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European Commission Against Racism and Intolerance

First report on the Netherlands

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For further information about the work of the European Commission against Racism and Intolerance (ECRI) and about the other activities of the Council of Europe in this field, please contact:

Secretariat of ECRI
Directorate General of Human Rights – DG II
Council of Europe
F - 67075 STRASBOURG Cedex
Tel.: +33 (0) 3 88 41 29 64
Fax: +33 (0) 3 88 41 39 87
E-mail: combat.racism@coe.int

Visit our web site: www.coe.int/ecri

INTRODUCTION

The European Commission against Racism and Intolerance (ECRI) was set up in 1994, at the instigation of the first Summit meeting of Heads of State and Government of the member States of Council of Europe, to combat the growing problems of racism, xenophobia, anti-Semitism and intolerance threatening human rights and democratic values in Europe. The members of ECRI were chosen for their recognised expertise in questions relating to racism and intolerance.

The task given to ECRI was to: review member States' legislation, policies and other measures to combat racism, xenophobia, anti-Semitism and intolerance and their effectiveness; propose further action at local, national and European level; formulate general policy recommendations to member States; and to study international legal instruments applicable in the matter with a view to their reinforcement where appropriate.

One aspect of the activities developed by ECRI to fulfil its terms of reference is its country-by-country approach, which involves carrying out an analysis of the situation in each of the member States in order to provide governments with helpful and concrete proposals.

The procedure adopted for the preparation of country-specific reports can be summarised thus:

- a. The preliminary collection of information as well as the preparation of the texts of the preliminary draft reports are carried out in small working groups of ECRI. Preliminary sources of information used are wide-ranging, including, inter alia, replies provided by governments to a questionnaire sent out by ECRI, input from the relevant national members of ECRI, information on national legislation collected for ECRI by the Swiss Institute of Comparative Law¹, information from international and national non-governmental organisations, various publications and the media.
- b. ECRI examines and discusses the preliminary draft report on each country in plenary session and adopts a draft report.
- c. The report is sent to the relevant government for a process of confidential dialogue conducted through a government-appointed national liaison officer. The draft country report is re-examined and possibly revised in the light of the comments provided by the latter.
- d. The report is then adopted in its final form by ECRI in plenary session, and transmitted through the Committee of Ministers of the Council of Europe, to the government of the country in question. Two months after this transmission, the report is made public, unless the government of the country concerned expressly requests that it is not made public.

A first series of ECRI's country-specific reports was made public in September 1997 and a second series in March 1998². A third series of country-specific reports was transmitted to the governments of the countries concerned in April 1998, and is thus now being made public³.

The following report contains ECRI's analysis and proposals concerning the Netherlands.

¹ The report prepared by the Swiss Institute (ref: CRI (97) 38), covering relevant legislation in member States of the Council of Europe is available from ECRI's Secretariat.

² The first two series comprise reports on Belgium, the Czech Republic, Finland, Germany, Greece, Hungary, Iceland, Ireland, Liechtenstein, Lithuania, Luxembourg, Malta, Norway, Poland, San Marino, Slovenia and Switzerland.

³ Reports on Bulgaria, France, Italy, the Netherlands, Portugal and Slovakia.

It should be noted that ECRI is carrying out its country-by-country procedure by preparing reports for all forty member States of the Council of Europe. This third series of reports, for which the procedure was completed by April 1998, will be followed by other series of reports during 1998 on the remaining member States of the Council of Europe. The order in which the reports are produced has no significance other than that these are the first reports to be completed. It is intended to complete the first round of country reports by the end of 1998.

The publication of this report represents the start of an on-going and active process of exchange between ECRI and the authorities of each of the member States, in order to identify solutions to the problems of racism and intolerance facing Europe. ECRI will also welcome the input of non-governmental organisations and other parties working in this field to ensure that its work is as constructive and helpful as possible.

REPORT ON THE NETHERLANDS⁴

Introduction

The Kingdom of the Netherlands, comprising the Netherlands in Europe, the Netherlands Antilles and Aruba in the Caribbean, has a long-standing experience of immigration, firstly from the European countries and later - after the Second World War - from further afield: Dutch-Indonesians and Moluccans, Antillese and Surinamese from ex-colonial territories, and "gastarbeiders" (guest workers) from the Mediterranean countries, principally Turkey and Morocco. More recent is a large influx of asylum-seekers from different parts of the world, notably Africa. It should also be noted that one territorial minority group exists in the Netherlands, that of the Frisians. There is also a significant Jewish community.

The "guest workers" initially had limited rights since it was assumed that they would be staying only temporarily in the Netherlands. However, during the 1980s it became clear that most of them would be staying in the country permanently, and their rights were extended, notably to include the right to family reunification and the right to stay with their families as legal residents. Furthermore, the government began to elaborate "minorities policies"⁵ to tackle the problems faced by minority groups. The policy initially encouraged the maintenance of separate cultural identities; however, in the 1990s developments in policy have also stressed the need to encourage greater integration within a pluralistic society.

Many examples of legislation and policies to combat racism and intolerance can be drawn from the experience of the Netherlands, which has taken many initiatives in this field. As is characteristic of the Dutch political culture, those policies are embedded in a strong interaction between authorities and NGOs, for example, the specialised body to combat racism - the "Landelijk Bureau Racismebestrijding" - and the network of local anti-discrimination centres. The Netherlands can point to a structured and well-developed approach to these issues, and, in general terms, a well-established resistance to the extremes of racism and intolerance. Nevertheless, despite all the measures in place and given the influence of other factors in addition to discrimination, the socio-economic position of minority groups, particularly certain groups, remains on the whole at a lower level than that of the native population.

Dutch society is usually portrayed as being tolerant towards those who are "different". However, in common with societies elsewhere in Europe, recent years have seen a hardening of attitudes towards "foreigners" in public debate and public opinion, although support for extreme right-wing parties and the incidence of racial violence are still relatively low compared to some other European countries.

Some of the key areas identified by ECRI as meriting particular attention include:

- the effectiveness of legislation in force (implementation);

⁴ Note: Any development subsequent to 13 June 1997 is not covered by the following analysis and is not taken into account in the conclusions and proposals.

⁵ The term "minorities" as used in the Netherlands covers most so-called "ethnic minorities"

- the need to raise public understanding of and support for government integration policies, both among minority groups as well as the population at large;
- the importance of monitoring and evaluating the various initiatives underway, with the support of reliable statistics;
- consideration of ways in which social policies might be refined as and when necessary to take account of the distinctive needs of minority groups, particularly in urban areas of high concentration.

I LEGAL ASPECTS⁶

A. International Legal Instruments

1. The Netherlands has ratified almost all the relevant international conventions, with the exception of the Framework Convention for the Protection of National Minorities, which it has signed but not yet ratified. The Dutch government has stated its intention to ratify this instrument and it is felt that this should be done as soon as possible.

B. Constitutional provisions

2. Article 1 of the Dutch Constitution lays down that "persons shall be treated equally in equal circumstances". The preparatory work and explanatory memorandum indicate that a difference of treatment is permitted but only on reasonable and objective grounds. Discrimination on grounds of qualities or characteristics of persons such as religion, belief, political opinion, race, sex etc are not permitted. The constitutional legislator acknowledged the effect of Article 1 on relations between individuals but left it to the courts how and to what extent these were affected in concrete circumstances. However, discrimination in relations between individuals became punishable from 1971 on and was further expressly prohibited in the General Equal Treatment Act of 1994 (see under C and D below).
3. Human rights, guaranteed by the Constitution, carry equal importance. Cases of conflict between the principle of non-discrimination and equal treatment on the one hand and the right of free speech, freedom of assembly and demonstration on the other, tend to be settled more in favour of the principle of non-discrimination and equal treatment, whereas in cases of conflict between the principle of non-discrimination and equal treatment and the right of individuals, private institutions or associations to live according to their beliefs and ideology, the government and the courts tend to give more weight to the latter right.

C. Criminal law provisions

4. Anti-discrimination provisions were introduced in the Criminal Code in fulfilment of the Netherlands' obligations under the International Convention on the Elimination of All Forms of Racial Discrimination. There is a wide range of criminal law provisions concerning racism and discrimination: these were revised in 1992 to eliminate some defects which had been found. The Procurators General have issued new guidelines concerning the enforcement of these provisions and training programmes for law enforcement officials have been organised. However, relatively few cases have been brought based upon these articles. It has been suggested that one reason for this may be the fact that it is difficult to prove in court that discrimination has taken place. Another explanation might be the availability of remedies under the Equal Treatment Act and Commission. There have also been concerns that victims may be unwilling to come forward, and complaints of the way in which the police and the Public Prosecutor deal with allegations of racial discrimination. New guidelines issued by the Attorney Generals instructing law enforcement officials to improve preliminary investigation in discrimination cases and to deal more effectively with allegations of racial discrimination will hopefully improve matters: however, the situation should continue to be closely monitored and any further appropriate steps taken to ensure that legislation in force has an effect in practice.

⁶ A full overview of the situation existing in the Netherlands in the field of combating racism and intolerance is provided in the publication CRI (95) 2 rev. prepared for ECRI by the Swiss Institute of Comparative Law (see bibliography)

D. Civil and administrative law provisions

5. The General Equal Treatment Act of 2 March 1994 is the main provision in general law specifically combating racial and other discrimination. This Act covers the fields of employment, housing, education, health care, care of the elderly and other public provisions of goods and services. The Act provides protection against discrimination on the grounds of religion, belief, political opinion, race, sex, nationality, sexual preference or civil status. The Act also provides that organisations who represent the interests of individuals who are victims of discrimination may instigate proceedings. A special Equal Treatment Commission is vested with powers to investigate and mediate in discrimination cases.

ECRI welcomes the General Equal Treatment Act as a significant step forward. It particularly notes the acceptance by the courts that statistical evidence might be sufficient in a discrimination claim to establish a *prima facie* case, if the plaintiff is able to show that the act or omission complained of belongs to a pattern⁷. It will be worth monitoring whether the new legislative framework increases the number of cases brought and offers more effective redress when existing alongside criminal law - information about such experiences would be of great value to all European States. However, attention will still need to be given to the question of whether any supplementary policy measures are required to strengthen the role of the existing institutions of justice.

E. Specialised bodies

6. The "Landelijk Bureau Racismebestrijding" (LBR), or National Bureau against Racism, is an independent organisation funded by the Department of Justice. Its aim is to combat racism and discrimination, primarily through judicial means. It provides assistance to victims, carries out research into structural forms of racial discrimination, issues codes of practice, advises the government, produces reports, engages in awareness-raising activities etc. Furthermore, a network of local anti-discrimination centres exists throughout the Netherlands which act at a grass-roots level to combat discrimination and racism, and several NGOs are active in the field. ECRI welcomes the existence of the National Bureau against Racism and the support which has been given to it.
7. As indicated above, the Equal Treatment Commission was established in 1995 to review and mediate discrimination cases. It may also initiate court proceedings or start an investigation on its own initiative.

II POLICY ASPECTS

F. Reception and status of non-citizens

8. Proposed legislation on the acceptance of double nationality was not passed by Parliament. In this connection, it should be noted that there is a general trend amongst European States to move towards a more flexible approach as regards the issue of dual nationality. In practice, however, double nationality is accepted in the Netherlands when giving up one's former nationality for the sake of naturalisation is not possible, or cannot be reasonably expected, or causes undue hardship. Long-standing legal residents enjoy most of the same rights as citizens: differences concern mainly active and passive voting rights (State and provincial level), military service (although not in practice), appointment to some official functions (for example, the police and judiciary).

⁷ cf ruling of Supreme Court in *Binderen v. Kaya*, 10 December 1982

9. Newcomers to the Netherlands are offered special training schemes containing language classes, introductory programmes on Dutch society and vocational training. The need for rapid integration is stressed: such programmes are apparently compulsory for those dependent on public support. The programmes are defined and funded by central government and implemented by the municipalities.
10. ECRI notes the element of compulsion which exists in the current training schemes and that it has been proposed that this approach be embodied in new legislation obliging all immigrants aged 18 or over, settling in the Netherlands for the first time, to participate in an integration programme. Under the new legislation, local government is bound to procure free education and training to newcomers, directed at the acquisition of the capacity to participate autonomously in society. The newcomer is obliged to use the opportunities offered: to learn Dutch as a second language and to be counselled in his or her orientation in society and trades. This new legislation - the Integration of Immigrants Act - is expected to enter into force at the beginning of 1998. ECRI hopes that the social effects of this element of compulsion will be carefully monitored. ECRI welcomes the willingness of the Dutch government to provide individual counselling and extensive language teaching to assist integration; however, ECRI would wish to stress that integration is a process demanding mutual recognition of the qualities embodied in both the host and the immigrant communities.
11. Almost all political parties in the Netherlands agree on the need to restrict further immigration into the Netherlands and to impose stricter criteria on handling asylum applications. There is some concern that care should be taken to ensure that a stricter immigration policy does not affect public perception of minority groups already resident within the Netherlands, i.e. a clear distinction should be made between migration policy and policy to improve the situation of minority groups already within the country. Against this background, it is important that policy concerning immigration, asylum-seekers and refugees should be publicised and explained in a positive manner, to counter public misconceptions. ECRI notes that awareness-raising activities by NGOs concerning minority policies are promoted and supported by the Dutch authorities.
12. There have been complaints that controls at borders and identification checks are discriminatory in that non-white individuals are more frequently subject to such controls. Although the police responsible for such checks are specially selected and extensively trained to avoid such discrimination, and national guidelines are laid down to specify under which circumstances and conditions controls should be carried out, further attention could be given to monitoring actual practice to ensure that no such discrimination occurs. Furthermore, increased recruitment of police and immigration officers from minority groups may help to improve relations between the forces of law and order and members of minority groups.

G. Education and training

13. One of the principles of the Dutch education system is "interculturalism", based on the premise that children grow up in a multicultural society. This principle applies to all schools in the Netherlands and is reflected in teacher training and in the contents of school books at primary and secondary level. The high concentration of minority groups in certain schools would suggest that schools with a high proportion of minority pupils are often rejected by the parents of native children - the so-called "white flight".
14. Children from minority groups generally perform less well than native Dutch children educationally, and certain groups in particular are underachieving. Policies such as the "Step-by-Step" programme have been developed and resources allocated to attempt to compensate for this shortfall. ECRI hopes that further efforts will be made to monitor

the performance of the various minority groups in schools and further education, so that policies may be fully evaluated and developed and refined to deal with the different situations of different groups by ensuring for example that they are not penalised by unduly low expectations, inadequate language skills or parental attitudes.

H. Employment

15. Unemployment among minority groups, particularly some groups, is very high compared to the native population (21.9% versus 6.3% in 1996⁸; up to 40% unemployment for some groups⁹). One of the main aims of the minorities policy is to combat this through overall labour market policies aimed at the creation of low-skill jobs, employment projects, and by attempting to raise the level of qualifications and language ability among minority groups. However, research has indicated that discrimination on the labour market is also a significant factor in the Dutch situation¹⁰, and although the Equal Treatment Commission in its Annual Report for 1996 mentions an increase of requests for judgements on the grounds of discrimination based on race or nationality, it still seems to ECRI that relatively few cases are brought under the relevant legislation. This may be partly because discrimination is hard to prove: except in cases where the court considers that reversal of the burden of proof is reasonable and fair, the burden of proof lies very broadly with the person who alleges discrimination. However, "situation tests" (i.e. where persons of different ethnic backgrounds pose as job applicants) or statistical data (e.g. if an employer employs considerably fewer persons of a certain ethnic background compared to other employers) may be used as admissible evidence for demonstrating discrimination. Nevertheless, further consideration might be given to ways of improving the implementation of anti-discrimination legislation in the field of employment.
16. Attention might also be given to the issue of "indirect discrimination" to ensure that conditions for employment do not unintentionally discriminate against members of minority groups. The "Act for the Promotion of Proportional Labour Participation of Non-Natives" is intended to deal with indirect discrimination.
17. A number of codes of practice relating to the labour market have been established, for example, a code of practice for employment agencies and a code of practice for the Federation of Dutch Trade Unions Movement. These are welcomed. Although not all the various codes of practice have been evaluated, results obtained to date seem to be rather disappointing: further consideration might be given to ways of raising awareness about such codes of practice and encouraging adherence to their principles.
18. "Specific measures" to encourage access of minority groups to the labour market also form part of Dutch minorities policy. A variety of measures have been taken in this respect, both in the public and private sectors. The "Act for the Promotion of Proportional Labour Participation of Non-Natives" (WBEAA), passed in 1994, commits companies of more than 35 employees to explicitly strive for a proportional representation of minority groups in their work force, to formulate a plan to this end and to release an annual public report about the contribution of minority groups in their work force. Only the last commitment is sanctioned. It is not yet clear whether this Act has had a favourable effect on the levels of employment of minority groups: it has been commented on the one hand that the lack of sanctions makes the Act unenforceable,

⁸ Source: "Year review of Integration policy for minorities" (figures for 1996)

⁹ Source: CBS (1996), *Allochtonen in Nederland*, Centraal Bureau voor de Statistiek.

¹⁰ cf. ILO International Migration Papers n° 4 (see bibliography)

while employers' organisations have criticised it as being impracticable and there have been doubts about the strength of public commitment to the principles underlying the Act. ECRI notes however that in 1997, new legislation (Labour Participation Minority Groups Act) was proposed to streamline procedures and to lighten the administrative burden on employers: this proposed legislation was prepared in consultation with the social partners and ECRI notes that it is foreseen that the legislative changes will be monitored and evaluated.

19. In general, it can be said that a wide range of initiatives and policies have been undertaken in the field of employment to improve the employment prospects of minority groups. While these measures have been subject to various forms of evaluation, their long-term effect has still to be assessed. Further efforts should be made to assess the effectiveness of the range of measures in place. Moreover, the awareness-raising measures already taken to inform the general public about the reasons behind such policies should be sustained and improved in order to counter any perception that minority groups are in some way being given preferential treatment on the labour market.

I. Statistics

20. Despite the widespread collection of statistics in a number of areas, there seems to be a lack of reliable, harmonised and comparable statistics as regards the situation of minority groups in all areas of social and economic activity, due in part to changes over time in the management of data sources and adoption of new definitions, and in part to problems of comparability between statistics collected by different sectors following different identification criteria. Further efforts should therefore be made to collect more comparable and reliable statistics, using a standard national form of categorisation of ethnic origin as the basis of all relevant studies, after full consultation about its acceptability and in full accordance with European laws, regulations and recommendations on data protection and protection of privacy.

J. Other fields

- Awareness-raising

21. Following a policy review in 1993, minority policy in the Netherlands has retained a commitment to a multicultural society while placing much more explicit onus on the minority groups themselves to make an effort to integrate. This is coupled with tougher immigration controls and targeted strategies to cope with juvenile delinquents from minority groups. The emphasis on an integration approach may, however, be interpreted by some groups of society as a tacit criticism of minorities who have failed to integrate and may thus even reinforce prejudices. It is important that policy does not lead to a lack of respect, institutionally or publicly, for a group's cultural background; it is equally important that policy should not obscure the possibility that differences of culture may have contributed to the social disadvantages peculiar to these groups and to which social policies need to be sensitive. It is necessary to improve understanding among the public at large about the content and underlying philosophy of policy towards minority groups and to avoid misunderstandings and misconceptions on the part of both the majority and minority populations. All sectors of society should be encouraged to support and (where appropriate) be actively involved in the implementation of government policies in this field. Developments in specific policy areas should take full account of these wider aims.

22. It is stressed that politicians play an important role in resisting the temptation to bow to pressure from extremist right-wing sentiments and in refusing to shift the blame for economic and social problems onto minorities.

K. Inner city problems

23. The Netherlands shares with other European countries of a similar social and economic background, problems associated with the concentration, in a number of deprived inner-city areas, of groups, including significant numbers of people from minority groups, which suffer substantially from economic and social disadvantages - as regards particularly law and order, housing, employment and education. These problems are shared by non-immigrant groups in the same areas. ECRI notes that initiatives have been taken to improve social and economic welfare in such areas, and that one initiative is currently underway to stimulate the creation of enterprises by unemployed members of minority groups. Policies for dealing with the difficulties of deprived inner-city areas may need to include measures directed specifically at ensuring that minority groups benefit on an equal footing with the majority population.

General data as supplied by national authorities

For reasons of consistency, ECRI, in its CBC reports, has, in this box, reproduced statistical data only from the replies of Governments to ECRI's questionnaire. The questionnaire was sent to the Dutch government on 13 July 1994 .

ECRI accepts no responsibility for the data below.

1 400 000 persons of foreign origin: of which 814 000 are considered as "ethnic minorities"

Frisians are traditional minority

34 000 Jewish community

40 000 new arrivals each year (family reunification and refugees)

35 000 asylum-seekers in 1993

Population of the Netherlands: 15.34 million (1 January 1994). This figure is taken from the Council of Europe publication "Recent demographic developments in Europe" (see bibliography).

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This bibliography lists the main published sources consulted during the examination of the situation in the Netherlands: it does not cover all the various sources of information (media, contacts within the country, national NGOs etc) which were utilised.

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