ECRI

European Commission against Racism and Intolerance
Commission européenne contre le racisme et l'intolérance

CRI (2001) 40

European Commission against Racism and Intolerance

SECOND REPORT ON THE NETHERLANDS

Adopted on 15 December 2000

Strasbourg, 13 November 2001

COUNCIL OF EUROPE CONSEIL DE L'EUROPE

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.ecri.coe.int

Foreword

The European Commission against Racism and Intolerance (ECRI) is a body of the Council of Europe, composed of independent members. Its aim is to combat racism, xenophobia, antisemitism and intolerance at a pan-European level and from the angle of the protection of human rights.

One of the pillars of ECRI's work programme is its country-by-country approach, whereby it analyses the situation as regards racism and intolerance in each of the member States of the Council of Europe and makes suggestions and proposals as to how to tackle the problems identified.

At the end of 1998, ECRI finished the first round of its country-by-country reports for all member States. ECRI's first report on the Netherlands is dated 13 June 1997 (published in June 1998). The second stage of the country-by-country work, initiated in January 1999, involves the preparation of a second report on each Member State. The aim of these second reports is to follow-up the proposals made in the first reports, to update the information contained therein, and to provide a more in-depth analysis of certain issues of particular interest in the country in question.

An important stage in ECRI's country-by-country work is a process of confidential dialogue with the national authorities of the country in question before the final adoption of the report. A new procedure in the second round of country reports is the organisation of a contact visit for the ECRI rapporteurs prior to the drafting of the second report.

The contact visit to the Netherlands took place on 5-7 June 2000. During this visit, the rapporteurs met with representatives of various ministries and public administrations responsible for issues relating to ECRI's mandate. ECRI warmly thanks the Dutch national authorities for their wholehearted co-operation in the organisation of the contact visit, and in particular would like to thank all the persons who met its delegation each of whom provided much valuable information on their own field of competence. ECRI would also like to thank the Dutch national liaison officer whose efficiency and collaboration were much appreciated by ECRI's rapporteurs.

Furthermore, ECRI would like to thank all the representatives of non-governmental organisations with whom its rapporteurs met during the contact visit for the very useful contribution they made to the exercise.

The following report was drawn up by ECRI under its own responsibility. It covers the situation as of 15 December 2000 and any development subsequent to this date is not covered in the following analysis nor taken into account in the conclusions and proposals made by ECRI.

Executive summary

Over recent years, the Netherlands has taken positive steps to counter racism and discrimination, including: initiatives aimed at improving the enforcement of existing criminal law provisions in the field of combating racism and discrimination, for example through the establishment of a National Discrimination Expertise Centre within the Office of the Public Prosecutor; action to counter the activities of extremist groups resorting to racially inflammatory propaganda, including through the establishment of a hotline for discrimination-related offences on the Internet; and initiatives to increase representation of ethnic minorities in the police service.

Problems of racism, xenophobia and discrimination persist, however and the labour market is one of the areas where discrimination still appears to be most widespread. The effectiveness of existing criminal law aimed at combating racism and discrimination is limited, notably due to difficulties in the enforcement of the relevant provisions. Of concern is also the general climate concerning asylum seekers and immigrants, sometimes resulting in manifestation of hostility vis-à-vis these groups of persons.

In the following report, ECRI recommends to the Dutch authorities that further action be taken to combat racism, xenophobia, discrimination and intolerance in a number of areas. These recommendations cover, *inter alia*: the need to take further action to improve durable participation of persons of ethnic minority background in the labour market, including in the public sector, *inter alia* through an improved use of existing civil law provisions; and the need to improve the effectiveness of the implementation of the criminal law provisions in force in the field of combating racism and discrimination, notably addressing certain aspects related to enforcement. Emphasis is also put on the need to ensure that the police service reflect, in a durable manner, the multicultural reality of the Dutch society.

SECTION I: OVERVIEW OF THE SITUATION

A. International legal instruments

1. The Netherlands has ratified most international legal instruments relevant in the field of combating racism and intolerance. ECRI welcomes the signature by the Netherlands of the Additional Protocol N°12 to the European Convention on Human Rights, which widens in a general fashion the scope of application of Article 14 of the Convention and contains a non-exhaustive list of grounds of discrimination. It encourages the Dutch authorities to ratify this Protocol as soon as possible. A draft law on ratification of the Framework Convention for the Protection of National Minorities is currently before the Parliament. ECRI hopes for a swift and successful conclusion of this process. ECRI also urges the Dutch authorities to sign and ratify the Revised Social Charter. ECRI furthermore encourages the Dutch authorities to ratify the European Convention on Nationality, which the Netherlands signed in November 1997.

B. Constitutional provisions and other basic provisions

2. The Dutch Constitution was amended in 1983. These amendments brought together all human rights provisions under chapter 1 of the Constitution, and inserted Article 1, which establishes the principle of equal treatment in equal circumstances and prohibits discrimination based on religion, belief, political opinion, race, sex or on any other grounds. Article 1 constitutes the only article providing for basic rights in the Constitution that does not allow for any form of limitation. As noted by ECRI in its first report, the constitutional legislator acknowledged the effect of Article 1 in relations between individuals, but deferred it to the judge to decide in a specific case the way and amount of this effect.

3. Article 93 of the Dutch Constitution stipulates that provisions of treaties and of resolutions by international institutions which may be binding on all persons by virtue of their contents become binding after publication. Accordingly, the incorporation of international covenants into domestic law is not required. According to Article 94, international law prevails in case of conflict with domestic law. It has been noted that the legal community is not always conversant with the provisions contained in the relevant international instruments ratified by the Netherlands. ECRI therefore feels that further efforts could be made to raise the awareness of the legal community of such provisions.

C. Criminal law provisions

4. The Dutch Criminal Code contains provisions aimed at combating racism and intolerance. In accordance with Article 1 of the International Convention on the Elimination of All Forms of Racial Discrimination, Article 90*quater* of the Dutch Criminal Code defines discrimination as any distinction, any exclusion restriction or preference, which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social cultural or any other field of public life. The Dutch Criminal Code penalises: insults expressed publicly for the purpose of discriminating on racial and other grounds

(Article 137c); incitement to hatred, discrimination and violence on grounds of, *inter alia*, race (Article 137d); and publicising or disseminating these expressions, other than for objective publication (Article 137e). Article 137f penalises the participation in or support of activities with the purpose of discriminating on racial or other grounds. The Criminal Code furthermore penalises racial discrimination in the exercise of a public service, profession or trade (Article 137g) and discrimination in the exercise of one's office, profession or business (429*quater*).

5. As already noted by ECRI in its first report, relatively few cases have been brought based upon these articles. Several reasons may explain this situation, including a certain reluctance on the part of the victims to report incidents to the police, the difficulties encountered in proving racial discrimination and the insufficient attention and experience on the part of the police and the public prosecution service in handling cases involving racial discrimination. To address some of these problems, a National Discrimination Expertise Centre, attached to the public prosecution service, was established in the autumn 1997 and started work in 1998. The aim of the Centre is to improve the public prosecutor service's enforcement of criminal law in relation to racial discrimination through, *inter alia* : training; provision of information and advise to local public prosecutors offices; organisation of regular consultation between public prosecutors and advocates-general with special responsibility for discrimination matters[1]. ECRI welcomes the establishment of the Center and stresses as particularly important its role in improving local enforcement of criminal law in relation to racial discrimination. ECRI also notes that a national police "discrimination officer" has been designated by the board of chiefs of police to achieve co-ordination in this field also within the police service. One of the tasks of this officer is to improve the expertise of police officers in handling discrimination cases and the registration of such cases[2]. ECRI notes that the discrimination officer has already proposed to the board of chiefs of police the establishment within the police service of an expertise centre similar to the one attached to the public prosecution service. ECRI believes that the establishment of such a centre would be helpful in carrying out the tasks highlighted above.

6. In its first report, ECRI noted the guidelines for discrimination cases for the police and public prosecution service, instructing law enforcement officials to improve preliminary investigation in discrimination cases and to deal more effectively with allegations of racial discrimination. There have been complaints, however, that these guidelines are not always adhered to and, in particular, that in some cases the public prosecution service decides not to prosecute for reasons of expediency. Although the parties whose interests are at stake can request the district court to order the Public Prosecutor to continue prosecution, it has been suggested that the Public Prosecutor should initiate legal proceedings in all discrimination cases and provide an explanation in cases where it decides not to prosecute. ECRI encourages the Dutch authorities to publish the reasons for not prosecuting a case.

---

[1] *Public prosecutors at each of the 19 district courts and advocates-general at each of the 5 courts of appeal include, respectively, a prosecutor and an advocate-general with special responsibility for discrimination cases.*

[2] *See below, paragraph 8.*

7. ECRI notes with interest the stress put by the Dutch authorities on the need for close co-operation between the police, the public prosecution service and the local anti-discrimination centres[3] to try and ensure an effective enforcement of criminal law in relation to racial discrimination. In this framework, it notes in particular the "Partnership Training Programme", which aims to achieve partnerships at regional level between the police, the public prosecution service, the anti-discrimination centres and the municipal authorities. In order to help addressing the problem of the reluctance of the victims to bring discrimination cases, as mentioned above, ECRI stresses the need to ensure adequate involvement of the organisations representing minority groups in these and similar initiatives.

8. As concerns prosecution of crimes under general law but with a racist motivation, the guidelines for discrimination cases for the police and public prosecution service stipulate that, in such cases, the public prosecution must emphasize the racist motivation in the closing remarks and take it into account when deciding what sentence to demand. However, ECRI notes that there is no provision in the Dutch criminal law penalising common offences - but with a racist nature - as specific offences, or explicitly enabling the racist motives of the offender to be taken into account as an aggravating factor in sentencing. In line with its General Policy Recommendation N°1 on combating racism, xenophobia, antisemitism and intolerance, ECRI encourages the Dutch authorities to further consider the introduction of such provisions. It has been noted that the police tend to treat these cases as offences under general law, and that the racist element is often neglected. Although ECRI is aware of initiatives taken at the local level to improve the situation in this respect, it encourages the Dutch authorities to ensure that registration of racially motivated offences is improved and harmonised nationwide. As mentioned above, the national police "discrimination officer" has an obvious role to play in this respect.

9. ECRI notes that a proposal is pending before the Parliament to increase the maximum penalties in case of commission of the offences provided for in Article 137 c, d and e, by profession or custom (structural or systematic discrimination). ECRI hopes for the swift adoption of this proposal and encourages the authorities to subsequently monitor the application of these provisions closely.

D. Civil and administrative law provisions

10. As noted by ECRI in its first report, the Equal Treatment Act (AWGB[4]) is the main set of provisions in civil law with the specific purpose of combating discrimination. Before the entry into force of the AWGB in September 1994, civil proceedings concerning discrimination cases were brought under Article 162 Book 6 of the New Civil Code on tortious behaviour, according to which anyone who has committed wrongful acts may be obliged to remedy the resulting damage. In the civil procedure, the onus of proof lies with the plaintiff, although the court can shift the burden of proof for reasons of equity and fairness. In its first report, ECRI welcomed the fact that test-methods, relevant to catering and

---

[3] *See below, Specialised bodies and institutions.*

[4] *Algemene wet gelijke behandeling.*

housing, and statistical data are also accepted as proper means of substantiating a claim.

11. The AWGB provides protection against direct and indirect discrimination on the grounds of race, religion or belief, political opinion, sex, nationality, sexual orientation and civil status. It covers: employment and professions; supply of goods and services and the conclusion of agreements in the course of conducting business or exercising a profession, by the public service and institutions working in housing, welfare, health care, culture and education; public supply of goods and services and the conclusion of agreements concerning these matters by private persons; school and career advice. The AWGB also established the Equal Treatment Commission, a professional, independent organisation with the task to investigate, mediate and judge in matters concerning the equal treatment legislation[5]. ECRI welcomes the fact that organisations who represent the interests of individuals who are victims of discrimination may instigate proceedings before the Commission, also in consideration of the protection against victimisation that this system provides. In this respect, ECRI welcomes the fact that the AWGB protects employees against dismissal for invoking the principle of equal treatment. However, ECRI encourages the Dutch authorities to ensure that legislation provides alleged victims of discrimination with adequate protection against the risk of retaliation due to the exercise of their rights under equal treatment legislation in all fields, and that such protection is extended to third parties (e.g. witnesses who have made a statement) as appropriate.

12. Consideration could also be given to extending the scope of the AWGB to cover other areas, including important functions carried out by public authorities, such as the police.

13. The attention of the Dutch authorities is furthermore drawn to the need to further investigate the religious dimension of racial discrimination and to address, as may be necessary, any shortcomings in legislation in this respect.

E. Specialised bodies and other institutions

14. In its General Policy Recommendation N° 2, ECRI stresses the important role played by specialised bodies such as commissions or ombudsmen, in combating racism and discrimination and promoting equality of opportunity for all groups in society. As mentioned above, the Equal Treatment Commission (CGB[6]) is responsible for ensuring compliance with Dutch equal treatment legislation. Although the decisions of the CGB are not legally binding, in that the CGB cannot force the party whom it has found guilty of discrimination to conform to its decision, in practice this party usually accepts the decision and carries it out. ECRI considers that the status of the decisions of the CGB could be further strengthened, for example by establishing that courts are to follow the decisions of the Commission unless there are compelling reasons not to do so.

---

5 *See below, Specialised bodies and institutions.*

6 *Commissie gelijke behandeling.*

15. Article 108 of the Constitution provides the statutory basis for the National Ombudsman, who is competent to examine complaints arising in connection with the actions of the representatives of the central government, the autonomous administrative authorities or the police. Most of the cases filed with the Ombudsman which -- if not directly referring to racism and discrimination – can at least be linked to racist or xenophobic attitudes concern the police, the immigration and naturalisation service and the labour office. Although ECRI understands that the Ombudsman is not the body with primary responsibility for the fight against racism, xenophobia and related intolerance in the Netherlands, it nevertheless hopes that this institution will play an active role in countering any actions on the part of the public authorities, which may be connected to these phenomena.

16. The National Bureau against Racism (LBR[7]) is an independent organisation funded by the Department of Justice, working as a national centre of expertise for the prevention of racial discrimination in the Netherlands. LBR provides its expertise to assist individuals and organisations in a practical fashion, through a team of information advisors, documentation specialists, legal and policy advisors and researchers. Key areas of work include: the labour market, housing, the media, education welfare and the legal system. ECRI encourages the Dutch authorities to ensure that adequate resources are available to enable this organisation to carry out its tasks effectively.

17. As already noted by ECRI in its first report, a network of over forty local anti-discrimination centres exists throughout the Netherlands. These centres act at grass-roots level to combat discrimination and racism, taking action in individual cases and seeking solutions at the political level, and provide local fora for individuals and organisations committed to the eradication of racism and discrimination. The anti-discrimination centres are funded by the Municipal and County Councils and vary considerably in both size and scope. In consideration of the good and often innovative work carried out by these centres, ECRI encourages the Dutch authorities to ensure that adequate funding is available to them so as to be able to work in a professional manner.

18. A hotline for discrimination-related offences on the Internet (MDI[8]) was established in 1997 and is funded by the government. ECRI welcomes the establishment of the MDI and encourages the Dutch government to ensure that funding of this hotline is continued adequately.

19. ECRI notes with interest the appointment of a Minister for Urban Policy and Integration of Ethnic Minorities who has budgetary co-responsibility for urban policy and co-ordinating functions for integration of ethnic minorities. This Minister has special responsibility for the implementation of the Integration of Newcomers Act , which is addressed below[9].

---

7 *Landelijk Bureau Racismebestrijdiging. On 1 July 1999 the Anti-Discrimination League (ADO) and the Anti-Racism Information Centre (ARIC) merged with LBR under the latter's name.*

8 *Meldpunt Discriminatie Internet. See below, Media*

9 *Reception and status of non-citizens.*

F. Education and awareness raising

20. ECRI emphasises the importance of imparting education on the values of tolerance and rejection of stereotypes from an early age. It notes that teaching material based on research and aimed at combating racism and stereotypes is available for teachers in Dutch schools. ECRI encourages the authorities to ensure that adequate use of this material is made in the classrooms.

21. In consideration of the multicultural composition of the student population in Dutch schools, ECRI urges the Dutch authorities to ensure that all teachers are properly trained to teach in a multicultural environment and to react to any manifestations of racism or discriminatory attitudes in schools.

G. Reception and status of non-citizens

22. On 30 September 1998, the Integration of Newcomers Act (WIN[10]) came into force in the Netherlands with the aim to promote newcomers' swift acquisition of self-sufficiency in the Dutch society. According to the provisions of the WIN, all newcomers must apply for an integration inquiry the results of which may require the newcomer to take part in an integration programme. This programme, which is drawn up by the municipalities, includes training in the Dutch language, social orientation and vocational orientation. The lay-out of the WIN is based on the experience in the reception of newcomers made on the basis of the regulations introduced in this field in 1996. However, while, under these regulations, integration contracts were concluded primarily on a voluntary basis, the WIN introduced the obligation for the newcomer to take part in an integration programme, which should be regarded as a first step towards integration. The WIN provides that the municipality supervises compliance of the newcomers with the obligations of the act and stipulates sanctions for newcomers who fail to meet their obligations. Refusal to participate in an integration programme may lead to a fine, although the authorities have stated that in practice such fine is not applied in every case. ECRI urges the Dutch authorities to carefully monitor the social effects of this element of compulsion. There have also been complaints that the integration programmes do not always match the individual needs and specificities of the newcomer. ECRI urges the Dutch authorities to ensure that all programmes are as far as possible suited to the individual circumstances of the newcomer, a principle which is spelled out in the WIN itself. In this respect, ECRI notes that, in May 2000, a Task Force was set up by four Ministries with the aim of eliminating waiting lists for language courses for the so-called old comers; supporting local authorities in their steering and scrutinising role; and setting up a monitor for specific individual demands of newcomers. More generally, while welcoming the willingness of the Dutch government to provide counselling and language teaching to assist integration, ECRI emphasises that integration is a process demanding mutual recognition of the qualities embodied in both the host and the immigrant communities and considers that all integration policies should reflect this approach.

[10] *Wet inburgering nieuwkomers.*

23. In 1998, the Dutch government adopted the Benefit Entitlement Act (*Koppelingswet*) whose main aim was to link the entitlements which aliens can claim from administrative authorities - in the way of payments, facilities, benefits, exemptions and permits - to legal residence in the Netherlands. ECRI is concerned that the debate around the adoption of this Act has often fostered intolerant attitudes *vis-à-vis* foreigners among the general public. Since the enforcement of the Act rests on a strict surveillance by the authorities of the residence status of people claiming benefits, concerns have also been voiced that checks would impact disproportionately on migrants and Dutch people of immigrant origins. ECRI encourages the Dutch authorities to take this aspect into consideration when reviewing the working of the Act.

- *Refugees and asylum seekers*

24. As it is case in other Western European countries, public support for refugees and asylum seekers has been dwindling in the Netherlands. Surveys suggest that the majority of Dutch people consider refugees as a problem and tend to think that refugees are more likely to be involved in criminal activities. Manifestations of hostility vis-à-vis this group of persons are reported to be not infrequent and have in some cases included violent acts of intimidation and threats of physical violence[11].

25. The new Aliens Act, which will enter into force on 1 April 2001, was presented in 1999 in order to streamline the asylum procedure and to reduce the time for decisions on refugee status. Under the new changes, rejected asylum seekers do not have a right to appeal before the administrative organs, but will have to challenge the decision directly in the courts. Subsequent appeals of negative courts' decisions to the Supreme Court would not, in principle, allow deportation to be suspended. ECRI notes that the utilisation of arguments tending to suggest that most asylum seekers are not genuine as a justification for taking steps which could be detrimental to procedural safeguards within the asylum process affects many persons living in the Netherlands in a discriminatory manner.

H. Access to public services

- *Access to education*

26. The situation of *de facto* segregation in schools in some localities in the Netherlands is a cause for concern to ECRI. Research tend to suggest that the high percentage of ethnic minorities in some schools cannot be explained solely on the basis of their socio-economic background, since the presence of native Dutch children of working class origin is more evenly balanced in schools as a whole. An important factor in this situation appears to be the practice of part of the indigenous Dutch people in neighbourhoods with a large population of ethnic minorities to send their children to schools in other areas (so-called "white flight").

---

[11] *See below, Access to social services – Access to housing.*

27. The Dutch government does not favour active policies of dispersal, *inter alia* in consideration of the fact that these would be incompatible with the Dutch constitutional principles of freedom of education and parental choice. Some local authorities actively inform parents about possibilities of schools within the neighbourhood where they live. The approach of the Dutch government policy is to combat the phenomenon of segregation through improving the quality of schools in general, and to take action to eliminate educational disadvantage in particular, for instance by granting a higher level of funding for pupils from disadvantaged groups. In this framework, ECRI encourages the Dutch authorities to improve support to weaker schools in order to make these schools more attractive for parents and children living in the concerned neighbourhood. More generally, ECRI feels that policies should be supported which encourage parents to send their children in a school within the neighbourhood where they live.

28. ECRI welcomes the various programmes run by the Ministry of Education, Culture and Science and the Ministry of Health, Welfare and Sports, aiming to prevent or alleviate educational and other disadvantage of ethnic minority children. It notes, however, that the general shortage of qualified teachers in the Netherlands affects disproportionately schools in the big cities where the highest concentration of ethnic minority pupils is mostly found. ECRI expresses concern that this problem, if not swiftly addressed, could seriously impair the above-mentioned positive efforts undertaken to counter the educational disadvantages of minority communities. ECRI furthermore—stresses the importance of recruitment campaigns for teachers from ethnic minorities and encourages the Dutch authorities to continue and possibly intensify such campaign.

29. Although there is a positive trend in the Netherlands for members of minority groups -- notably the second generation of immigrant communities -- in terms of increased access to higher education, the situation is still uneven between groups of different ethnic backgrounds. It is estimated, for instance, that only 2% of students in higher education come from a minority background. A number of initiatives have been taken to address this problem, including the adoption of a Higher Education and Research Plan which aims to improve the position of students from ethnic minorities and to reduce the drop-out rate. Within the framework of this plan, the Expertise Centre for Ethnic Minorities in Higher Education (ECHO[12]) is conducting projects to improve the access to and continuation of university education for minority groups. ECRI encourages the Dutch authorities to continue their efforts in this field.

- *Access to housing*

30. The Equal Treatment Act prohibits institutions dealing with housing from differentiating on the basis of race. Most cities have adopted a system for social housing allocation according to transparent and objective criteria which has helped members of ethnic minorities to access social rented housing. In addition to such system, however, in many cities a new system of housing allocation has been adopted, which ethnic minorities, and particularly foreigners, are reported to have difficulties to access, due to the existence a comparatively more complex procedure which is not always easy to understand

[12] *Expertise Centrum Allochtonen Hoger Onderwijs.*

for persons with lower levels of education or knowledge of the Dutch language. ECRI encourages the authorities to ensure that all systems in force for local housing allocation do not result in indirect discrimination.

31. The Housing Act of 1 June 1994 authorises the local councils to oblige private leasing/housing companies to report on the extent to which they have leased to or housed migrants. ECRI encourages the authorities to make adequate use of these provisions in order to detect any possible directly or indirectly discriminatory practice.

32. There have been reports of public manifestations of hostility on the part of the local population of areas where refugees and asylum-seekers are housed. Such manifestations have included attempts by wealthy people to buy collectively plots of land considered for housing refugees by city councils, but also campaigns of intimidation, threats of physical violence, and even violent demonstrations, including arson attempts. ECRI urges the authorities to take action in this respect, including measures to raise the awareness of the local population of the issues concerning asylum seekers and refugees.

- ***Access to healthcare***

33. Research suggests that members of ethnic minorities, and notably foreigners, make comparatively less use of healthcare facilities than the rest of the population. Although part of this phenomenon is due to lack of information on how to use these facilities, the inadequacy of the healthcare system to cater for and adapt to the special needs of minorities also appears to play an important role in this respect. ECRI stresses the need for measures to address this situation, which, as suggested by the Advisory Council for Public Health and Care, could include the creation of a national focal point and the inclusion of members of ethnic minorities in the management boards of health care providers. ECRI notes that, in November 2000, the Dutch government published a paper entitled “Interculturalisation of health care”, which contains a range of measures, including the establishment of an organisation to implement the recommendations of the Council for Public Health and Care, the interculturalisation of training courses in the care sector, and the funding of research, monitoring and development projects.

- ***Access to public places such as bars and discotheques***

34. In recent years, local anti-discrimination centres have received an increasing amount of disturbing complaints concerning discriminatory refusals of access to public places such as bars, cafés and discotheques. Young people of Surinamese, Antillean, Moroccan and Turkish origin are the most frequent alleged victims of such practices. As mentioned above, discrimination in granting access to public places is a violation of Article 429quater of the Criminal Code. In addition, the Drink and Catering Industry Act provides as a precondition for granting a license the respect of certain moral standards, which a discriminatory admittance policy would obviously not meet. However, these possibilities offered by the existing legislation have hardly ever been used. ECRI urges the Dutch authorities to take action in this field, notably through the adoption of measures aimed at raising the awareness of the persons running

these establishments of the legal provisions existing in this field and pursuing a more active law enforcement policy in this respect.

I. Vulnerable groups

This section covers certain minority groups which may be particularly vulnerable to problems of racism, discrimination and intolerance in the country in question. It is not intended to provide an exhaustive overview of the situation of all minority groups in the country, nor to imply that groups not mentioned face no problems of racism and discrimination.

- *Jewish community*

35. An estimated 30,000 Jews live in the Netherlands today, compared to the 140,000 population before the Holocaust. The majority is concentrated in the Amsterdam area, although there are also communities in most other Dutch cities. The Dutch Jewish community sustains a variety of religious and educational institutions.

36. The Dutch Jewish community remains one of the targets of extreme right-wing movements and of Islamic fundamentalist movements. Although no comprehensive system of recording of antisemitic incidents is in place, antisemitic activities appear to have been increasing slowly but steadily in recent years. Incidents such as acts of vandalism, abusive graffiti, desecration of Jewish cemeteries and memorial sites, but also insults and threats continue to happen. Football vandalism and Internet propaganda are among the main focal points of antisemitic activities in the Netherlands. While, as mentioned below, recent developments in the field of combating the dissemination of racist and antisemitic material through the Internet are welcome[13], action is still needed to counter the phenomenon of racist and antisemitic chanting at football stadiums.

- *Roma/Gypsies*

37. The Roma and Sinti population in the Netherlands is composed of around 3000 Sinti, whose presence in the country dates back to the 19th century and 500-700 Roma who came to the Netherlands in the late seventies.

38. Despite the long history of Sinti/Roma groups in the Netherlands, their participation in primary and secondary education remains very low, and their unemployment rate extremely high. The level of societal prejudice is also still considerably high. Although the repeal of the Caravan Act in 1999 put an end to the discriminating nature of legislation on caravan dwellers and puts the latter on an equal footing with all other Dutch citizens, the relations between caravan dwellers on one side and local governments, housing associations and local population on the other are still often tense.

---

13 *See Media.*

39. Most of the policies aimed to address the problems faced by the Roma and Sinti communities are drawn up at the local level. ECRI strongly urges the local authorities to ensure that members of the Roma Sinti communities are thoroughly involved at all stages of the drawing up of such policies. Furthermore, although ECRI understands the important impact of policies at the local level, it nevertheless stresses the role of the central government in overseeing developments and taking corrective action as necessary.

J. Monitoring the situation in the country

40. As highlighted in various parts of this report, the local dimension of the work against racism and discrimination is very important in the Netherlands. While this presents positive aspects, it appears to be a cause of difficulties in the area of collection of data and statistics at the national level, in that the criteria on the basis of which such information is gathered at the local level are not harmonised throughout the country. ECRI is aware that initiatives are being taken to address this problem, especially in the field of registration of racist incidents[14] and encourages the Dutch authorities to further their efforts in this respect, including providing support to the initiatives of the civic organisations, antidiscrimination centres etc. aimed at achieving an integrated nationwide system of collection of data.

41. The Dutch government carries out an anti-racism monitor, a monitor concerning image building and opinions, and an integration monitor. ECRI encourages the Dutch authorities to ensure that minority populations' perceptions of levels of discrimination and intolerance are clarified. In this respect, the attention of the Dutch authorities is drawn to ECRI's general Policy Recommendation N°4 on national surveys on the experience and perception of discrimination and racism from the point of view of potential victims.

K. Conduct of law enforcement officials

42. ECRI addressed the aspects related to the role of the police in ensuring an effective implementation of the criminal legislation aimed at combating racism and discrimination in the initial part of this report[15]. Here, ECRI stresses the positive impact that a police force reflecting the ethnic composition of the communities it serves has on the quality of the service it provides to these communities, notably as concerns the incidence of prejudice ad discrimination.

43. ECRI notes the active policy of recruitment of members of the police of ethnic minority background pursued by the Dutch authorities, which has led to an important increase in the number of these officers within the police in recent years. ECRI considers, however, that there are still important margins of improvement, notably as concerns the presence of these officers at senior levels and, especially, as regards the need to ensure that, once recruited, officers from ethnic minorities stay on their jobs. Recent figures suggest that the number of ethnic minority officers who are leaving the service is greater than the number of those joining the service. ECRI encourages the Dutch authorities

---

14 *See above, Criminal law provisions.*

15 *See Criminal law provisions.*

in their efforts to investigate the causes behind this trend and to take immediate action to address any problems identified. In this respect, ECRI believes that the sustainable establishment of a multiethnic police can only be attained through efforts to ensure that the internal police culture change accordingly. It therefore strongly encourages initiatives aimed at raising the awareness of the police of the need to combat prejudice and stereotypes within the service itself.

L. Media

44. A code of self regulation of the Dutch Organisation of Journalists establishes that a person's race, nationality, religion etc. should only be mentioned if relevant; that racist or prejudiced statements are only to be quoted if relevant; and that migrants should not only be quoted on "migrant issues" but also on other issues. There are also guidelines for the police press information, concerning the prevention of ethnic stigmatisation, according to which the ethnic background of people involved in an incident should not be mentioned unless it is of great importance to explain the situation. ECRI notes that these guidelines are not always applied and calls for a stricter compliance with these self-regulatory provisions.

45. According to MDI[16], the number of racist offences on the Internet is sharply increasing. While most of the offences are of an antisemitic nature, complaints of discrimination against Turks and Moroccans are also reported to be on the rise. After receiving a complaint, the MDI contacts the Internet provider and, in co-operation with them, issues the sender of the offensive text a request to remove the material. While perpetrators are reported generally to comply with the request, if a warning is ignored, a report is sent to the police and the sender is informed. In 1999, this procedure has made possible the arrest of authors of antisemitic articles and led to a successful prosecution against the authors of racist cartoons and other material. ECRI encourages the Dutch authorities in their efforts to counter the dissemination of racist material through the Internet.

M. Right-wing extremism

46. Although some political parties and movements which resort to racist and intolerance propaganda exist in the Netherlands, a decline in the success of these organisations is reported, as reflected in their losses both in the municipal and the parliamentary elections. Currently, there are no representatives of such organisations in Parliament and few in city councils. However, this decline has been connected by some observers, among other reasons, to the higher receptivity of some mainstream parties to ideas of intolerance, particularly towards immigration.

47. ECRI notes with interest that, in November 1998, the political party Centrum Partij ’86 was declared illegal and dissolved by the Amsterdam district court, which found that incitement to discrimination against ethnic minorities was the main purpose of the activities of this party. Another positive development is the coming into force of the Bill on Subsidisation of Political Parties on 1 July 1999, which authorises the withdrawal of subsidies and floor time in the media from political parties convicted of racial offences.

---

16 *See above, Specialised bodies and other institutions.*

SECTION II: ISSUES OF PARTICULAR CONCERN

In this section of its country-by-country reports, ECRI wishes to draw attention to a limited number of issues which in its opinion merit particular and urgent attention in the country in question. In the case of the Netherlands, ECRI would like to draw attention to discrimination in employment.

N. Discrimination in employment

48. Although the overall presence of members of ethnic minorities in employment has increased in recent years, their overall position on the labour market in the Netherlands remains an issue of particular concern to ECRI. Figures show that in recent years the number of people in employment grew faster amongst members of ethnic minorities than among the native population. However, although the unemployment rate of ethnic minorities passed from 26% in 1994 to 16% in 1998, the general decline of unemployment experienced by the Netherlands during these years appears to have benefited the members of the native Dutch population comparatively more. The unemployment rate of people of Surinamese and Antillean origin is reported to be still two to four times higher than that of the native population. This discrepancy is as high as four to seven times when the Turkish and Moroccan communities are considered. Long-term and youth unemployment are also phenomena who appear to affect members of ethnic minorities disproportionately.

49. The disadvantaged position of minority groups in the Dutch labour market has been traced back to a combination of factors, including the differing levels of education. However, research suggests that these factors can only account for part of the existing imbalances and that direct, indirect or unconscious forms of discrimination contribute significantly to the weak labour market position of ethnic minorities.

50. As noted above[17], criminal and civil law provisions exist in the Netherlands prohibiting discrimination in employment. The majority of complaints submitted to the Equal Treatment Commission concerning race and nationality relate to the field of work. These complaints include job applicants from ethnic backgrounds who were allegedly not considered for a particular job, discrimination in the workplace and complaints on unequal pay and the termination or non-extension of employment contracts. ECRI believes that employment is one of the areas where a more active role of the Dutch authorities in the enforcement of legal antidiscrimination provisions, as suggested above[18], would have more impact.

---

17 *See Criminal law provisions and Civil and administrative law provisions.*

18 *Ibidem.*

51. Although adequately implemented legal provisions are of paramount importance in this field, ECRI is aware that legal measures alone cannot suffice in combating effectively the phenomenon of discrimination in employment. In this respect, ECRI noted in its first report the Act for the Promotion of Proportional Labour Participation of Non-Natives (WBEAA[19]) of July 1994, which committed companies with 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. Following a number of difficulties -- including problems of enforceability of the legislation and the heavy administrative burden imposed on the employers -- which resulted in a very limited compliance of employers with the provisions of the WBEEA, the Act on the Promotion of Labour Participation of Ethnic Minorities (Wet SAMEN[20]) came into force in January 1998. While, under the Wet SAMEN, the employers are subject to the same main obligations as under the WBEAA, the reporting procedures and the framework for enforcement have been modified[21]. ECRI welcomes the adoption of the new legislation as a means to actively seek for better representation of ethnic minorities in employment. ECRI notes that the Wet SAMEN was evaluated in the Spring of 2000. The evaluation indicates that employers are increasingly complying with their administrative obligations and that they are complying slightly better with their substantive obligations under the Wet SAMEN. As a result of this evaluation, a number of measures have been adopted, including the extension of the Act until 2003. ECRI strongly encourages the Dutch authorities to continue to monitor the employers' compliance with the provisions of the Wet SAMEN and to take any necessary action in this respect. Furthermore, as already mentioned in the first report, the need is stressed to inform the general public about the reasons behind the adoption of this and other measures aimed at promoting the participation of ethnic minorities in employment in order to counter any perception that minority groups are in some way being given preferential treatment on the labour market.

52. ECRI welcomes the fact that a series of measures intended to improve the position of ethnic minorities in the labour market and favour equal treatment and opportunities for ethnic minorities have been announced in the "Policy Document on Labour Market Policy for Ethnic Minorities - Action Plan 2000-2003". These include the conclusion of covenants by the Ministry of Social Affairs and Employment and the Ministry of the Interior and Kingdom Relations with large companies concerning the influx and movement of employees from ethnic minorities through improved intercultural management.

---

19 *Wet bevordering evenredige arbeidsdeelname allochtonen.*

20 *Wet stimulering arbeidsdeelname minderheden.*

21 *In particular, instead of drawing up two annual reports (i.e. one for publication, and one for internal use containing the measures to be implemented in the following year to encourage the employment of ethnic minority groups) employers are to publish one single report containing figures on ethnic minority employment rates within their organizations, and the measures they intend to adopt to promote their participation in the workforce; employers must submit their annual report to the Regional Manpower Services Board instead of the Chamber of Commerce and Industry; they must consult and include the opinion of the works council before publishing the annual report; furthermore, the Wet SAMEN is enforced on the basis of civil law rather than criminal law and the Labour Inspectorate is responsible for supervising compliance.*

53. ECRI furthermore stresses that small and medium enterprises should also be made more aware of the need to combat discrimination and encouraged to take up equal opportunities policies and promote employment of ethnic minorities. In this respect, it notes that in the Policy Document mentioned above the Ministry of Social Affairs and Employment and the Ministry of the Interior and Kingdom Relations have entered into a covenant with the Dutch central entrepreneurial organisation for small and medium businesses and the public employment services to place an extra 20,000 job seekers from ethnic minority groups in employment with small and medium-sized companies during the 2000-2001 period. ECRI encourages the Dutch authorities to closely monitor the effectiveness of such initiatives with a view to extending them further.

54. Although access to employment is paramount, ECRI generally stresses that adequate attention should also be paid by the authorities to the aspect of retention, as it has been reported that ethnic minorities are particularly likely to leave their employment. A further related area on which ECRI would welcome further research and monitoring concerns the mechanisms and the opportunities in place for promotion to higher jobs and the position of ethnic minorities in this respect, since members of ethnic minorities are reported to have difficulties in gaining access to senior positions and to be sometimes recruited at levels not corresponding to their qualifications.

55. As concerns initiatives aimed to promote entry of unemployed persons in the labour market through training and work experience placements – such as the Job Seekers Employment Act (WIW[22]) and the Employment Scheme for Long-Term Job Seekers – ECRI strongly encourages the Dutch authorities to monitor the extent to which members of ethnic minorities actually benefit of these opportunities.

56. ECRI welcomes the setting up, in 1998, of a Task Force on Minorities and the Employment Market, composed of representatives of the social partners, government employers, public and private temporary employment agencies and ethnic minority groups. The Task Force aims to create conditions for a better balance between supply of job seekers from ethnic minorities and demand on the part of employers and to promote best practices on both sides of industry and in individual companies. ECRI notes that the recommendations made by the Task Force have been included in the Policy Document on Labour Market Policy for Ethnic Minorities mentioned above.

57. In order to ensure that public commitment to the promotion of the participation of members of ethnic minorities in employment is seen to be steady and consistent, therefore setting a compelling example for private employers, ECRI considers that policies to promote adequate representation of ethnic minorities within the public sector itself are paramount. ECRI welcomes the fact that ethnic minority participation in employment in the public sector increased from 3.2 % in 1994 to 7.3 % in 1998. It expresses concern, however, at the fact that very few officials from ethnic minorities are to be found above the lowest administrative levels and encourages the Dutch authorities to address this issue. It has also been reported that, particularly in certain governmental departments, ethnic minority employees are disproportionately represented amongst the staff leaving the service. ECRI strongly encourages the Dutch authorities to closely monitor and research this phenomenon – for example

[22] *Wet inschakeling van werkzoehenden.*

through systematic exit interviews -- and to take any necessary corrective action in this respect.

58. Codes of conduct may also prove useful to address these problems. ECRI notes that -- following a "General Declaration against Racial Discrimination" signed in 1992 by members of the central government, provincial and local governments, political parties, civil organisations, media and private persons -- the Ministry of the Interior and Kingdom Relations adopted in 1994 an internal antidiscrimination code of conduct. The code aims to facilitate a more effective application of the antidiscrimination legislation, raise general awareness of discrimination and expose any indirectly discriminatory effects of policy. The adoption of the code was accompanied by the appointment of a special committee entrusted with hearing complaints from the employees and making recommendations to the competent authorities within the Ministry on sanctions or measures to be taken. ECRI strongly encourages the Dutch authorities to monitor the effectiveness of the code of conduct. It also considers that all government Ministries and provincial governments should consider establishing such codes and pay particular attention to their implementation.

59. ECRI notes with interest that since the introduction, in April 1988, of the Act Altering The Requirement Of Possession Of Dutch Nationality For Certain Functions[23], the prerequisite of Dutch nationality for public service is eliminated, except for certain branches (such as diplomacy, magistracy, public prosecution, the military, the police and security professions).

[23] *Wet tot wijziging van eis van Nederlanderschap voor bepaalde functies.*

BIBLIOGRAPHY

This bibliography lists the main published sources used during the examination of the situation in the Netherlands: it should not be considered as an exhaustive list of all sources of information available to ECRI during the preparation of the report.

1. CRI (98) 49: Report on the Netherlands, European Commission against Racism and Intolerance, Council of Europe, June 1998

2. CRI (96) 43: ECRI general policy recommendation n°1: Combating racism, xenophobia, antisemitism and intolerance, European Commission against Racism and Intolerance, Council of Europe, October 1996

3. CRI (97) 36: ECRI general policy recommendation n°2: Specialised bodies to combat racism, xenophobia, antisemitism and intolerance at national level, European Commission against Racism and Intolerance, Council of Europe, June 1997

4. CRI (98) 29: ECRI general policy recommendation n° 3: Combating racism and intolerance against Roma/Gypsies, European Commission against Racism and Intolerance, Council of Europe, March 1998

5. CRI (98) 30: ECRI general policy recommendation n°4: National surveys on the experience and perception of discrimination and racism from the point of view of potential victims, European Commission against Racism and Intolerance, Council of Europe, March 1998

6. CRI (2000) 21: ECRI general policy recommendation n° 5: Combating intolerance and discrimination against Muslims, European Commission against Racism and Intolerance, Council of Europe, April 2000

7. CRI (98) 80 : Legal measures to combat racism and intolerance in the member States of the Council of Europe, ECRI, Strasbourg, 1998

8. Information supplied by the Dutch authorities on issues arising directly out of ECRI's first report

9. Information : Integration of newcomers Act, Ministry of the Interior and Kingdom Relations, Directorate for the Co-ordination of Integration Policy for Minorities, August 1996

10. Information : Housing and integration of refugees and asylees, Ministry of the Interior and Kingdom Relations, Directorate for the Co-ordination of Integration Policy for Minorities, December 1998

11. Guidelines for procurators general and chief public prosecutors, 1993

12. F. Bovenkerk, M. van San, S. de Vries «Policing a Multicultural Society», LSOP Police Training and Knowledge Centre, 1999

13. European Social Charter, Committee of Independent Experts, Conclusions XV-1

14. CDMG (97) 17 rev. : « Recent developments in policies relating to migration and migrants », European Committee on Migration, Council of Europe, January 1998

15. CDMG (99) 7 final : « Recent developments in policies relating to migration and migrants », European Committee on Migration, Council of Europe, 1999

16. The National Ombudsman of the Netherlands, Annual Report 1997, 1998, 1999 (Summary)

17. Equal Treatment Commission, Annual Report 1998

18. CERD/C/362/Add.4 : « Fourteenth periodic reports of States parties due in 1999: Netherlands», CERD, United Nations, July 1999

19. CERD/C/57/CRP.3/Add.7: « Concluding observations of the Committee on the Elimination of Racial Discrimination », CERD, United Nations, April 1999

20. «The effectiveness of integration policies towards immigrants and their descendants in France, Germany and the Netherlands», Jeroen Doomernik, ILO International Migration Papers N° 27, Geneva, 1998

21. «LBR Shadow report» submitted to the Committee on the Elimination of Racial Discrimination under Article 9 of the International Convention for the Elimination of All Forms of Racial Discrimination, Rotterdam, July 2000

22. «1999 : Year in perspective», Report by LBR, Rotterdam, June 2000

23. US Department of State « 1999 Country Reports on Human Rights Practices: The Netherlands», February 2000

24. International Helsinki Federation, Annual Report 1999

25. International Helsinki Federation, Annual Report 2000

26. « Extremism in Europe » coordinated by Jean-Yves Camus – CERA 1998 – The Netherlands, by Rinke van den Brink

27. «State care and communal share: illegal migrants in contemporary Dutch cities » Institute for Human Sciences (IWM), Working Paper No. 1/1999, Vienna

28. M.R. Schriemer, «Final evaluation of the Dutch NAPAP program “coalition training”», Erasmus University, Rotterdam