



Economie & Humanisme

F:\NEC ou Affaires\CE MEDIS discriminations et statistiques 0834\Rapports MEDIS finaux\Rapport final PaysBas GB2.doc

Comparative Study on the Collection of data to Measure the Extent and Impact of Discrimination in a selection of countries

Medis Project (Measurement of Discriminations)

Final Report on The Netherlands



Virginie Guiraudon

Karen Phalet and Jessika Ter Wal

June 2004

**EUROPEAN COMMISSION
Employment and Social Affairs DG**

TABLE OF CONTENTS

<u>Introduction</u>	1
<u>I- Anti-discrimination law and policies</u>	6
<u>A/ Anti-discrimination laws and the Equal Treatment Commission</u>	6
<u>B/ Main policies on the four grounds of discrimination</u>	10
1) <u>Race and ethnicity</u>	10
2) <u>Religion</u>	20
3) <u>Sexual orientation</u>	24
4) <u>Handicap/disability</u>	27
<u>II- The use of statistics and their characteristics</u>	30
<u>A/ The collection of data: institutes, sources and categories</u>	30
1) <u>The municipal registers and the GBA</u>	30
2) <u>Statistics Netherlands (CBS)</u>	32
3) <u>SCP, ISEO, ITS and other institutes and data sources</u>	34
<u>B/ Social science studies</u>	38
1) <u>Employment</u>	38
2) <u>Education</u>	41
3) <u>Media and the issue of “visibility”</u>	43
4) <u>Studies on sexual orientation</u>	45
<u>C/ Their role in policies and politics</u>	46
1) <u>The use of monitoring in policy</u>	46
2) <u>The use of monitoring by non-governmental organizations</u>	51
3) <u>Public Debates</u>	61
<u>D/ The use of statistics as legal evidence</u>	67
1) <u>The van Binderen case</u>	67
2) <u>The Equal Treatment Commission and the use of data</u>	68
3) <u>The CGB and equal pay</u>	70
4) <u>Testing and discrimination in nightlife</u>	72
5) <u>The CGB investigates on its own: the case of sexual orientation and IVF</u>	72
<u>E/ The interaction between social science, law and politics</u>	73
<u>III - Controlling the production and use of statistics</u>	75
<u>A/ Data protection laws</u>	75
<u>B/ Measures to protect sensitive data collection and use and exemptions</u>	77
<u>C/ Other issues</u>	79

<u>References</u>	80
1) <u>Books, articles and reports</u>	80
2) <u>Press articles</u>	86
<u>Annexs</u>	87
1) <u>Annex 1. List of abbreviations</u>	87
2) <u>Annex 2. List of interviewees and interlocutors</u>	87
3) <u>Annex 3. Web Sites Related to Anti-discrimination Monitoring and Enforcement</u>	88
4) <u>Annex 4. Equal Treatment Act</u>	89
5) <u>Annex 5. Act on equal treatment on the grounds of handicap or chronic illness</u>	96

INTRODUCTION

Article 1 of the new Dutch Constitution adopted in 1983 reads as follows: "All persons in the Netherlands shall be treated equally in all circumstances. Discrimination on the grounds of religion, belief, political opinion, race, or sex or on any other grounds whatsoever shall not be permitted." Symbolically the fact that the commitment to equality is the first written down in the basic law of the Netherlands marks an attachment to the fight against discrimination. Dutch nationhood has been built on the recognition of diversity in society.

Historically, there have been several "pillars" in Dutch society reflecting religious pluralism: a Protestant pillar, a Catholic pillar and a non-denominational or lay pillar. Peaceful coexistence among various groups in society rested upon their equal access to societal and political institutions (equal opportunities) and the "emancipation" of all segments of society so that there would not be groups with a lower social position (equality in outcomes).

In 1983, along with the Constitution, the policy on ethnic minorities also saw the light (Minderhedennota 1983). In effect it extended "pillarization" (*verzuiling*) and the Dutch commitment to equality to new groups considered to be "socially disadvantaged": postcolonial migrants such as Surinamese, Moluccans and Antilleans, former guest-workers such as Turks and Moroccans and other groups including asylum-seekers and caravan dwellers. In 1998, a policy aimed at bettering the position of minorities in the sphere of employment was targeted at minorities (SAMEN Wet or Act for the Stimulation of Labour Market Participation). Key to understanding the "philosophy" of ethnic minority policy and the way it relates to anti-discrimination measures and ethnic monitoring is that ethnicity and social class are closely linked. In order to "qualify" as an ethnic minority, your (ethnic) group must suffer socio-economic disadvantage. Subsequently, monitoring is necessary to establish the socio-economic position of your group and to target policies that seek to achieve social equality.

Although the so-called pillar system originally reflected religious pluralism and then transpired into the organization of society and politics, Dutch society in the second part of the 20th century became largely secularised. The spirit of tolerance and respect of diversity endured. This can be seen in the legislation on homosexuality. Since 1994, same sex couples have been able to register partnerships and homosexuals could file a complaint before the Equal Treatment Commission. Since 2001, marriage between two persons of the same sex is authorized. Commenting on the debate regarding the legalization of same sex marriages, activist legal scholar Kees Waaldijk has noted that there was little opposition from religious groups. He stated: "It's a very secular society. There was strong opposition from some really traditional protestant churches and from the Bishops, but the rest of the Catholic church didn't say much." In fact, he believes debates at church meetings and discussion in Christian media helped advance the issue (Waaldijk 2002).

To sum up the way in which the discrimination problématique has been dealt with in the Dutch case, it applies an historical model that calls for the equalizing of social conditions among groups and the tolerance of pluralism to a post-industrial and post-modern context. In the context of secularisation that made traditional religions less salient, new groups have benefited from the adaptation of the old model (e. g. women, migrants, gays and lesbians, Moslems and Hindis). New terminology imported from other countries such as “multiculturalism,” “diversity,” and “integration” have gained ground to designate the goal of equality policies yet they coexist with older concepts such as “emancipation” and the issue of the “social positioning of minorities.”

The Dutch ability to think of discrimination in a broad sense is made easier by its political tradition since pillarization meant groups could be recognized not just individuals and there was a commitment to ensure equality in outcomes not just equality before the law. The ideal type counter case here is France. The challenge in the Netherlands is to avoid the simple coexistence of groups within any real social interaction (*mixité sociale*). In other words, one preoccupation is segregation, the lack of interethnic and inter-group relations. This is of course a feature that is also discussed in the British case. The other challenge is the social acceptance of policies that give more to those who have less and to go beyond the famous Dutch tradition of *gedogen* (turning the other eye). It is important to underline that issues of social inequality and segregation are intertwined. If you take the case of ethnic minorities, if there is segregation in education, housing and employment, groups that are poorer and with less social and cultural capital than others have fewer chances of “climbing the social ladder.” Segregation can help perpetuate social difference. In sum, although the Dutch model of pillarization implies that it is normatively acceptable that groups co-exist, this does not mean that they should only be “separate but equal.” Policy debates since the 1990s suggest that a social mix is desirable to allow the advent of social equality.

Discrimination based on ethnic and racial origin is not the only one that Dutch laws have sought to prohibit. With the adoption in 1994 of the Equal Treatment Act, an equal treatment commission was created to examine cases of direct and indirect discrimination in employment, education and the provision of goods and services on the basis of ethnic and racial origin, nationality, religion, belief political affiliation, gender, sexual orientation, marital status (and working hours in employment).

In some respects, Dutch equality policy went further than the current EU legislation. Notably, discrimination with respect to civil status and political affiliation was prohibited. In others, notably age and disability, the Dutch anti-discrimination laws did not explicitly offer protection against unequal treatment on those grounds. Therefore, it is fair to say that the Dutch tackled discrimination and recognized that certain groups were not equal citizens in society before the adoption of the 2000 European Community directives based on article 13.

In fact, Dutch political actors had been active proponents of a EU anti-discrimination policy. The Dutch National Bureau against Racism (LBR) was one of the founding organizations of the Starting Line Group, an NGO network coordinated in Brussels by the Dutch-led Migration Policy Group that proposed an article in the EC treaty banning discrimination on racial and other grounds. Dutch members of the European Parliament had also voiced their support for an article that would include sexual orientation as a ground for discrimination (notably Labor Party MEP Joke Swiebel) and attempted to avoid the adoption of a watered down version of the race directive (e. g. Green MEP Kathalijne Buitenweg). Finally the Dutch delegation that presided over the negotiations of the 1997 Amsterdam treaty also played an important role in seeing that article 13 was included in the Treaty. Aside from the United Kingdom – another case study in this project— The Netherlands has had the most experience in the fight against discrimination on all grounds except disability.

As a EU member state means, The Netherlands should comply with EU law in the area of equal opportunities, anti-discrimination and data protection. Similarly, the Equal Treatment Commission that gives opinions on alleged cases of discrimination frequently refers to the jurisprudence of the European Court of Justice, in particular its extensive jurisprudence on equal treatment between men and women. The Dutch situation can thus be compared to other member-states that have less experience with anti-discrimination policy. Another point of comparison regards the type of societal issues raised in discrimination cases. For instance, racial, ethnic and religious discrimination are being discussed mainly with respect to immigrant communities that have settled in the post-war period (post-colonial migrants and guest-workers and their families). In other words, the Dutch debate is different from the US, Canadian and Australian ones. In fact, the North American handling of racial and ethnic discrimination has been considered unsuited to the Dutch situation whereas the British found deemed that it was a useful model. Notwithstanding, most of the issues regarding discrimination raised in law and politics in the Netherlands echo debates in other member-states: Should Moslem women be allowed to wear the veil at work? Should gays have the same rights as married couples and should their partners enjoy the same benefits? One finds many similar situations. Children of Moroccan and Turkish descent have difficulties getting into certain nightclubs in the Netherlands yet this is true in France, Germany, Belgium, etc. The same point could be made regarding the hiring of ethnic minorities.

In other words, while the Netherlands has prohibited discrimination in its constitution, passed an Equal Treatment Act and set up a Commission, discrimination is undoubtedly an on-going concern and an ever complex and evolving phenomenon. In recent developments, native Dutch come forth with more complaints before the local anti-discrimination bureaus and the Equal Treatment Commission. Discrimination against some ethnic minorities are framed in religious terms (“those Moslems as opposed to “those Turks and Moroccans”). There are cases in which several of the grounds of discrimination are at stake, such as gays and lesbians or women feeling discriminated by religious groups invoking their right to be different. In the past few years, political and media attention has been intense, notably during the 2002 legislative electoral campaign when Pim Fortyun, leader of the

Leefbaar party denounced Moslem minorities as backwards and condemned their attitudes towards women and gays. In the current Dutch situation of heightened emotional political debates, the role that social science studies and statistics play is a fascinating question. As several of our interlocutors noted, while monitors showed an improvement of the situation of ethnic minorities, especially with respect to education and employment throughout the 1990s, this was ignored by elected politicians and the media that increasingly spoke of the failure of the integration of minorities.

Regarding the monitoring of the socio-economic situation of the groups concerned by the legislation on anti-discrimination, the Dutch case is quite singular in this comparative study. Unlike the other countries chosen as case studies, there is no census in the Netherlands. Still there is a plethora of “monitors” and social science studies tracking ethnic groups.

Our research has identified a set of paradoxes and tensions. (1) Although there is no census, there is an extensive amount of data available through automated municipal population registers (GBA) and other databases that can be linked together. Since 1998 and the passing of the Koppelingswet, a law that aims at preventing illegal residents from accessing public services and benefits, the GBA has in fact been used to track undocumented foreigners. (2) Although not prescribed by law, there are several monitors. They aim at determining the social position and access to services of ethnic minorities. Others also list complaints of discrimination and cases before the Equal Treatment Commission and the public prosecutor. Yet the conclusions drawn from the monitors are often at odds: politicians and governments in the 1990s point to the studies to underline the “failure of integration” of minorities while NGOs on the contrary consider that they justify more active diversity and anti-discrimination policies. The government’s attitude as minority policy came to the fore in national debate is also contradictory. New surveys are planned while some are discontinued. Budgets are cut to conduct studies while new expert commissions and monitors are planned. (3) Only one law, the 1998 SAMEN Wet (Act for Stimulation of Labour Market Participation) explicitly called for the monitoring of minorities with the aim of achieving a multicultural workplace in the Netherlands by publishing the numbers of members of minorities in companies of more than 35 employees. Yet, the program was terminated at the end of 2003. This has occurred in spite of its use by the equal Treatment commission and by lobbying NGOs.

In brief, the relationship between policies that aim to achieve the social equality of groups and the instruments that help to achieve this goal is not self-evident or unproblematic. One strong area of consensus however concerns the Dutch system of data protection and the legitimacy of data collection for anti-discrimination purposes, as long as it also allows for public awareness of the data gathered and citizens’ access to public documents including official statistics. This should be underlined given the controversy that led to the termination of the census in the late 1970s. Following the predominantly left-wing criticism of the census and its intrusion into private life, the probable boycotting of the census by people from the left-wing would have made results unreliable and the census never took place. It

seems that the current system of protection of sensitive data satisfies the actors involved in the fight against discrimination.

Our report on the measurement of discrimination, its political and legal use and its conformity with legislation on data protection is organized as follows:

- 1° We first discuss the general policy and legal framework to tackle discrimination and achieve social equality and also discuss each ground separately.
- 2° We present the various institutes and studies that measure the social position of groups and discuss the use of statistics in policies and their use by NGOs and courts as well as current public debates on this issue.
- 3° Finally, we turn to the system of data protection ensuring the individuals' right to privacy and its relationship to the measurement of sensitive data.

I - ANTI-DISCRIMINATION LAW AND POLICIES

A/ Anti-discrimination laws and the Equal Treatment Commission

Article 1 of the Constitution prohibits discrimination. The Dutch equal treatment laws elaborate on this norm. These laws are complex and prohibit unequal treatment in specific fields and on a limited number of grounds.

The first law to be adopted was an Act on the equal treatment of men and women (*Wet gelijke behandeling mannen en vrouwen*, WGB). When it came to legislation prohibiting discrimination on other grounds, the government thus chose to pass a separate Act rather than to include anti-discrimination provisions in existing civil law. The new Act adopted in 1994 (*Algemene wet gelijke behandeling*, AWGB, see annex 4) was modelled on the existing Act on equal opportunities. The Equal Treatment Act (hence referred to as the ETA) covers a number of discrimination grounds. Besides race and ethnic origin, it covers religion, belief, political opinion, nationality, heterosexual or homosexual orientation and civil status. It may be noted that two grounds which are mentioned in the Framework Directive, handicap and age, were not listed in the 1994 ETA. Separate legislation has been developed for these grounds. The Act on equal treatment on the grounds of handicap or chronic illness (*Wet gelijke behandeling op grond van handicap of chronische ziekte*, WGB h/cz) adopted in 2003 has been in force since January 1st, 2004 (see annex 5).

In the ETA, there is a general prohibition of unequal treatment. Exceptions are only possible if they are explicitly mentioned in the Act. The scope of the ETA includes employment, the self-employed and the public supply of goods and services. The latter includes housing, health care and education. Both direct and indirect discrimination are prohibited, although objective justifications may exist for indirect discrimination: the unequal treatment serves an objectively justified goal; the chosen measures are appropriate and necessary to reach this goal and the goal cannot be reached otherwise. It should be mentioned that in cases of indirect discrimination, the intention of the person or company that performs the act is not relevant. The idea is that indirect discrimination reveals practices that are based on persistent practices and dominant views, prejudice and stereotypes. The law uses the notion of “differentiation” rather than discrimination to cover more cases than those of intentional discrimination (Goldschmidt 2001).

Positive discrimination is allowed (section 2(3)). This is only allowed for women and minorities. So far, positive discrimination is only allowed to cases where under-representation can be established and is proportional and effective. The Equal treatment Commission has recommended that exceptions be allowed under the law.

In section 11 of the ETA, an equal treatment Commission is established to enforce the Act (*Commissie Gelijke Behandeling* hence CGB). The Commission has to be approached by means of a request in writing, upon which the Commission may conduct an investigation, after which its findings may be published. The CGB is a semi-judicial body. It comprises nine members, including a chair and two assistant chairs and the same number of deputy members. The staff helping them is made up of about 50 people. The Commission's main task is to investigate private complaints and to give a ruling whether the provisions of the ETA were violated. Filing is free of charge and no lawyer is required. The rulings of the Commission are non-binding to be easily accessible for persons complaining about discrimination. In case a ruling by the Commission is not followed, the victim can start a case with a civil court and claim his rights and the Commission may bring legal action before the Court (sec. 15(1) of the ETA).

The Commission may conduct an investigation on its own initiative and publish its findings (sec. 12(1) of the ETA). If it requests information, it must be provided by law. Section 18 and 19 of the ETA state that public servants and other persons are obliged to provide information and documents if the Commission so requests.

There is no explicit monitoring mechanism in the Equal Treatment Act. The Commission has to publish a report on its activities every year, which includes tables with the number of cases in each field and on all the grounds covered by the Act. There is also a review of the functioning of the ETA and the Commission every five years, a standard legal clause in Dutch laws.

Table 0. CGB opinions 2000-2002 : discrimination grounds

Ground/year	2000	2001	2002
Sex	51 (35%)	70 (41%)	98 (48%)
Race	47 (32%)	45 (26%)	40 (19%)
nationality	16 (11%)	24 (14%)	11 (5%)
religion	7 (5%)	13 (8%)	20 (10%)
Full or part time work	11 (8%)	11 (6%)	27 (13%)
Sexual preference	5 (3%)	4 (2%)	1 (0.5%)
Marital status	8 (6%)	4 (2%)	8 (4%)
Political conviction	0	0	1 (0.5%)
Personal beliefs	0	0	0
Total	171 (100%)	171 (99%)	206 (100%)

Source: CGB (www.cgb.nl)

If one examines the discrimination grounds in the opinions of the CGB in the last three years, one sees that the number one category is sex/gender followed by race/ethnicity. Cases regarding discrimination on the ground of religion have been steadily increasing. Sexual orientation concerns a very small number of cases and a decreasing one to boot.

There are a number of non-governmental organizations (NGOs) that, although not created by law as is the Commission, participate in the fight against discrimination and can advise individuals to file a complaint with the Commission or start group action (see section 12 of the ETA). First there are 35 local anti-discrimination bureaus (ADB's) in Dutch cities. These NGOs exist since the 1980s and first focused mostly on race and ethnicity. Since the ETA has come into force they also help individuals with complaints about discrimination on the other grounds covered by the Act and try to register complaints using the grounds and fields that are listed in the legislation.

Furthermore, there are NGOs and federation of associations that represent the interests of particular groups or provide legal advice to potential plaintiffs. We will examine their role on detail below. For the time being, the main organizations in the areas studied in this report can be listed:

- The LBR (National Bureau against Racism) focuses on racism and racial discrimination. They have sought to create case law in the past by submitting complaints to the Commission. They also cover discrimination on the basis of religion.
- COC (*Cultuur en Ontspannings-Centrum*, or Centre for Culture and Leisure) is the Federation of Dutch Lesbian, Gay, Bisexual and Transgender Associations. They are *inter alia* involved in improving the situation of lesbian and gay teachers in schools, typically an issue that could be put forth before the Equal Treatment Commission.
- The CG-Raad, the national umbrella organisation for the chronically ill and disabled in The Netherlands representing 102 member organisations and 40 affiliated organisations, provides legal advice to persons with disabilities and would be the most likely to launch group action suits before the Equal Treatment Commission.

In other words, although there is only one independent semi-judicial anti-discrimination body, there are many more organizations involved in anti-discrimination. There are either (1) based at the local level and cover several grounds such as the ADB's or (2) nation-wide federations or lobbies that focus on one specific ground (race/ethnicity/religion, sexual orientation, handicap). In a country like the Netherlands that has long practiced consociationalism and neo-corporatist politics, umbrella organizations and interest groups are encouraged by government and parties as interlocutors in policy-making. These organizations receive public funding although they are non-governmental.

Besides filing a complaint with the Equal Treatment Commission one can also report a complaint to the police. Discrimination is punishable according to the Penal Code articles 137c, d, e, f en g, en 429quater, which prohibit insult/defamation, incitement to hatred, and refusal of goods and services. After police enquiry the Public Prosecutor decides whether a case will be brought in front of the court. The new *Landelijk Bureau Discriminatiezaken Politie* (LBD or National Bureau Discrimination Cases for the Dutch Police) started in fall 2002. It is located within the police force of the Rotterdam-Rijnmond region, but is active for all forces nationally. It aims to make a structural contribution to the advancement of police expertise in the area of fighting discrimination. In addition, the intent is to have this organization address a number of persistent problems surrounding registration, the shortage or total lack of knowledge about discrimination among police officers, and the lack of regional contact-persons and a structured set-up to facilitate exchange between the police and coalition partners. Problems with registration are related to different database systems used in the 25 police regions, which do not have a national gathering point, and the varied importance attached to registration. The expectation is that the LBD will develop into an important partner organization of the (National Federation of) anti-discrimination agencies, in order to cooperate more intensely, enhance expertise, and consult regularly with the police regarding discrimination cases.

The National Expertise Centre Discrimination of the Public Prosecutor (LECD) exists since 1998 and is located at the Amsterdam Public Prosecutor. It registers data and keeps statistics of cases treated by the Public Prosecutor. The centre is concerned with optimisation of the registration of discrimination cases by the different offices of the Public Prosecutor among other things in function of the two-yearly reports to the UN Committee. It registers those cases that fall under the penal code. In 2003 the LECD published an overview of the cases of discrimination that had been filed and treated nationally at the 19 Public Prosecutor offices. The vast majority of reports in these five years led to conviction, transaction or compulsory labour (*taakstraf*) (LECD, 2003). Cases treated under the Civil Code are not part of this overview. Such cases are kept on file in a database of the LBR and in the yearly reports of the CGB. The LECD also mediates to the police in improving and developing uniform data registration methods. The LECD is a reference point for the discrimination officers working for the Public Prosecutor, in the form of support and guidelines for deciding whether or not to prosecute a specific act, and contribute to the development of a national policy of the Public Prosecutor in cases of discrimination.

B/ Main policies on the four grounds of discrimination

The Equal Treatment Act is a piece of transversal policy-making. Several groups are protected in a number of social spheres. Yet, there are policies that are specific to a certain group and the issues raised by each ground of discrimination studied in this report are different. We thus examine in this section each ground of discrimination in turn to identify the way in which it has been construed and measured in the Netherlands and constructed as an object of public debate and policy-making.

1) Race and ethnicity

The Netherlands until the late 1970s was a reluctant country of immigration and, in fact, had a negative migratory balance until 1961 as many Dutch left to settle abroad. After World War II, the main incoming flows first concerned about 300000 citizens from Indonesia of European descent and mixed origin that came after independence in 1949. Starting a bit later than other European countries in the 1960s and 1970s, the Netherlands recruited unskilled workers from countries around the Mediterranean (Southern Europe, Turkey, Morocco). Later, their families came to join them (family reunification or family formation). Since the 1970s, there has also been migration between Dutch overseas territories and the Netherlands, mainly from Surinam that became independent in 1975 and the Dutch Antilles (Curaçao and other islands) and Aruba. Nearly all have Dutch citizenship.

By the end of the 1970s, a number of factors convinced political elites that the benign neglect of immigrant communities justified by the official stance that the Netherlands was not an immigration country was wrong-headed. This of course was also the case in neighboring countries such as France or Germany. Without going into details, it became clear that immigrants were here to stay, that as the economy worsened and industrial restructuring was under way, they were not faring well. There were also signs of inter-ethnic tensions and some violent events (hi-jackings of trains by Moluccan youths, arson attacks on Turkish dwellings). In 1979, the Scientific Council for Government Policy (WRR) issued a report on the subject. It recommended that the fiction of temporary migration be abandoned and that an integration policy be developed that would promote the participation of immigrants in social and economic life and good inter-ethnic relations with a focus on equal opportunity and the fight against discrimination.

The 1980 government draft policy on minorities resembled the WRR report with regard to the policy proposals that it contained. In fact, the person that had drafted the 1979 study on ethnic minorities for the WRR, Rinus Penninx, had been hired by the Ministry that drafted the response to the report. As he himself recalls, there was a political will to do something about the situation of immigrants but little expertise in this area so the few scholars that worked on the topic (Besides himself, Hans van

Amersfoort, Han Entzinger, Carlo van Praag and Frank Bovenkerk) had an opportunity from the late 1970s through part of the 1980s to have a real impact on the input side of policy.¹

According to official policy as approved by Parliament, minority policy applies to those immigrant groups “for whose presence the government feels a special responsibility (because of the colonial past or because they have been recruited by the authorities), and who find themselves in a minority situation” (*Minderhedennota* 1983, p. 12). As one can see the definition refers mainly to post-colonial migrants and guest workers if and only if their social situation is worse than native Dutch. Minorities are thus not defined by their status (national vs. foreigner) or by their race/color but instead by their social position and by the responsibility that the Dutch state feels it has towards them. This is important to keep in mind to the extent that the original list made in 1983 could change but only if new groups fulfil the conditions. The Chinese community leaders recently wanted to be recognized as minorities but were not considered to qualify as such.

Ethnic minorities were listed in 1983 to include: Surinamese, Antilleans and Arubans, Moluccans, Turks, Italian, Spaniards, Portuguese, Greeks, Yugoslavs, Tunisians, Cape Verdians, gypsies and tinkers (an indigenous semi-nomadic group). They made up about 450000 people at the time. Indonesians are not considered to be a minority because of their socio-economic situation. Since 1983, groups from EU countries south of Europe are also no longer to be minorities.

There were three main goals stated in the 1983 minority policy:

- Promoting equality before the law
- Promoting multiculturalism and the emancipation of ethnic communities
- Improving the minorities' social and economic situation.

In brief, the policy targeted specific groups yet sought to have a comprehensive approach to their “emancipation” (their attaining equality with other groups) that could encompass cultural, legal, economic and social aspects.

The Dutch minority policy finalized in 1983 stated as one of its three major goals the eradication of legal discriminations against immigrant minorities. The policy document states that the goal of policy was “preventing discrimination and fighting it wherever it occurs, and also improving legal provisions when necessary.” (*Minderhedennota* 1983, p. 10). A report known as the “phone book” for its length that combed Dutch law and found 1300 such instances was commissioned that year and many discriminations have since disappeared (Beune and Hessels 1983). From 1979 when an advisory committee and the researcher Rinus Penninx made recommendations in view of developing an ethnic minority policy (WRR 1979) to 1986 when resident foreigners first voted in local elections, reformists within the Dutch government used a number of strategies to ensure the conflict would not spill over

¹ Interview with Rinus Penninx, IMES, Amsterdam, April 19, 2004.

either from the bureaucracy or the legislature into a wider public or electoral sphere. This allowed the framing of the debate in “scientific” terms rather than in emotional ones. Moreover, there was only a very small issue network of academics and civil servants involved in packaging the overall policy. Lateral moves and exchanges between these two worlds are frequent regardless of the policy area (Lijphart 1975). Many academics advise or work for the government, and civil servants have academic credentials. In 1980, a coordinating unit for minority policy was created within the Ministry of Interior that had regular contact with academic policy advisors, prompting Han Entzinger (1985) who advised the government on immigration to state that “immigration policy was largely determined by administrators and their advisors.” The aforementioned cooperation between academia and its main research-funding source, government, also served the purpose of confining the expression of dissent to internal debates.

Ethnic minorities were not very active or organized at this point yet ethnic elites were invited to participate in formal consultative structures such as the National Advisory Council for Ethnic Minorities (LAO). This means that discussions took place within a state-led setting. The government first resorted to this further way of avoiding polarization after the 1976 Moluccan train hi-jackings, in a way keeping with the “summit diplomacy” that Dutch governments use in times of political conflict (Lijphart 1975). Within the overall policy framework, parties favored some measures and opposed others. This resulted in side-bargains that in the end led to a more comprehensive policy towards ethnic minorities than if only one party had been able to outvote the others. For instance, the Christian Democrats (*Christen-Demokratisch Appel*) were keen on granting Muslims worship facilities while the social democrats (*Partij van der Arbeid*) staunchly affirmed secularist principles. Their positions were reversed as far as rights of political participation were concerned which provided them with a bargaining opportunity. As it happens, the Dutch were elaborating a new constitution in the early 1980s. This offered an opportunity to give constitutional value to some of the issues raised in the debate on minorities (the principle of equality, the possibility for non-nationals to vote, etc.)

The definition of ethnic minorities in the Netherlands is based on the 1983 policy decision, with the adoption of the minority policy (*Minderhedennota* 1983). The indication of the target groups included in the integration policy now takes place in memorandums that are subjects of parliamentary debate.² It is recommended that changes in the description of the integration policy target groups be explicitly subjected to parliamentary evaluation. A resolution to change should be made known two months before it is introduced to the States General. This opens the possibility for parliamentary and public discussion. minority policy can extend further than to groups with ethnic features, so that refugees and caravan dwellers are also included.

² Outline Policy Memorandum, Kamerstukken II (Parliamentary Papers of the Second Chamber) 1993/94, 23 684, no. 1.

Except for caravan dwellers, other groups were immigrant groups, some Dutch, others foreign. In the absence of a census that could have offered the possibility of self-definition, counting minorities relied on municipal registers. The criterion to identify a minority was their country of birth and that of their parents. This pragmatic solution can be explained by the fact that the idea was that one had to go beyond citizenship/nationality as a means of identifying minorities since people from Surinam or the Antilles were Dutch citizens yet the policy still focused mostly on immigrants of the first and second generation.

The categories targeted by minority policies have not drastically changed since the early 1980s. Most studies focus the four largest migrant-origin groups showing socio-economic disadvantage. Although the way they are identified (their country of birth and that of their parents) means that they will be soon hard to track in databases and while new migrant groups are facing great difficulty (asylum-seekers that came in large numbers in the 1990s), the categories are stable and are not contested. This is the case of statisticians who want to conduct longitudinal studies but also of NGOs and other political bodies.

Yet, what has changed is the goal of policy and the terminology used in political and policy discourse. Only a few years after the adoption of minority policy, a new report by the WRR suggested called *Allochtonenbeleid* (WRR 1989) that too much emphasis had been put on multiculturalism and not enough had been done to improve the socio-economic situation of immigrant minorities. This is when the idea of a law to register the number of minority people in firms was raised. Instead of the term "ethnic minority," the report spoke of "allochtonen", people of non-Dutch origin. The change in terminology suggested that "minorities" were first and foremost from a different background, language and culture than the Dutch and this was a primary reason for the difficulties that they faced. The emphasis of policy should thus be to help them "integrate" within that culture rather than continue to nourish separateness in the name of multiculturalism. In practice however, the category used to identify allochtones was not different than for ethnic minorities: country of birth and country of birth of parents. Still, the category "allochtones" did not distinguish foreign-origin populations with socio-economic difficulties from those that fared better in society. The statistics bureau thus subdivided allochtones in their aggregate tables depending on their country of origin. It contrasted Western with Non-Western allochtones and native Dutch.

The decade that followed the 1989 WRR report on allochtones is interesting in several respects. This is when many of targeted policies and ethnic monitoring discussed in part 2 were developed. The decade is also the one when issues linked to immigration and asylum, Islam and ethnic minorities came to the forefront of political debate and the media paid more attention than in the 1980s. Concomitantly, the economic situation improved with lower unemployment and higher growth. Ethnic minorities benefited to some extent from this improved context and from some targeted policies. Still, the political atmosphere worsened.

One area of policy innovation has been the adoption of instruments to render effective the goal of socio-economic equality. The 1980s had seen many reforms that focused on equality before the law for foreign minorities rather than proactive policies to ensure socio-economic equality. In the beginning of the 1990s, the government and other social actors felt that the participation of minorities in the labour market should be increased, because they were lagging behind in this field. Once again, the policy advisors of the WRR, the government think tank that had published the 1979 report outlining the Dutch ethnic minority policy, played an important role. Their 1990 report called *Allochtonenbeleid* took stock of the evolution of ethnic minorities after the adoption of the 1983 policy (WRR 1990). They argued that too much attention had been paid to cultural issues and not enough to socio-economic ones. (how did the non-native Dutch do with respect to the labor market, education and housing?). They underlined that too many non-natives were unemployed and living on welfare benefits. With respect to work, they directly inspired themselves from the Canadian example of the Canadian Equity Act. They wanted a law that would provide public contracts to employers that hired immigrant workers (WRR 1990). The report referred to "allochtones" (the antonym of "autochtones" or natives) rather than to ethnic minorities. Government officials also made trips to Canada. In 1994, the "Wet BEAA" (the Act on the Promotion of Proportional Labor market Participation of Allochthones,) came into effect.³ The aims of the Act were to improve the position of minorities in the labour market and combat factors such as discrimination.

The crux of the Act was that employers had to register the number of members of minority groups in their service and formulate policies to get more minorities in their employment and keep them in their service. Interestingly enough, there was a demonstration in Amsterdam against the Act because it consisted in registering minorities in a way that was said to resemble the registration of Jews during WWII.⁴ However, this Act was hardly complied with. NGOs could ask the Public Prosecutor to prosecute, on the basis of stipulations in the Penal Code yet it did not happen. The law was evaluated in 1996: the conclusion drawn was that the Act was an administrative hassle with few results.. At that time only 14% of employers were complying fully with its stipulations, depositing a report at the Chamber of Commerce. Less than 60% of the employers had introduced the compulsory registration of the ethnic origin of employees. Companies complained about the complexity and volume of procedures and administrative requirements.⁵ On the other side, complaints were raised about poor monitoring and enforcement of the law. Therefore, the Act was adapted and changed, resulting on 1 June 1998 in a new Act.

³ Wet bevordering evenredige arbeidskansen voor allochtonen.

⁴ Interview with Jessica Silversmith, MDA.

⁵ *Jaaroverzicht Minderhedenbeleid*, 1998, p. 30

The SAMEN Act (Act for Stimulation of Labour Market Participation), which was introduced on January 1, 1998, replaced it and was also part of the policy to improve the labour market position of ethnic minorities. It was meant to support enterprises in the implementation of a multicultural employment policy. In 2001, the act was prolonged, but in 2003 it was decided to end its implementation as of 1 January 2004. Although the Act obliged employers with more than 35 people staff to register ethnicity and produce a yearly report, the employers could also refuse to register ethnicity, without the need to further motivate their refusal. Interest groups could sue the employer, after they have appealed to him first. Compliance with the Act may be claimed, possibly with a penalty, on the basis of tort law.

According to the SAMEN Act, a proportional representation of ethnic minorities is achieved when an enterprise has as much employees from a target group as are represented in the *regional* working population. Qualifications and skills were also taken into account. The government listed percentages that should finally be reached for each region. The entrepreneur registered those who belong to the minorities. A public annual report showed the number of persons from the target groups and the measures for the coming year to reach a better proportional representation of minorities. The annual report was submitted to the Works Council. It had to be deposited with the Regional Employment Agency on June 1st of the following year at the latest. The Labour Inspectorate checked this and informed the Works Council and organisations of employees and employers, if necessary. A copy of this information was made available at the Regional Employment Agency, *inter alia* for the benefit of interest groups. In practice, the Act worked better than its predecessor.

About one third of the employers deposited an annual report. Moreover, the reports deposited were often not up to standard. Many employers did not use the right proportional percentages. Many employers in the beginning were reluctant about the SAMEN Act, but this resistance is said to have declined over the last years. Among others, control mechanisms and lobbying improved this. The act was not just an administrative measure. It was meant to put the issue of ethnic minorities' position in the labour market on the agenda. The registration allowed to identify whether proportionate labour participation of ethnic minorities was effected within the enterprise. Difficulties in human resource policies could thus be acknowledged.

The national employment service (Arbeidsvoorziening) was actively involved in the implementation of the SAMEN Law with fifty company advisors and a national facilitator on ethnic minorities (the advisors are known as BAMs or "Bedrijfsadviseur minderheden") Moreover, the national employment service aims for proportional placement of ethnic minorities in so-called "labour market trajectories" (trajecten), which were developed for people with major employability problems. Although the number of placements in such trajectories increased, the placement rate for job seekers from ethnic minorities was still lower than that for their native Dutch counterparts.⁶

⁶ *Jaaroverzicht Minderhedenbeleid*, 1998, p. 31

Similarly, the Dutch social partners have concluded agreements on ethnic minorities entitled *Met minderheden meer mogelijkheden* (more possibilities with minorities) in 1990, in 1997 and in 2000. In the agreement, the social partners at the central level advised the collective bargaining partners (sector level) to agree on certain initiatives and also showed individual companies how to derive their own target figures from these.

The framework agreement also contained several recommendations with regard to the implementation of agreements, including the delegation of the actual work to separate organisations since a research in 13 on the previous minorities agreement (1990-1996) had shown some problems. Social partners should differentiate the implementation of policies for ethnic minorities by geographical area. They should also focus their activities on youth and education. They should pursue a non-discrimination policy, increase the role of the employees' council, promote multicultural staff policies and emphasize observance of the SAMEN Act.

Another policy instrument is the formulation and signing of a covenant with large companies. The 'Frame covenant regarding multicultural staff policy, influx and promotion of ethnic minorities in large companies' was signed by the Minister of Social Affairs and Employment, the Minister for Integration and Urban Policy and fourteen large companies including ABN-AMRO Bank, Coca Cola and KLM. In the light of the recommendations of the Task Force on Minorities and Employment, companies who signed the covenant committed themselves to implement a number of measures such as the establishment of a trainee programme for the highly educated, appointing more members of ethnic minorities in the staffs of temporary job agencies and personnel departments, improving intercultural management, introducing a mentor model for new employees from ethnic minority backgrounds and involving employees' councils in the influx and promotion of ethnic minorities. The government committed its support and advice. The same ministers signed a separate three-year covenant was signed in 2000 with the Dutch Federation of Small and Medium-Sized Enterprises. They agreed that 20,000 ethnic job seekers would be channelled into vacancies in small and medium-sized companies. It seems to be working (Houtzager 2001). In any case, a number of initiatives beyond the SAMEN Act were developed since then to improve the employment situation of minorities.

Table 1. Ethnic minority population of the Netherlands, from 1971 to 2001 (in thousands)

	1972	1975	1980	1985	1990	1995	2001
Turks	30	63	120	156	206	264	320
Moroccans	22	33	72	111	168	218	273
Southern Europeans	62	76	72	65	105	133	162
Surinamese	38	69	146	181	237	277	309
Antilleans	18	19	36	47	81	92	117
Moluccans	26	29	35	35	35	38	40
Ghaneans						12	16
Refugees (exc. former Yugosl.)						82	179
Percentage of population	1.6	2.3	3.7	4.5	6.0		

Source: IMES (<http://www2.fmg.uva.nl/imes/stats.htm>)

Today, immigrants remain highly concentrated in the four big cities (Amsterdam, Rotterdam, The Hague, Utrecht) with 40% of the largest minority groups (Turks, Moroccans, Surinamese, Antilleans). By 2002 about 20% of incoming migrants (known as “newcomers”) come from the countries of origin of the four large minority groups (Turkey, Morocco, Surinam, the Antilles/Aruba). They come mainly under the label of family unification or family formation. Migrants now come from a larger number of countries. Moreover, there was a sharp increase in the number of asylum-seekers arriving in the Netherlands in the 1990s from places such as former Yugoslavia or Somalia. Claims for asylum rose from about ten thousand in 1988 to fifty thousand in 1994.

To this day, minority policy has not eradicated socio-economic inequality among ethnic groups. Part of the problem lies in the fact that segregation endures and that almost by definition, minorities face discrimination both on the basis of class and ethnicity.

Socio-economic inequality is inherent in the official Dutch definition of 'ethnic minorities' as not only culturally different but also (collectively) disadvantaged. It seems important to take into account class origins (eg parental education and occupational status) in 'ethnic statistics' – not only for analytic reasons: to separate out the 'unexplained variance due to ethnic origin after taking into account non-ethnic sources of unequal opportunities or outcomes. But also for pragmatic reasons. In particular, restrictive measures which are disproportionately affecting ethnic minorities most often come under the guise of socio-economic criteria (eg new income guarantees that are required for cross-border marriage, new government plan not to subsidize new schools with more than a maximum percentage of enrolled disadvantaged pupils – which in fact makes the recognition of new Islamic schools highly unlikely – or the Rotterdam proposal to restrict the freedom of settlement of newcomers under a certain income level). To denounce such measures as indirectly discriminating, statistical evidence would require measures of social class origins along with ethnic origin. This is not common practice as

far as population data are concerned. But it should be recommended that questions on the social class background of parents be included in special minorities surveys such as SPVA.

There is also continued segregation in employment and education that hinder the stated policy goal of “emancipation” of minorities. Residential segregation indices have been published periodically for the four officially recognized ethnic minorities (Turks, Moroccans, Surinamese and Antillians) and for a residual category of 'other non-western allochtones' (which are said to consist mainly of asylum seekers). To this end CBS (Central Bureau of Statistics) ethnic data and ethnic categories are used. CBS-population data are based on anonymized and pooled personal records from the municipal population registers (the so-called GBA-system), which allow for categorization by ethnic origin based on the countries of birth of both parents. CBS makes frequent use of the general 'ethnic' category of 'non-western allochtones' which includes immigrants from less developed countries (LDC) and their children, excluding North America and Western Europe. Reflecting the ethnic diversification of new immigration and a decreased emphasis on ethnic categories as target groups for special policies, the CBS-category broadens the scope beyond the four ethnic minorities that were targeted by the former ethnic minorities policies. Still, by focusing on immigration from LDCs, some notion of 'collective disadvantage' attached to 'cultural difference' – which was a prerequisite to qualify as 'ethnic minority' under the former policies – is retained in the general CBS-category. Lastly, it is noteworthy that children of mixed parentage are usually included in the 'non-western' category if one parent is of non-western origin.

The most recent Minorities Report 2003 published by SCP (Social and Cultural Planning office) confirms the well-known and extremely uneven spatial distribution of 'non-western allochtones' - with major concentrations in the most urbanized West of the country, in particular in the metropolitan area (the four major cities): 'non-western allochtones' make up 10% of the total population, but no less than 20% of all inhabitants in Utrecht and up to 30% and more in Amsterdam, Rotterdam and The Hague are of non-western origin. Across the four cities, over half of the children under age 15 are of non-western origin (van Praag 2003). This uneven pattern is reproduced at the neighborhood level (units are postcode sectors) within the metropolitan area, so that 'non-western allochtones' make up over 50% of the local population in 14% of the neighborhoods, and 30% to 50% in another 16% (van Praag 2003). Segregation indices are highest for Turks and Moroccans and lower for Surinamese and Antilleans, and they are higher in Rotterdam and The Hague than in Amsterdam and Utrecht. Moreover, residential segregation seems to be on the rise since the mid-1990s, although the decreasing probabilities of contact with native Dutch are largely explained by an overall increase in the numbers of non-Dutch residents (van Praag 2003). Moreover, so-called 'ethnic segregation' overlaps greatly with socio-economic segregation, as it has been shown by the latest 2002 edition of the periodical Minorities Monitor in Rotterdam, published by ISEO (Veld 2003).

As Dutch communes have a longstanding tradition of highly regulated and heavily subsidized local housing policies, it is not surprising that ethnic segregation statistics have been used to legitimate proactive policies encouraging ethnic and social mixing in disadvantaged neighbourhoods (eg successful housing policies in the Staatsliedenbuurt in Amsterdam), or even imposing the spatial dispersion of newcomers (eg asylumseekers are forced to settle outside the metropolitan region). Although forced dispersion is more often than not counterproductive - and its legitimacy (even when based on administrative or socioeconomic rather than directly ethnic criteria) is highly questionable – the issue of ethnic segregation keeps reappearing on the political agenda. In particular in Rotterdam, ethnic segregation is currently a matter of much public and political debate. Apparently with qualified support from the Ministry in The Hague, local politicians have recently been catering to popular demands to 'close the city' to newcomers: in a highly controversial policy note ('de Hekkennota'), it is proposed that newcomers with low incomes (cut-off is minimum wage + 20%) be barred from settling in disadvantaged urban neighborhoods that qualify as 'overburdened'. [Since ethnic minorities are dramatically over-represented in this income category, it could be argued that restricting the freedom of settlement of this category would qualify as indirect ethnic discrimination.]

A related political debate concerns the increasing level of ethnic segregation in urban schools, which is a direct consequence of residential segregation since most parents, especially immigrant parents, send their children to local schools (Bronneman-Helmers & Turkenburg 2003). Contrary to popular beliefs, the percentage of ethnic minority children in school has only very minor effects on the school achievement of these children, after controlling for background characteristics of their parents and when the varying instructional quality of these schools is taken into account (Gijsberts 2003). Major problems are twofold: (a) the depletion of teaching staff, which hits disproportionately the urban schools with high concentrations of ethnic minority children and youth, and (b) 'white flight' – i.e. native Dutch parents sending their children to vocational schools outside the cities – which forces some urban schools to close down certain sections or sites in disadvantaged urban neighborhoods (e.g. in Kanaleneiland in Utrecht).

2) Religion

As mentioned in our introduction, Dutch political and social institutions in the twentieth century reflected religious pluralism in the so-called "pillar system." Article 1 prohibits discrimination on the basis of religion and the Dutch Equal Treatment Act also includes religion as a possible ground for discrimination. The Dutch constitution guarantees the right to religious expression. Article 6 of the Constitution states that every one has the right to freely manifest its religion and beliefs, individually or collectively. A group that considers itself to constitute a religion is given the benefit of the doubt: it is considered as such unless proven otherwise.

The principle of separation of Church and State is upheld in the Netherlands although the state subsidizes religious organizations that maintain educational facilities. This is the case of Catholic, Protestant and Jewish schools and since 1988 of Moslem and Hindi schools: the "foundation of primary schools based on Hindu and Islamic principles" was accepted after a letter from the Secretary of State of Education to the Lower Chamber stated that "there was no reason to assess the foundation of these schools in an essentially different manner from those of different denominations" (Shadid and van Koningsfeld 1992). This means that they are publicly financed as long as they respect the rules laid down by law regarding the curriculum and methods.

The right to religious expression has led to arrangements for new religions in the 1980s. For instance, ritual burials according to Hindi and Muslim rites have been legalized. The public call to prayer of the Imam has been accepted on the same basis as for Christian bells in a 1987 parliamentary decision. In a May 1986 decision, the Supreme Court stated that Moslem imams had the same juridical status as priests and Rabbis (Shadid 1991). As far as religious feast days are concerned, a letter of the Ministry of Culture and Public Health stated that Muslim civil servants could take leave during religious feasts. In 1989, the Ministry of Home Affairs declared that blaspheming the deity of Islam was as much a criminal offence as blaspheming other gods (Rath, Groenendijk and Penninx 1991). Yet, in the private sector, as was made clear in a 1985 Supreme Court decision and follow-up government statement, it is left up to the social partners or individual employees and employers to come to an arrangement.⁷ All in all, "accomplished changes in Dutch regulations and guidelines in favour of Muslims indicate a disbalance between the pace of integration in the juridical sphere [...] and in the socioeconomic sphere" which is much slower (Shadid 1991, p. 355). In other words, and as is clear from the cases examined by the CGB, it is at the workplace and in the provision of goods and services that religious discrimination is most likely to occur

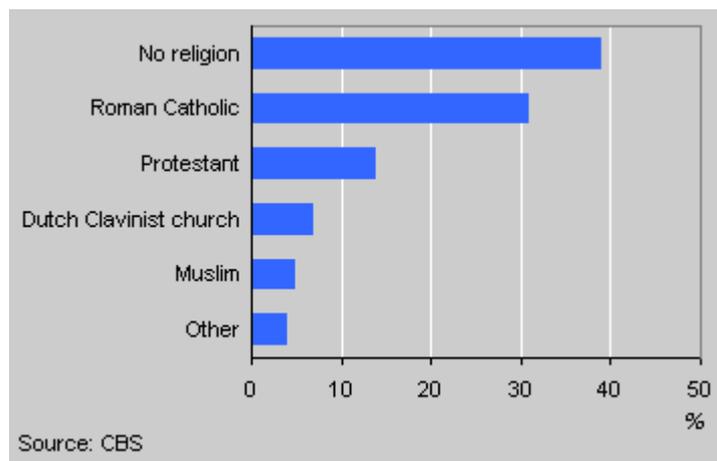
⁷ *Nederlandse Jurisprudentie* 1985, pp. 1209-17.

In 1830, when the first census took place, 59.1% of the Dutch population was Protestant (mainly Reformed), 39% Roman Catholic, 1% Jewish and 0.1% adhered to other religions or professed no faith. Since then the situation has changed remarkably. In 1971, when the last census was held, the Roman Catholics outnumbered the Protestants, while the number of people with no church allegiance increased to 23.3% in 1971. After 1971 church membership continued to decline. According to some sociological studies the percentage of people who are not affiliated to any church increased to 48.7% in 1985. The Netherlands is thus one of the most secularized countries in Europe.

Since the end of World War II the religious situation has become more diverse through immigration, especially from Surinam, Morocco, and Turkey. Many immigrants are Christians, yet the greater part belongs to Islam. Hinduism and other non-Western religions can also be found in many of the larger cities. Yet, the Dutch government decided to stop registering the religious affiliation of its citizens in the 1970s. Therefore, the information on religious affiliation and practice comes from surveys (for instance national election studies still include a question on religion and the monitor on the social position of ethnic minorities as well).

The national statistics institute CBS publishes figures on religion based on the figures that they possess on religious affiliation in the country of birth of Dutch residents or that of their parents and from surveys. For instance, the total number of Muslims is an estimate based on the number of first and second generation foreigners by ethnic background, excluding Surinam, Morocco and Turkey. The number of Muslims coming from these countries is based on the 1998 survey "Social position and use of facilities by foreigners." On January 1st, 2002, CBS estimated that there were 890 thousand Muslims in the Netherlands (5,5% of the total population), 260 thousand more than in 1995. The number of Hindus was 95 thousand (0,6% of the total population), 13 thousand more than in 1995 (CBS 2004a). According to CBS, The largest group of Muslims are of Turkish descent: nearly 310 thousand. The second largest group comes from Morocco, 275 thousand. Together they account for two-thirds of the total number of Muslims in the Netherlands. Most Hindus come from Surinam: nearly 85 percent. Another 10 percent have an Indian background (CBS 2002).

Table 2. Official statistics on religious affiliation in the Netherlands (1 January 2003).



From the way in which religious affiliation is constructed as a category, one can see that the non-Christian religions are closely associated with the presence of populations with a foreign background. There is also a strong link between religious discrimination and racial and ethnic discrimination of ethnic minorities. In practice however cases of discrimination say before the CGB are listed only once in the reports even if they are cases of multiple discrimination. These include many cases of indirect discrimination. Data on religious discrimination is also available in the *Monitor Racisme en extreme-rechts* (2003) that compiles information from the local anti-discrimination bureaus, the public prosecutor, criminal courts as well as the case law of the CGB. The association between religion and ethnicity is also very present in public discourse (press articles, politicians' speeches). Attacks on "Moslems" generally target Moroccans and Turks, the two largest groups of former guest workers in the Netherlands. When populist politician Pim Fortuyn declared that the Netherlands were full ("Nederland is vol") and that Islam was a backwards culture ("de Islam is een achterlijke cultuur"), the link between restricting immigration and criticizing Islam was clear.

After 9/11, discussions on Islamophobia and the new anti-Semitism have taken place in the Netherlands. There have been thus slight changes in the monitoring of this phenomena. The Netherlands participated in the "rapid response studies" of the EUMC in Vienna: in two days, data on incidents against Moslems were gathered using the network of 35 anti-discrimination bureaus (ADB) and reported to the EUMC. Regarding antisemitism, the ADBs are now requested to report complaints in a separate category rather than aggregate them with other cases of religious discrimination. Yet this is not always the case for lack of training usually.

The wearing of a headscarf is controversial and has led to the development of a body of jurisprudence.⁸ Cases concern the work place and schools. School decisions concerning headscarves is made not on the basis of a specific written policy but mostly on an ad hoc basis. For those involved, this can even result in the refusal to allow a student to continue an already chosen course of study. The problems involved in the wearing of headscarves are especially common in secondary vocational training. The absence of a sufficiently consistent policy is evident not only in admission to the educational establishment itself but also in the problems encountered when looking for an internship or performing the work of an intern. The establishment of a formal school policy does not protect a school from complaints, by the way. In 2001, three Muslim parents turned to the CGB to have the ban on the wearing of headscarves removed from the regulations of a public primary school in The Hague (Kapelle 2001).

Regarding the wearing of headscarf, there are still considerable differences in opinion. There was a controversy in 2001 regarding a court registrar in Zwolle. The CGB did not find that the woman should be fired because she wore a headscarf (case 2001-53). The Commission thought that there had been evidence of indirect discrimination based on religion in which no objective justification has been shown. Yet there was much debate in the press.⁹ After the CGB judgement was issued, the Minister of Justice, in answer to the first question raised in the Lower House, expressed the government's opinion.¹⁰ He stated that judges and registrars appearing in court may not show any sign of personal beliefs or convictions and that the wearing of a headscarf or any other outer sign of a conviction, religious or not, is not permitted.

So far, there has not been any extensive survey of the number of girls and women wearing headscarves and only some sporadic studies in the work place (done by NGOs such as the national Bureau against Racism). The only indicator is the number of cases before the CGB and complaints foiled in local anti-discrimination bureaus.

As we will develop later on, statistical estimates on religious affiliation are unsatisfactory. Moreover, information is missing in a number of areas (e.g. the aforementioned "headscarf" figures). This situation should be underlined given the political salience of Islam and the raise in the number of cases of discrimination on the ground of religion.

⁸ *Nederlands Juristenblad* 2001, pp. 993-995

⁹ See the opinion pieces in the *NRC Handelsblad* on 30 June and 9 July 2001, and in *de Volkskrant* 4 July 2001.

¹⁰ Appendix to Kamerstukken II (Parliamentary Papers of the Second Chamber) 2000/01, no. 1652

3) Sexual orientation

The Netherlands was fairly quick with decriminalizing homosexuality: it was the second European country after France. It was the first country in Europe to equalize the age of consent in 1971. Since the 1983 constitution, sexual orientation is implicitly covered in its anti-discrimination clause (Article 1). In 1992, there was an explicit mention of sexual orientation in the anti-discrimination provisions of the Penal Code, and in 1994, an explicit mention in the Equal Treatment Act, which covered many grounds including sexual orientation.¹¹ In 1994, with the government in its last days, legislation for registered domestic partnerships (RDPs) was introduced. This helped to generate further discussion with the public and in the media. This had been the result of activism by gay rights scholars, associations and the Netherlands' main gay publication (De Gay Krant). In fact there had been internal dissension within the gay and lesbian rights movement until the more radical left-wing gay movement understood that same-sex marriage was an equality issue and they changed their stance to support full equality in this area between straights and gays.

Along with Sweden, the Dutch public is very open to homosexuality (see table 3). There was really a legislative race to see which country would allow same sex marriages first. The Dutch "won" that particular race passing the law in 2000, followed by Belgium two years later. The law authorizing same sex marriages came into force on April 1st, 2001 in the Netherlands.

¹¹ In the Netherlands, it should be noted that, even before the European Court of Justice ruled on it, discrimination against transsexuals fell under gender discrimination, rather than under sexual orientation discrimination. So using the ground of sex, complaints about anti-transsexual discrimination can be brought before the CGB. That has happened six times from 1994 to 2002. Four of these cases were employment cases, and only one of these was successful (Waalwijk 2001).

Table 3: Acceptance of homosexuality in EU member states according to 2000 European values Survey

EU Member States	Mean answer to question whether <i>homosexuality</i> can be justified, (10=always, 0=never)	Percentage of population that would not like to have <i>homosexuals</i> as neighbours
Netherlands	7.8	6
Denmark	6.6	8
Sweden	7.7	6
Belgium	5.2	18
Finland	4.9	21
France	5.3	16
Spain	5.5	16
Luxemburg	5.9	19
Germany	5.7	13
Ireland	4.4	27
Great Britain	4.9	24
Austria	5.4	25
Italy	4.8	29
Portugal	3.2	25
Greece	3.4	42

Source: Halman (2001).

In the Netherlands there is no legal definition of “civil status” but during the passage of the registered partnership bill, the government stated that being registered as partner was a new civil status.¹² In addition, the 1994 Equal Treatment Act bans discrimination on the ground of civil status. A prohibition of civil status discrimination outlaws discrimination between married and registered partners, between married and unmarried/unregistered partners, and between registered and unregistered/unmarried if deemed a civil status (as in the Netherlands, but not in France). Dutch legislation is thus more protective of gays and lesbians that xcould suffer indirect discrimination. In fact, only some civil status discrimination in the employment field is covered by the prohibition on indirect sexual orientation discrimination as required by the EC Framework Directive, which does not cover direct discrimination on the ground of civil status. Many employers, pension funds, service providers, and administrations sometimes treat people differently depending on whether someone has a partner, on the gender of that partner is, and/or on the legal status of the relationship. In the case of discrimination on the basis of sexual orientation, many cases (except health cases) were cases of indirect discrimination based on civil status. Therefore, with the advent of the same sex marriage, there should be less such instances.

¹² *Kamerstukken II* (Parliamentary Papers of the Second Chamber) 1996/97, 23761, nr. 11, p. 3. quoted in Waaldijk (2003).

Other issues linked to sexual orientation discrimination have been access to health services and in particular to Assisted Reproductive Technologies. The CGB investigated clinics that perform in vitro fertilizations to establish whether lesbian couples *inter alia* had access to IVF procedures (see below).

There are few studies on discrimination *per se*. And sexual orientation is “sensitive data” *par excellence*. However, there have been CBS estimates (Harmsen and Steenhof 2003)¹³ on the number of same sex couples (about 50000 in 2003), associative membership surveys and social science studies. The Central Bureau of Statistics, on June 4, 2002, published figures showing that the number of gay couples living together increased by 25 percent in the last five years, and they now number nearly 50,000 households. Male partnerships were more common than the female.

Table 4. Official figures on partnerships and marriages

Partnership registrations

<i>Subjects</i> Partnership registrations				
	Partnership registrations, relative	Between a man and a woman	Between men	two Between two women
<i>Periods</i>	<i>per 1,000 inhabitants</i>	<i>Absolute</i>		
1998	0,29	1 616	1 686	1 324
1999	0,21	1 500	894	863
2000	0,18	1 322	815	785
2001	0,21	2 847	285	245
2002	0,52	7 581	358	382

Marriages

<i>Subjects</i> Marriages				
	Marriages, relative	Between a man and a woman	Between two men	Between two women
<i>Periods</i>	<i>per 1,000 inhabitants</i>	<i>Absolute</i>		
2001	5,1	79677	1339	1075
2002	5,3	83970	935	903

Source : CBS

Note: The number of gay marriages accounted for only a small share of the 82600 marriages in 2003 : 1.5 thousand same-sex couple married in 2003. In 2002 this figures was 1.8 thousand.

¹³ The basic idea is to proceed by elimination to establish the number of same sex couples that are not family members or college roommates.

4) Handicap/disability

Distinction on the ground of disability has only recently been incorporated into Dutch anti-discrimination law, namely in the Equal Treatment Act on the ground of Disability and Chronic Illness (the Act known as WGB h/cz is included in translation in the annexes).¹⁴ Disability is not explicitly cited in article 1 of the Constitution nor did it constitute a ground for discrimination stated in the 1994 equal Treatment Act.

In the Netherlands, people with a physical or mental disability are entitled to full and equal participation in society. The policy task of the Dutch government is aimed at giving the disabled the opportunity to function independently, equally and fully integrated within the Dutch society. Disabled people are enabled to direct and give substance to their lives. Their rights, including rights to equal opportunities and duties, are equal to those of all Dutch citizens. Under this policy, a disabled person is defined as someone limited in his or her functioning as a result of a physical or mental impairment. More than 11% of the inhabitants of the Netherlands have serious to very serious limitations, 15% of the population between 15 and 64 (Statistics Netherlands 2003). About 100,000 of the disabled population have a mental disability and about 60,000 people live in an institution or in a family replacement home. Data on disabilities is derived from the Dutch Health Interview Surveys, the Living Conditions survey, and the Netherlands disability register (LISV) maintained by the Social Security Administration. A million and a half persons are said to have a disability, half of which are in the active labour force. Any person that suffers from social exclusion can be considered to be disabled. The definition is thus very large and benefits generous.

One "typically Dutch" political issue regarding disability and work has been the abuse of the Dutch incapacity benefits system (WAO or *Arbeidsongeschiktheidsverzekering*). This problem has been fully acknowledged by organisations representing employees, employers and government bodies. Currently a million people are in the WAO system with a third of the claimants off with "psychological" problems such as depression, anxiety, stress ("overspannen"). About seventeen percent of the workforce draws upwards of 70 percent of their last salary while officially they are incapacitated. Many young women are on disability leave because this welfare benefit is more generous than others. In the Netherlands, the proportion of young women between the ages of 20 and 35 who receive disability benefits is three times higher than for their male counterparts.

A recent OECD report suggests that the ways in which disability is defined and assessed and benefits are awarded have a strong impact on the number of people on benefit rolls. Countries with generous benefits that many people have access to tend to have higher disability rates. Disability benefits

¹⁴ *Wet van 3 april 2003 tot vaststelling van de Wet gelijke behandeling op grond van handicap of chronische ziekte, Stb. 206*. There are also legal provisions that cover equal job opportunities for disabled employees (Article 3, *Wet reïntegratie arbeidsgehandicapten*), and medical examinations in job applications, (*Wet Medische Keuringen*). See Hendriks (2000).

amount to 20% of all social expenditure, whereas it only constitutes about 10% of spending in other EU countries, with the exception of Poland (OECD 2003).

In the mid-1980s, companies began dumping older employees into the incapacity benefits scheme because it was less costly than redundancy packages and there were few health checks. Eventually the government caught on and tried to fine those companies. By 1995 the government made employers financially responsible for the first year of sick pay before the employee was approved to the state-funded WAO. Firms took out private insurance for such risks, with premiums dependant on the company's health record. Numbers continued to rise. In 2002 "The Donner Commission" led by Christian Democrat MP Piet Hein Donner, released a report, the latest of a series of reports over the last 20 years on re-vamping the WAO system. it proposed restricting the benefit to people who are totally incapable of work. Unions acknowledge that there is a culture of avoiding workplace conflicts by going off sick. It is difficult to find a job once one is in the WAO scheme. This may be an area where discrimination (in hiring) cases arise and are presented before the CGB.

In the Netherlands, the responsibility for disability policy is quite complex. The central government's policy in the areas of care, mobility, accessibility, housing, employment, income position, education, vocational training, sport and culture is distributed over various ministries. Five ministries are involved in disability policy: the Ministry of Health, Welfare and Sport, the Ministry of Social Affairs and Employment, the Ministry of Education, Culture and Science, the Ministry of Housing, Physical Planning and the Environment, and the Ministry of Transport and Public Works. These Ministries work together in the Interdepartmental Committee for Coherence and Coordination in Policy for the Disabled and/or the Chronically Ill. Each ministry is responsible for implementing an inclusive disability policy within their respective portfolios. The Ministry of Health, Welfare and Sport is charged with developing and implementing the policy for care facilities and welfare for people with a disability.

This also involves developing, implementing and evaluating policies aimed at social participation of disabled persons. Care facilities and services for the disabled are financed through the General Act on Exceptional Medical Expenses. The Deputy Minister of the Ministry of Health, Welfare and Sport is responsible for the overall policy coordination for the disabled in all relevant areas. The Disabled Persons Policy Directorate (DGB) is responsible for developing, implementing, and evaluating policy aimed at enabling people with a disability to function (as appropriate to their age and their sociocultural environment). The DGB also co-ordinates policy on the disabled with other ministries in the Interdepartmental Committee for Cohesive and Co-ordinated Policy on Persons with a Disability and/or a Chronic Illness (ISG).

The Dutch Council of the Chronically ill and the Disabled is an umbrella organization, consisting of associations of people with a chronic illness or a disability. The mission of the organization is "the realisation of a society which enables people with a disability or a chronic illness to participate as citizens, based on equal rights, equality of chances and equality of obligations." Two of the main tasks

of the organization are the promotion of the interests of the member-organizations and offering them support. All together the member-organizations comprise more than three hundred thousand members.

Concerning discrimination on grounds of handicap, the current legislation does not yet foresee prohibition of unequal treatment in access to goods and services (this is expected for 2010/2030), only employment and professional education. The reason is that public transport is not yet fully tailored to providing access to people with a handicap (the trains still have to be ordered etc.). This is considered by NGOs as a major contradiction.

II - THE USE OF STATISTICS AND THEIR CHARACTERISTICS

In this section, we turn to data collection and analysis related to the four grounds of discrimination in our study. We want to know who collects the data, under what mandate, using which sources, categories and methods. We focus on several areas of social science research that have tried to measure discrimination, diversity and the social positioning of minorities (education, employment, visibility in the media). We then move on to the use of statistics by government, courts and non-governmental organizations. We conclude by outlining current public debates on ethnic monitoring in the Netherlands.

A/ The collection of data: institutes, sources and categories

1) The municipal registers and the GBA

The last census in the Netherlands took place in 1971. It used to be conducted every ten years. In the 1970s, there was a discussion on the census. First, some argued that people felt an invasion of their private lives and that the census questions violated their right to privacy. Second, there was a suspicion surrounding censuses because of the use of personal data during the Second World War to track down Jewish populations and send them to concentration camps. It was said, for instance, that Amsterdam had been the city where the largest number of Jews had been arrested because population registers had been extensive and well kept. As a consequence of these criticisms, the planned 1981 census never took place. It was believed that it would not have been reliable since the left-wing critics threaten to boycott the census. Moreover, students at the time were paid to take part in the census and it was felt as a reason more not to want to participate.¹⁵

Instead, the Dutch population and household statistics are based on municipal population registers that have been fully automated since 1994. It is no small irony that, although the census was abolished to protect the privacy of individuals, the system that replaced the census contains many pieces of information that can be linked to other databases. As the Dutch statisticians and social scientists that we interviewed underlined, it has the potential of resembling the “big brother” of 1984, in any case much more than the census was. In comparative perspective, the Dutch system is therefore the only case in our study where there is no census and therefore no nation-wide survey with questions on race and ethnicity. It resembles Nordic systems such as the Swedish and Norwegian municipal registers. It should be underlined that there is no question on religion in the registers.

¹⁵ Source: MDA.

Dutch statistics compiled by Statistics Netherlands are thus based on the automated municipal population registers known as the GBA system (*Gemeentelijke Basis Administratie persoonsgegevens* or municipal basic registration of population data). The word “basic” refers to the fact that it is a population register within a system of local registers: the local registers on social security, on water and electricity supply, the local registers of the police departments dealing with the foreign population in the Netherlands and the national registers for old age pensions. The GBA system introduced in 1994 replaced the paper card system of population registers. The GBA is a decentralised and comprehensive system. Due to legal provisions, there is no central counterpart of these municipal registers. Every municipality in the Netherlands has its own population register containing information on all inhabitants. Municipalities are responsible for storing and supplying data and the central government has developed an electronic communications network which links all municipalities and users of population data. The network maintained jointly by local and central governments is an electronic mail system that allows for interactive real-time data exchange.

The information is listed per individual in a “personal list.” In the registration system each inhabitant has been given a unique personal identification number (PIN). This PIN enables the authorities to link a person’s data to those of his spouse, parents and offspring since their PIN is included in the personal file. This allows the construction of data on the nuclear family and on households. Among the data in the file, there is personal data, along with data about parents and offspring. Much attention was paid to the rules regarding keeping the population register up-to-date. The information to update the registers is provided by the local registrar (births, deaths, marriages, partnerships), the judicial courts (divorces), the Ministry of Justice (changes in citizenship) or the persons concerned (house moves, immigration, emigration, events that took place abroad).

As the Netherlands has no census, population data are drawn from administrative data sources, which are mostly collected at the regional or local level and which are pooled and coupled by CBS (Central Bureau of Statistics), and made available for monitoring purposes to government institutes and ministries. For example, the last SCP (Social and Cultural Planning office) Minorities Report (Dagevos, Gijsberts & van Praag 2003) analyzes administrative data (along with general and special survey data) on the educational and labor market attainment of immigrants and their children by ethnic origin, using the CBS category of 'non-western allochtones'. This category is separated out into Turkish, Moroccan, Surinamese and Antillean origin groups (as target groups of the former ethnic minorities policies) and a residual category of 'other non-western allochtones'. This residual category, which is available since 1994, would refer mostly to relatively recent asylum seekers – although CBS categories do not contain information about migration types or generations.

Examples of relevant general administrative data sources that have been analyzed by ethnic origin, are the registration of employees and employers, of students who enter and leave school, and of those who take and pass their final exams. In addition, specific policies in the areas of education, employment and access to social provisions often come with their own ethnic registration and

categorization systems with a view to evaluate the implementation and the outcomes of the policy. While administrative data are a rich source of relevant information still, the decentralisation of relevant policies and the increased subcontracting of local policy planning and evaluation to private companies, may interfere with democratic access to data and with data quality, completeness and comparability across communes. Especially smaller communes may lack the motivation and means required for effective data gathering. On the other hand, major multi-ethnic cities such as Rotterdam have developed a strong local tradition of high-quality monitoring of ethnic attainment levels and access to provisions (eg the Rotterdam Minorities Monitor and the data by ethnic origin in the Rotterdam Education Monitor).

2) Statistics Netherlands (CBS)

Statistics Netherlands (CBS) is responsible for collecting, processing and publishing statistics to be used in practice, by policymakers and for scientific research. In addition to its responsibility for (official) national statistics, Statistics Netherlands also has the task of producing European (community) statistics. Its mission and organization are laid down in the Act of 20 November 2003 governing the central Bureau of Statistics (Statistics Netherlands Act 2003).

On 3 January 2004, CBS became an autonomous agency with legal personality. There is no longer a hierarchical relationship between the Minister of Economic Affairs and the organisation. However, the minister is responsible for setting up and maintaining a system for the provision of government statistical information. CBS long-term statistical programme and the annual work programme are set by the Central Commission for Statistics. This is an independent commission that watches over the independence, impartiality, relevance, quality and continuity of the statistical programme. The Director-General of CBS decides autonomously which methods to use to make these statistics, and whether or not to publish results.

Statistics Netherlands (CBS) is authorised to obtain all data from the municipal population registers to compile statistics required for national needs and the needs of international organisations such as the UN, Eurostat or the Council of Europe. It can also conduct its own studies in the absence of an official request. This is the case for instance of the study estimating the number of same sex couples in the Netherlands that we discuss later in this report (Steenhof and Harmsen 2003).

Besides the automated municipal population registers, CBS also conducts a number of large-scale surveys, regarding the labor market, health, etc. A special unit within the Division of Social and Spatial Statistics is in fact in charge of linking the various datasets to allow for statistical analysis.

In the code of practice of the institution (CBS 2004b), six principles are reiterated as guiding the action of the institute and its personnel: impartiality, reliability, relevance, cost-effectiveness, confidentiality, and transparency. We will come back to the issue of data protection and CBS later on in this report,

yet it should be underlined that confidentiality is an important principle yet not the only one that would seem relevant: impartiality, reliability and relevance would also seem essential if the data produced by CBS is then used in policy-making and lobbying. In the strategy paper *Statistics that Count* written by the director of CBS, he also insists on the importance of data protection devoting a special section to the issue. He writes: "In the publication of survey results, we ensure that no figure can be traced back to individual persons, households, companies or institutions; When databases are linked too, very strict conditions are necessary to protect individual identities" (Noort 2001, pp. 5-6). In fact, stipulations about the duty of CBS with regard to confidentiality is written both in the law on the Central Bureau and the central Commission of Statistics and in the Data Protection Act. The 1996 law referred to in the strategy report has recently been updated in 2003 yet contains the same specifications on the use of data. As an exception to confidentiality, data sharing with Eurostat, national statistical institutes in EU member states, Dutch Central Bank and academic researchers is allowed under certain conditions (See Statistics Netherlands Act 2003).

Religion:

The numbers of Muslims and Hindus are estimated on the basis of the numbers of persons with a foreign background in the Netherlands by country of origin and the shares of Muslims and Hindus in these countries. For Surinam, Morocco and Turkey, however, the shares of Muslims and Hindus are taken from a 1998 survey on non-western foreigners' social position and use of provisions (SPVA), which included a question on religious denomination. In 2003 CBS estimates that there are in total (incl. children) 920.000 Muslims in NL or 5,7% of the population – supplementing the 2002 SPVA-survey data with (almost certainly biased) inferences from national statistics in the countries of origin. According to this estimation over one in ten inhabitants of the metropolitan area (Amsterdam-Rotterdam-The Hague-Utrecht) would be Muslim (eg 13% in Rotterdam). The most numerous Muslim groups are of Turkish (320.000) and Moroccan (285.000) origin. Increasing estimated numbers of Muslims are mostly accounted for by relatively high fertility rates, and to a lesser extent by new immigration.

CBS-estimates of religious membership have been challenged, however, on statistical as well as sociological grounds. First, statistically speaking, diverging estimates from different data sources leave much room for interpretation (Becker 2003). Specifically, using a two-step question (*step one: are you religious or not? and step two: if so, what is your religion?*) SCP in its periodical general CV-surveys ('Culturele Veranderingen') finds that 60% of the Dutch population is non-religious. In contrast, CBS uses a one-step question (*what is your religion? Catholic, Protestant Christian, reformed, Muslim, Hindu etc. or none*) in its own POLS-surveys ('Permanent Onderzoek Leef Situatie) finds only 40% of non-religious respondents in the Netherlands. Although general surveys by SCP and CBS are not representative for ethnic minorities, they generate quite different numbers of self-declared 'religious' Muslims (Becker 2003). Since the periodical special SPVA-surveys among ethnic minorities by ISEO

and SCP use the one-step question, it seems likely that the CBS-estimates of Turkish, Moroccan and Surinamese 'Muslims' based on these surveys are inflated (Phalet & ter Wal 2004).

Beyond statistical or methodological doubt, some researchers have advanced sociological arguments that cast doubt on current practices of counting Muslims (Phalet & ter Wal 2003). In short, Islam differs institutionally from most Christian churches in that it does not keep official lists of church members. In the absence of formal or institutionalised membership, there is no internal agreement on membership criteria. Some Muslims consider all those born as Muslims as “Muslims for life” regardless of the self-declared leaving or switching of religions. In contrast, others draw a sharp line between “real Muslims” who live in accordance with the five pillars of Islam, and so-called “geographical Muslims” who are only counted as Muslims because of their countries of birth. To complicate things further, survey research among second-generation Muslims in West European host countries identifies a rapidly increasing Islamic fringe of so-called “cultural Muslims” without religious practice who claim a purely ethnic attachment to a “Muslim” civilisation or cultural heritage. Some researchers distinguish an additional category of “sociological Muslims” who identify with the geopolitical fate of Muslims across the globe in the absence of religious or cultural affinities.

Due to the fuzzy boundaries and the embattled status of Islam in the Netherlands since the 1990s, Muslim religious identity may be imposed by the receiving society in the absence of religious self-identification or objective religious practice. On the other hand, religious identity claims by Turkish or Moroccan youth or women may be refused by co-religionists who do not accept their claims as valid. The case of Islam exemplifies complex issues that are inherent in “ethnic categorization” – should non-religious Turks or Moroccans who are nevertheless perceived and often excluded as Muslims be counted as such? Is this way of counting biased? Or is it a self-fulfilling prophecy?

3) SCP, ISEO, ITS and other institutes and data sources

A key player in the area of measuring ethnic inequality in the Netherlands is SCP (Social and Cultural Planning office). SCP is a government institute with a strong national tradition in large-scale survey research, such as the periodical national CV surveys ('Culturele Veranderingen'), monitoring social and cultural changes in the Dutch population (SCR 1995). The main primary data source on ethnic disadvantage in the Netherlands are the periodical SPVA-surveys ('Sociale Positie en Voorzieningsgebruik Allochtonen'). These are special minorities surveys with a focus on education and the labor market, which have been repeated every fourth year since the late 1980s. Originally, the 1988, 1991 and 1994 SPVA surveys were set up by ISEO (Institute for Social and Economic Research). In 1998 and 2002 the SPVA surveys were extended and ISEO collaborated with SCP. The SPVA-data inform regular reports on the position of ethnic minorities to the Dutch parliament, as well as many more specific research reports and publications on ethnic minorities in the Netherlands. Data from previous waves are public domain and hence freely available for academic research.

As a government institute SCP is based in The Hague and works closely with public administration and with the ministries. SCP is not an independent research institute but an 'interdepartmental institute' which has been attached to the Ministry of Public Health, Well-being and Sports since 1974. Its tasks are research, policy advice and policy evaluation and its activities are supervised by a committee in which the ministries and the research units of the political parties are represented along with representatives from the royal Dutch academy of sciences (KNAW) and from similar semi-administrative and semi-research institutes such as CBS and CPB (Central Planning Office). In turn, SCP is represented in other boards and committees such as the WRR (scientific council for government policies) and SER (social and economic council). Typically, SCP - and the overlapping management of SCP and other institutes and public administration - can be seen as a product of the Dutch polder model where social partners and experts reach consensus about policy choices.

ISEO on the other hand is an academic research institute attached to economics and social sciences faculties at EUR (Erasmus University Rotterdam). While ISEO has an applied focus on publicly funded policy-oriented research in the Netherlands, it is embedded within an academic environment and evaluated by academic standards. Hence, ISEO has to balance a strong but mainly national and applied research tradition with an increasingly exclusive emphasis on English language publications in international Journals within Dutch universities. Another vulnerability of academic institutes like ISEO is the small number of fixed academic staff who have to recruit young researchers on short-term contracts. SCP on the other hand has more fixed research staff and a very generous research budget compared to academic institutes in the social sciences. At the same time, SCP has to coordinate or balance its well-established national reputation and prestige as an independent research institute with the pragmatic interests and needs of public administration and – to some extent at least - with the political agenda of the government. In other words, the institutional legitimacy of SCP does not only depend on the high standards of its research but also and ultimately on its public service function. More in general, the development of Dutch research in the area of ethnic and migration studies since the late 1970s has been closely related to policy making, and research institutes differ mainly in the degree of their detachment from national and local policy making.

The SPVA-surveys are concerned with socio-economic disadvantage and with equal access to social provisions for the four major minority groups by ethnic origin (i.e. Turkish, Moroccan, Surinamese and Antillian origin groups according to the formal definition of ethnic minorities by the Ministry of Interior based on the country of birth of at least one parent) - as compared with a Dutch origin reference sample. The main focus since 1988 is on educational and occupational attainment, along with special questions on migration histories and settlement, language mastery and family formation, which are not usually available from general surveys. In addition, the latest 1998 and 2002 surveys include an extensive list of attitude questions about cultural values (eg gender roles and child rearing), religion, social networks, associational life, ethnic self-identification, perceived prejudice and discrimination. These extensions reflect a growing political concern with the socio-cultural integration and acceptance (versus ethnic segregation) of immigrants and their descendants in Dutch society. Interestingly, the

attitude questions aimed at measuring immigrant integration are situated almost exclusively in the private and communal life spheres. They do not cover aspects of full democratic citizenship in the public domain, such as media use, public opinion and political participation.

Random samples of households are drawn from the commune registers (N=4.004 in 1988, N=4.030 in 1991, N=4.096 in 1994, N=7.553 in 1998 and N=4.199 in 2002). Respondents are approached for personal interviewing with multilingual questionnaires by trained co-ethnic interviewers. Reported response rates vary between ethnic groups and communes and the overall response rates have declined over the years from 50 to 79% in 1988 down to 44 to 52% in 2002. In order to correct for selective non-response, the SPVA 2002 data have been weighted to reflect the population distributions by gender, age and migration generation within ethnic origin groups (based on the commune registers). In the last two surveys, the samples have been extended to cover not only the metropolitan area (Amsterdam, Rotterdam, The Hague and Utrecht) but also a number of middle-sized communes with significant numbers of ethnic minorities.

Within households, the so-called 'head of the household' is interviewed and core information is gathered about other household members, including children. In addition, a shortened version of the main questionnaire for heads of households is also presented to one other adult member of the household (age 15 to 65). Typically, most statistics on the socio-economic attainment of minorities based on SPVA, use only data from (predominantly male) heads of households. But even when other adult respondents are included, SPVA-data are not fully representative of the female population who are selectively underrepresented, in particular Turkish and Moroccan women. Unfortunately, this feature of the sampling design limits the usefulness of SPVA for the purpose of monitoring the equal access of women from ethnic minorities to education and to the labor market.

SPVA special survey data are complemented by a few general surveys with sufficient numbers of ethnic minority members. In the area of employment, the main data source that provides information on ethnic origin are the annual labor force surveys by CBS. The EBB ('Enquête BeroepsBevolking') keeps track of labor market positions as a function of socio-demographic characteristics, including ethnic origin, since 1987. From 1999 onwards, EBB surveys take the form of a rotating panel study using a combination of computer-assisted personal interviews (CAPI) and telephone interviews (CATI). The sampling frame is the adult population (age 15 and older) in the Netherlands and samples are stratified by communes and households. In the last EBB survey in 2002 N=47.000 respondents participated. Reported response rates vary between 54 and 60% from 1990 to 2002. Due to large sample sizes and the accumulation of annual data collections, the EBB includes large numbers of respondents within the CBS category of 'non-western allochtones' for statistical analyses. Moreover, this category can be broken down into the four major minority groups (of Turkish, Moroccan, Surinamese and Antillian origin) and a residual subcategory of 'other non-western allochtones'. The EBB data are complementary to the SPVA data on the labor market position of ethnic minorities in a number of ways: the annual replication allows for trend analysis, the sampling of individual

respondents within households remedies the gender bias in (especially Turkish and Moroccan) SPVA samples, and extensive Dutch data allow for the comparative analysis of 'expected outcomes' for members of ethnic minorities while setting equal their (supposedly) relevant socio-demographic characteristics. A major limitation is that the EBB surveys are in Dutch, so that non-Dutch speaking members of ethnic minorities are not well-represented. For example, lower estimates of Turkish and Moroccan unemployment rates in EBB 2002 as compared with SPVA 2002 are most probably due to (positive) selectivity of the EBB samples of ethnic minorities (Dagevos 2003).

In the area of education, two major data sources complement largely retrospective data on ethnic minority school careers from special SPVA-surveys: the PRIMA research follows pupils through primary education; and the VOCL research starts at the beginning of secondary school (see also Gijsberts 2003; Herweijer 2003). Both cohort studies are complementary to the SPVA surveys for several reasons: they relate ethnic origin and socio-economic background of the parents to standardized measures of school achievement (using CITO test scores); they include a sizeable category of 'other non-western allochtones' in addition to the four major minority groups; and they allow for dual comparisons with disadvantaged and non-disadvantaged children and youth of Dutch origin - using parental education as an indicator of social disadvantage (Gijsberts 2003).

PRIMA ('landelijk cohortonderzoek primair en speciaal onderwijs') is coordinated by ITS (Institute of Applied Social sciences) at KUN (University of Nijmegen) in collaboration with Kohnstamm Institute for educational research at UvA (University of Amsterdam). Both institutes are university-based with an applied focus on educational policies and practice. Accordingly, PRIMA data files are made publicly (but not freely) available for academic research. The PRIMA research extends the 1988 – 1992 evaluation studies under the heading of LEO ('Landelijke Evaluatie Onderwijsvoorrangsbeleid') which were set up to evaluate national educational priority policies for students from socially disadvantaged and/or ethnic minority families since 1986. Every other academic year student samples in group 2, 4, 6 and 8 of primary education have participated in PRIMA 1994-'95, 1996-'97, 1998-'99 and 2000-'01. Data collection is based on representative clustered samples of students in primary schools (close to 700 schools). Schools with large numbers of disadvantaged students are oversampled (about 200 schools). Disadvantaged students are defined by educational priority policies as students of Turkish, Moroccan, Surinamese or Antillean origin and/or students whose parents have only lower secondary qualifications or less. In total about 57.000 primary school pupils participate in each round. Paper-and-pencil questionnaires are filled out by all pupils in class. In addition, background and context data are gathered from parents, teachers and school directors. Student, parent and school questionnaire forms are combined with standardized CITO test scores measuring educational progress in mathematics and Dutch language. CITO is the national institute for educational testing that develops and validates the official exam, known as the CITO test, at the end of primary school. The exam scores, together with the judgement of the school director taking into account motivation, effort and capabilities, are at the basis of a final and binding school advice. On the basis of their school advice, children are oriented

towards vocational tracks or general tracks leading to higher education within the Dutch school system.

Similarly, VOCL ('Voortgezet Onderwijs Cohort Leerlingen') was set up in 1993 with a view to follow up students through secondary education. The research is a collaboration of CBS with NWO, the Dutch National Science Foundation, and GION (Groningen Institute for educational research) that coordinated the data collection for VOCL 1999. Again, universities play a key role in the research and the data files are made publicly (but not freely) available for academic research. The aim of the VOCL research is to relate educational choices, progress and achievement in secondary schools to the school advice and the initial academic performance of students in year 1 and 2, their family background (ethnic and social class origins and educational support at home) and the school context (ethnic and socio-economic composition and school effectiveness). The first VOCL 1993 panel study has followed over 20.000 students, adding yearly updates on their school career and performance levels. In parallel, the second VOCL 1999 panel study has followed over 19.000 students up to year 3 of secondary school. The clustered sample of schools represents all secondary schools in the Netherlands. Students fill out paper-and-pencil questionnaires in class, as well as standardized tests measuring their educational progress and attainment. Due to large numbers, the school careers of male and female students in the CBS category of 'non-western allochtones' (Turkish, Moroccan, Surinamese, Antillean and other) can be analyzed and compared with the careers of disadvantaged and non-disadvantaged male and female students of Dutch origin.

B/ Social science studies

In the following section, we examine the types of research carried out by social researchers related to the study of discrimination, in particular studies that have focused on (ethnic) minorities. We focus in particular on employment, education, visibility in the media. We conclude by summarizing research conducted on the difficulties encountered by gays and lesbians.

1) Employment

Statistical analyses of ethnic occupational disadvantage in the Netherlands have relied on the SPVA special survey data and on the EBB general labor force survey data (Dagevos 2003). Comparing ethnic minority samples with Dutch samples, and setting equal relevant background characteristics such as age and qualifications, the analyses typically estimate 'net ethnic penalties' in the Dutch labor market for various ethnic groups and across generations of immigrant origin (eg. Veenman 1991). Overall, very significant and relatively enduring ethnic penalties are found at the bottom end of the labor market structure, also for the second generation: members of ethnic minority groups run significantly higher risks of economic inactivity, welfare dependence and prolonged unemployment as compared with Dutch origin. Ethnic differentials remain significant and sizeable for both men and women, older and younger generations after controlling for background characteristics such as age

and qualifications (Dagevos 2003). Moreover, following a steady decline of unemployment rates since the mid 1990s, also for ethnic minorities, for the first time in 2002, unemployment is on the rise again. In the 2002 EBB data ethnic minorities are 3 to 5 times as likely to be unemployed when compared with the native labor force. Moreover, the 2002 SPVA data suggest that the EBB estimates are underestimating Turkish and Moroccan unemployment rates. According to SPVA, 8 to 18% of Turkish, Moroccan, Surinamese and Antillian men and women in the labor force are registered as unemployed (as compared with 3,3% of the native labor force and 4,1% overall unemployment). Looking beyond the gross overrepresentation of ethnic minorities in unemployment statistics, it is noteworthy that social class origins are not usually taken into account – along with the ethnic origins of the parents. When controlling for the occupation of the parents, Van Ours, Veenman and Verhoeven (2002) find very minor remaining effects of ethnic origin on the occupational destinations of the second generation. Clearly, there is great overlap between the ethnic and social class origins of ethnic minorities, which makes it hard, if not impossible, to separate out statistically socio-economic disadvantage from ethnic discrimination in a narrow sense.

High unemployment risks for ethnic minorities are related to their overrepresentation in less favorable segments of the labor market. Thus, also ethnic minority members who are employed, are more exposed to job insecurity than their native Dutch counterparts (more temporary contracts, more subcontracting through interim bureaus, and more frequent switching between jobs). On the other hand, net ethnic overrepresentation in unskilled or semi-skilled labor (after controlling for age and qualifications) is declining and continues to decline. In absolute numbers, however, ethnic minorities are still very much limited in their access to the higher occupations. This is mainly due to generally lower qualifications. Lastly, ethnic wage differentials are not usually significant after taking into account qualifications and job characteristics. Still, gross ethnic differentials in real income could be considered as evidence of indirect discrimination, in as far as they are conditioned by ethnic disadvantage in school and labor market careers (Veenman 2004).

Estimates of gross and net ethnic penalties are open to competing interpretations. Hence, statistical analyses of labor market outcomes as a function of ethnic origin can only suggest but never fully demonstrate direct or indirect discrimination. Alternative explanations of the dramatic 'ethnic gap' in employment refer to differences in resources between immigrant and native populations that are relevant to their work performance, but that are not captured by the classic indicators of human capital: formal qualifications and age or experience (Veenman 2001). For example, the job search of ethnic minorities may be less effective than that of native Dutch competitors, because they are lacking valuable social skills and personal network. Or some ethnic minority members may be at a disadvantage due to ambivalent or negative work attitudes, possibly as a consequence of previously experienced discrimination.

To rule out such competing explanations, statistical analyses of ethnic penalties have been complemented by two alternative research methods (triangulation). On the one hand, so-called employer studies report discriminatory attitudes and behavior among employers as 'gate keepers' of the labor market. On the other hand, studies of victimization report experiences of prejudice and discrimination from the perspective of ethnic minority members in the labor market. In his review of research on discrimination for the journal *Beleid en Maatschappij*, Veenman (2004) gives a very good overview of the main research methods and findings, and their limitations, in the Dutch context. One type of employer research is aimed at demonstrating unequal treatment by employers, using a 'situation test' where employers are confronted with matched applicants of ethnic and Dutch origin. Research among Dutch employers using the situation test has clearly demonstrated that ethnic applicants are more often turned down in job interviews than a native Dutch equivalent (eg. Gras, Bovenkerk, Gorter et al 1996 as part of the ILO research program). Complementary evidence comes from employer studies that focus on ethnic attitudes and behavioral intentions rather than actual behavior, testing the presence or absence of a motive to discriminate against ethnic minorities. According to Veenman (1995), about one in ten Dutch employers is overtly opposed to hiring immigrant applicants. But negative images of the work performance of ethnic minorities – which may motivate discriminatory behavior – are much more widespread. Moreover, it has been shown that these images are not usually based on actual negative experiences with ethnic minority employees (Kruisbergen & Veld 2002). Findings from employer studies are the counterpart of victimization studies, measuring perceived discrimination by ethnic minorities. Although perceptions of personal discrimination tend to be selective and the attribution of discriminatory motives is often uncertain (eg. Phalet, van Lotringen & Entzinger 2000), the actual experience of discrimination by ethnic minorities is indeed one more piece of the puzzle. Thus, Veenman found evidence of perceived discrimination in his study of Moluccan experiences in the Dutch labor market. Similarly, in a survey of Turkish and Moroccan youth (ages 18 to 30) about 15% reports regular personal experiences of discrimination and around 25% agrees that Turks and Moroccans are discriminated by Dutch employers (Phalet et al 2000).

Employer as well as victimization studies focus mostly on blatant prejudice and direct discrimination. In many instances discrimination is indirect rather than direct. In this respect, psychological tests and job interviews have been shown to favor certain personal attitudes or to attribute certain ways of self-presentation to the disadvantage of applicants from different cultural backgrounds (Choenni & van der Zwan 1987). In the Netherlands, rather much research effort has gone into the inventarization and correction of biased items or scales in general intelligence tests for children and adults and in a number of more specific skills or aptitude tests that are frequently used for academic and professional selection and orientation purposes (Bleichrodt & van de Vijver 2001). An example are the 2000 COTAN ratings ('Commissie Test Aangelegenheden Nederland') by the Dutch professional association of psychologists (NIP). If cultural bias is identified in a standardized test, the use of this test may unfairly restrict career opportunities for ethnic minority members, which would amount to indirect discrimination. Still, as the example of the biscuits factory in Utrecht shows - where ethnic

minority employees filed a complaint against their collective dismissal on the basis of an allegedly biased 'trainability' test and lost the case - psychological experts in court could make better use of psychometric bias research and recommendations (Possel 1995).

2) Education

As reported in the most recent Minorities Report 2003 by SCP (Gijsberts 2003), the PRIMA research links the initial performance level of minority students at the start of primary school with their achievement and progress on mathematics and language tests in the following years. In the last year of primary education all pupils have to take the national standardized CITO test. Their mathematics and language scores on this final test are decisive for a more or less favorable school advice, orienting them towards vocational training or alternatively, towards general and higher forms of education. Initial and final performance measures have been analyzed for successive cohorts of pupils as a function of gender, the ethnic and social class origins of the parents, and the ethnic composition of the schools (Gijsberts 2003).

Overall, children in the category of 'non-western allochtones' start their school careers with significant educational disadvantage, in particular in language-related domains (Gijsberts 2003). Within this broad category, children from Surinamese parents and from mixed marriages with a Dutch partner, are less disadvantaged: their performance is on a par with that of Dutch pupils who are socially disadvantaged (i.e. whose parents have only lower secondary qualifications or less). Conversely, Turkish, Moroccan and Antillean children are doing less well. Lastly, within the residual category of 'other non-western allochtones' initial disadvantage is most outspoken for children from non-western countries such as Afghanistan, Iran and Irak (Mulder & Uerz 2002).

Since primary schools with large numbers of socially disadvantaged and ethnic minority pupils receive additional funds as part of educational priority policies, a key question is to what extent children from ethnic minorities are indeed enabled to catch up with their native Dutch peers. Although ethnic minority pupils are still at a disadvantage at the end of primary school, especially on language tests, they are also found to make more rapid progress than their Dutch classmates (Gijsberts 2003). As a consequence, the 'ethnic' achievement gap is much reduced at the end of primary school. Moreover, when ethnic comparisons are controlled for parental education as an indicator of social class origin, differences in mathematics scores are fully accounted for, but not ethnic differences in language scores. On the other hand, the ethnic composition of schools has little impact on the achievement of ethnic minority pupils and this (slightly negative) impact is even smaller towards the end of primary education (Gijsberts 2003). Finally, trend analysis across PRIMA cohorts shows that primary schools are more effective in closing the ethnic gap in 2002 than they were in the mid 1990s, and this is most true for schools with large numbers of ethnic minority pupils (Gijsberts 2003). This positive trend suggests that educational priority policies have enabled an institutional learning process so that, over time, schools are developing more effective strategies to cope with language and learning problems in

multi-ethnic classrooms. In fact, the generous funding and the specific expertise of primary schools with large numbers of ethnic minority pupils may be (part of) the reason why ethnic segregation *per se* has little or no negative impact on the school performance of minority children in the Netherlands.

The earliest and hence most decisive branching point in the Dutch school system is the official school advice at the end of primary school. This advice is based on 'objective' CITO test scores, together with the judgement of student motivation and development by the school director. Comparing the proportions of children who receive a positive advice for higher education (hbo+) across ethnic categories, they vary from 10 to 20% of the ethnic minority children, over 20% of the socially disadvantaged Dutch children, to 20 to 30% of 'other non-western allochtones', and up to 40 to 50% of the large majority of Dutch children in the non-disadvantaged category. An ongoing discussion in educational research and practice regards the over- or underestimation of the school achievement of ethnic minority children, and its consequences for the school advice at the end of primary school. In particular at the end of the 1980s and up to the mid 1990s, ethnic minority children were receiving more positive school advices than Dutch children with similar test scores, the main reason for this (most probably unintended) positive discrimination being a tendency among school teachers to discount (generally poor) language scores of minority children (Tesser & Iedema 2001). One controversial issue is whether 'objective' test scores should prevail over the 'subjective' judgement of school teachers. In light of the often doubtful predictive validity of test scores for ethnic minorities (cf. Bleichrodt & van de Vijver 2001), teachers may be well advised to give ethnic minority pupils 'the benefit of the doubt'. A related issue regards the consequences of an overly positive school advice for the future school career of a minority student. On the one hand, more frequent school failure and dropout among minority youth have been associated with their 'misplacement' in higher tracks due to positive discrimination. On the other hand, most minority students stay on in higher tracks in spite of 'misplacement' and a majority pass their final exams (Dronkers & Koeslag 1994).

Interestingly, a new trend analysis of school advice as a function of test scores and ethnic origin in the Minorities Report 2003 by SCP shows that positive discrimination is no longer significant in 2000 (Gijsberts 2003). After two years of secondary education, however, ethnic minority students have again experienced more upward mobility and rather less downward mobility than students of Dutch origin with the same school advice (Herweijer 2003). Even in the absence of a 'positively biased' school advice, secondary school teachers seem more reluctant to refer ethnic minority students with poor results to lower tracks (Herweijer 2003). The positive side of this story is that a majority of the ethnic minority students in higher tracks move steadily upward, pass their final exams, and move on to higher education. The downside is that minority students more often fail their exams than their classmates of Dutch origin. Moreover, ethnic minority students who fail, run higher risks of dropping out. Thus, Kalmijn and Kraaykamp (2002) conclude that the Dutch tracking system selectively protects Dutch students, but much less minority students, from the risk of school dropout.

Looking beyond the discussion about the up- and downsides of alleged 'positive discrimination' in the tracking practice of Dutch schools, one should keep in mind the broader picture. Overall, ethnic minority students, in particular students of Turkish and Moroccan origin, are dramatically over-represented in lower vocational tracks and, in spite of the rapidly growing numbers of minority students entering higher education, they are still much underrepresented at this level (Crul & Wolff 2002). Most importantly, the availability of detailed information on the school careers of Dutch children and youth by ethnic origin groups, enables researchers and policy makers to keep track of educational disadvantages and risks attached to ethnic minority status. On the positive side, these same statistics chart the massive educational progress that has been made by the so-called second generation over the last decades – thus correcting persistent negative public images of ethnically segregated schools and underachieving ethnic youth.

3) Media and the issue of “visibility”

In this section, we discuss studies that were conducted in a particular area of employment: the media. This area is interesting because in this sphere two policy goals are at stake: the employment of minorities (as encouraged by the 1998 SAMEN Wet) and the portrayal of a diverse society as encouraged by the 1983 ethnic minority policy which included a multiculturalism component. Media studies seek to measure the visibility of minorities with means that differ from employment studies. Dutch studies have been conducted as part of EU-wide research initiatives.

The implementation of the SAMEN Wet) in the realm of public broadcasting has been monitored by an independent NGO called *Mira Media*. The 'Facts and figures' publication from Mira Media of November 2003, show that the percentage of ethnic minority staff at public service NOS (Netherlands Broadcasting Foundation) was 6.3%. This means the (internal) target of 9% was not been reached. Also the other organisations with programming time on public broadcasting did not reach this goal. ENDEMOL which produces programmes for both commercial and public television with a large audience share did reach the target. RTL and MTV also came very close, other commercial channels did not (Mira Media, 2003).

In 2004, the official broadcasting monitoring body, the *Commissariaat voor de Media*, proposed that transmission time for religious and spiritual movements should be divided more equally: more time was to be given to Buddhist, Hindu, Jewish and Muslim broadcasting organisations, to the reduction of transmission time hitherto allotted to Protestant Churches. According to proportional calculations of the Commissariat, that would better reflect the current adherence to religious associations in the Netherlands (NRC Handelsblad, 2004).

In 2003 Mira Media organised together with the EUMC RAXEN network and national NGOs a “European Day of Media Monitoring” consisting of across-EU standardised quantitative monitoring (a pilot), case studies and meetings. The results of the monitoring were presented at a press conference

organised by the International Federation of Journalists, in the week preceding the International Day against Racism 2004 (ter Wal, 2004 see www.multicultural.net/edmm/eu_report). On this and other occasions Mira Media's international arm has pressed for insertion of the media as a separate domain in the EC anti-discrimination policy (it is not contained in Article 13 and the EU Race directive).

The public broadcasting organisation set up a Diversity Unit in 2000. This agency carried out a Diversity Monitor of Dutch television (van Dijck, Sterk and Vierkant, 2003). The questions asked in the monitor concerned the extent to which the pictures presented by Dutch television are representative of diversity in society, and the differences between commercial and public television in the proportion of man/women and minority/majority people shown on screen. The monitor was carried out on a sample of 108 hours public and 92 hours commercial television from the month of March 2002. The unit of analysis was the people/characters appearing on screen, for non-fiction programmes the presenters and other people speaking, and for fiction programmes 4-6 characters depending on the duration of the programme. The sample was composed of a total of 3682 records.

The study uses 'visible difference' as a criterion for recognizing ethnic minorities: identified either on the basis of appearance (skin color, kind of hair, shape of eyes, clothing, name or accent) or on the basis of labels used by ethnic minorities themselves or others. Subsequently the representation of ethnicity was classified as: White/European, Black, Mediterranean, Asian or south-American. Within these groups further sub-specifications of ethnicity could be entered. More than two thirds of the people appearing on television belonged to the White/European group. The other categories scored 16%, and the remaining percentage was not classifiable on the basis of visible characteristics. There was a significant difference between public and commercial broadcasting, the latter had more 'coloured' people. On the public channels, 72% of the people appearing were white, on the commercial channels, 67% were white. However, minorities living in the Netherlands were better represented on public TV, whereas minorities shown on commercial TV were more often African Americans in (North-American) fiction programmes, comedies etc..

For the other categories analysed in the monitor, gender was off-balance with 64% of people being men, and 35% women (this percentage was higher than in a 1998 monitor on female participation in TV programmes, 29%). Young and old people were less visible on television than the category of people between 30-49 years of age. The statistics were used by the Unit "Media Policy and Programme Coordination" of the public broadcasting organisation to account for and improve its policy in representing minorities (see also van Dijck and Nellen, 2003).

The National Union of Journalists (NVJ) includes a special bureau monitoring cases of discrimination of minorities in the media, called the project bureau Migrants and Media, which also commissions research (e.g. content analysis of press coverage and media organisation analyses) however not managing a statistical monitor of its own.

The recent suspension of public funding to these agencies seems to be not only a sign of general budget cuts, but an indication that support to the monitoring and lobbying done by such agencies is not given high priority by the present government. The NVJ Bureau and the Diversity Unit of the Public Broadcaster will disappear in their present form. The agencies seem to have more opportunities to continue their work within the framework of general diversity management (covering all the motives/grounds of discrimination) and 'human rights' formulae (e.g. press freedom). Although most consider this development away from specific target-group directed actions, programmes and organisations inevitable, some worry what will be the effect for ethnic minority treatment and the dissipation of the built-up expertise and data gathering systems in the area of race/ethnicity.¹⁶

4) Studies on sexual orientation

In 2000, a complete review was made of all Dutch research on sexual orientation. This literature survey (De Graaf & Sandfort 2000) listed 71 research projects. Most of them have been asked for by gay and lesbian NGOs and commissioned or paid for by the local authorities or the national government. And most of them have been done because reports on complaints are not very representative of real discrimination.¹⁷ The authors underlined that the results contradicted the idea of the emancipation of homosexuals in particular in the area of work and health. In particular, research showed that gays were taking sick leave more than heterosexuals and suffered from psychosocial stress at work. This was especially true in school for teachers. The survey also noticed that most studies was qualitative and based on small samples. The authors think that the health problems and psychological difficulties faced by gays should be paid serious attention. They also call for larger-scale surveys by questionnaire allowing for statistical analysis.

Two researchers at the Central Bureau of Statistics, Liesbeth Steenhof and Carel Harmsen (2003) have sought to estimate the number of same-sex couples in the Netherlands using household statistics that are based on the local registration systems. They thought this was an interesting, relevant and actual topic, and there was not much information available until then. No one outside Statistics Netherlands commissioned this research. They don't know who have made use of the data. Yet it is accessible for everyone (and contains no data on individuals as is always the case at CBS).¹⁸ The methodology that they used consisted first in first identifying the households with two "unattached" persons on the same sex (about sixty thousand). They observed that the age distribution of persons peaks between 25-29 and assumed that in this age category there are students and young working people living as roommates rather than partners. They then estimated the number of same sex couples in this age group by considering that the same-sex to opposite-sex ration was the same as for

¹⁶ Source: communication with head of project bureau at NVJ meeting and communication with media scholar Leen d'Haenens.

¹⁷ Communication with Peter Dankmeijer, Dutch Expertise Centre on LGBT Policy Issues.

¹⁸ Communication with Liesbeth Steenhof, CBS.

cohabitants aged between 30 to 39 living together. They estimated that there was 48,000 same-sex couples in the Netherlands in January 2002.

C/ Their role in policies and politics

1) The use of monitoring in policy

Labor market policies

Data available for 2002 show that labour participation rates and unemployment figures differ widely among various ethnic groups. In 2000, the Labour Inspectorate conducted a survey on wage differences in the private sector. The uncorrected difference between native Dutch and ethnic minority wages was 21%. If corrected for job and personal characteristics, such as education, distribution over economic sectors et cetera, a difference of 4% remains. This difference cannot be explained by other factors and this is defined as wage discrimination.¹⁹

Other macro data more or less confirm this outcome. The Wage Indicator Survey 2002, which utilizes data submitted by visitors of a website, indicate that the gross hourly wages of a native Dutch man was € 15,74; that of a native Dutch woman was € 13,42. Men of Surinamese and Antillean origin earned € 14,55 and men of Turkish and Moroccan origin earned € 12,66. Women of Surinamese or Antillean origin received €14,10 whereas women of Turkish and Moroccan origin earned € 12,42.²⁰

With a view to combat ethnic discrimination in the labor market, as evident from combined statistical analyses and employer studies (Veenman 2004), both general and special policies have been developed. Policies are oriented toward three types of actors and the linkages between them: (a) the demand side of the labor market (eg. unemployed or workers), (b) the supply side (eg. employers or personnel officers), and (c) intermediary agencies such as social and employment services (administrators or professionals). Our brief review of relevant policies is based on Dagevos and Turkenburg (2003), with a focus on monitoring aspects of the policy approaches.

Statistics on ethnic groups are often associated with special policies targeting specific ethnic minorities. Although some special labor market policies are in place, allochtones or minorities in general are more often targeted than specific ethnic groups (with some exceptions, eg. a local policy project to support new Turkish entrepreneurs in Amsterdam). Or else, specific non-ethnic subgroups are singled out within the category of allochtones (eg. highly qualified refugees). Moreover, most labor market policies from which ethnic minorities profit, specify broad non-ethnic social categories as target groups. But many general policies come with specified minimum percentages or quota of ethnic minorities who should be reached by and hopefully benefit from the policies. The normative concern

¹⁹ *Kamerstukken II* (Parliamentary Papers of the Second Chamber), 2001/2002, 27 099, no. 6.

²⁰ K. Tijdens et.al., *Loonwijzers 2001/2002* Amsterdam: Amsterdam Institute for advanced labour studies, 2002

behind the quota is that ethnic minorities, who are often over-represented in socially disadvantaged segments of the labor force, should have equal access to public provisions and policy instruments. This concern is operationalized in terms of proportional representation ('evenredigheid'): for example, a minimum percentage of the long term unemployed who are offered subsidized employment should be 'allochtone'. Percentages may reflect the statistical presence of ethnic minorities within a region (as in the principled approach taken by the Wet SAMEN) or within a population to which policies apply (eg. long term unemployed). More often however, the targeted numbers reflect what is seen as a feasible correction of actual ethnic disadvantage given the limited means and manpower attached to the policy. In any case, statistics analyzing labor market outcomes in terms of the relative over- or under-representation of ethnic minorities simultaneously inform and legitimate the specification of ethnic quota for general policies, and the development of special policies with a view to redress ethnic disadvantage.

First of all, two types of policies are aimed at influencing the supply side of the labor market: one is the Wet SAMEN and the other refers to specific partnerships or agreements between public and private actors on job opportunities for ethnic minorities in exchange for public support.

In 1998 the SAMEN Act succeeded the very unpopular and largely ineffective positive action policies that were launched in 1994 under the heading of the WBEAA. Under the new and less rigid Wet Samen, employers with 35 or more employees are under the obligation to register the ethnic origin of employees and to submit annual reports of proactive policies to enhance equal recruitment and career opportunities for ethnic minorities within the company. Regional centers (RBAs) collect the data for annual reports that are presented in Parliament. Although still unpopular among employers, the new law has proved more effective than its predecessor as far as registration goes (70% compliance with 'ethnic' registration in 2001). Notwithstanding increased compliance with registration, the overall requirement of proportional representation has not been met (8,5% of registered ethnic minorities instead of the required 10%). As can be expected, the degree of under-representation increases dramatically at the higher income levels.

A complementary approach in the Dutch tradition of social partnership consists of mutual agreements committing employers to specific targets in exchange for public support. The most successful example of this approach was the 2000 –2002 MKB project ('Midden- en Klein Bedrijf') where medium-sized and small employers collaborated with public employment agencies to create 70.000 new jobs, 62.000 of which were filled by ethnic minorities. Keys to the success of this project are active recruitment and intensive mediation by public agencies. Although not all 62.000 newly employed ethnic minorities were previously unemployed and many were employed in temporary jobs, the impact of the project was considerable. Participants on both sides reported improved relationships between private and public partners and more positive perceptions of the supply side of ethnic minority job applicants (Dagevos & Turkenburg 2003). Similar though less ambitious projects are the RGO project ('Raamconvenant

Grote Ondernemingen') and the .KOM project with partners in catering, cleaning, construction, transport and security branches seeking to recruit and retain ethnic minority staff.

The other side of labor market policies is aimed at stimulating the labor market participation of the economically inactive and the unemployed at the supply side. General policy tools consist of subsidized employment for those who are readily 'employable' and so-called reintegration trajectories for those who need more training or support. In addition, special policies specifically seek to activate ethnic minorities who are on welfare or long term unemployed or otherwise economically inactive.

Subsidized employment consists of regular but subsidized ID ('Instroom en Doorstroom banen') and temporary WIW jobs ('Wet Inschakeling Werkzoekenden'). The monitoring of ethnic minority participation in subsidized labor is guided by the principle of equal representation (Dagevos & Turkenburg 2003). As ethnic minorities are overrepresented in the target categories of long term unemployed, they should be offered as much or more subsidized employment. CBS data for 2002 on 'non-western allochtones' in ID and WIW jobs show that this is indeed the case for both women and men. Thus, 25.000 ethnic minorities were employed in subsidized work in 2002. Of those on temporary WIW contracts, 47% went on to work in regular employment (Dagevos & Turkenburg 2003).

The participation of ethnic minorities in reintegration trajectories is far from proportional though, which is mainly due to the lack of means and incentives for communes to invest in more intensive or more long term mediation activities. In the near future, the new law on work and welfare (WBB) – sanctioning communes with higher levels of welfare dependence - will only make things worse.

Since ethnic minorities are more often classified as 'not directly employable' by public employment agencies, special policies which are specifically targeting ethnic minorities have been developed. One example are the SPAG projects ('StimuleringsProjecten voor Allochtone Groepen') originally targeted at Antillian and Aruban youth (1994) and later extended to Turkish and Moroccan youth (1998) and adults (2001). The projects actively recruit specific categories of unemployed that are not reached by regular employment agencies. They are offered intensive support, training and mediation. Another example of special policies is the extension of newcomers policies under WIN ('Wet Inburgering Nieuwkomers') to the integration of settled immigrants ('oudkomers'). Most participating communes work together with ethnic voluntary associations to recruit economically inactive or unemployed immigrants, often women, for participation in integration courses. Lastly, some communes have their own special policies (for example, SPAR 'Stimuleringsproject Allochtonen Rotterdam'). In most cases, communes are expected to set targets and to provide statistics by ethnic origin of persons who have been offered special trajectories along with completion rates and some form of success rates (Dagevos & Turkenburg 2003).

Educational policies

Special educational policies are directly informed by major surveys such as SPVA, PRIMA and VOCL, analyzing school careers as a function of ethnic and social class origins (see above). As ethnic and social class origins overlap greatly, the relative importance of ethnicity versus social class in explaining (and remedying) 'ethnic' educational disadvantage has been a matter of debate. Although this debate has never been settled, since the late 1990s policies have tended to de-emphasize ethnic difference and discrimination, referring to general social disadvantage rather than ethnic origin. This ambivalence is reflected in the national weight system, which is used to allocate most of the funding under the heading of educational priority policies since 1986. According to this system pupils of Dutch origin who qualify as socially disadvantaged (i.e. whose parents have lower secondary qualifications or less) are weighted 1,25; pupils with an ethnic minority background and whose parents have low qualifications are weighted 1,9; moreover, to qualify for funding through the weight system, schools must have 9% or more disadvantaged pupils (weights 1,25 or 1,9). In 2003 about one in four pupils was weighted as disadvantaged (Bronnenman-Helmers & Turkenburg 2003). The legitimacy of the weight system is controversial. The main issues are: how accurately do the weights represent disadvantage in different social and ethnic groups? is the funding attached to the weights used effectively to improve educational opportunities and outcomes for all? and should the correction of social disadvantage be abandoned in favor of an individualized approach of learning problems? Taking the latter approach, the current government has announced the replacement of the weight system by individual tests at the start of primary school.

Our brief review of special educational policies is based on Bronnenman-Helmers and Turkenburg (2003) with special attention to the use of monitoring. Special policies to combat ethnic educational disadvantage are organized by the levels of education. Most policy efforts to increase educational opportunities for ethnic minority children focus on primary education. Attached to these policies are special policies at the preschool level and at secondary and higher levels. In general, policy targets are premised on the normative principle of proportional representation ('evenredigheid') and negotiated at the national level (eg. +4% ethnic minorities in secondary tracks leading to higher education by 2006). Since 1998, however, educational policies have been mostly decentralized to the communes and schools under the general heading of local educational disadvantage policies (GOA). National directives leave much room for local variation in the implementation of policies and the measurement of policy outcomes.

At the primary level, most funding (eg. 268 million Euro in 2003) is allocated through the weights system ('Gewichtenregeling') of educational priority policies. The weight system is complemented by educational support policies ('Onderwijskansenbeleid') providing special funding for schools with large numbers of socially disadvantaged pupils who submit a plan to improve the instructional quality. In addition, OALT ('Onderwijs in Allochtone Levende Talen') special language policies were supporting

mother tongue teaching, Dutch language learning and intercultural education. These policies have been discontinued.

While the weight system is limited to primary education, special policies at the preschool level (VVE 'Voor- en Vroegschoolse Educatie') are in fact derived from the weight system. They are aimed at increasing the preschool participation of ethnic minority children, who would be weighted > 1 according to the weight system. With a view to reducing the initial educational disadvantage of ethnic minority children, special stimulation programs are offered to enhance the language competence of the children and to prepare them for primary school. At the secondary level, so-called 'cumi' students (or students from 'cultural minorities') are defined by ethnic origin and length of stay. In 2003 cumi status was attributed to 8,5% of all students in secondary schools. Most of the funding attached to cumi students goes to extra language support for recently arrived immigrant youth. At the national level, the government has committed communes and schools to a 25% reduction of ethnic differences in language tests in 2006. The strong policy focus on language is in line with findings from major surveys showing that ethnic minorities are typically lagging behind on language tests (see above).

Given the increased risk of school dropout among ethnic minority students, general policies with a view to register dropout and to prevent and remedy dropout from school are noteworthy. Data are collected at the regional level but not all regions register dropouts by ethnic origin. In accordance with European directives, the overall target of the Dutch government is a reduction of school dropout by 30% in 2006. At the higher end of the tracking system, the under-representation of ethnic minorities has informed the national policy target of a 4% increase of ethnic minorities in secondary tracks leading to higher education. There is no official government policy at the level of higher education, although some initiative by universities and NGO's are subsidized. One successful example are so-called 'mentor projects' where successful students with an ethnic minority background act as 'mentors', recruiting and supporting younger minority students.

In sum, 'ethnic statistics' have played – and continue to play - a major role in setting policy targets and in developing special policies aimed at reducing ethnic educational disadvantage.

2) The use of monitoring by non-governmental organizations

A range of non-governmental organizations gather information on discrimination and/or publish it. They use the information in their monitors not only to raise awareness on the existence of discriminatory behavior but also to call upon public authorities (city councils, police, national ministries) and private actors (employers, night club owners) to work with them to improve the situation. They provide their expertise in training police officers or drafting codes of conduct. Last but not least, monitoring is not just a means to an end but an end in itself. The NGOs see the collection and publication of data as crucial to justify their social utility, their institutional survival and in cases where it applies the public funding that they receive. It legitimates their action and they thus welcome the inflationary demands for information from the Vienna EUMC and from other international organizations (e. g. as part of the CERD treaty). These international demands have some undesirable outcomes such as portraying the Netherlands as more Islamophobic than other countries because they have a good network of local anti-discrimination bureaus that can gather information on incidents than other countries in the EU do not have...

a) The Anti-Discrimination Bureaus (ADBs)

The choice for the local level in the action against discrimination is obvious when monitoring discrimination in the work environment, the living environment and social relations. Here the local ADBs (Anti-Discrimination Bureaus and Hotlines), play a central role.

The ADBs were born out of local initiatives to combat discrimination, which find their origin in the societal developments of the 1970s and 1980s. In 1972 the Rotterdam neighbourhood « *Afrikaanderwijk* » witnessed race riots. The native Dutch population protested against the settlement of mostly Turkish migrants in the area. In 1976, there were similar riots in the city of Schiedam (part of larger Rotterdam area). In 1977, the first victim of racial violence in Amsterdam died, and in 1983 15-year old Kerwin Duinmeijer was killed in Amsterdam by a 16-year old skinhead. In 1983 and 1984, arson attacks with a racist or extreme right background were registered with striking regularity. In 1982 the extreme right Centrum Partij had obtained a seat in parliament. Against this background the first ADB opened in Rotterdam in 1983, and other cities followed suit. At the time of their foundation, the struggle against extreme right-wing organisations and their ideologies constituted an important part of the work. The ETA and juridical framework from which to operate did not yet exist, and the bureaus had to resort more to a moral framework in their treatment of complaints.

An example of the changes in the work of the ADBs in the 1990s is the Rotterdam ADB, called RADAR. In 1998 RADAR proposed to transform its local function into a regional one. From that year more attention was also paid to the monitor, in the sense of increasing access to relevant data from other institutions to develop a multi-agency monitor, and cooperation to make a uniform registration possible: cooperation for example with the regional police, the local provincial and central government

authorities. Also media reporting was to be used as a source (RADAR, 1998). RADAR proposed to carry out analyses by area (region/cities) and by sector (labour/education etc.). The multi-agency monitor would work as an early warning system, as a basis for regular (policy) evaluation, as a measurement instrument for the longer period, and in order to analyse differences and similarities between different geographical areas. In addition, reliability of data and comparison of data from different sources would allow for 'blind spots' in registration to be checked, so that reliability could be improved. This would also need to include registration of requests for information, which can be an important additional indicator of developments in society.

The introduction of the ETA in 1994 thus made a big change and also broadened the scope of registration and monitoring of the ADBs. At the same time, the extreme right started to play a much less important part in the complaints received. This also had consequences for the legitimacy of the anti-discrimination work (different grounds, more people concerned) and for the network relations maintained with interest groups: no longer only those of ethnic minorities. Following the EU directives, the ADBs become even broader in their scope as they also register cases involving disability and age. The 35 local ADBs are independent NGOs funded by the local authorities (in the smaller places they can be part of the social service umbrella). The Rotterdam and The Hague ADBs serve a wider area: Rotterdam including the region Rotterdam-Rijnmond (municipalities of Schiedam and Spijkenisse), and The Hague including Delft and Zoetermeer (they therefore may also receive relatively more funding). These two bureaus also have a separate monitor department, and the largest number of people working with the bureau: fifteen in Rotterdam and approximately the same in The Hague. The Amsterdam ADB (six people paid staff) receives funding from the municipality and the Stadsdeel Amsterdam-North.

The ADBs provide qualified evidence into the type, location and frequency of different grounds of discrimination and develop initiatives and strategies to promote equal treatment. The complaints arrive directly to the local ADBs via telephone or e-mail contact with the bureau, or through mediation of the police. The contact details of the bureau are provided when one reports an incident to the police. The ADB's also receive the data and data mutations from the police. In Amsterdam this is done on a continuous basis electronically, with a newly devised programme, and it is also monitored via a fixed contact person at the police. The Rotterdam ADB meets on a yearly basis with a contact person of the police and with the Public Prosecutor. The bigger ADBs in principle are able to follow the whole itinerary of a complaint from beginning to end.

Besides registration of the complaints, and the production of reports with statistics based thereon, the main task of the bureaus is of course to make sure the complaints are assessed and treated. If a complaint has a chance to be dealt with by the equal treatment Commission or the police, the case is passed on. But in case of complaints related to labour market or goods/services, the ADBs contact directly the employer or the service-providing organisation to try to resolve the complaint between the parties. This is quicker than a procedure at the Commission. The ADBs do however benefit from the

existence and independent authority status of the Commission also in their direct mediation, in that they can refer to jurisprudence and the possibility to bring the case before the Commission if it is not solved. This reference, i.e. in letters to the third party, is often enough to resolve the case satisfactorily between the parties without taking time to go before the Commission.²¹

The ADBs also work together with the other NGOs (LBR, Anne Frank Foundation, Leiden University), for example in the National Platform founded as result of the action programme drawn up after the UN Durban Conference (WCAR). ADBs also provide data to the Ministry and other (e.g. local) authorities and other monitoring agencies (EUMC, CIDI) whenever they require it. General information dissemination is also a task of the ADBs. To increase the public visibility of the bureaus, in 2004, a new national hotline number (which is linked to the local bureaus) was introduced with support of the EU; a publicity campaign will follow. It is meant to give also visibility to the other grounds of discrimination monitored.

The ADBs are generally well informed about other research done about ethnic minorities and ethnic relations, but do not integrate these in their own statistics or reports. Rotterdam participates in European research/advocacy projects. In one project, the data from the SAMEN law were used to identify companies working with good practice in terms of recruitment hiring and codes of conduct. This project involved a monitor, an award, and a code of conduct. In the monitor, three sectors of the regional labour market were studied for discrimination and equal treatment on the basis of race/ethnicity (complaints and practices). The award included a survey to companies in the region, which had a low response; good practices were charted. This type of research adds a new approach in the work of the ADB by setting up a dialogue with employers. The Rotterdam ADB also gives advice and support to companies for the development of codes of conduct, handbooks and guidelines for e.g. companies.

In addition, RADAR does regular test studies, for recruitment in the labour market (phone calls). They would like to do more with this in the future. In the late 1990s they also did a test about discrimination in nightlife, together with local journalists and council members – this resulted in a agreement with local partners and the nightlife businesses and the formation of a panel (see below). RADAR would like to do more with the general complaints data, analysing them for example also on the neighbourhood level.²²

Since its foundation in 2000, the national federation of ADBs, the umbrella organisation for the local ADBs and hotlines, produces yearly “Core figures” (Kerncijfers) that put together their data (LV ADB, 2003). In gathering their national data the ADB’s make sure that their registration system does not contain duplicates by taking out the complaints that are also filed in different places, e.g. by police, PP, and by the Meldpunt Discriminatie Internet (a separate hotline for discrimination on the Internet). The

²¹ Source: RADAR.

²² Research is also done for local authorities, e.g. in Rotterdam for the *Stedelijke Advies Commissie*, in combination with an advice concerning anti-discrimination policy. Because of the age discrimination law, another study was undertaken to be able to compare the situation before and after the introduction of the law.

figures are basic tables, they would like to do more cross-tabulations e.g. as in 2004 comparing ethnic origin and policy domain, but that is still quite limited. Ideally in the future there should be a central registration bureau where all complaints come in and are registered in real time. The databases are now only merged at the end of each year to write the report of the LV ADB.

After keeping track of the earliest registrations in the 1980s by hand, in the mid-1990s a start was made at computerizing the registration process and the introduction of the AWGB also produced a change. Since 2002-2003, the bureaus all use the same new programme for registering their complaints (based on the AWGB).

Not all ADBs immediately started registering complaints on all grounds of discrimination following the AWGB after its introduction in 1994. Some bureaus already did address more grounds before this date. Others, for example the Rotterdam bureau RADAR follows the AWGB since 1997; before it only filed complaints of racial discrimination. RADAR also registers complaints of people who feel discriminated because of their appearance even though this is not covered by the ETA and is thus not treated as a complaint to the other party (it then falls into the 'other complaints' category).

The majority of complaints filed with the ADBs are still those for discrimination based on ethnic/racial grounds, but the number of complaints for discrimination on the other grounds has increased. The reason for this increase may be that other forms of discrimination are more manifest, or that RADAR is catching up with these forms that were not registered before. Possibly also the preparedness of people affected by other forms of discrimination has increased. It cannot be excluded either that there is a shift in the tendency to report discrimination: the number of complaints at the CGB dealing with racial discrimination have decreased proportionately as well over recent years.

The grounds cited in the core figures 2002 are: anti-Semitism, full-time/part-time work, marital status, sex, religion, handicap, origin/colour/race, age, personal beliefs, life', nationality, political conviction, and sexual orientation/preference (LV-ADB 2003). Most registered complaints are those on grounds of race/ethnicity (around 60%). The religion-based complaints have been increasing since 2001.

In classifying the types of complaint, the ADBs distinguish between five categories: debatable treatment, hostile treatment, violence, threats and 'other'. The domains in which incidents were classified in 2002: labour market (with sub-categories, most frequent are workplace-related complaints), neighbourhood, public services, commercial services, nightlife & entertainment, housing, media and advertising, education, police/immigration service/public prosecutor, private sphere, public/political opinion, sports & recreation. In 2002, nationally complaints about discrimination in the neighbourhood had increased and for the first time outnumbered complaints in the labour market sphere (LV-ADB, 2003; Ministerie van Justitie, 2003).

The registered ethnicity of complainants/plaintiffs is based either on self-definition, the documents provided, or – in case of email contact – on the basis of the last name if no other explicit reference is made to ethnicity by complainant her/himself (MDA). The people working at the hotline always explain why they ask about the plaintiff's ethnic background: also to see whether you can reach the target group, and to see differences in treatment of different groups. For example we notice that ethnic minorities do not report on other grounds of discrimination than race/ethnicity (sex or handicap for example).

Furthermore, the registration is done on the basis of the incident, not on the basis of the number of people who file a complaint about (the same) incident. This means for example when many people complained about the public statements against Islam by a political scientist of Somali origin (Ayaan Hirshi Ali), this was filed as one case. This decision has the downside of not reflecting very well the social unrest that can be created by one incident (esp. public statement); in any case it is not over-estimating it. Also, it does not reflect the amount of work that goes into such a case by the ADBs (they had to respond and write letters to almost 350 complainants).

Within the ADB's there are also continuous checks on and deliberation about the adequacy of classification of complaints, and thus indirectly also about the reliability of their statistics. The ADB's also make regular agreements about the classification of incidents, so that this is done uniformly.²³ Discrimination on the basis of nationality is only registered when they have to do with documents. General differential treatment is classified as discrimination based on race.

Another phenomenon observed by the ADBs is intersectional discrimination: unequal treatment based on several grounds at the same time (e.g. race and religion). The system currently does not yet allow for the registration of forms of double/intersectional discrimination, the Amsterdam ADB and the ADBs of Rotterdam and the Hague have proposed inclusion of this possibility in the database system (this requires a new programme).

Finally ADBs in the larger cities observe what is called interference of grounds of discrimination: groups which consider themselves victim (e.g. minority youth), behave themselves in other circumstances as perpetrators (e.g. discrimination of homosexuals). Some anti-discrimination bureaus are faced with plaintiffs of Dutch ethnic origin, and also inter-ethnic discrimination complaints, e.g. a Moroccan Berber filing a complaint against an Arab (source: MDA). It is not so easy to register these cases with the current program (source: RADAR). Though these cases certainly do not constitute the majority of complaints they do appear to reflect societal change. This phenomenon refers exclusively to the larger cities (Amsterdam Rotterdam The Hague) where, due to segregation, in parts of the city's

²³ One debate on classification stems from the symbols used in discrimination of Jews. The MDA has proposed to classify incidents which are not directed specifically at Jewish targets (e.g. cemeteries, parks with a special history) but at general targets (e.g. svastika's on facades) as incidents based on race/ethnicity. Banners comparing Hitler to Sharon are considered political positioning and are not filed as incidents of discrimination or anti-Semitism. The ADBs strive for uniformity in registration of such complaints, but there may be disagreements about distinguishing anti-Semitism from racial discrimination or no discrimination (confirmed also by van Donselaar and Rodrigues, 2003).

neighbourhoods and schools, native Dutch people constitute a minority. According to the LBR, from the national data does not emerge that perpetrators of minority origin are frequent or increasing. There are however signals that in situations where native Dutch form a minority, they sometimes experience discrimination: at school, in neighbourhoods, and sometimes at work. However the majority of discrimination cases concerns other minorities, and discrimination based on sex and sexual orientation, or anti-Semitism.

As a result of the development mentioned above, there is some debate within part of the ADBs about the desirability of keeping away all information about perpetrators from information in general figures or reports (source: MDA). The debate is related to the registration of violence against homosexuals, women, and anti-Semitism purported by youths of Moroccan origin. The ADBs do get requests for information related to frequency and type of such incidents. The program is now based on the assumption that the ethnicity of the perpetrators is of no importance, or on the basis of practice it was hitherto assumed that the perpetrator is mostly native Dutch – only the ethnicity of plaintiffs is a separate entry in the registration programme. Should it be reported in the overview of findings (i.e. not for the single case) that part of the perpetrators were « Moroccan youth » instead of just “youth”? (see also par. 2.3.3 below, public debate).

The ADBs rightly stress that they only uncover the tip of the iceberg, and that an increase in complaints does not justify the conclusion that discrimination as such has increased (e.g. RADAR 2003). In places where there are no hotlines or bureaus to file complaints, or where these do not function optimally (as is the case in many smaller cities, where the bureaus often run with part-time voluntary staff, or only one paid person), or where the existence of the bureaus is less widely known among the public, less data will emerge. Not all ADBs, esp. the smaller ones, consider registration equally important. In addition, the number of Bureaus providing figures changes from year to year. New bureaus are set up, others close down or make a new start. Finally, not all registered complaints that are filed are founded, according to the existing laws and jurisprudence (LV-ADB, 2003).

The forms in which discrimination manifests itself also change from time to time: once combating discrimination becomes more effective, discrimination manifests itself often in increasingly indirect and subtle forms (as illustrated also by the UK case). Instead of simply refusing ‘foreigners’ for jobs, employers introduce job entry criteria, such as linguistic skills, which can be hard to objectify. Even though the exclusionary effects are the same, it is more difficult to prove that this new form is also discriminatory. Similarly, also the definition of discrimination may change from one period to the next. Now there is a tendency to subsume more and more grounds under the ETA: also part-time/full-time work and temporary/fixed contract, for example.

Under-registration is another risk, which results from not reporting/filing a possible aspect of discrimination which is part of a complaint/arrest for another reason (e.g. a racially motivated assault or physical abuse which is only filed as abuse and not as discrimination), for example by the police.

Under-reporting also occurs because it may not be easy for people experiencing unequal treatment to establish whether the reason for a particular treatment they received was actually discriminatory, or they may think it is easiest to forget about it.

In parallel, a decreasing trust of complainants in the filing of complaints can result in lower complaint figures. For example, young people who have filed several complaints against a discotheque for discrimination, after continuous refusals to enter the place, decide to simply not go there anymore. This may lead to a decrease in complaints but not to a changing policy of the night clubs/discotheques.

The comparison of figures from ADBs and police at the aggregate national level is not entirely reliable, for various reasons. Although the ADBs and police aim at uniform registration, differences may occur which lead to a compromised comparability of the data. Police data about racial discrimination/violence have only recently been automated. Since 1,5 years, the Amsterdam ADB has invested in designing a database program for the Amsterdam region police, because before they used very diverse methods and systems of registration. This has improved data exchange between the police and the Amsterdam ADB and it could eventually be used nationally. But there are 25 police regions, and the preparedness to register varies: not all local police regions take the registration serious and seem to give priority to data collection on these incidents.

The way in which the police classify single incidents is furthermore arbitrary. The new agreement is that one incident is the unit of counting, not the amount of complaints, before this could differ from one region to the next. With incidents in which different forms of discrimination occurred concomitantly, it often happens that the police only register the most serious offence (van Donselaar en Rodrigues, 2003: 13). In 2003 a check in the region Rotterdam-*Rijnmond* learned that while the police register resulted in over 100 complaints for that year filed under discrimination, when looking in the actual text of the official police report, there were more than 1000 cases in which words appeared that were related to discrimination, anti-Semitism and the like (source: RADAR).

There is a discussion, again within the monitoring agencies, about the lack of reliability and methodological problems when using national figures for international comparison. The key reference in this debate is the DUMC report for the EUMC on Islamophobia after September 11, 2001. Vienna gave them two days to provide info on incidents of violence against Muslims after 9/11 (this was done three times). They could do it because they could rely on the 35 local ADBs. The problem is that the data was compared across the member states. The Dutch were said to be one of the countries with most incidents but it is mainly because they have a network of bureaus that register complaints that perhaps did not exist let's say in Italy which would then come out as less "Islamophobic". The idea of having 'rapid response' information is good but the methodology is different in all the Member States so the information gathered cannot be compared. In other cases it is also difficult for NGOs to present

results in a European framework where different interpretations exist, for example in the case of deciding to allow or prohibit headscarves in public schools.

The Amsterdam ADB has provided a possibility for complaints in cooperation with the municipal services provided to newcomers (at the local newcomers' desk). Here we see an increasing number of complaints of people against statements by politicians who presuppose that newcomers do not try hard enough to integrate, whereas in fact newcomers are refused in the official integration itinerary, placed on waiting lists, etc. for e.g. bureaucratic reasons or arbitrary decision-making on the part of municipal services.

In 2002 in Rotterdam the local council, the Union of Hotels, Restaurants, and Bars, the Youth Council and RADAR signed an agreement, in which they committed themselves to a policy for accepting ethnic minorities clients in night clubs. In addition in Rotterdam a special panel was set up to deal with entry policies of nightclubs (Panel Door Policy). The secretary of the Panel, hosted by RADAR, takes in complaints, monitors and maintains contacts with the panel to keep an eye on the situation and intervene when clubs don't follow the policy.

In different ways the ADBs try to use their figures to improve the position of minorities and increase awareness. Firstly, the ADBs have successfully lobbied for uniform standards, criteria and categories for registering complaints at the national level both by the bureaus themselves and the police and public prosecutor, and continue to safeguard the interpretation of these agreements. This quality of data is a first requisite to be taken seriously in further lobbying work. Secondly, on a different level, ADB's follow up on cases (through access to data systems) that are 'forgotten' by the police, or dropped by the Public Prosecutor, when they still have a chance, and they have not been communicated to the plaintiff yet, the case can be reopened in the system thanks to actions of the ADB. Then there is a chance that it is reopened and the eventually you do get a hearing.

In Amsterdam, the data from the police and the ADB are used to monitor the priority given by the police to discrimination cases. When no priority is given, this may result in parliamentary questions. Moreover, the Amsterdam ADB warns the police about possible problems coming up in demonstrations with a potential anti-Semitic character and possibly resulting clashes, and this is then evaluated to indicate on the basis also of the figures to show that more policy is needed at the police to anticipate such problems. Such lobbying is done very much in the background.

On a different level, the Amsterdam ADB has lobbied with the National Complaints Commission Education, which registers complaints related to education on the basis of its mandate following the 1998 Quality Law (including complaints concerning discrimination, sexual intimidation, violence, bullying and aggression). Right now discrimination is not mentioned separately in the reports but subsumed under decisions about more largely classified incidents. The ADB would like to see these

data on discrimination to become more visible (give more priority to it) in the reporting and has therefore contacted the complaints commission. This also allows for better exchange of data.

In 2004, NGOs gathered in the Article 13 Network lobby for the implementation of Article 13 (and 14) (Artikel 13 Platform, 2004). They stress the need to fill the gaps for other motives/type than those of ethnicity/race (e.g. ground of handicap is now pressure made to stick to access to goods and services as an important form of discrimination). Another point in the discussion about different grounds, is the risk of creating hierarchies between for example religion and sexual orientation, or religion and ethnicity (e.g. discrimination of homosexuals by Muslims, discrimination of Jews by Muslims).

b) Monitor Racism & Extreme Right

The University of Leiden, in cooperation with the Anne Frank Foundation has issued six regular publications over the last years, the Monitor Racism and Extreme Right. The majority of data about racist and extreme right violence come from the AIVD (General Intelligence and Security Service), Public Prosecutor, and the police, the other are collected as additional information. The AIVD requests the police regions to collect, according to a standardised format, data about racist and extreme right-wing violence. These data are entered in a central system by the AIVD, the format of which has been developed together with Leiden University. The publication of the Monitor also contains reference to the figures from the ADBs and the CGB concerning racial discrimination, and data from MDI (Hotline Discrimination Internet), the CIDI (Centre Information Documentation Israel), and another action group (anti-fascist research group Kafka). The CIDI registers complaints and lobbies specifically for incidents of anti-Semitism. Anti-Islamism is also reported upon separately in the latest Monitor.

In their latest report, Van Donselaar and Rodrigues (2004a: 22) state that the Dutch police's prosecution of racism and discrimination is insufficient. Reporting such offences is often problematic, and even when accepted, the cases are frequently not passed onto the next level. The more stringent measures of March 2003 drafted by the commission of Public Prosecutors, are not followed sufficiently by the police. Reports are not always registered, they are too often dropped using the police's discretionary powers and they are reluctant to undertake investigations.

The new Monitor Racism will be carried out by more parties, LBR and LVADB are now included. The scope of monitoring will be broadened.

c) National Bureau Against Racial Discrimination

LBR is a central player in providing public resonance to discrimination issues and placing these on the agenda. Different organisations have in the course of the years merged with this bureau and it is expected to continue to attract mergers with other local/national agencies in the future (such as the LV-ADB) among others under the influence of inter-(nationalisation) of monitoring efforts (see below DUMC). LBR publishes a yearly report, where it cites the cases of the LV-ADB, CGB, and its own cases and the wider societal context, including the political and public debate and opinion climate about ethnic relations in the Netherlands. Lobbying is done by the LBR for single cases brought to its attention, for example measures concerning headscarves in schools. It does not produce its own statistics.

In 1985, LBR was created as legal expertise center after the CERD was ratified. In the first annual reports, there was very little information on monitoring or on the actual situation in the Netherlands. The monitoring role was assumed when LBR merged in 1999 with the Rotterdam-based anti-racism information center (ARIC) and ADO on the media and portrayal of minorities. From 2000 onwards, annual reports which we call “the annual state of play”.

In the past LBR tried to do research but it required too many resources (manpower and financial means). It was too expensive and they abandoned that idea. Sometimes they work with other organizations. For instance, they carried out a research with the FNV (national federation of trade unions) on the ways in which companies are involved in inter-cultural management activities (to deal with a diverse workforce and problems on the work floor).

They interviewed personnel managers and then we published a brochure with the FNV.

Normally, they rely on existing data. Their main sources on employment are CBS (the yearly CBS Labor market data or *enquete beruf bewerking*) and ISEO every four years (the SPVA studies –use of facilities and social position of allochtones). The data on employment (large difference between unemployment of native Dutch and population with foreign background). Suggests to them that there is discrimination. For instance, this is the case of the ISEO study on school leavers with same diploma since qualitative interviews in this study showed that these people had more problems with job applications than Dutch people. Moreover, in the 2002 ISEO qualitative survey, employers were interviewed on their image of migrant workers. 26% of the employers said that if they had the choice between native Dutch and ethnic minority they would prefer native Dutch.

Yet, according to LBR Dick Houtzager, there is no quantitative study or survey on discrimination. In drafting EUMC report, one of his recommendations was to conduct an in-depth research on discrimination in the Netherlands because they are no hard figures. In his view, it is very difficult to take policy measures if you do not know why ethnic minorities are being discriminated against and to what degree. He does realize that carrying out such a research is very difficult and that one might not

be able to go beyond what ISEO has done with interviews. Still, as Dick Houtzager puts it, "If you look at the EUMC cumulative report on labor market discrimination in 2002, the conclusions are extremely weak. It is disappointing. You could not get a picture of discrimination."²⁴

d) Dutch Monitoring Centre for the EUMC (DUMC)

The DUMC is a cooperation of the LBR, the National Federation of ADBs, the Anne Frank Foundation and Leiden University. The main task of the DUMC is to collect and analyse data about racism and discrimination for the yearly reports of the EUMC, thereby focusing on specific domains. In 2001, for example, data was gathered concerning education, employment, legislation, racial and extreme right violence, and discrimination in nightlife. In the current negotiations it has been decided to add for this year also goods and services in general (e.g. mortgages, redlining). At the request of the EUMC, the DUMC also separately reported on anti-Islamic reactions to the consequences of the attacks in the United States on 11 September 2001. These were overviews of anti-Islamic incidents, changes in the public attitude towards Muslims, good practices for combating prejudice and violence, and reactions of politicians and other opinion leaders. In 2005 the Centre is also expected to issue a national 'Monitor Racisme' commissioned by the Dutch government (see above NPRD). The Ministry of Justice has asked the DUMC organizations (university of Leiden, LBR, national federation of ADBs, Anne Frank House) to publish a racism monitor to be delivered by end of 2005.

Among the issues covered in the report: employment, education, police and justice, housing, goods and services. At the request of the government, one of the parts of the report will be a survey on attitudes.

3) Public Debates

To the question concerning debates about the desirability to produce statistics about discrimination, all informants answer that in the Netherlands there are no *public* debates – published prominently in the media – about the need to produce statistics about discrimination. A possible explanation is that the anti-discrimination bureaus and non-governmental initiatives started in the 1980s due to the rise of the extreme right Centrum Partij in elections and also the increased presence of the extra-parliamentary extreme right. For obvious historical and political reasons the consensus about the need to monitor these phenomena was widespread. For the same reason, protection of personal data has always been a key issue in the Netherlands. The registration of complaints by the bureaus and the Commission, on the grounds of the AWGB, is anonymous and the need for statistics produced on the basis of this registration, or the methods used, are not and have not been questioned publicly, since it is felt that the privacy of victims is not infringed. The police data passed on to the ADBs is also anonymised: they do not contain personal data.

²⁴ Interview with Dick Houtzager, LBR, Rotterdam, April 20th, 2004.

The interest of Ministries in the data gathered about discrimination mainly result from controversial incidents that receive high media coverage (e.g. in May 2004 because of media reports about a mosque where allegedly anti-homosexual books are propagated, or for example discussions about headscarves). The political statements on such incidents can be quite polarising so it seems the data are rather used internally than for public debate. Instead the official demand for data about covert, perpetuating forms of discrimination on grounds of race/ethnicity and religious belief seems to be limited to the standard obligations from the international monitoring agencies. The NGOs regret the attitude of the Ministry of Justice, which seems interested in the data from the Monitor and the networking organisations mainly because there is an obligation to report on discrimination in the Netherlands on the part of the UN (CERD) and the European Commission (EUMC). NGOs also regret that no attention has been paid so far in research or politics to discrimination of Roma and Sinti in the Netherlands.

Recent debates at the political and NGO-level are not specifically statistics-related. The political debate is focused more on integration and disadvantage of ethnic minorities and related statistics. According to the Amsterdam ADB director, discrimination has stopped being a political issue since the disappearance of the extreme right from parliament, and even more after the success of Pim Fortuyn.

In its National Action Plan against Racism the NPRD states:

Against the background of increasing contrasts between ethnic groups, views on discrimination have changed. In the harshening of the public debate the [constitutional] anti-discrimination principle is sometimes felt to be at odds with the freedom of expression, and the freedom of religion. To ignore criticism, or avoid a discussion, by appealing to discrimination, is no longer accepted. [...] The changed patterns of prejudice and discrimination require a different approach to combating discrimination. In order to oppose prejudice and discrimination it is essential to recognise that shared citizenship means the acceptance of basic, common values and norms (Ministry of Justice, 2003).

Also the latest report of the Monitor Racism and Extreme right concludes that the tendency to broaden the freedom of expression leads to new limitations for sanctioning the expression of racist offences. The public debate appears to be much less familiar with the functioning of the ETA and the ADBs and more with the constitutional principle of anti-discrimination. The legitimacy of the constitutional article which was openly questioned by populist leader Pim Fortuyn during his election campaign in February 2002.

Comments in the written media about crime and segregation are often based on the claim that there is a tendency among ethnic minorities (in particular Moroccan youth) to 'take advantage' of alleged 'discriminatory treatment' while insisting in 'uncooperative' behaviour (see also below under police, quotation Rinus Visser).

In 2004, the president of the Parliamentary Commission of Enquiry into thirty years Integration in the Netherlands, liberal-right-wing MP Stef Blok remarked that one of the findings of the Integration Commission [based on hearings of the commission with representatives and key figures] concerned 'the discussion that goes on in this country about discrimination' (reporter's words). Blok noticed a "remarkable difference" with the political discussion, where this issue is almost absent. This needed to change, according to Blok. (reported by Moerland, 2004).

Given that the public debate is not driven by political or research agenda's, the public actors who speak about discrimination are mostly normal citizens and NGOs, who often receive less prominent attention in the mainstream media (cf. Ter Wal, 2004b).

In the sphere of employment motives, within the NGO's there is debate about the abrogation of the SAMEN Act, which they oppose. In a way with the ending of the SAMEN Act, the government has questioned the usefulness of this type of registration – it is no longer considered an effective instrument to stimulate employers to contribute to improve the position in the labour market of ethnic minorities. The evaluation report of the Act published by the government in September 2003 expressed that the aim of this Act, which had a temporary character, was to raise awareness among employers, and that this aim has been reached. The abrogation is also part of the government's aim to reduce administrative burdens for employers.

However, according to the LBR the aims of the Act have not been reached yet. LBR opposes the decision to abrogate 'the only legal instrument which supervises the stimulation of access and mobility of ethnic minorities in the Dutch labour market' (de Fey, Kellermann and Nieuwboer, 2004: 211). Unemployment among ethnic minorities is still disproportionately high among ethnic minorities when compared with native Dutch. In addition, during the years 1999-2003, 70% of the employers had actually met the requirement to hand in a report of the registered data following the Wet SAMEN (in 2000 even 77%). According to LBR this indicates that there is support among employers to comply with this law. The LBR has no confidence in the voluntary registration by employers proposed by the government, nor in the proposed foundation of a 'National Centre Diversity Management', which is not considered a real alternative for legal obligations. The LBR considers it bitter that the government abrogated this act, whereas in its 15th and 16th report to the CERD (1998-2002), it has mentioned that the Act is extremely effective. (Source : press release LBR and FORUM). Moreover, for the Equal Treatment Commission and the judge statistical data are important to provide evidence of indirect discrimination. Therefore continuing registration of employees' ethnic origin and sex is important. (Source: E-Quality)

In its 2003 report about minorities, the SCP claimed that now that unemployment rises, measures specifically targeted at minorities are necessary. The SCP observes and is worried about a certain fatigue to enact a labour market policy targeted at minorities. (Source: Wet Samen website, press

release). The opposition Labour and Green Party have introduced a bill which proposes to renew the Wet SAMEN, this bill is yet to be discussed in parliament.

Some people who are of minority origin feel discriminated by the rationale behind the SAMEN act, because for some (e.g. people whose parents were born in Indonesia) it was for the first time that they were confronted with the fact that according to the official definition they were considered 'allochtoon' and therefore considered as 'different'. The official category of 'allochtoon' in public understanding has come to be synonymous of 'Turkish and Moroccan', and has received a negative connotation (because of negative media coverage and political discourse).

This rejection of being registered as 'allochtoon' was also observed in a survey about experiences of discrimination among minorities conducted on commission of the EUMC by Utrecht University, where many second-generation respondents with one or two parents of Indonesian origin (and also some of Turkish and ex-Yugoslavian origin) complained about having been approached as 'allochtoon' by the survey. In addition, a limitation of the official registration system, that works with country of birth only and not ethnicity, is that it is impossible to exclude from a survey sample extracted from the GBA children of so-called 'native Dutch' employees who were born in Indonesia, unless one introduces a – not completely reliable – time limit (the official time limit used also in the SAMEN Act is that of the independence of Indonesia – before Dutch Indies).

Another debate relating to employment has revolved around claims based on research that ethnic minority employees perform systematically less well in intelligence tests carried out by employers in the recruitment procedure. The LBR has also worked together with the National Institute of Psychologists in a critical analysis of the use of psychological testing in recruitment procedures, which are often not apt for ethnic minorities.

Debates regarding discrimination in access to goods and services include issues such as discrimination in nightlife but also cases of indirect discrimination. One case in point is the use of postal codes as a criterion for systematically refusing the concession of mortgages in specific city areas ('redlining') (Meldpunt Discriminatie Amsterdam, 2003). This issue has received rather prominent though incidental press coverage (Groen, 2003; Mulder, 2003). In addition, without use of publicity, the Amsterdam ADB has successfully negotiated with two large banks to change their policy in the concession of mortgages to people without a residence permit for a fixed amount of years (before such cases were categorically refused by several of the largest banks).

An interesting parliamentary debate took place in 1999 when Parliament examined the bill for the approval of the 1995 Framework Convention for the Protection of National Minorities. In the bill, the term 'national minorities' was understood to mean Frisians (a minority language group) and persons

authorized to reside in the Netherlands who belong to the groups targeted by integration policy.²⁵ This interpretation of the notion of national minorities led to comments from the Council of State and to a discussion during proceedings in the Lower House. A motion in the Lower House to strike the provision that minorities within the meaning of the integration policy are also national minorities obtained insufficient support. This debate led to a discussion on the definition of national minorities. The spokespersons of the various parties have expressed their objections to the proposed and, in their estimation, too liberal definition. They feared that the government definition will lead to more far-reaching substantive protection of ethnic minorities than is desired or intended and would lead to claims by ethnic minorities against the government on grounds of the direct effect than can be attributed to the convention. Moreover, there has been debate concerning which groups may lay claim to the title of national minority: Roma and Sinti? Jews? As Peter Rodriguez underlines in his analysis of this debate, "the basic principle is that in order to qualify for the label 'minority', the group concerned must have experienced disadvantage or discrimination." (Rodriguez 2001).

Regarding debates among journalists and media commentators, statistics relating to discrimination have not caused a debate among Dutch journalists. Recently more prominent media attention has been paid to anti-Semitism among ethnic minorities in Amsterdam and also the classification of such events is criticised by some (e.g. Beusekamp, 2003; De Waard, 2004 ; Kouters, 2003). Some attention has been paid by public broadcasting to discrimination in nightlife, including improvised test studies shown with a candid camera.

Since several years (1998-1999), it is an increasingly accepted general practice in Dutch press reports to mention the ethnicity of perpetrators of criminal offences or deviant behaviour. This has happened also under the influence of changed police practices and public statements by local heads of police. As a result of perceptions of increased problems with migrant youth in larger cities, it was felt that no longer could they keep silent on the ethnic identity of this 'problem youth'. Nevertheless, ethnic crime reporting is still an object of debate in part of the public broadcasting service. Similarly, NGOs e.g. a Moroccan organisation against police violence and discrimination, criticise media reports and politicians, who according to these NGOs cite and follow uncritically questionable research on 'ethnic crime' and de-contextualise its findings thereby reinforcing negative portrayal (cf. report by Oñorbe Genovesi 2003). In a different realm, the LBR has noted that the media have created the impression that offensive language is found frequently on internet sites visited by minority youth (such as maroc.nl) but this is not correct, because the site is actively monitored and cleaned by the moderators/owners (LBR, 2004).

The debate in the media does give some indication of the variety of positions on the issue. The following example on the number of ethnic minorities in the police forces is telling. In 2003, the National Police Union's figures stated that 5.8% of the police force (including cleaning personnel) were

²⁵ The protection offered to purely linguistic minority groups must be comparable to that offered to ethnic minorities. The Framework Convention does not lead to any legal change for Dutch ethnic minorities.

of ethnic minority origin, whereas the national aim was 10%. It turns out that although more ethnic minorities entered the police force, they quickly disappeared again. Why this is so, has not been researched recently. The following two reactions cited in the article are an illustration of more widespread positions towards discrimination. Hans van Duijn, president of the National Police Union:

For some it appears not to be their profession after all, others have problems with the social code, or feel they are not taken seriously. The police has – more than elsewhere – a group culture of the white male. In addition police officers are frustrated because they are confronted continuously with misery. They react taking it out on the weaker groups : women, minorities. That goes from bad jokes, to untactful remarks. The management is often not aware of it.

Rinus Visser, police Rotterdam-Rijnmond and director of the Landelijk Bureau Discriminatiezaken represents a different position: “To speak of discrimination in the workplace, that is too easy. Of course there are examples where it happens. But you may also expect assertiveness from your police colleagues. We have dealt with this too rigidly for a long time. We have to learn how to cooperate.” (cited in report by Ruepert, 2003).

Issues that are linked to using studies to discriminate (as opposed to fight discrimination) have been given some coverage in the media. The first case relates to housing. In 2003, the local council of Rotterdam where the biggest party in the council is the local section of Pim Fortuyn’s Party “Leefbaar Rotterdam” launched a proposal aimed at refusing unemployed from settlement in the city of Rotterdam (*De Volkskrant*, by Azough en Meerhof 2003). The controversial proposal was based *inter alia* on statistics from a local municipal research office (Centrum voor Onderzoek en Statistiek, also issuing the GBA figures), about prognoses of the increase in ethnic minority population percentages in the year 2017 (*Het Parool*, 1 december 2003). Although this created a lot of debate and media attention, and people did criticise the fact that the council used the word ‘kansarmen’ (the disadvantaged) as a substitute for ‘ethnic minorities’, the main attention did not go to the possible indirect discrimination contained in the proposal. Instead other aspects were focused on: the motivations for and (in)feasibility of the plan, the experiences of people living in mixed neighbourhoods, etc..

The second example concerns a Christian-Democratic party proposal. In 2003, a double/extra WAO health-check exclusively for ethnic minorities was proposed by the Christian Democratic Party, based on statistics about the overrepresentation of ethnic minorities in the WAO and research by the Verwey Jonker Institute on the typology of health complaints of ethnic minorities (de Boer, 2003). This measure was criticised in letters from newspaper readers, however it did not lead to a public discussion about the discriminatory nature of the proposal.

D/ The use of statistics as legal evidence

1) The van Binderen case.

The Van Binderen case in front of the Supreme Court was the first case where statistics were used as an argument in itself in a civil law case. It was a discrimination case. But there was no follow-up in the field. Developments in the use of statistics as evidence are now common in environmental cases but not in discrimination jurisprudence. As Peter Rodriguez puts it, "it is a 'landmark case' but nothing comes after."²⁶ Statistics are not much used as proof/evidence (only as supplemental argument for persuasion) except in equal pay cases.

In the case Binderen/Kaya, which concerned discrimination in the allocation of housing by building corporations, the judge used several data that were compared and statistically significant differences emerged (de Fey, Kellermann and Nieuwboer 2004, p. 124). In this 1982 case, the judge decided to shift the burden of proof on the basis of the statistical evidence. The Turkish Dutchman Kaya had successfully argued in his claim that between 1975 and 1980 the housing corporation van Binderen had allocated only one of its 543 freed housing units to "foreigners" as they were called at the time. In comparison, other corporations allocated 7.2% of their free housing stock to foreigners. In addition, Kaya related the number of foreigners registered as looking for housing at van Binderen (10.2%) and their number in the tenants file of the corporation (three foreigners out of 1788 tenants). This led to the claim that the discriminatory policy of van Binderen was the cause of fact that Kaya had also been waiting for many years to be allocated housing.

In the jurisprudence concerning discrimination based on sex, statistical evidence has played an important role. The European Court of Justice has developed several criteria to this aim. In the Regina/Secretary of State vs. Seymour-Smith and Perez, the unequal treatment of people employed for less than two years in one function was at stake, these people received less pay than others.²⁷ The complainant claimed that in practice women were particularly disadvantaged by this, so that it would be a case of indirect discrimination. The court considered several conditions on which to use comparative statistics for supporting such cases.

Usually the data necessary to support a presumption of discrimination are in the hands of the accused party. This is the case of data about employees in a company are with the employer especially now that the SAMEN law has been discontinued. This is also the case of data about allocation of housing lying with the building corporation. This complicates the procedure, but a refusal to supply such data may be used in the procedure when necessary (de Fey, Kellermann and Nieuwboer, 2004: 125).

²⁶ Interview with Peter Rodriguez, Anne Frank House, Amsterdam, April 21st 2004.

²⁷ European Court of Justice Case C-197/97, 9 February 1999, Seymour-Smith and Peres

For example statistical data can be used as evidence in cases of discrimination in lay-offs (employment). The proportions in the data on the personnel in the company can give insight into patterns of staff management: when only minorities are laid off, or proportionately more minority than majority people are affected. This presumption is reinforced when personnel of minority origin is replaced with native Dutch personnel. It happens for example that employers then hire young Dutch through commercial employment agencies (de Fey, Kellermann and Nieuwboer 2004, p. 204).

2) The Equal Treatment Commission and the use of data

Article 18 of the Equal Treatment Act states that the Commission can get assistance from ministerial appointed civil servants (e. g. expertise on tax law) and Article 19 says that it is an obligation to give information to the Commission. It happened once someone refused and there was a summary procedure and in the end a criminal procedure before he gave the information.²⁸ The CGB has made clear that they value the use of data especially in cases of indirect discrimination. As professor Goldschmidt has put it, “the disproportionate impact has to be established, preferably on the basis of statistical data. The availability of reliable statistical information is very important in practice. Collection of data on the specific position of minorities is a task to be taken seriously by the government” (Goldschmidt 2001, p. 3).

When a company was a party in a CGB case involving ethnic minorities, the Commission would ask whether they had participated in Wet SAMEN and had the numbers of ethnic diversity. This was useful information to compare with their attitude in a case or their statements that they really cared about diversity and did not discriminate ethnically. The Equal Treatment Commission has asked government and parliament to reconsider the end of the Wet SAMEN and said that it was useful for their work.

The Commission can start to do research in an area, to investigate without a complaint being filed. It is written in the Act that it can do so at its own initiative. They have done so in several cases (the access of homosexual couples to in vitro fertilization clinics which we discuss below, and equal pay for women in healthcare).

The conditions for doing research are laid down in Article 12 of the ETA that states that there needs to be systematic distinction in a public service or in one or more sectors of society. There also needs to be a concrete indication that there may be a case of ‘illegitimate distinction’. This was a problem in practice since the Commission staff had to investigate the whole branch. They wanted to do it for ethnicity and financial institutions but it was too heavy an endeavour (because there were not sufficient concrete indications or complaints of discrimination in this area (as a whole). Once there will be more concrete cases the research could be initiated). The Equal treatment Act and the

²⁸ Interview with Peter Rodriguez, Anne Frank House, Amsterdam, April 21st 2004.

Commission is being evaluated and it will change that so the Commission will be able to investigate one company only not the whole branch. Research is preferred to the use of experts, former Commission member Peter Rodriguez points out that “Well if you ask for an expert, you need to consult the parties and they can ask for a counter-expertise. There has not been much use of experts. This would only be to help make the final decision but not crucial to case.”²⁹

The ET Commission uses statistics in cases of discrimination based on sex mostly. In cases where the question is whether a criterion in fact leads to a (suspicion of) indirect discrimination, the Commission has two methods to come to an opinion. The first is use of general facts and figures. The second is use of data from the surroundings of the people which are affected by the measure, for example the employer’s staff register. In that case the number of women among the disadvantaged group is compared with the number of men. The Commission sometimes carries out research to this end.

The method of general data has been used in case of flexible contracts. The Commission judged that it is generally known that women more often work part-time (they interrupt their professional career to look after their children) and that this is confirmed statistically. Another example, people participating in a pension scheme turned out to be disadvantaged when concerning surviving partners whose partners were at least ten years older. The Commission also researched the national figures of the CBS to support this (Asscher-Vonk and Burri, 2001).

The method of strictly considering employees’ data consists of the following. Proportions are used. The discrimination needs to be significant: the disadvantaged group needs to exceed the not disadvantaged group with a factor of 1.5.

The fatal factor is not always sufficient – research is sometimes done in the specific professional sector. Case 2001-83 showed a considerable discrepancy between the division men/women in the sector (factor 1.3), and with the employer in question (factor 3.2). The Commission decided to first investigate through expert advice the relation between the factor with which the treatment could be identified, and the size of the population to which this factor is applied. In 2001 no final judgement had been passed on the basis of this expert advice. The possibility therefore exists that the employer, despite the fact that the policy negatively affected particularly women, need not refute a presumption of indirect discrimination.

According to Asscher-Vonk and Burri (2001, p. 39): “it is not clear from the judgements why the Commission in some factual constellations considers the presence of a suspicion of indirect discrimination without further argumentation, while in other situations it considers other data necessary.’ It is not clear either why, in some cases, the Commission chooses to refer to general data from CBS, while in other cases, it only uses employers’ data.”

²⁹ Ibidem

3) The CGB and equal pay

No one is specialized in a particular research area except for the so-called “equal pay” division. These are two experts with special knowledge on how to investigate cases of pay discrimination. They go to the company and ask to see the data on wages and do their calculations.

The Dutch Equal Treatment Commission has taken up cases of wage discrimination based on sex and based on ethnicity since 1994. It may be noted that there is no case law of judicial courts on wage discrimination with regards to race or ethnic origin. The only reference point is therefore the case law of the Commission. From 1998 to 2003, the number of Commission rulings on wage discrimination with regards to race or ethnic origin was 29. Of these, 13 cases were decided in favour of the complainant. In the remaining 16 cases, wage discrimination could not be established. Of the 13 positive rulings, eight were very similar and concerned the application of the collective labour agreement for Cultural Minorities and Interpreters.³⁰ Before 1996, not a single wage discrimination case based on race was brought before the Commission; in the succeeding years, the number increased somewhat. In 2003, the Commission handled only one case.³¹

In 1989, the Dutch Act on Equal Treatment of men and women in the Workplace (*Wet gelijke behandeling mannen en vrouwen*, WGB) came into force. The WGB specifies that equal pay should be given for work of equal value or work of nearly equal value. The Act specifies what criteria should be used when determining wage differences. A similar specification is lacking in the Equal Treatment Act, which was introduced five years later. The Equal Treatment Commission utilizes the WGB as the legal basis for wage discrimination in both sex and race cases. The 1989 WGB functions as a *lex specialis* to the ETA, meaning that it takes priority over the ETA. It gives, more detailed provisions about the establishment of an equal pay case. Article 5 of the Equal Treatment Act states that it is forbidden to discriminate in employment conditions, but does not say how this is to be determined.

In several cases the Commission has concluded that there is no reason to use a different method of investigation for cases relating to unequal pay on grounds of gender from that used for cases dealing with race or nationality or any ground whatsoever. Yet, there is a slight difference in the way the CGB investigates these cases. According to the Equal Treatment Act for Men and Women, it is enough to make a comparison of income with only one other colleague. In race and nationality cases the Commission also investigates any structural differences in pay between different categories of employees. A diagram is then drawn up, with a different pay curve for each category of employees (e.g. different curves for employees of Moroccan origin and employees of Dutch origin). In this diagram a curve of the average salary of all employees is also included. These pay curves show the relationship between the level of the job and the salary level per category of employees (sometimes with a ‘correction’ because of the specific situation of the employees). In principle the corrected pay

³⁰ Commission 2002-73, 2002-74, 2002-75, 2002-76, 2002-77, 2002-78, 2002-80 and 2002-81.

³¹ Commission 2003-151

curves should not differ. By making a separate pay curve for the complainant and the employee(s) he or she is comparing his or her salary with, one can determine whether there are individual or structural differences in pay between certain categories of employees. This method helps the Commission to determine whether or not there is unequal pay on the basis of race or nationality. It has been possible to deal with indirect discrimination based on race and ethnicity as well by using diagrams with pay curves that indicate which group or individual is being discriminated against.

By means of investigations based on job evaluation schemes it has proved to be possible to determine whether there is discrimination based on gender or race in individual cases. It is important to note that when investigating a possible discrimination case, only the facts count. Whether or not there is an intention to discriminate is not relevant.

In a standard procedure of investigation (usually concerning gender) the Commission will determine the period to be taken into consideration, assess the equal value of the jobs that have to be taken into consideration, assess the standards of conditions the employer usually applies to determine salaries and investigate if and how these standards have been applied in the specific case (with respect to the applicant and the colleagues s/he compares herself with). Equal treatment law provides that the equal value should preferably be assessed by using a reliable job evaluation scheme, where possible using the scheme the company itself applies. If such a scheme is not available, the Commission usually chooses a job evaluation scheme that corresponds to the type of labour at hand. The Commission has developed a test of several criteria to determine whether a job evaluation scheme is reliable (case 1998-55).

The Commission in the Netherlands has experience in using average wage levels of other workers in comparable jobs, which has led to satisfying results. Where a suitable comparator has not been available within the company of the complainant, the Commission has looked into other companies in order to find a comparator. In the case of a complaint by a Turkish employee and an Antillean employee of a printing company (Case 2001-52), the Commission established that co-workers, performing similar work, earned more than employees of ethnic minority background. The Commission considered that the law did not prescribe an assessment procedure to compare wages of ethnic minorities with those of other workers. In the absence of such specific regulations, the Commission applied the assessment criteria which are laid down in the WGB. The Commission concluded that the market value of certain types of work may under specific circumstances lead to differences in payment, but that the difference must be proportional. In this case, the Commission found that market value differences were only allowed in times of scarcity on the labour market, which was not the case.

In the future, the Commission will have the competence to investigate equal pay in a company or small groups of companies on its own initiative. At present, its investigative powers are limited. Of its own accord, the Commission can only investigate a whole branch or an individual case, but not a company or small groups. The Commission is currently developing 'Quickscan' equal pay, a software

programme designed to indicate differences in pay in one company or a small group of companies. The Commission will then, with this information, investigate whether or not it is a case of discrimination.

4) Testing and discrimination in nightlife

The CGB passes judgements in many cases involving admission policies that fail to pass muster when submitted to testing. These cases have had much success in criminal courts. It is established case law for the CGB that admission requirements that are not clear and verifiable, and are not systematically carried out, result in conflict with the Equal Treatment Act. The Commission allows group action suits. On many occasions, Anti-Discrimination Bureaus have approached the Commission with such suits. In such cases a test is used to show proof of discrimination. The Commission accepts the test as evidence, as long as it is carefully administered. The establishment suspected of discrimination is visited separately by successive groups of non-native and native customers. Through the presence of witnesses, the basis of refusal (full capacity; membership required) is exposed and discrimination is demonstrated. The defence maintained by owners – that testing must be regarded as entrapment – has been overturned in court: the people who perform the test have no interest in being discriminated against.

If a test is carried out to determine whether non-natives are being turned away from a certain café, the test must be organised differently than when the investigation focuses on discrimination in a money-lending institution. The more complex the situation, the heavier the requirements that the test must satisfy. In testing for discrimination in a café, the income, work and credit rating of the test persons are not important, but they are important in an investigation of discrimination in money-lending. There the test persons must satisfy all the requirements set by the lending institution in order to qualify for whatever that institution has to offer. These requirements must be the same for all tested individuals, regardless of race and nationality. In investigating admission policy to a café, appearance, age and personality play a role.

5) The CGB investigates on its own: the case of sexual orientation and IVF

Between 1994 and 2000, there have been 14 cases involving discrimination on the ground of sexual orientation involving the provision of services, seven of which were about medical services. Putting highly controversial questions before the Commission. Six cases were thrown out because the Commission ruled that the distinction made did not amount to unlawful direct discrimination, since the reason for excluding or including a certain group had been a medical one (e. g. refusing gay men as blood and sperm donors and heterosexual men a free vaccine for hepatitis B). The seventh medical case [2000-04] was started by the Commission itself, using its power to investigate a certain social area. The investigating dealt with the thirteen hospitals in the Netherlands that provide in vitro fertilisation treatment. It appeared that some of these hospitals refused the treatment to unmarried

women, to single women and or to women with female partners. It found that nine clinics excluded single women, and four excluded lesbians. One hospital stipulated that a couple should use their own sperm. This practice in effect excludes lesbians and therefore indirectly discriminates against them. The hospital said in its defence that it is essential for the welfare of a child to grow up in a family with a father and mother.

In its opinion the Commission did not use the medical exception they had created in the other cases. In their view, the exceptions were not based on reasons of health, but on morals. In a controversial opinion, the Commission ruled that it is always unlawful in this field to discriminate against women whose partner is female, that it is always unlawful to discriminate against women who are not married to their partner, and that depending on the actual reasons use it may also be against the law to discriminate against single women. The Commission concluded that, as there is no scientific research to suggest that a child with two mothers fares less well than one with a mother and father, this argument is not an objectively justified reason to exclude lesbians. In the case of single women, the Commission accepted this argument.³²

This case exemplifies two uses of research. First, the research conducted by the Commission was meant to investigate the extent of direct and indirect discrimination and the reasons behind the exclusion of certain couples or women. Second, the Commission stated that in the absence of research showing that the welfare of children is at risk if raised by a lesbian couple, discrimination is justified.

E/ The interaction between social science, law and politics

Compared to other European political systems, the Dutch case exhibits a substantive amount of interaction between social science and politics. Social scientists often with experience as civil servants in ministries have been instrumental in setting up the Dutch minority policy. This was the case of Rinus Penninx, one of the “founding fathers” of Dutch minority policy in the late 1970s, as he worked both as an academic and as a civil servant in the ministry of Culture, Recreation and Social Work. In effect he handed to himself the report of the WRR in 1979 and wrote the government response to his own report. Rinus Penninx also introduced the term ethnic minority in the Dutch debate. Han Entzinger who is currently a professor at Erasmus university in Rotterdam also played an important role in the second WRR report. Published in 1990, the report called for a reorientation of ethnic minority policy towards the integration of “allochtonen” (non-natives). He also made proposals regarding newcomer policy and the employment of minorities. Professor Entzinger worked as a civil servant at the Ministry of Culture, Recreation and Social Work before joining academia (in 1975 he had written a piece to call for the establishment of an ethnic minority policy).

³² The opinion is summed up at : <http://www.cgb.nl/english/asp/sexual.asp>

The interaction between policy and social studies is also exemplified by the clout of the WRR and the existence of an institute such as the SCP, which combines analysis and policy recommendations in its reports. There is also a tradition of evaluation of policies and laws, usually every five years. There are also many Commissions set up by government or parliament that include academics. There have been several on issues such as religion, integration policy, etc.

This should not be interpreted as meaning that social scientists have an immense influence on policy-making. At times they did influence the terms of the debate and policy formulation yet this was in a favourable context given that politicians had agreed to act and avoided polarization of the debate. As Jan Rath puts it, in the Dutch political system “sensitive issues were usually resolved by a technocratic compromise. In that process experts had acquired a predominant if instrumental role” (Rath 2001, p. 13).

Yet, this is no guarantee that social science studies are not ignored as soon as the issue becomes high politics. Social scientists then can be held responsible for the so-called failure of the diversity and equality policies that they helped initiate. They can also be replaced by opportunist colleagues as the post-2002 political situation suggests. Moreover, as noted in our introduction, when figures about ethnic minorities showed an improvement in their position with respect to employment and education in the 1990s, politicians ignored these statistics and it is during that decade that the discourse on the failure of integration, on Islam and its incompatibility with Dutch society gained ground in the public sphere.

NGOs that we interviewed complain that the government pays attention to issues when there are media events that focus on individual cases and ignore structural causes of social differentiation among groups. They also criticized the fact that monitoring is sponsored by the government because of its international legal obligations rather than as a genuine interest in remedying social problems.

Finally, it should be underlined that the main institutes are influenced by the political debate. This is the case of CBS and SCP that are linked to government. Yet this is the case in other instances where research depends on public spending and responds to demands from governments or city halls. One example is the fact that the latest integration monitor includes more questions on acculturation and includes a new section on crime (ISEO 2002). Clearly the fact that politicians and the media link crime and immigrants has been in part taken on board by the institute that had to do the study.

There have been some criticism of the “intellectual domestication” of researchers (Rath 2001, see also Jongkind 1991) and their close and pragmatic relationship with policy-makers. In a nutshell, if research is not theory-driven but instead seeks to fit with politically palatable views, it ignores some important aspects of the causes and dynamics of social differentiation (e. g. class versus ethnic determinants of inequality).

III - CONTROLLING THE PRODUCTION AND USE OF STATISTICS

A/ Data protection laws

The right to privacy is laid down in the Dutch Constitution. Article 10 states: "(1) Everyone shall have the right to respect for his privacy, without prejudice to restrictions laid down by, or pursuant to, Act of Parliament. (2) Rules to protect privacy shall be laid down by Act of Parliament in connection with the recording and dissemination of personal data. (3) Rules concerning the rights of persons to be informed of data recorded concerning them, of the use that is made thereof, and to have such data corrected shall be laid down by Act of Parliament." In May 2000, the government-appointed Commission for Constitutional Rights in the Digital Age presented proposals for changes to the Dutch Constitution. One consisted in expanding Article 10 to the right of persons to be informed about the origin of data recorded about them and the right to correct that data.

Aside from its national basic law, The Netherlands has also ratified a number of international instruments that protect the processing of personal data. As a member of the Council of Europe, the Netherlands has signed and ratified the Convention for the Protection of Individuals with Regard to Automatic Processing of Personal Data (ETS No. 108). It has signed and ratified the European Convention for the Protection of Human Rights and Fundamental Freedoms. It is a member of the Organization for Economic Cooperation and Development and has adopted the OECD Guidelines on the Protection of Privacy and Transborder Flows of Personal Data. And last but not least, as a member of the EU, it has complied with the 1995 directive on data protection.

The Dutch data protection Act (*Wet bescherming persoonsgegevens* or WBP) came into force in September 2001 in accordance with the European Data Protection Directive 95/46 of 1995. The Act is thus a revised and expanded version of the Data Registration Act of 1998 that also regulates the disclosure of personal data to countries outside of the European Union. Some of the aspects that are important when sensitive data is concerned were already present in the previous Dutch legislation. For instance, the information requirements which include information to be given to the data subject (articles 10, 11 of the directive) and the data subject's right of access to data (art. 12 of the directive). These obligations already exist in the WPR (articles 28, 29 WPR).

The Dutch data protection authority (*College Bescherming Persoonsgegevens*, or CBP) exercises supervision of the operation of personal data files in accordance with the Act. Previously known as the *Registratiekamer*, the CBP's functions have remained largely the same with the implementation of the new Act, although it has been given new powers of enforcement. It can now apply administrative measures and impose fines for non compliance with a decision. It can also levy fines for breach of the notification requirements. Otherwise, the CBP continues to advise the government, deal with

complaints submitted by data subjects, institute investigations and make recommendations to controllers of personal data files.

Art. 51(2) of the Personal Data Protection Act provides that the CBP has to be consulted about any proposed legislation or general administrative regulations which relates exclusively or to a significant extent to the processing of personal data. This implies that policy proposals that relate to the four grounds of discrimination of our study or that require the gathering of sensitive data to fight discrimination would lead to an opinion from the Agency.

The CBP must be notified of the use of personal data, unless an exemption applies. The framework for performing this task has been set forth in the WBP and other related legislation. In this context, the legislator has implemented Article 28 of the European Privacy Directive 95/46/EC, which explicitly provides for the existence of such a supervisory authority and which also provides that this authority should fulfil its task completely independently.

There is evidence that the CBP is fully aware of its role in preventing the discriminatory treatment of people through the use of personal data. This is especially the case in the area of health data and the following example concerns disability. In 2002, the CBP issued an opinion when the SUWI Act (Work and Income Implementation Structure Act) came into force on January 1st, 2002. The legislation related social security-related issues, particularly the reintegration of workers after periods of occupational disability. The Dutch DPA urged the government to ensure the total transparency of the data flows associated with the Act. It should be clear to everyone involved – individuals, institutions and companies – just what information can lawfully be exchanged, between whom and for what purposes. The CGB noted that: “Increasingly, the occupational reintegration of people who have been unfit for work for extended periods is contracted out to private companies. When advising the government on various legislative issues, the CGB has repeatedly underlined the need for specific regulations – preferably based in legislation – covering the exchange of information in the context of reintegration activities. Someone who is being reintegrated is in a vulnerable position, and the data that is being exchanged is essentially of a medical nature. The evident conflict between the need to protect privacy and the need to help people back to work is such that the providers of reintegration services would benefit from guidance.”

B/ Measures to protect sensitive data collection and use and exemptions

The Act imposes strict conditions on the registration of “special data” including ethnicity and sexual orientation. Article 16 states that: “It is prohibited to process personal data concerning a person's religion or philosophy of life, race, political persuasion, health and sexual life, or personal data concerning trade union membership, except as otherwise provided in this Section. This prohibition also applies to personal data concerning a person's criminal behaviour, or unlawful or objectionable conduct connected with a ban imposed with regard to such conduct.”

Yet, this article does not apply in certain cases. In the case of racial data, it is clear from the law that what it refers to is data on ethnic minorities as defined by country of birth, data that are considered necessary to identify and give preferential treatment to a minority. The English translation of Article 18 that explains the reasons that might justify collecting data related to race and the conditions that should be met in that instance is the following:

1. The prohibition on processing personal data concerning a person's race, as referred to in Article 16, does not apply where the processing is carried out: a. with a view to identifying data subjects and only where this is essential for that purpose; b. for the purpose of assigning a preferential status to persons from a particular ethnic or cultural minority group with a view to eradicating or reducing actual inequalities, provided that: 1°. this is necessary for that purpose;
2. The data only relate to the country of birth of the data subjects, their parents or grandparents, or to other criteria laid down by law, allowing an objective determination whether a person belongs to a minority group as referred to under (b), and 3°. the data subjects have not indicated any objection in writing.

This clearly legitimates the categories laid down in laws regarding ethnic minorities and shows that data collection of the foreign background of individuals is fully justified by the need to reduce inequalities among ethnic groups in society. At the same time, the law is so precise in its phrasing that any change in the ways that race and ethnicity are categorized and measured would require an adjustment of the data protection law.

There are other provisions in the Data Protection Law that suggests that sensitive data on race should be collected. For instance, Article 23 states that processing personal data is legal if “this is necessary to comply with an obligation of international public law.” This means that when the Netherlands gathers data to fulfil its obligations as a signatory of the CERD Treaty, a member of the EU or the Council of Europe, it is not prohibited.

This acknowledgement of the need to comply with international obligations applies to all sensitive data and therefore could apply to data on disability in the context of international monitoring (as done for the UN or the OECD).

Another provision that is important in the context of our study also applies to all types of data can be found in the second part of Article 23. It regards the legal framework regarding research and statistics:

“The prohibition on the processing of personal data referred to in Article 16 for the purpose of scientific research or statistics does not apply where: a. the research serves a public interest, b. the processing is necessary for the research or statistics concerned, c. it appears to be impossible or would involve a disproportionate effort to ask for express consent, and d. sufficient guarantees are provided to ensure that the processing does not adversely affect the individual privacy of the data subject to a disproportionate extent.”

In cases where research serves a public interest without affecting disproportionately the individual's privacy, the data protection agency should make a notification or else the relevant ministry. The Dutch data protection agency can grant exemption from the prohibition on processing sensitive data. Researchers that gather this type of data must thus follow a procedure to be in compliance with the Act. Social science colleagues contacted affirm that it is generally granted.

Names are never used. If tables are produced, there should be no number so small in a cross-tabulation that one could identify the individuals. This means that there are limits to the amount of break down that can be published.

Regarding the legal regime that applies to public institutes that gather statistics such as CBS (Statistics Netherlands), the Data Protection Act makes clear that they should act in accordance to the Act in their use of personal details. Among other things this implies that personal details may only be used if the person to which they refer is explicitly informed of this use. However, personal details may be used to trace a user if a criminal offence is committed, or if criminal statements or comments are made via the website, and in other exceptional cases as laid down in Section 43 of the Dutch data protection act (state security, detecting criminal offences, etc.). Personal details are defined as information that can be used to identify a natural person; i.e. if the name of the person to which the information refers can be traced. Examples of such information are: name, address and e-mail address.

It should be noted that the situation is slightly different if the data processed is only used for scientific purposes as opposed to policy purposes. Then the Act stipulates that : “Where processing is carried out by institutions or services for the purposes of scientific research or statistics, and the necessary arrangements have been made to ensure that the personal data can only be used for statistical or scientific purposes,” it is not necessary to tell the individual what the data gathered is for or to tell him what it has been used for. The Dutch data protection agency in its 2001 report states that it is working on producing a framework document setting out the legal rules on the use of personal data in the context of scientific and statistical research.

When it comes to research done for commercial purposes by private organizations, a recent opinion by the Data Protection Agency is of interest. In 2000, the Dutch data protection agency issued an opinion on ethnic marketing. It stressed that ethnic marketing is permitted as long as it is used carefully. The marketing organization must presume that it is dealing with special data and the WBP imposes strict conditions on the registration of 'special data' including ethnicity. The attitude of the agency is that registering ethnicity can be a good or a bad thing: "Registering people of a particular ethnic origin is one means of reaching a specific section of the population. However, registering ethnicity gives rise to the possibility of excluding individuals on the basis of their ethnic background" (Helden, 2000)

Pursuant to the Personal Data Protection Act, the Decree on Regulated Exemption has been enacted to exempt certain organizations from the registration requirements of the Act. There are also sectoral privacy laws regulating for instance the search of private homes, the Dutch police, medical exams, medical treatment, social security, and the employment of minorities (the SAMEN Act). This means that positive discrimination policies warrant the collection of data on ethnic minorities.

C/ Other issues

The Netherlands highly values public access to documents. This may sometimes contradict personal data protection. The emphasis has been to explore technical solutions (so-called PETs, Privacy Enhancing Technologies). For example, CBS the central statistics bureau provides access to the data it produces online yet it does so in aggregate tables that cannot allow individual records to be traced to a particular address. Moreover, CBS computers are not in contact with the outside world (the World Wide Web) to prevent hackers getting into their sensitive data.

Concerns regarding personal data protection in the Netherlands regard the tendency in the 1990s to create interfaces between various official databases. The 1998 *Koppelingswet* most notably called for data exchange between data on the status of individuals in relation to immigration and social security databases to prevent undocumented aliens from accessing public services and benefits.

Lastly, public authorities in the Netherlands possess a significant amount of information on individuals through the public registries. This is no small irony since the census was abolished after 1971 for being too invasive of privacy. Personal registers are data rich.

References

1) Books, articles and reports

Alders, Maarten. 2001. *Classification of the population with a foreign background in the Netherlands*. Paper presented at the conference "The measure and mismeasure of population. The statistical use of ethnic and racial categories in multicultural societies." in Paris, France, 17 - 18 December 2001. <http://www.cbs.nl/en/publications/articles/population-society/population/classification-foreign.pdf>

Asscher-Vonk, I.P. and Burri, S. (2001). Geslacht. In: Commissie Gelijke Behandeling: Gelijke behandeling: oordelen en commentaar 2001, Kluwer. http://www.cgb.nl/download/oordelen2001_15-95.pdf pp. 37-39 'Indirecte discriminatietoets'

Becker J. 2003. *De vaststelling van de kerkelijke gezindte in enquêtes*. Work document 92. The Hague: SCP.

Beune, H. H. M. and Hessels, A. J. J. 1983. *Minderheid - minder recht? een inventarisatie van bepalingen in de Nederlandse wet- en regelgeving waarin onderscheid gemaakt wordt tussen allochtonen en autochtonen*. Staatsuitgeverij. Den Haag.

Bink, S. (2003). *Media en Minderheden in Nederland*. Utrecht: Mira Media

Böcker, Anita and Minderhoud, Paul. 1991. *Immigrants and Social Security: Perspectives of Dutch Implementation Officers and Turkish Clients*. Paper presented at the International Conference of Law and Society. 26-29 June 1991.

Bronneman-Helmerts H. M. and Turkenburg M. 2003. Het onderwijsbeleid ten aanzien van minderheden. In J. Dagevos, M. Gijsberts & C. van Praag (eds), *Rapportage minderheden 2003 (pp. 143-197)*. The Hague: SCP.

Burri, S. (2003). 'Indirect sex discrimination in Pay and Working Conditions', in J. Cormack (Ed.) (2003). *Equal pay and Working Conditions*. Report of the Second experts' meeting hosted by the Dutch Equal Treatment Commission, 23-24 June 2003, Utrecht

CBS. 2000, 2001, 2002. *Allochtonen in Nederland*, Voorburg: CBS.

CBS. 2002. "Nearly 900 thousand Muslims in the Netherlands." *Webmagazine*. 18 November 2002. Voorburg: CBS.

CBS 2003. "Nearly as many Muslims as Calvinists in the Netherlands." *Webmagazine*. 13 October 2003. Voorburg: CBS.

CBS. 2004a. "Number of Muslims differs considerably per region." *Webmagazine*. 27 April 2004. Voorburg: CBS.

CBS. 2004b. *Code of Practice*. January 2004. Document 0142. Voorburg/Heerlen: CBS

Commissie Gelijke Behandeling (CGB) (2002). *Oordelenbundel 2001*. www.cgb.nl

Commissie Gelijke Behandeling (CGB) (2003). *Fact sheet Dutch Equal Treatment Commission 2002*. www.cgb.nl

Cormack, J. (ed.) (2003). *Equal pay and Working Conditions*. Report of the Second experts' meeting hosted by the Dutch Equal Treatment Commission, 23-24 June 2003, Utrecht

De Fey, C.C., Kellerman, A. and Nieuwboer, J.W. (2004). *Met recht discriminatie bestrijden*. Den Haag: Boom Juridische Uitgevers.

De Graaf, H. and Sandfort, T. (2000), *De maatschappelijke positie van homoseksuele mannen en lesbische vrouwen*, NISSO, Delft: Eburon.

Dekker, Paul and Ester, Peter. 1989. "Elite Perceptions of Mass Preferences in the Netherlands: Biases in Cognitive Responsiveness" in *European Journal of Political Research* 17, pp. 623-639.

Dekker, Paul. 1991. "Publieke opinies over ethnische minderheden in Nederland en West-Duitsland" in *Mens en Maatschappij* 66, n° 3, pp. 296-314.

Entzinger, Han. 1985. "The Netherlands" in Tomas Hammar (ed.), *European Immigration Policy*. Cambridge: Cambridge University Press.

European Foundation for the Improvement of Living and Working Conditions. 2003. *Work and Health Statistics in the Netherlands*. Dublin: EFILWC.

<http://www.eurofound.eu.int/working/surveys/NL0403SR01/NL0403SR01.pdf>

Gijsberts M. 2003. Minderheden in het basisonderwijs. In J. Dagevos, M. Gijsberts & C. van Praag (eds), *Rapportage minderheden 2003* (pp. 63-142). The Hague: SCP.

Goldschmidt, J. E. 2001. *Anti-Discrimination Law in the Netherlands. Experiences of the First Seven Years*. Paper delivered at the international conference on Equal treatment between persons and Prohibition of All Forms of Discrimination, Budapest, December 2001.

Groenendijk, C. A. 1989. "Nationality and Access to Employment in the Public Service: Law and Practice in the Netherlands" in *Netherlands International Law Review* 36, n°2, pp. 107-130.

Hagendoorn, L., J. Veenman & W. Vollebergh (eds) 2004. *Assimilation and integration of immigrants in the Netherlands*. Aldershot: Ashgate.

Hagendoorn, Louk. 1993. "Ethnic Categorization and Outgroup Exclusion: Cultural Values and Social Stereotypes in the Construction of Ethnic Hierarchies" in *Ethnic and Racial Studies* 16, n°1, pp. 26-51.

Halman, Loek. 2001. The European Values Study: A Third Wave. Source book of the 1999/2000 European Values Study Surveys. Tilburg: EVS/WORK and Tilburg University.

http://spitswww.uvt.nl/web/fsw/evs/documents/EVS_SourceBook.pdf

Harmesen, Carel and Liesbeth Steenhof. 2003. *Same-sex couples in the Netherlands*. Paper presented at the workshop on comparative research in Europe, in Rome, Italy, 30 June - 2 July 2003.

<http://www.cbs.nl/en/publications/articles/population-society/population/same-sex-couples.pdf>

Hendriks, A. 2000. *Gelijke toegang tot de arbeid voor gehandicapten*. Deventer: Kluwer.

Houtzager, Dick C. 2002. *Discrimination in employment (2001)*, Dutch Monitoring Centre against Racism and Xenophobia, Amsterdam: DUMC (www.dumc.nl).

ISEO and COS. 2000, 2001, 2002. *Minderhedenmonitor 2000. Ethnische minderheden in Rotterdam*. Rotterdam: ISEO and COS.

ISEO. 2002. *Integratiemonitor*. Rotterdam: ISEO.

Jongkind, Fred. 1992. "Ethnic Identity, Societal Integration and Migrants' Alienation: State Policy and Academic Research in the Netherlands" in *Ethnic and Racial Studies* 15, n°3.

Kapelle, Iris. 2002. *Discrimination in education (2001)*, Dutch Monitoring Centre against Racism and Xenophobia, Amsterdam: DUMC (www.dumc.nl).

- Kuijjer, Aldo. 1993. "Recent Changes in Dutch Immigration, Nationality, and Anti-Discrimination Law" in *Migration, Immigrants and Policy in the Netherlands*. Amsterdam: SOPEMI.
- Landelijk Bureau ter bestrijding van Rassendiscriminatie (LBR) (2004). *Racisme in Nederland. Stand van Zaken*. www.lbr.nl
- Landelijk Expertise Centrum Discriminatie (LECD) (2003). *Cijfers in beeld: discriminatiecijfers 1998-2002*. Amsterdam: LECD
- Landelijke Vereniging van Anti-Discriminatie Bureaus en Meldpunten (LV ADB) (2003). *Kerncijfers 2002. Klachten en Meldingen over ongelijke behandeling. Een overzicht van discriminatieklachten en -meldingen*. www.lvadb.nl
- Lijphart, Arend. 1975. *The Politics of Accommodation: Pluralism and Democracy in the Netherlands*. Second Edition. Berkeley, CA: UC Press.
- Magnée, Ivo, and Eke Gerritsma. 2003. *Dutch country report in immigration management*. Bruxelles: Migration Policy Group (<http://migpolgroup.com/publications>, March 2004).
- Mahnig, Hans. 1992. "Immigration et émancipation des minorités aux Pays-Bas" in Jacqueline Costa-Lascoux and Patrick Weil, eds., *Logiques d'Etats et immigrations*. Paris: Kimé.
- Meldpunt Discriminatie Amsterdam (MDA) (2003). *Jaarverslag 2002*. Amsterdam: MDA.
- Minderhedennota*. 1983. Tweede Kamer 1982-3, 16102, number 21. The Hague: Ministry of Interior.
- Minderhoud, Paul. 1993. "Voor mij zijn ze allemaal gelijk," *ein rechtssociologische studie naar verschillen tussen migranten en Nederlanders bij de uitvoering van de kinderbijslag- en arbeidsongeschiktheidswetgeving*. Amsterdam: Thesis Publishers.
- Mulder L. & Uerz D. 2000. Nijmegen: ITS.
- Jaaroverzicht Minderhedenbeleid (1998), Tweede Kamer der Staten-Generaal, Vergaderjaar 1997-1998, 25 601, No. 2, 1998
- Ministerie van Justitie (2003). *Nationaal Actieplan tegen Racisme*. De follow-up van de VN-Wereldconferentie tegen racisme, rassendiscriminatie, vreemdelingenhaat en aanverwante onverdraagzaamheid (WCAR) te Durban, volgens Nederlands -perspectief. www.justitie.nl
- Mira Media (2003). *Feiten en Cijfers. Wet SAMEN: Verslaglegging van Omroeporganisaties*. Utrecht: Miramedia Available at: http://www.miramedia.nl/media/files/wetsamen_update0312.doc
- OECD. 2003. *Transforming Disability into Ability: Policies to Promote Work and Income Security for Disabled People*. Paris: OECD.
- Pastor, Anna (2004). *Europarlementariërs willen uitbreiding discriminatiewetgeving. Verslag verkiezingsdebat 7 mei 2004* (ww.lbr.nl)
- Penninx, Rinus, Schoorl, Jeannette and van Praag, Carlo. 1994. *The Impact of International Migration on Receiving Countries: The Case of the Netherlands*. Amsterdam: Swets and Zeitlinger.
- Penninx, Rinus. 1979. "Towards an Overall Ethnic Minorities policy?" in WRR (Netherlands Scientific Council for Government Policy), *Ethnic Minorities*. The Hague.
- Penninx, Rinus. 1995. 'La société néerlandaise et ses immigrés. La position des immigrés aux Pays-Bas et le multiculturalisme dans la société néerlandaise', in Catherine Neveu (ed.), *Nations, frontières et immigration en Europe*, p. 49-85. Paris: CIEMI/L'Harmattan.

- Penninx, Rinus. 1996. 'Immigration, minorities policy and multiculturalism in Dutch society since 1960.' In: R. Bauböck, A. Heller & A.R. Zolberg (ed.), *The challenge of diversity. Integration and pluralism in societies of immigration*, 187-206. Vienna/Aldershot: European Centre/Avebury.
- Penninx, Rinus. 1997. 'Negotiating a place in society. Immigration and minority policy, public discourse and multiculturalism in Dutch society', in: W.W. Isajiw (ed.), *Multiculturalism in North America and Europe. Comparative perspectives on interethnic relations and social incorporation*, 221-243. Toronto: Canadian Scholars' Press.
- Penninx, Rinus. 2001. 'Immigrants and the dynamics of social exclusion - Lessons for anti-discrimination policies', in: F. Lindo and M. van Niekerk (eds.), *Dedication and detachment. Essays in honour of Hans Vermeulen*. Amsterdam, 193-211. Amsterdam: Het Spinhuis.
- Phalet K. & ter Wal J. (eds) 2004. *Moslim in Nederland*. Den Haag: SCP.
- Platform Artikel 13 (2004). *Klaar? Af! Debat over discriminatiebestrijding in Europa*. Den Haag 7 mei 2004. (Reader)
- Politie Rotterdam-Rijmond and RADAR (2001). *Tobben aan de Maas: politierapportage discriminatieklachten, een analyse van de cijfers*.
- Prins, C. J. M., 2000, "Dutch population statistics based on population register data," *Maandstatistiek van de Bevolking*, February 2000, p. 9-15.
- Rath, Jan, Groenendijk, Kees and Penninx, Rinus. 1991. "The Recognition and Institutionalization of Islam in Belgium, Great Britain and the Netherlands," *New Community* 18, n°1, pp. 101-114.
- Rath, Jan. 1991. *Ethnic Minorities Studies in the Netherlands: The Remarkable Absence of Marxist Theory*. mineo. Available from the author.
- Rath, Jan. 1991. *Minorisering: De Sociale Constructie van 'Ethische Minderheden'* Amsterdam: Sua.
- Rath, Jan. 1993a. "Les immigrés aux Pays-Bas" in Catherine Wihtol de Wenden et al., *Les étrangers dans la cité*. Paris: La Découverte, pp. 138-148.
- Rath, Jan. 1993b. "La construction sociale des minorités ethniques aux Pays-Bas et ses effets pervers" in Marco Martiniello et Marc Poncelet, eds. *Migrations et minorités ethniques*. Brussels: De Boeck Université.
- Rath, Jan. 2001. 'Research on immigrant ethnic minorities in the Netherlands', pp. 137-159 in P. Ratcliffe (ed.), *The Politics of Social Science Research. 'Race', Ethnicity and Social Change*. Houndmills, Basingstoke, Hampshire: Palgrave
- Rodriguez, Peter. 2001. *Analytical Report on Legislation 2000*. Dutch Monitoring Centre against Racism and Xenophobia, Amsterdam: DUMC (www.dumc.nl).
- Rodriguez, Peter. 2002. *Discrimination in nightlife*. Dutch Monitoring Centre against Racism and Xenophobia, Amsterdam: DUMC (www.dumc.nl).
- Rolls of Roelofs, Silvia (Ed.) (2003). *Jaarverslag 2002. Commissie gelijke behandeling* Utrecht: Commissie Gelijke Behandeling, Utrecht.
- Rotterdamse Anti-Discriminatie Actie Raad (RADAR) (1998). *Tussen Radar en Kompas. Anti-discriminatie bureaus als regionale waarnemingscentra voor discriminatie*. Rotterdam: Stichting Radar.
- Rotterdamse Anti-Discriminatie Actie Raad (RADAR) (2003). *Radar 20 Jaar Jong. Twintig jaar anti-discriminatie werk 1983-2003*. Rotterdam: Stichting Radar.

SCP and ISEO. 2004. *Onderzoeksrapport 2004-1: Emancipatie in estafette. De positie van vrouwen uit etnische minderheden*. Den Haag: SCP.

SCP. 2001. *Rapportage Minderheden 2001*. Den Haag: SCP.

Shadid, W. A. R. 1991. "The Integration of Muslim Minorities in the Netherlands" in *International Migration Review* 25, n°2, pp. 355-373.

Shadid, W. A. R. and van Koningsveld, P. S., eds. 1992. *Islam in Dutch Society: Current Developments and Future Prospects*. Kampen: Kok Pharos Publishing House.

Smeets, H.M.A.G., Martens, E.P., & Veenman, J. 1999. *Jaarboek Minderheden 1999*. Houten: Bohn Stafleu & Van Loghum.

Smeets, H.M.A.G., Martens, E.P., & Veenman, J. 2000. *Jaarboek Minderheden 2000*. Lelystad: Koninklijke Vermande bv.

Smeets, H.M.A.G., Martens, E.P., & Veenman, J. 2002. *Jaarboek Minderheden 2001*. Houten: Bohn Stafleu Van Loghum.

Statistics Netherlands. 2003. "More women and older people with a disability affecting their capacity to work." Press release. 20 November 2003. Voorburg/Heerlen: CBS.

Statistics Netherlands Act 2003. Translation of *Staatsblad* 2003 516 1. The Hague. SDU or <http://www.cbs.nl/en/organisation/statlaw-en.pdf>

Ter Wal, J. (2004a). The European Day of Media Monitoring. A quantitative analysis of daily press and TV contents in the 15 EU Member States. Utrecht: On-Line More Colour in the Media (www.multicultural.net).

Ter Wal, J. (2004b). *De Islam in de publieke discussie. Inhoudsanalyse van de Volkskrant 1998-2002*. Den Haag: Sociaal en Cultureel Planbureau.

Uunk, W. & S. Dominguez Martinez. 2002. *Wijken in beweging. Migratie in en uit concentratiewijken*. Assen: Koninklijke Van Gorcum.

Uunk, W. 2002. *Concentratie en achterstand. Over de samenhang tussen etnische concentratie en de sociaal-economische positie onder allochtonen en autochtonen*. Assen: Koninklijke Van Gorcum.

Van Dijck, B. and Nellen, N.M. (2003). *Multiculturele programmering 2002. Rapport Mediabeleid & Programmacoördinatie*. Hilversum: Publieke Omroep

van Dijck, B., Sterk, G. and Vierkant, P. (2003). *Monitor Representatie Diversiteit 2002*. Hilversum: Publieke Omroep

Van Donselaar, J. and Rodrigues, P.R. (2003). *Monitor Racisme en Extreem rechts. Vijfde rapportage*. [period end 2001-end 2002] Amsterdam: Anne Frank Stichting en Leiden: Departement Bestuurskunde van de Universiteit Leiden

Van Donselaar, J. and Rodrigues, P.R. (2004a). *Monitor Racisme en Extreem rechts. Opsporing en Vervolging 2002*. Amsterdam: Anne Frank Stichting en Leiden: Departement Bestuurskunde van de Universiteit Leiden

Van Donselaar, J. and Rodrigues, P.R. (2004b). *Monitor Racisme en Extreem rechts. Racistisch en extreem rechts geweld in 2002*. Amsterdam: Anne Frank Stichting en Leiden: Departement Bestuurskunde van de Universiteit Leiden

van Helden, W. J. 2000. "The client's origin, privacy rules for ethnic marketing," *Achtergrondstudies en Verkenningen* 19, Registratiekamer, September 2000.

Van Noort, R.B.J.C. 2001. *Statistics that Count*. Voorburg/Heerlen: CBS.

Van Ours J, Veenman J & Verhoeven W. 2002. *Van ouder op kind*. Tilburg: Organisatie voor Strategisch Arbeidsmarktonderzoek.

van Praag C. 2003. Demografie. In J. Dagevos, M. Gijsberts & C. van Praag (eds), *Rapportage minderheden 2003* (pp. 13-33). The Hague: SCP.

Van Praag, Carlos S. 1973. "Het overheidsbeleid inzake allochtone groepen" in H. Vermey-Jonker, *Allochtonen in Nederland. Second Edition*. The Hague: Ministry of Culture, Recreation and Social Work.

Van Praag, Carlos S. 1983. *Vooroordeel tegenover ethnische minderheden. Resultaten van Nederlands opinie-onderzoek*. Rijswijk: Sociaal en Cultureel Planbureau.

Veenman J. 2003. Discriminatie op de arbeidsmarkt: De resultaten van Nederlands onderzoek. *Beleid en Maatschappij* 2003.30.2, 90-100.

Veenman, J. (ed.) 2002. *De toekomst in meervoud. Perspectief op multicultureel Nederland*. Assen: Koninklijke Van Gorcum.

Veenman, J. 2001. Ethnic minority educational and labour market performance in the Netherlands. In K. Phalet & O. Orkeny (Eds.), *Ethnic minorities and the inter-ethnic relations in context* (pp. 231-249). Aldershot: Ashgate.

Veld Th. 2003. Etnische minderheden in Rotterdam. In: *Minderhedenmonitor 2002*. Rotterdam: ISEO-COS.

Waldijk, Kees. 2001. *Not Quite Paradise. Forty Sexual Orientation Cases Decided by the Dutch Equal Treatment Commission between 1994 and 2001*. Paper for the conference organised by Center for Research and Comparative Legal Studies on Sexual Orientation and Gender Identity "Sexual orientation, gender identity and fundamental rights - Decriminalisation, Anti-discrimination Laws and the Recognition of Gay, Lesbian and Transsexuals Rights" in Turin, Italy, 9-10 March 2001.

Waldijk, Kees. 2002. *How Holland did it. Visibility is key to ending marriage discrimination*. Conference "Marriage Partnerships and Parenting in the 21st Century", Turin, Italy, June 5-8, 2002. Available at: http://www.samesexmarriage.ca/advocacy/turin/KeesWaldijk_2002.htm

Waldijk, Kees. 2003. Taking same-sex partnerships seriously: European experiences as British perspectives? *International Family Law*, 2003, p. 84-95.

WRR (Wetenschappelijke Raad voor het Regeringsbeleid). 1979. *Etnische Minderheden*. The Hague: SDU Uitgeverij.

WRR. 1990. *Allochtonenbeleid*. The Hague: SDU Uitgeverij

WRR. 2001 *Nederland als Immigratiesamenleving*. The Hague: SDU Uitgeverij.

2) Press articles

Azough, R. and Meerhof, R. (2003). Rotterdam: werklozen niet welkom. Harde toon in gemeentelijk actieprogram. *De Volkskrant*, 29 November 2003

Beusekamp, W. (2003). 'Onwetendheid voedt nieuw antisemitisme'. Bolkestein: Slecht geïnformeerde Noord-Afrikaanse jongeren maken zich schuldig aan discriminatie joden. *De Volkskrant*, 10 November 2003, p. 1

De Boer, E. (2003). CDA: keur allochtonen twee keer. Oververtegenwoordiging in WAO wekt zorg. *De Volkskrant*, 30 October 2003, p. 1

De Waard, M. (2004). Onderzoekers zien toename van jodenhaat, *NRC Handelsblad*, 8 January 2004, p. 3

Groen, J. (2003). Een rode cirkel rond de postcodes 2525 en 2572. Vind maar een bewijs: banken discrimineren en verstrekken geen hypotheek meer voor huizen in bepaalde wijken. *De Volkskrant*, 26 September 2003, p.2

Groen, J. and Oñorbe Genovesi, I. (2002). 'Politiek is lobbyen, zowel in café als moskee'. *De Volkskrant*, 23 January 2002, p.2

Kouters, S. (2003). 'Met een keppeltje op wordt je belaagd.' Joden voelen zich ontheemd in hun eigen Mokum. Appèl van joodse en moslimorganisaties tegen toenemend antisemitisme. *De Volkskrant*, 1 November 2003, p.1-2

Moerland, R. (2004). VVD'er Blok: 'Praten over discriminatie is nodig'. *NRC-Handelsblad*, 19 January 2004, p. 1

Mulder, E. (2003). Postcode 2525? Lening afgewezen! *Trouw*, 18 September 2003, p.13

NRC Handelsblad (2004). 'Boeddhisme versus protestantisme op tv', 9 February 2004, p.3

Oñorbe Genovesi, I. (2003). 'Steeds meer Marokkanen willen weg'. Miryam Aouragh van Comité tegen politiegeweld en discriminatie hekelt hetze tegen allochtonen. *De Volkskrant*, 30 October 2003, p.2

Ruepert, M. (2003). Politiekorps moet meer allochtonen aannemen. 'Wervingscampagne van ministerie is eigenlijk mislukt'. *Metro*, 25 April 2003, p.

Stutel, W. (2003). 'Voorkeursbeleid verkracht journalistiek'. *De Volkskrant*, 1 November 2003, p. 5 (Media supplement)

Annexs

1) Annex 1. List of abbreviations

ADB	anti-discrimination bureau
AIVD	Algemene Inlichtingen en Veiligheidsdienst (Intelligence and Security Service)
CBS	Centraal Bureau voor de Statistiek (Statistics Netherlands)
CGB	Equal Treatment Commission
CIDI	Centrum Informatie en Documentatie Israël
ETA	Equal Treatment Act
ISEO	Institute for Socio-Economic Research
LBR	National Bureau against Racism
LECD	Landelijk Expertise Centrum Discriminatie
LV-ADB	Landelijke Vereniging Anti-Discriminatie Bureaus en Meldpunten
MDA	Meldpunt Discriminatie Amsterdam
MDI	Meldpunt Discriminatie Internet
NPRD	National Platform overleg en samenwerking tegen Racisme en Discriminatie
PP	Public Prosecutor (<i>Openbaar Ministerie</i> in Dutch)
RADAR	Rotterdamse Anti-Discriminatie Actie Raad
SCP	Social and Cultural Planning office
WGB	Wet gelijke Behandeling Mannen en Vrouwen
WGB h/cz	Wet gelijke Behandeling op Grond van Handicap of chronische Ziekte
WRR	The Netherlands Scientific Council for Government Policy

2) Annex 2. List of interviewees and interlocutors

1. CENTRAL BUREAU OF STATISTICS: Marteen Alders, Rip van Vliet and Liesbeth Steenhof
2. LBR: Dick Houtzager
3. ABD Utrecht: Martin Jensen
4. CGB and Anne Frank House: Peter Rodriguez
5. IMES: Rinus Penninx
6. ISEO: Justus Veenman
7. SCP : Jaco Dagevos
8. Meldpunt Discriminatie Amsterdam: Jessica Silversmith
9. RADAR: Iris kapelle
10. LEIDEN university: Kees Waaldijk, Joyce Outshoorn and Jantine Oldersma
11. CGB: Martin Zwamborn
12. "Meijers committee": Ivo Magnee

13. Bureau Beeldvorming en diversiteit at Publieke Omroep: Bernadette van Dicjk
14. Dutch Expertise Center for Gay/Lesbian Emancipation: Judith Schuyf and Peter Dankmeijer
15. COC: Dick Vanderveur

3) Annex 3. Web Sites Related to Anti-discrimination Monitoring and Enforcement.

Equal Treatment Commission (Commissie Gelijke Behandeling, CGB)
<http://www.cgb.nl/english/default.asp>

Equal Treatment Act (*Algemene wet gelijke behandeling*, AWGB)
<http://www.cgb.nl/asp/awgb.asp>

Equal treatment Act on the grounds of handicap or chronic illness (*Wet gelijke behandeling op grond van handicap of chronische ziekte*, WGB h/cz)
http://www.cgb.nl/english/asp/WGBh_eng.asp

Dutch Disability Council (De Chronisch zieken en Gehandicapten Raad Nederland)
<http://www.gehandicaptenraad.nl/>

Dutch data protection agency (College bescherming persoonsgegevens, CBP)
<http://www.cbpweb.nl/en/index.htm>

Dutch data protection act (*Wet bescherming persoonsgegevens*, WBP) in English
http://www.cbpweb.nl/en/structuur/en_pag_cbp.htm

Dutch National Bureau against Racial Discrimination (Landelijk Bureau ter bestrijding van Rassendiscriminatie, LBR)
<http://www.lbr.nl>

LBR reports monitoring racism and discrimination in race and ethnicity
<http://www.lbr.nl/racismerapportage/index.html>

Centraal bureau voor de Statistiek, CBS
<http://www.cbs.nl/>

Sociaal en Cultureel Planbureau, SCP
<http://www.scp.nl>

Instituut voor Sociologisch-Economisch Onderzoek, ISEO
<http://www.iseo-eur.com>

Netherlands Scientific Council for Government Policy (Wetenschappelijke Raad voor het Regeringsbeleid - WRR)
<http://www.wrr.nl/en/frameset.html>

NVJ Bureau Media and Migrants
<http://www.beeldvorming.net/>

4) Annex 4. Equal Treatment Act

General rules providing protection against discrimination on the grounds of religion, belief, political opinion, race, sex, nationality, heterosexual or homosexual orientation or civil status

Greetings to all who shall see or hear these presents! Be it known: Whereas We have considered that, having regard inter alia to article 1 of the Constitution, it is desirable to provide protection against discrimination on the grounds of religion, belief, political opinion, race, sex, heterosexual or homosexual orientation or civil status, in order to promote equal participation in the life of society, and that it is therefore desirable to prohibit discrimination on these grounds except in such cases as provided for by law, and that to enforce this prohibition it is desirable that an Equal Treatment Commission be established;

We, therefore, having heard the Council of State, and in consultation with the States General, have approved and decreed as We hereby approve and decree:

Chapter I

Equal treatment of persons irrespective of their religion, belief, political opinion, race, sex, nationality, heterosexual or homosexual orientation or civil status

Section 1

For the purposes of this Act and the provisions based upon it the following definitions shall apply

- a. discrimination: direct and indirect discrimination;
- b. direct discrimination: discrimination between persons on the grounds of religion, belief, political opinion, nationality, race, sex, heterosexual or homosexual orientation or civil status;
- c. indirect discrimination: discrimination on the grounds of other characteristics or behaviour than those meant under (b), resulting in direct discrimination.

Section 2

1. The prohibition on discrimination shall not apply to indirect discrimination which is objectively justified.
2. The prohibition on discrimination on grounds of sex contained in this Act shall not apply: a. in cases in which sex is a determining factor and b. in cases concerning the protection of women, notably in relation to pregnancy and motherhood.
3. The prohibition on discrimination contained in this Act shall not apply if the aim of the discrimination is to place women or persons belonging to a particular ethnic or cultural minority group in a privileged position in order to eliminate or reduce de facto inequalities and the discrimination is reasonably proportionate to that aim;
4. The prohibition on discrimination on the grounds of race contained in this Act shall not apply in cases where a person's racial appearance is a determining factor.

5. The prohibition on discrimination on the grounds of nationality contained in this Act shall not apply: a. if the discrimination is based on generally binding regulations or on written or unwritten rules of international law and b. in cases where nationality is a determining factor.
6. The cases referred to in subsections 2, 4 and 5(b) shall be defined in more detail by order in council.

Section 3

This Act shall not apply to:

- a. legal relations within religious communities and independent sections thereof and within other associations of a spiritual nature;
- b. the office of minister of religion.

Section 4

This Act shall be without prejudice to:

- a. the Equal Opportunities Act;
- b. articles 1637ij, 1639e and 1639h of the Civil Code;
- c. discrimination by or pursuant to any other Act of Parliament which entered into force before this Act.

Section 5

1. It shall be unlawful to discriminate in or with regard to:

- a. public advertising of employment and procedures leading to the filling of vacancies;
- b. the commencement or termination of an employment relationship;
- c. the appointment and dismissal of civil servants;
- d. terms and conditions of employment;
- e. permitting staff to receive education or training during or prior to employment;
- f. promotion.

2. Subsection 1 shall not apply to:

- a. the freedom of an institution founded on religious or ideological principles to impose requirements which, having regard to the institution's purpose, are necessary for the fulfilment of the duties attached to a post; such requirements may not lead to discrimination on the sole grounds of political opinion, race, sex, nationality, heterosexual or homosexual orientation or civil status;
- b. the freedom of an institution founded on political principles to impose requirements which, having regard to the institution's purpose, are necessary for the fulfilment of the duties attached to a post; such requirements may not lead to discrimination on the sole grounds of political opinion, race, sex, nationality, heterosexual or homosexual orientation or civil status and
- c. the freedom of a private educational establishment to impose requirements on the occupancy of a post which, in view of the establishment's purpose, are necessary for it to live up to its

founding principles, although such requirements may not lead to discrimination on the sole grounds of political opinion, race, sex, nationality, heterosexual or homosexual orientation or civil status.

3. Subsection

1 shall not apply to requirements which, in view of the private nature of the employment relationship, may reasonably be imposed on the employment relationship.

4. Subsection

1 shall not apply to requirements governing political opinion which may reasonably be imposed in connection with appointments to administrative or advisory bodies.

5. Subsection

1 shall not apply to requirements governing political opinion which may reasonably be imposed in connection with appointments to confidential posts.

6. Subsection

1 (d) shall not apply to discrimination on grounds of civil status in relation to pension provision.

Section 6

It shall be unlawful to discriminate with regard to the conditions for and access to the liberal professions and opportunities to pursue the liberal professions or for development within them.

Section 7

1. It shall be unlawful to discriminate in offering goods or services, in concluding, implementing or terminating agreements on the subject, and in providing advice or information regarding the choice of educational establishment or career if such acts of discrimination are committed

- a. in the course of carrying on a business or exercising a profession;
- b. by the public service; c. by institutions which are active in the field of housing, social services, health care, cultural affairs or education ord. by private persons not engaged in carrying on a business or exercising a profession, in so far as the offer is made publicly.

2. Subsection

1 (c) shall not affect the freedom of a private educational establishment to impose requirements governing admission to or participation in the education it provides which, having regard to the establishment's purpose, are necessary for the fulfilment of its principles; such requirements may not lead to discrimination on the sole grounds of political opinion, race, sex, nationality, heterosexual or homosexual orientation or civil status. Discrimination on the grounds of sex shall be permitted solely if the distinctive nature of the establishment so requires and if equivalent facilities are available for pupils or students of both sexes.

3. Subsection

1 (a and d) shall not apply to requirements which may reasonably be imposed having regard to the private nature of the circumstances to which the legal relationship applies.

Section 8

1. If an employer terminates an employee's employment in contravention of section 5 or on the grounds that the employee has invoked section 5, either at law or otherwise, such termination shall be invalid.
2. Without prejudice to chapter 8 of the General Administrative Law Act, an employee may invoke subsection 1 within two months of being given notice of termination of employment or within two months of termination of employment if the employer has terminated it other than by giving notice. The invalidity of the termination of employment shall be invoked by notifying the employer. Termination of employment as referred to in subsection 1 shall not render the employer liable for compensation. All claims by the employee in connection with the invocation of invalidity of termination of employment under this subsection shall lapse after six months.

Section 9

All contractual provisions which conflict with this Act shall be null and void.

Section 10

1. Legal persons with full legal powers which, in accordance with their constitution or statutes, represent the interests of people who could invoke this Act may bring legal action with a view to obtaining a ruling that conduct contrary to this Act is unlawful, requesting that such conduct be prohibited or eliciting an order that the consequences of such conduct be rectified.
2. No conduct may form the subject of a case or claim as referred to in section 1 if the person affected by the conduct objects to such a case being brought.

Chapter 2 The Equal Treatment Commission

Section 11

1. An Equal Treatment Commission shall be established, hereinafter referred to as the Commission.
2. The Commission may establish subcommittees from among its members for the performance of its duties.

Section 12

1. The Commission may, in response to a request in writing, conduct an investigation to determine whether discrimination as referred to in this Act, the Equal Opportunities Act or article 1637ij of the Civil Code has taken or is taking place, and may publish its findings. The Commission may also conduct an investigation on its own initiative to determine whether such

discrimination is systematically taking place in the public service or in one or more sectors of society, and publish its findings.

2. A request in writing as referred to in subsection 1 may be submitted by:
 - a. a person who believes that he/she has suffered discrimination as referred to in this Act, the Equal Opportunities Act or article 1637ij of the Civil Code;
 - b. a natural or legal person or competent authority wishing to know whether they are guilty of discrimination as referred to in this Act, the Equal Opportunities Act or article 1637ij of the Civil Code;
 - c. a person responsible for deciding on disputes concerning discrimination as referred to in this Act, the Equal Opportunities Act or article 1637ij of the Civil Code;
 - d. a works council or a committee as referred to in chapter XIA of the General Civil Service Regulations or corresponding regulations which believes that discrimination as referred to in this Act, the Equal Opportunities Act or article 1637ij of the Civil Code is taking place in the company or civil service unit respectively for which it was appointed;
 - e. a legal person with full legal powers which, in accordance with its constitution or statutes, represents the interests of those whose protection is the objective of this Act, the Equal Opportunities Act or article 1637ij of the Civil Code.
3. If a request in writing as referred to in subsection 2 (d and e) names persons who are said to have been disadvantaged, or if an investigation conducted on the Commission's own initiative relates to such persons, the Commission shall inform the persons concerned of the planned investigation. The Commission shall not have the power to involve persons as referred to in the previous sentence in the investigation or the evaluation if they have stated in writing that they have reservations about such involvement.

Section 13

1. The Commission shall institute an investigation and shall forward its findings, in writing and with reasons, to the petitioner, the person said to be guilty of discrimination and, if relevant, the victim of discrimination.
2. The Commission may make recommendations when forwarding its findings to a person said to be guilty of discrimination.
3. The Commission may forward its findings to such of Our Ministers as may be concerned, and to such organisations of employers, employees, professionals, public servants, consumers of goods and services and relevant consultative bodies as it believes appropriate.

Section 14

1. The Commission shall not institute an investigation if:
 - a. the request referred to in section 12, subsection 2 is manifestly unfounded;
 - b. the interest of the petitioner or the importance of the behaviour concerned is manifestly insufficient;
 - c. the period of time which has elapsed since

the discrimination referred to in section 12 took place is such that an investigation can no longer reasonably be conducted.

2. In cases as referred to in subsection 1, the Commission shall notify the petitioner in writing, giving reasons.

Section 15

1. The Commission may bring legal action with a view to obtaining a ruling that conduct contrary to this Act, the Equal Opportunities Act or article 1637ij of the Civil Code is unlawful, requesting that such conduct be prohibited or eliciting an order that the consequences of such conduct be rectified.
2. No conduct may form the subject of action as referred to in subsection 1 if the person affected by that conduct has reservations.

Section 16

1. The Commission shall comprise nine members - including a chair and two assistant chairs - and the same number of deputy members.
2. The chair and the assistant chairs must fulfil the requirements laid down in section 48, subsection 1 of the Judiciary (Organisation) Act governing eligibility for appointment as a judge in a district court.
3. The members and deputy members shall be appointed by Our Minister of Justice, in consultation with Our Minister of the Interior, Our Minister of Employment & Social Security, Our Minister of Education & Science and Our Minister of Welfare, Health & Cultural Affairs.
4. Section 11, with the exception of part d (3o), and section 12, with the exception of subsection 1 (e), sections 12a and 13, section 13a with the exception of subsection 5, section 13b and sections 14a to 14c, 14d, subsections 1 and 2, and 14e of the Judiciary (Organisation) Act shall apply *mutates mutandis*.
5. For the purposes of section 14d, subsection 2 of the Judiciary (Organisation) Act, the Supreme Court shall afford the chair of the Commission an opportunity to provide information, verbally or in writing, on a complaint that is before the Commission and to make known his/her views thereon.
6. The members and deputy members shall be appointed for a maximum of six years. They may be reappointed immediately. The Minister of Justice may accept their resignation, if tendered.

Section 17

1. An office shall be set up to assist the Commission in the performance of its duties.
2. Our Minister of Justice shall, on the recommendation of the Commission, appoint, promote, suspend and dismiss the staff of the office. Our Minister of Justice shall decide in what cases they shall be appointed, promoted, suspended and dismissed.

3. The secretary, who shall also be the head of the office, must fulfil the requirements laid down in section 48, subsection 1 of the Judiciary (Organisation) Act governing eligibility for appointment as a judge in a district court.

Section 18

1. The Commission may, in the performance of its duties, call on the assistance of civil servants designated by such of Our Ministers as it may concern.
2. The Commission may, in the performance of its duties, seek assistance from one or more persons who can supply the information required by the Commission for that purpose.

Section 19

1. The Commission and the persons referred to in section 17 who are designated by the Commission may call for all the information and documents which may reasonably be considered necessary for the performance of its duties.
2. Everyone shall be obliged, unless they are exempt on the grounds of official or professional confidentiality, to provide the information and documents required pursuant to subsection 1 in full and in accordance with the truth, in the manner and within the time-limit laid down by or on behalf of the Commission. This obligation shall not apply if, in this way, a person would expose himself or a relative by blood or marriage, in the direct or indirect line to the second or third degree, or his spouse or former spouse to the risk of criminal prosecution for an indictable offence.

Section 20

1. The Commission shall issue an annual report of its activities, which shall be published. It shall forward this report in any event to such of Our Ministers as it may concern and to the advisory bodies concerned.
2. Every five years, calculated from the entry into force of this Act, the Commission shall draw up a report of its findings on the operation in practice of this Act, the Equal Opportunities Act or article 1637ij of the Civil Code. It shall forward this report to the Minister of the Interior.

Section 21

1. Further rules concerning the working methods of the Commission shall be laid down by order in council, including in any event rules governing:
 - a. the manner in which cases are to be dealt with;
 - b. hearing both parties;
 - c. the public conduct of hearings; e publication of its findings as referred to in section 13, subsection 3.

2. The salaries, travel and accommodation expenses and other remuneration of the members and deputy members of the Commission shall be laid down by order in council, and rules shall likewise be laid down concerning the entitlement of the members of the Commission to redundancy pay after the expiry of the period for which they were appointed.

Chapter 3 Concluding provisions

Section 29

1. The prohibition on discrimination on the grounds of nationality contained in this Act shall not apply for a period of two years, to be calculated from the entry into force of the Act, in respect of discrimination practised by administrative authorities on the basis of published policy rules.
2. The policy rules referred to in subsection 1 shall be defined as written rules for the exercise of a power by an administrative authority.

Section 33

Our Minister of the Interior shall, in consultation with Our Minister of Justice, Our Minister for Social Affairs & Employment, Our Minister of Education & Science and Our Minister of Welfare, Health & Cultural Affairs, forward to the States General as soon as possible after receipt of the report referred to in section 20, subsection 2, a report on the operation in practice of this Act, the Equal Opportunities Act and article 1637ij of the Civil Code.

Section 34

This Act shall enter into force with effect from the first day of the sixth calendar month after the date of publication of the Bulletin of Acts and Decrees (Staatsblad) in which it appears. An earlier date of entry into force may be laid down by Royal Decree. [Section 35](#) This Act may be cited as the Equal Treatment Act.

5) **Annex 5. Act on equal treatment on the grounds of handicap or chronic illness**

Article 1

The following definitions apply in this Act:

- a. discrimination: direct and indirect discrimination;
- b. direct discrimination: discrimination between people on the grounds of a real or alleged handicap or chronic illness;
- c. indirect discrimination: discrimination on the grounds of traits or behaviour other than those described at b which results in direct discrimination.

Article 2

The prohibition on discrimination also means that the persons on whom this prohibition is imposed are obliged to make effective modifications according to need, unless this would impose a disproportionate burden on them.

Article 3

1. The prohibition on discrimination does not apply if:
 - a. the discrimination is necessary to protect health and safety;
 - b. the discrimination relates to a regulation, standard or practice which is aimed at creating or maintaining specific provisions and facilities for the benefit of persons with a handicap or chronic illness;
 - c. the discrimination is intended to grant persons with a handicap or chronic illness a privileged position in order to neutralise or ameliorate existing disadvantages and the discrimination is proportionate to the objective.
2. The prohibition on discrimination does not apply with regard to indirect discrimination which is objectively justified.

§ 2. Work

Article 4

Discrimination is prohibited in:

- a. offering a job and the treatment in filling a vacancy;
- b. entering into and terminating an employment relationship;
- c. the appointment as a civil servant and the termination of employment as a civil servant;
- d. assistance with finding work;
- e. terms of employment;
- f. allowing people to attend education and training during and prior to an employment relationship;
- g. promotion.

Article 5

Discrimination is prohibited with regard to the conditions for and access to the professions and for the performance of and development within the professions.

§ 3. Vocational education

Article 6

Discrimination is prohibited in:

- a. granting access to and the provision of career planning and career choice information;
- c. granting access to, offering, examining and concluding education aimed at entry to and performance in the labour market.

Article 7

The following definitions apply in article 8 and the provisions based on it:

- a. public transport: passenger transport open to all in accordance with a timetable by bus, train, metro, tram or a vehicle propelled by means of a guide system;
- b. travel information: information about the timetable with its period of validity, guaranteed connections within the timetable, changes to the timetable and the associated zoning.

Article 8

1. Discrimination is prohibited in:

- a. granting the access to the buildings and infrastructure associated with the public transport which is required in order to travel;
- b. offering public transport services and travel information;
- c. concluding, executing or terminating contracts relating to public transport.

2. Rules will be stipulated by or pursuant to an Order in Council with regard to the modifications to be made under the first paragraph in conjunction with article 2, as described in that article.

§ 5. Legal protection

Article 9

1. Termination of the employment relationship by the employer contrary to article 4 or because of the fact that the employee has invoked article 4 at law or otherwise is subject to annulment.

2. Without prejudice to chapter 8 of the General Administrative Law Act, an employee's right to invoke the grounds for annulment described in the first paragraph lapses two months after the termination of the employment relationship. Article 55 of Volume 3 of the Civil Code does not apply.

3. A legal action relating to the annulment will be barred after a period of six months following the day on which the employment relationship has ended.

4. The termination described in the first paragraph does not make the employer liable to pay damages.

Article 10

1. If a person who believes that they are or will be discriminated against to their disadvantage as described in this Act produces facts in court which can give grounds for suspecting that such discrimination exists, the counterparty must prove that they have not acted contrary to the law.

2. If a person who believes that they have been disadvantaged by acts contrary to article 2 produces facts in court which can give grounds for suspecting that there has been a failure to make effective modifications, the counterparty must prove that they have not acted contrary to this provision.

Article 11

Contractual terms which contradict this Act are invalid.

Article 12

The Equal Opportunities Commission described in article 11 of the General Equal Opportunities Act can investigate whether discrimination is taking place or will take place as described in this Act and whether acts contrary to article 2 of this Act have taken place. Articles 12, 13, 14, 15, 20, second paragraph, and 33 of the General Equal Opportunities Act apply correspondingly.

Article 13

Our Minister of Public Health, Welfare and Sport - in consultation with Our Ministers of the Interior and Kingdom Relations, of Justice, of Social Affairs and Employment, of Traffic and Water Management and of Education, Culture and Sciences - will send a report to Parliament on the effectiveness and effects of this Act in practice within five years of it coming into force

§ 6. Final provisions**Article 14**

The articles of the Act come into force at a time to be stipulated by Royal Decree, which can be different for the various articles or components thereof.

Article 15

This Act will be cited as the Act on equal treatment on the grounds of handicap or chronic illness.

Charge and command ...

Issued on May *twenty-second* 2003