

## **APPENDIX: GOVERNMENT'S VIEWPOINT**

**The following appendix does not form part of ECRI's analysis and proposals concerning the situation in the Netherlands**

ECRI, in accordance with its country monitoring procedure, engaged in confidential dialogue with the authorities of the Netherlands on a first draft of the report. A number of the authorities' comments were taken on board and integrated into the report's final version (which only takes into account developments up until 5 December 2018, date of the examination of the first draft).

The authorities also requested that the following viewpoint be reproduced as an appendix to the report.

## Response from the Government to ECRI's 5th monitoring cycle report on the Netherlands

In its report ECRI makes a number of recommendations. The Dutch government's response to each recommendation (framed in grey in the ECRI report) is set out below.

### I. Common topics

#### 1. Legislation against racism and racial discrimination

##### -Criminal law

##### Paragraph 7:

*ECRI recommends that the Dutch authorities bring their criminal legislation fully into line with its General Policy Recommendation No. 7 and, in particular, (i) explicitly incorporate the grounds of colour, language, citizenship, national or ethnic origin and gender identity in all provisions of the Criminal Code that are aimed at combating racism and intolerance, (ii) explicitly criminalise public denial, trivialisation, justification or condoning, with a racist aim, of crimes of genocide, crimes against humanity or war crimes, (iii) make sure that the law provides for effective, proportionate and dissuasive sanctions for racist, homo- and transphobic offences and (iv) provide explicitly in the Criminal Code that racist, homo- and transphobic motivation constitutes an aggravating circumstance for any ordinary offence.*

##### Government response

##### *Re (i):*

The government recognises the importance of criminalising discrimination on the grounds of colour, language, citizenship, national or ethnic origin and gender identity. Existing legislation reflects this. One of the grounds of discrimination mentioned in the anti-discrimination provisions in the Criminal Code (articles 137c-137g) is 'race'. In accordance with the International Convention on the Elimination of All Forms of Racial Discrimination, 'race' is taken to include characteristics of a physical, ethnic, geographic, cultural, historical and religious nature. This is confirmed by the established case law of the Supreme Court.<sup>1</sup> Discrimination on the grounds of race includes discrimination of a human being on the grounds of their origin, and of their language and citizenship in so far as these denote their origin. The government therefore sees no reason to include colour, language, national or ethnic origin as separate grounds of discrimination in its criminal legislation.

In the memorandum of reply to the bill revising the criminalisation of current offences (35 080) the government indicated that it would investigate the desirability of adding gender identity and gender expression as a ground of discrimination to article 137c of the Criminal Code (group insult) and article 137g of the Criminal Code (dissemination of discriminatory utterances) As indicated there, it is not necessary to add this ground to articles 137d, 137f and 429quater of the Criminal Code, because gender identity and gender expression are already covered by the ground 'gender' in these articles.

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<sup>1</sup> See e.g. Supreme Court 13 June 2000, NJ 2000, 513 and Supreme Court 29 March 2016, ECLI:NL:HR:2016: 510.

*Re (ii):*

In the government's view articles 137c-137g of the Criminal Code provides sufficient scope to take action against the behaviour in question. Through these articles the Netherlands has also fulfilled its obligations under international law regarding the criminalisation of genocide denial for instance, as laid down in the EU framework decision on combating racism and xenophobia<sup>2</sup> and the Council of Europe's Additional Protocol to the Convention on Cybercrime.<sup>3</sup> The fact that these criminal law provisions can be used to take action against genocide denial is confirmed by the Supreme Court's case law.<sup>4</sup> ECRI, too, noted in its fourth report about the Netherlands<sup>5</sup> that this behaviour is already a criminal offence under the provisions referred to.

*Re (iii):*

The report specifically mentions articles 137d and 137f of the Criminal Code. The government wishes to prevent the right to freedom of expression being misused to sow discord in society by inciting violence, hatred or discrimination. For this reason the bill revising the criminalisation of current offences (35 080) proposes, in line with ECRI's recommendation, to double the severity of the penalty in article 137d of the Criminal Code. Article 137f of the Criminal Code does not relate to the act of discrimination itself but to participating in or facilitating activities aimed at discrimination. That is why the maximum penalty is lower than for other discrimination offences. This is in line with the system of the Criminal Code, in which lower maximum penalties apply for offences that involve preparing or facilitating other offences.

*Re (iv):*

The government fully endorses the importance of the criminal justice authorities responding appropriately to offences motivated by discrimination. Hence, the government also attaches importance to explicitly discussing discriminatory motivation in criminal cases. It is an element of criminal law policy for the Public Prosecution Service to demand heavier penalties for offences with a discriminatory aspect or discriminatory motivation. A penalty increase of up to 100% can be recommended.<sup>6</sup> The Public Prosecution Service's guidelines are deemed legislation within the meaning of section 79 of the Judiciary (Organisation) Act (*Wet op de rechterlijke organisatie*).<sup>7</sup> This shows that in practice the Netherlands amply implements the objective contained in ECRI's recommendation, that is to regard a discriminatory or racist motivation as an aggravating circumstance.

As indicated by letter of 19 June 2018,<sup>8</sup> it might be possible to augment existing policy by adding discriminatory motivation as an aggravating circumstance. An academic study has been commissioned to identify the advantages and disadvantages. The study will consist of two parts. The first part will focus on how neighbouring countries take discriminatory motivation into consideration as an aggravating circumstance and how this works in practice (comparative law analysis). The second part will be aimed at gaining insight into the extent to which the enhanced policy focus over the past few years has contributed to the proper implementation of existing policy on aggravating circumstances for offences with a

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<sup>2</sup> 2008/913/JHA

<sup>3</sup> Dutch Treaty Series 2005, 46.

<sup>4</sup> See e.g. Supreme Court, 10 September 1985, NJ 1986/164; Supreme Court, 25 November 1997, NJ 1998/261 and Supreme Court 27 March 2012, NJ 2012/ 220.

<sup>5</sup> See §7 of the report.

<sup>6</sup> See the Public Prosecution Service's Instructions on Discrimination (*Aanwijzing Discriminatie*) and Guidelines on Prosecuting Discrimination (*Richtlijn strafvordering discriminatie*).

<sup>7</sup> See Supreme Council 19 June 1990, NJ 1991/119

<sup>8</sup> Parliamentary Papers, House of Representatives, 2017/18, 29 279, no. 442.

discriminatory motivation. An assessment will also be made to determine whether policy can be enhanced in other ways to improve current methods.

#### **-Constitutional, civil and administrative law**

##### Paragraph 16:

*ECRI recommends that the Dutch authorities generally align their anti-discrimination legislation with its General Policy Recommendation No. 7 and, in particular, (i) align the list of prohibited discrimination grounds with that in Protocol No. 12 to the European Convention on Human Rights, (ii) extend the scope of application of the General Equal Treatment Act to the whole of the public and private sectors, (iii) introduce a legal provision placing public authorities under a positive duty to promote equality and to prevent discrimination and (iv) evaluate whether Dutch anti-discrimination legislation provides for effective, proportionate and dissuasive sanctions.*

##### Government response

The effectiveness of the Equal Treatment Act (*Algemene wet gelijke behandeling*) was evaluated for the fourth time in 2017. It did not emerge from this evaluation that the Netherlands Institute for Human Rights - which is responsible for monitoring compliance with legislation on equal treatment - has any reason to wish to change the scope of application of the Equal Treatment Act as recommended by the Commission. The Institute made no recommendations to extend the grounds or areas to which the Act applies. Incidentally, the Equal Treatment Act gives the courts and the Netherlands Institute for Human Rights a broad margin of appreciation in interpreting the grounds of discrimination covered by the Act. In its opinions the Institute has consistently found that the concept of race must be interpreted based on the definition given in the International Convention on the Elimination of All Forms of Racial Discrimination. This definition includes ethnic and national origin and colour as grounds of discrimination. Discrimination on the basis of language proficiency can also be protected under the ground of 'race'.

In its most recent evaluation the Institute specifically examined its own competences, including its competence to render opinions. The Institute noted that although its opinions are not binding on the parties, in three-quarters of cases in which it finds an unlawful distinction, its opinion is followed up on and measures are taken. In practice, it has not proven necessary for the Institute to actively exercise certain competences, such as its statutory right to information and its right to bring legal proceedings, but the existence of those competences is already sufficient to achieve the desired effect, namely cooperation in the Institute's investigations and opinions. As such, there is no reason to amend the Act to provide for binding opinions or sanctions.

Unilateral action by the public authorities is not covered as such by legislation on equal treatment, but is covered by the prohibition on discrimination in the Constitution. Accordingly, this prohibition is one of the general principles of proper administration. There can be no misunderstanding that the Constitution imposes a duty to actively promote equality and prevent discrimination. A statutory amendment does not appear to be necessary to ensure this.

#### **-Equality bodies**

##### Paragraph 22:

*ECRI recommends that the Dutch authorities ensure that all local Anti-Discrimination Bureaus become fully independent, and that they are merged at regional level or establish strong regional cooperation. The authorities should assign all competences to promote equality and prevent discrimination listed in § 13 of its General Policy Recommendation*

*No. 2 either to the equality bodies at national or regional/local level, and provide them with the necessary resources.*

#### Government response

Anti-discrimination bureaux provide victim support and register reports of discrimination in almost all municipalities. Many anti-discrimination bureaux operate effectively and provide the proper support to citizens at local level. However, as ECRI points out, there are weak points in the bureaux' national network . In her letter of 26 April 2018<sup>9</sup> the Minister of the Interior and Kingdom Relations set out the findings of two studies of anti-discrimination services and outlined three possible solutions to known problems. She announced that the possible solutions would be assessed by several partners in the anti-discrimination system, including municipalities (including the four largest cities), the Association of Netherlands Municipalities (*Vereniging Nederlandse Gemeenten*) and the Association of Provincial Authorities (*Interprovinciaal Overleg*). As announced in the letter of 12 February 2019 on progress regarding the government's approach to discrimination,<sup>10</sup> the government will inform the House of Representatives before the summer in a separate letter of the outcomes of talks with the parties involved and the ways in which the anti-discrimination services will be improved. This letter will also address the related ECRI recommendations in more detail.

### **2. Hate speech**

#### **-Data**

No recommendations.

#### **-Public discourse**

No recommendations.

#### **-The authorities' response**

#### Paragraph 41:

*ECRI recommends that the Dutch parliament and government develop and adopt codes of conduct that prohibit hate speech and provide for suspension and other sanctions for breach of their provisions.*

#### Government response

It is up to the House of Representatives and the Senate to decide whether and how to implement this recommendation by ECRI. The government does not intend to draw up codes of conduct for the political discourse of members of government.

#### Paragraph 44:

*ECRI recommends that the authorities initiate, without encroaching on media independence, a process in which media and their representative organisations develop an action plan to tackle routines and reflexes that have stigmatising effects on groups such as Muslims, Black people and Roma and to ensure balanced reporting on issues relating to such groups.*

#### Government response

The government is opposed to initiating actions aimed at inducing independent media to adjust their content, partly because regulating media content and imposing codes of

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<sup>9</sup> Parliamentary Papers, House of Representatives, 2017-2018, 30 950 no. 156

<sup>10</sup> Parliamentary Papers, House of Representatives, 2018-2019, 30 950 no. 161

conduct constitutes an encroachment on media independence. The government would note that in any democratic society, freedom of the press is a guiding principle. That freedom may only be restricted in highly exceptional cases, which are defined by law and in the public interest, for instance in the case of incitement to commit criminal offences or acts of violence against a public authority or incitement to violence. Current criminal law offers scope to take action in such cases. The government deems additional measures as proposed by ECRI undesirable and unnecessary.

Paragraph 46:

*ECRI recommends that the authorities build up awareness among Internet users about the prohibition of hate speech, continue motivating internet companies to enforce the existing codes of conduct, and task and fund an organisation to monitor proactively the Internet for hate speech.*

Government response

The Audiovisual Media Services Directive states that member states are responsible for ensuring that video platform services take appropriate measures to protect the general public against content that incites violence or hatred. The government intends to add to the Media Act an obligation for video platform services to safeguard this through codes of conduct. The Directive must be implemented by 19 September 2020 at the latest.

Paragraph 51

*ECRI recommends that the prosecutors and police officers specialising in hate speech and hate crime reach out more intensely to people belonging to minorities, build up confidence through a sustainable dialogue, and encourage people and groups exposed to hate speech to report hate speech cases to the competent institutions (§§ 13 and 18 of ECRI's General Policy Recommendation No. 11).*

Government response

In order to increase willingness among victims of discriminatory violence to report incidents or lodge a criminal complaint, the police are focusing on measures to support victims who report an incident or lodge a criminal complaint, and on increasing knowledge and expertise by making use of internal police networks. The police work on the principle that their services are available to all and anyone should be able to approach any police officer and receive the help they need.

With due regard for its position and task in the judicial system, the Public Prosecution Service consults with partners, interest groups and media experts on how to highlight the criminal-law approach to tackling discrimination. In an open dialogue the parties involved exchange ideas on the impact of discrimination on the community, the scope and limitations of criminal law and the dilemmas surrounding communication regarding criminal cases.

Paragraph 54:

*ECRI recommends that the Dutch authorities continue prosecuting hate speech in football stadiums and thus ensure respect and knowledge of the hate speech legislation. The authorities should also support the dialogue between relevant football clubs and civil society with a view to reliably preventing racist and in particular antisemitic chants and behaviour.*

### Government response

Professional football clubs and the Royal Netherlands Football Association (KNVB) agreed in 2016 to take swifter and firmer action against racist, anti-Semitic and other discriminatory chants. When such chants occur, the clubs immediately warn their supporters to stop this behaviour. If they do not stop, the match is suspended. The instigators of inappropriate and offensive chants are tracked down and reprimanded in a joint approach by the football club, the supporters club, the Royal Netherlands Football Association and the police and criminal justice authorities. In the case of discriminatory chants the Public Prosecution Service can prosecute the perpetrators. This can be done in response to criminal complaints or at the Public Prosecution Service's own initiative.

In 2018 two projects were implemented by the Anne Frank Foundation in cooperation with professional football clubs. The Fancoach project focuses on supporters who have made anti-Semitic or racist chants. The Fair Play project involves an online game which is played by young people in a workshop setting. The game was developed by the Anne Frank Foundation in cooperation with professional football clubs and municipalities' sports departments. The aim is to make young people more aware of the significance and consequences of discriminatory behaviour.

### **3. Racist and homo/transphobic violence**

No recommendations.

### **4. Integration policies**

#### **-Integration policies for people with a migration background and Antilleans**

#### Paragraph 70:

*ECRI strongly recommends that the Dutch authorities adopt an integration strategy and action plan that openly states that integration is a two-way process and contains measures to mobilise the entire society to facilitate, support and promote integration. The authorities should organise the integration process themselves by providing free language and integration courses as from the first moment, and provide for the possibility to adapt integration programmes to the individual needs and capacities of people with migration backgrounds and Antilleans. Integration indicators and targets to reach should be defined for all objectives and measures.*

### Government response

The government would point out that the civic integration programme is the first step in the integration process. An amendment revising the existing civic integration system will enter into force in 2021. The ultimate objective is to enable immigrants to participate in Dutch society, preferably through paid work. To this end it is essential that immigrants have knowledge of the basic principles and fundamental values of Dutch society and develop their language skills to the highest achievable level. Other key pillars in the new system are the greater role for municipalities in supporting civic integration exam candidates and the introduction of an extensive intake procedure. Using the information gathered during this intake a personalised Civic Integration and Participation Plan will be drawn up for each candidate to help them learn Dutch while working in a job or on a work placement, volunteering or studying.

Dutch nationals from Aruba, St Maarten and Curaçao are not required to complete the civic integration programme or exam. If they have language deficiencies, they - like any other person - can avail themselves of the educational resources provided by municipalities to people with language deficiencies who are not required to complete the civic integration

programme. It should be noted that under the language proficiency requirement in the Participation Act, individuals who are dependent on social assistance benefits are required to make an effort to achieve language level 1F.

#### **-Integration results for people with a migration background and Antilleans**

##### Paragraph 73:

*ECRI recommends that the Dutch authorities take appropriate measures to further reduce the gap in the educational outcomes of children with migration backgrounds and Antillean children, and focus on convincing parents of such children to enroll them in early childhood education.*

##### Government response

Equal opportunities in education are a key priority for the Dutch government. As explained in the letter of 13 March 2019 on the promotion of equal opportunities in education, the government is taking various measures to increase equality of opportunity for children and young people. For example, the government is investing an extra €170 million on a structural basis to improve the availability and quality of early childhood education. This means municipalities have approximately €500 million to implement policy on eliminating educational disadvantage. Municipalities use these funds mainly to invest in early childhood education, which enhances preschool children's language development through play. Municipalities decide which groups are eligible for early childhood education. Resources are allocated to municipalities based on a Statistics Netherlands indicator which is based on factors such as country of origin. Consideration is given to children with a migration background and in particular to those whose parents come from the Caribbean parts of the Kingdom. Municipalities must ensure that as many children as possible from the target group actually attend early childhood education by encouraging parents to allow their children to participate. According to figures published by the Inspectorate of Education between 80 to 85% of children from the target group attend. Municipalities receive support in the form of guidelines and meetings with a focus on sharing knowledge.

Around €300 million has also been made available for tackling educational disadvantages at primary schools. This amount is divided over the primary schools where the problem is most pressing. Schools are free to decide how to use these resources. The Equal Opportunities Alliance also encourages local and regional partners to share their experiences and build up new knowledge in order to promote equal opportunities in education. This helps ensure a broad and local approach focused on cooperation between schools and with other partners.

The transition from one school to another can be an especially vulnerable time for pupils whose parents are less familiar with the education system or provide less support and encouragement. This applies in particular to the move from primary to secondary school. Through subsidised bridging programmes these children can receive extra support during this transition.

The government has launched a pilot project giving primary and secondary schools more freedom to set up schools for pupils aged 10 to 14 who would benefit from a more gradual transition. Lastly, there are no indications that primary school leavers attainment tests put pupils with a non-Dutch cultural background at a disadvantage. There are indications, though, that primary schools are somewhat more likely to advise a lower type of secondary education for pupils with a migration background. However, the advice for pupils in this category is also more likely to be adjusted, meaning that on balance there is no net discrepancy between these pupils and pupils with a Dutch background.



#### Paragraph 77:

*ECRI recommends that the authorities insert for all objectives and measures of the Action Plan against Labour Market Discrimination indicators and measurable targets to reach. Within this plan, they should continue focusing on access to the labour market, ensure that non-discriminatory recruitment procedures are developed and implemented, and extend the competences of the labour inspectorates to the field of recruitment.*

#### Government response

The efficiency, reach and results of the measures introduced in the Action Plan on Labour Market Discrimination are monitored where possible. In addition, various studies are carried out and a record is kept of reports in order to monitor the prevalence of discrimination in the Dutch labour market. Government policy can be adjusted on the basis of this information. As recommended by ECRI, the Action Plan will continue to focus on improving access to the labour market for various groups, promoting non-discriminatory recruitment and selection procedures and reinforcing the role of the Social Affairs and Employment Inspectorate in tackling labour market discrimination.

#### **-Integration measures for Roma**

#### Paragraph 84:

*ECRI recommends that the Dutch authorities develop a specific programme for the integration of Roma with tailor-made measures to increase pre-school attendance, improve educational outcomes, ensure implementation of the new policy on caravan sites and eliminate statelessness. In this context, the authorities should consider appointing Roma mediators.*

#### Government response

The Social Inclusion of Roma Monitor (Risbo, 2018) shows that Roma and Sinti are at a great disadvantage in many areas of Dutch society, including education and the labour market. The government intends to launch a pilot in several municipalities together with Roma mediators in order to encourage young Roma and Sinti people to enrol in further education or training and help them to find a work placement or a job.

In the coalition agreement extra funding was made available for early childhood education, increasing to an extra €170 million each year from 2020. In the Netherlands municipalities are responsible for preventing and addressing educational disadvantages among pre-school children aged 2.5 to 4. Municipalities receive funding for this from the Ministry of Education, Culture and Science which is allocated on the basis of a Statistics Netherlands indicator. This indicator takes into account the parents' level of education, country of origin, how long the child has been in the Netherlands and whether the parents are receiving counselling for debt problems. Municipalities are responsible for deciding which group is eligible for early childhood education. Central government provides guidance through the support programme for municipal policy on eliminating educational disadvantage. This support programme will continue to devote special attention to Roma, Sinti and members of the traveller community.

With a view to addressing the issue of statelessness, the government intends to initiate dialogues with municipalities that have large Roma populations in order to gain a better understanding of the obstacles that Roma, including those who are stateless, face when applying for Dutch nationality. In these talks, the parties will also discuss whether the procedure for determining statelessness announced by the government in its response to the report of the Advisory Committee on Migration Affairs (*Advies Commissie Vreemdelingenzaken*) entitled '*Geen land te bekennen, staatloosheid in Nederland*' ('No land in sight, statelessness in the Netherlands'), will provide an adequate solution for Roma

who are currently unable to provide documents proving they are stateless. The rules that apply to stateless individuals who wish to apply for Dutch nationality are more flexible than the rules for other individuals. The required period of residence is shorter, the fee is lower, and stateless children born in the Netherlands can acquire Dutch nationality via the option procedure.

The policy framework on municipal policy on travellers' caravans and caravan pitches, published on 12 July 2018, prompted many municipalities to evaluate and, where necessary, revise their policy. During the first few months of 2019, staff from the Ministry of the Interior and Kingdom Affairs met with municipal civil servants in a large number of provinces in order to provide further information on the policy framework and answer questions about formulating and implementing policy. On 1 April 2019, the ministry also launched a centre of knowledge and expertise where municipalities can ask questions and learn from each other about the best ways to achieve results in this area.

## II. Topics specific to the Netherlands

### 1. Interim follow-up recommendations of the fourth cycle

No recommendations.

### 2. Policies to combat discrimination against and intolerance towards LGBT people

#### Paragraph 93:

*ECRI recommends that the Dutch authorities adopt new legislation on name changes and gender recognition for transgender persons, drawing inspiration from international recommendations such as Resolution 2048 (2015) of the Council of Europe Parliamentary Assembly.*

#### Government response

Under the current statutory rules pertaining to transgender people, the simplified procedure for changing gender on birth certificates involves reporting the change to the Registrar of Births, Deaths, Marriages and Registered Partnerships and submitting an expert statement. The individual may register a name change at the same time. Hence, existing legislation already provides for a simple procedure on name changes for transgender people. The statutory rules on gender registration on birth certificates have been evaluated by the Utrecht University's Molengraaff Institute for Private Law, at the request of the Research and Documentation Centre (*Wetenschappelijk Onderzoek- en Documentatiecentrum*). The government response to this evaluation was sent to the House of Representatives on 10 April 2019.

#### Paragraph 97:

*ECRI recommends that the Dutch authorities implement measures to promote mutual tolerance and respect in schools regardless of sexual orientation and gender identity. These measures should provide LGBTI pupils with the necessary information, protection and support to enable them to live in accordance with their sexual orientation and gender identity.*

#### Government response

In the Netherlands, schools set their curricula on the basis of the attainment targets that apply to primary and secondary education. One of these targets is aimed in part at teaching respectful attitudes towards sexuality and diversity, including sexual diversity. The attainment targets will be formulated more precisely over the coming period to give schools a clearer idea of what is expected of them.

The government supports the School & Safety Foundation (*Stichting School en Veiligheid*), which offers information, teaching materials and courses for teachers on social safety in the broadest sense to primary, secondary and secondary vocational schools. The social acceptance of sexual and gender diversity and the safety of people who embody that diversity are explicitly addressed.

The government also supports the Gender and Sexuality Alliances (GSAs) of the COC (the Netherlands' largest LGBTI rights group), whose activities include organising Purple Friday. GSAs are alliances of LGBTI pupils, heterosexual pupils and teachers. Around 80% of secondary schools now have an active Gender and Sexuality Alliance. Studies have shown that this an effective way of increasing safety and social acceptance.

### 3. Conduct of police services

#### Paragraph 103:

*ECRI recommends that the Dutch authorities (i) introduce by law or binding regulation a reasonable suspicion standard, whereby powers relating to control, surveillance or investigation activities can only be exercised on the basis of a suspicion that is founded on objective criteria, (ii) define and describe in detail the conditions under which such measures are permitted (iii) systematically collect data on stop and control measures at least within pilot projects, (iv) test the use of stop and control forms in pilot projects and (v) address racial profiling in initial and further training.*

#### Government response

Dutch legislation is based on the principle that the police exercise their powers when, on the grounds of objective criteria, they suspect that an offence has been committed. This legislative framework is amplified by case law on permissible police action.

The Code of Criminal Procedure (*Wetboek van Strafvordering*) lays down further rules on the lawful stopping of persons (*staandhouding*). Article 27 of the Code of Criminal Procedure sets out that someone is regarded as a suspect 'if facts or circumstances give rise to reasonable grounds for suspecting that he/she has committed an offence'. The phrase 'reasonable grounds' gives police officers discretion to decide whether and how to use their powers. The decision must be objective, i.e. made on the basis of facts and circumstances, and must be explained in the official police report. An assessment is subsequently made of the facts and circumstances on which the decision was based. The obligation to draw up an official report (*verbaliseringsplicht*) laid down in article 152 of the Code of Criminal Procedure plays an important part in enabling the Public Prosecution Service and the courts to carry out this assessment of the facts and circumstances that led to the police officer's decision.

Furthermore, the section 3 of the Police Act 2012 sets out the tasks of the police. It follows from this description of tasks that the police may carry out preventive checks in the interests of law enforcement. In carrying out these tasks, discrimination referred to in article 1 of the Dutch Constitution must be avoided. Under section 47a of the Police Act 2012, the police service is required to promote proper conduct by officers in order to prevent discrimination. This means that preventive checks may be carried out only on objective grounds.

In the context of the ‘Power of Difference’ (*Kracht van het Verschil*) programme measures have been developed to help ensure police actions during proactive checks are professional, information-driven and effective. These measures include training, a framework for carrying out proactive checks (*Handelingskader pro-actief controleren*) and a smartphone app that allows police officers on the street to see how often someone has been stopped. Attention is given to justified selection, transparent explanations, proper treatment, and reflecting on one’s actions. These measures are being rolled out nationwide. The circumstances and outcomes of checks can be logged and subsequently consulted using the smartphone app. The decision not to introduce stop forms was taken in light of the extra administrative burden that would entail for the police. Moreover, there is no basis in Dutch law for registering ethnicity. The smartphone app referred to above is expected to meet the need for greater insight into the effectiveness of proactive checks. This information provides a basis for discussing the professional execution of checks based on objective grounds.