate openly with the Government. As a result, SyRI posed a fundamental threat to the functioning of democracy under the rule of law. According to the coalition, it was not possible to improve the system by incorporating extra safeguards or using better algorithms.

The UN Special Rapporteur on extreme poverty and human rights, Philip Alston, wrote an *amicus curiae* letter to the Court in The Hague, in which he voiced grave concerns about SyRI. According to the Special Rapporteur, the proceedings against SyRI were of international interest, especially with regard to the use of technology and algorithms in welfare states and the consequences thereof for the rights of vulnerable citizens.<sup>32</sup>

SyRI affects the rights of all citizens. At the same time, SyRI was only applied in the poorest neighbourhoods, where most people are not white. Therefore, the application of SyRI seems to violate the prohibition of discrimination.

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<sup>30</sup> Wet structuur uitvoeringsorganisatie werk en inkomen, available at:

<https://wetten.overheid.nl/BWBR0013060/2019-01-01>

<sup>31</sup> Council of State, Ontwerpbesluit houdende regels voor fraudeaanpak door gegevensuitwisselingen en het effectief gebruik van binnen de overheid bekend zijnde gegevens (Besluit SyRI), met nota van toelichting, Staatscourant 2014, nr. 26306, available at:

<https://www.raadvanstate.nl/adviezen/zoeken-in-adviezen/tekst-advies.html?id=11339>; Autoriteit

Persoonsgegevens, Advies conceptbesluit SyRI, available at: (18 February 2014)

<https://cbpweb.nl/sites/default/files/atoms/files/z2013-00969.pdf>.

<sup>32</sup> Amicus brief of the United Nations Special Rapporteur on Extreme poverty, in the case of NJCM c.s./De Staat der Nederlanden (SyRI): Implications of the use of digital technologies in welfare states, (2019) available at:

<https://www.ohchr.org/Documents/Issues/Poverty/Amicusfinalversionsigned.pdf> .

On 5 February 2020, the District Court of The Hague ruled that SyRI violated the European Convention on Human Rights. According to the Court, SyRI constituted a disproportionate invasion of the private lives of citizens.<sup>33</sup> This did not only apply to people whom SyRI identified as being at increased risk, but to everyone whose data was analysed by SyRI. According to the District Court, SyRI was not transparent and, therefore, not verifiable. The invasion of privacy was unforeseeable for citizens, and they could not defend themselves against it. The Court also mentioned the actual risk of discrimination and stigmatisation of citizens based on socio-economic status and possible migration background in so-called ‘problematic neighbourhoods’, where SyRI has already been deployed. According to the Court, the deployment of SyRI is accompanied by a risk of prejudice, but this risk cannot be controlled. Based on these considerations, the District Court declared SyRI to be non-binding, which means that the Government can no longer use SyRI.

### 3.2 Waiting lists within youth care

A third issue that the NJCM would like to draw the Committee’s attention to are the growing waiting lists in youth care. The NJCM signals that the Dutch government does not have a clear central overview of the developments since the decentralisation of youth care.

Since 2015, the organisation of youth care has been decentralised to the municipal level. This has resulted in a fragmentation of approaches and a lack of oversight into the problems with waiting lists. In 2016 the Dutch Youth Institution (Nji) researched the waiting lists within youth care. This research showed that it was not possible to obtain information about waiting lists and waiting times on national, regional and municipal levels because a part of youth care providers (such as mental health institutions and ortho pedagogical treatment centres) provided this information instead of government bodies. Many of these providers were publishing their data on the website; no institution gathered information on these numbers on national, regional or municipal levels. This situation made it impossible to have an overall picture of national, regional and municipal numbers on waiting lists within youth care in the Netherlands.<sup>34</sup> The same research showed that also the Central Bureau of Statistics (CBS) did not have the numbers available concerning these waiting lists.<sup>35</sup>

In December 2019, the Minister for Medical Care and Sport and the State Secretary for Health, Welfare and Sport clarified that there could be multiple causes for the waiting lists and that they could differ regionally. The Ministry explained that the Government had made separate agreements with municipalities about how to approach this topic.<sup>36</sup>

In December 2020, the State Secretary of Public Health, Welfare and Sport stated that a poll held by the Dutch mental health care showed that the number of crisis reports had increased. The State

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<sup>33</sup> District Court The Hague, 5 February 2020, ECLI:NL:RBDHA:2020:1878, <https://uitspraken.rechtspraak.nl/inziendocument?id=ECLI:NL:RBDHA:2020:1878>.

<sup>34</sup> Gert van den Berg e.a. Wacht maar: onderzoek naar wachttijden en wachtlijsten in jeugdzorg en jeugdhulp, 2017 (Nji), p.5; In this research there has been made a selection of Government documents on waiting lists, such as: parliamentary papers, letters of ministers and representatives of the second chamber.

<sup>35</sup> Gert van den Berg e.a., Wacht maar: onderzoek naar wachttijden en wachtlijsten in jeugdzorg en jeugdhulp, 2017 (Nji), p. 36, available at: <https://vng.nl/publicaties/wacht-maar-onderzoek-naar-wachttijden-en-wachtlijsten-in-jeugdzorg-en-jeugdhulp>

<sup>36</sup> Parliamentary papers II 32620 nr. 242, p. 2 – 3, available at: <https://zoek.officielebekendmakingen.nl/kst-32620-242.html>

Secretary agreed with the VNG (Association of Dutch Municipalities) that the VNG would arrange an overview of what kind of different specialist mental health care existing for vulnerable children as quickly as possible. The VNG prepared a questionnaire among 42 youth aid regions and relevant providers. The results are expected in the short term.<sup>37</sup>

Furthermore, the State Secretary informed the Parliament (member) that whenever there is a crisis, there is always help available. Healthcare professionals are estimating which help is available and what is needed. For this, healthcare professionals need to have a quick and easy view of the available crisis places in municipalities. Providers already have developed an app where it can be seen where beds are available 24/7. Juveniles from all over the country could make use of these beds whenever they are in need. Therefore, the app has a national function. The State Secretary made a further effort to have an overview of the available crisis places by talking to Dutch mental health providers and the VNG and informed them that due to the decentralized organization of youth assistance, there was no national picture available of the waiting lists. A change is expected when the bill 'Availability of youth care for youth' is adopted. In that case, municipalities are obliged to draw up a regional vision on waiting lists per region from 2021 on.<sup>38</sup>

### 3.3 Conclusion

With regard to the child benefits scandal, the NJCM notes that by creating and upholding a biased fraud prevention system and (in part illegal) policies with the lack of a hardship clause, the Netherlands severely infringed articles 12 and 14 of the Charter. Furthermore, several other human rights have been infringed, not the least non-discrimination and the right to privacy. As the parliamentary report *Ongekend Onrecht* clearly indicates that a systemic failure of all State powers (legislative, executive and judicial) led to grave harm being caused to thousands of citizens, the NJCM advises the Committee to pose questions to the Dutch government about how the harm will be effectively remedied, how similar harm will be avoided in the future and what lessons must be learned.

With regard to Syri, the NJCM wishes to draw the attention of the Committee to the fact that, the First Chamber of Parliament currently deliberates about a new law<sup>39</sup> that grants to the Government even further powers than the SUWI act that made SyRI possible, and the Dutch government prepares its negotiating position with respect to the upcoming EU Regulation on Artificial Intelligence. The NJCM advises the Committee to address the obligation of the Dutch government under articles 12,

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<sup>37</sup> Isabel Baneke, 'De jeugd-ggz staat onder druk. Het aantal crisismeldingen is de afgelopen maanden met 30 tot 60 procent gestegen, blijkt uit een rondvraag van de Nederlandse ggz. Er moet nu iets gebeuren', *Trouw.nl* 23 December 2020, available at: <https://www.trouw.nl/zorg/aantal-crisismeldingen-in-jeugd-ggz-tot-60-procent-gestegen-er-moet-nu-iets-gebeuren~b24de616/>

According to this news item the number of crisis report about mental health institutions for youth has grown considerably. In some regions, the group of young people in acute crisis has increased by 60 percent since the Coronacrisis. It mainly concerns youth struggling with eating disorders and suicidal thoughts according to the Dutch mental health care (GGZ).

<sup>38</sup> Parliamentary papers II 1564, p. 1 – 3, available at: <https://zoek.officielebekendmakingen.nl/ah-tk-20202021-1564.html>

<sup>39</sup> Wet gegevensverwerking door samenwerkingsverbanden, available at: [https://www.eerstekamer.nl/wetsvoorstel/35447\\_wet\\_gegevensverwerking\\_door.](https://www.eerstekamer.nl/wetsvoorstel/35447_wet_gegevensverwerking_door.)

14 and article E of the Charter to secure the enjoyment of the rights set forth in the Charter without any discrimination.

With regard to the waiting lists, the NJCM sees that the Dutch government has taken different agreements with municipalities on how to approach waiting lists within youth care. However, we advise the Committee to address that the Dutch government should take leadership in providing information about waiting lists and waiting times on national, regional and municipal levels instead of relying on providers of youth care to do so.

## 4. Article 30

### Additional information

In relation to question a) on article 30, the NCJM believes the Dutch government has omitted essential information on development concerning child poverty. More information is detailed below on measures taken by the Dutch government. The NJCM wants to draw the Committee's attention to the lack of data collection at the municipal level and, therefore, a lack of central oversight on the issue of child poverty.

#### 4.1 Extra money for the fight against child poverty

As of 2017, the Dutch cabinet has made a 100 million euros extra available annually for structural help for children who are growing up in poverty: 85 million is paid annually to municipalities by the Ministry of Social Affairs and Employment, 10 million is paid by the same ministry for parties which are committed to fighting against child poverty (such as Learning Money Association, National Children's Aid Fund, Sport Youth Fund and Culture and Stichting Jarige Job), and 5 million is made available through the subsidy scheme 'Opportunities for all children'. The Secretary of State of Social affairs and employment found it important to make additional financial and other resources available to combat child poverty. This was a response to Social Economic Council 's (SER) advice<sup>40</sup> of 2014 on 'Growing up without poverty' and the report by the Ombudsman for Children 'All children have a chance' .<sup>41</sup> SER's advice mentioned that municipalities are primarily responsible for the required customization and implementing poverty policy, and reducing child poverty. Therefore, local customization is an important starting point according to SER's advice. SER sees that there are many different local schemes and benefits provided in kind. There is also a great deal of non-use, and little is known about the effectiveness of local facilities. Therefore, municipalities need to increase their effectiveness by customization of their poverty policy.<sup>42</sup> SER concluded in its report 'Growing up without poverty' that the Dutch tools for poverty reduction have been insufficient in recent years. It also concluded that it is not clear what effects facilities of the municipalities have on children and young people living in poverty. For example, child services contributions have not led to a decrease in the number of children living in poverty and the income support for parents has not grown in line with fixed costs. SER found the income policy of the Government insufficient, ineffective and complex with adverse effects for parents with children. SER found that the complexity was caused by the sum of different policies measures at national as municipal levels.

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<sup>40</sup> The advice report of SER mentions that in 2014 1 out of 9 children were living in poverty: that is a total amount of 378.000 children.

<sup>41</sup> Parliamentary papers II 24515, nr. 455, p. 1, available at: ; <https://zoek.officielebekendmakingen.nl/kst-24515-455.html>; According to the Ombudsman for Children, an important part of poverty is that households have debts; Kinderombudsman, Alle kinderen kansrijk: het verbeteren van de ontwikkelingskansen van kinderen in armoede, 5 december 2017, p. 16 – 17, available at: <https://www.dekinderombudsman.nl> > publications

<sup>42</sup> In this regard SER finds the role of civil society important in supporting poor children; civil society can have an important additional role such as signalling, informal reception, temporary bridging; SER, Opgroeien zonder armoede, Advies 17/03 maart 2017, p 96 – 105, available at: <https://www.ser.nl/nl/publicaties/opgroeien-zonder-armoede#:~:text=In%20het%20advies%20Opgroeien%20zonder,van%20de%20oorzaken%20van%20armoede.>



## 4.2 Investigation on poverty indicators

Another development was that the Dutch cabinet requested in October 2018 the Central Planning Bureau (CPB), the Social and Cultural Planning Bureau (SCP) and the Central Bureau of Statistics (CBS) to investigate whether it is possible to create poverty indicators that can be used for a possible poverty reduction among children. This research showed that there is no detailed and complete insight into the municipal poverty policy.<sup>43</sup> Municipalities conduct special assistance and individual income allowance to households that are in need under the Participation Act. It also provides a wide range of social amenities, especially for children. However, municipalities do not have actualised data on how these measures work out in their municipalities and what consequences these measures have on increasing or decreasing child poverty. The report mentioned that it is necessary to build and update a register in which help by municipalities through provisions are specified.<sup>44</sup> The report also mentioned that existing figures do not provide insight into social exclusion and deprivation of households in poverty; an indicator for this yet needs to be developed.<sup>45</sup> This given fact is important to include in this report. It shows that the Dutch institutions responsible for figures on child poverty have different approaches in determining these and that specific indicators need to be developed.

## 4.3. Some numbers about poverty

According to the report of CBS in 2018, 264.000 children were part of a household with a low income. This meant that a single-parent family with two children had less than 1.600 euros to spend per month. In 2018, there were as many children in poverty as in the previous year (which was 8,1 per cent in 2017). The number of children in poverty with a non-Western migration background increased because of Syrian refugees who had to depend on social assistance benefits. In 2018, 77% of children with a Syrian background were part of a low-income family. However, children with another non-Western background (such as Turkish, Moroccan, Surinamese or Aruban) were less likely to deal with a low income in 2018 than in 2014.

More than 113.000 children with a single-parent family and almost 147.000 children from a two-parent family were at risk of poverty in 2018. This came to almost a quarter of all children living in a single-parent family against 5,5% of all children from a two-parent family. This risk became smaller as the children became older, which allowed the parents to work. Households that obtained their income from work were by no means safeguarded from a low income. Children living in these households were sharing the poverty problems of their parents too. Almost 90.000 children were in that situation, equating to almost a third of all children living in poverty that year. This meant that salaried households were the largest group of workers with low income. In 2018 almost 55.000

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<sup>43</sup> For example: local amenities, such as income support in kind and remission of local charges in addition, affect in many cases the spending capacity of households and their social participation capacity.

<sup>44</sup> CPB, SCP & CBS, Verkenning naar eenduidige indicatoren kinderarmoede: op verzoek van het ministerie van Sociale Zaken en Werkgelegenheid, 31 oktober 2018, p. 8, available at: <https://www.cpb.nl/publicatie/verkenning-naar-eenduidige-indicatoren-kinderarmoede#:~:text=Het%20kabinet%20heeft%20het%20Centraal,eventuele%20reductiedoelstelling%20voor%20armoede%20onder>

<sup>45</sup> See note 39, p. 9



children with families with salaried income were at risk of poverty, which was one-fifth of all underage children at risk of poverty. For families with income from an independent business with staff, 7300 children were living in poverty. For families with income from an independent business without staff, 27.500 children were living in poverty.<sup>46</sup> These were the numbers of the CBS in 2018, which was published in 2019. Such a report was not published in 2020 about the numbers of child poverty in 2019.

#### 4.4 Action plan by the Dutch Government

One of the major ambitions of the Dutch cabinet in this regard was handling the debts of parents. The Dutch government pursued an action plan<sup>47</sup> for approaching this problem in collaboration with the municipalities. The Dutch cabinet came up with the idea to reward parents with a low income as compensation for their debts and to support municipalities in shaping their poverty policy as mentioned before.<sup>48</sup> The Dutch cabinet also made a wider effort to improve the living situation of children and parents together with municipalities with various action programs. Some of these programs were not aimed at children in poverty specifically but contributed to the situation of children indirectly, such as *Tel mee met Taal* (a program to combat parental illiteracy and promoting the reading pleasure of children), the Youth Homeless Action Program (that strives for a reduction of the number of homeless young people), etc.<sup>49</sup>

#### 4.5 Conclusion

The NJCM applauds the different efforts the Dutch government has made in combating child poverty. However, the persisting child poverty in the Netherlands teaches us that further efforts are necessary. The NJCM explicitly sees the need for clarification on the method for measuring child poverty in the Netherlands by different institutions such as CPB, SCP and CBS. We supports the idea that specific indicators should be developed for this purpose and asks the Committee to address this point to the Dutch government. Dutch municipalities and the Dutch government should provide sufficient and effective policy measures as well as detailed, actualised, and complete data on child poverty policy on the municipal and national level.

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<sup>46</sup> CBS, Armoede & sociale uitsluiting, 2019, p. 90 – 96, available at: <https://www.cbs.nl/nl-nl/publicatie/2019/50/armoede-en-sociale-uitsluiting-2019>,

<sup>47</sup> This action plan is available at:

<https://www.rijksoverheid.nl/documenten/kamerstukken/2020/09/28/intensivering-armoede--en-schuldenaanpak>

<sup>48</sup> Parliamentary papers II 24515, nr. 501 p. 6, available at: <https://zoek.officielebekendmakingen.nl/kst-24515-501.html>

<sup>49</sup> Parliamentary papers II 24515 nr. 484, p. 6 -7, available at: <https://zoek.officielebekendmakingen.nl/kst-24515-484.html>

## **5. Conclusion**

In conclusion, the NJCM sees reason for the Committee to ask for additional information and explanation to the Dutch State on four articles. The first being the growing rural/urban divide in the Netherlands in relation to article 11. Further, concerning articles 12 and 14, the NJCM has highlighted three developments: the child-care benefits scandal, the use of AI for fraud detection and the waiting lists in youth care. Lastly, the NJCM provides additional information on compliance with article 30, specifically on the steps taken and not taken by the Dutch State on child poverty.