

Analytical Report on Legislation

RAXEN National Focal Point NETHERLANDS

University of Leiden, Department of Public Administration,
Leiden

Anne Frank House, Amsterdam, Amsterdam

National Federation of Local and Regional Anti-
Discrimination Organisations (LV-ADB), Rotterdam

National Bureau against Racial Discrimination (LBR),
Rotterdam

Vienna, 2004

DISCLAIMER: This study has been compiled by the National Focal Point of the European Monitoring Centre on Racism and Xenophobia (EUMC). The opinions expressed by the author/s do not necessarily reflect the opinion or position of the EUMC. No mention of any authority, organisation, company or individual shall imply any approval as to their standing and capability on the part of the EUMC. This study is provided by the National Focal Point as information guide only, and in particular does not constitute legal advice.

1. Executive Summary

The first article of the Dutch Constitution prohibits discrimination and guarantees the right to equal treatment to everyone living in the

Netherlands, thereby putting into words the fundamental significance that is attached to equal treatment and non-discrimination in Dutch law. Both principles are further developed in broad terms in criminal legislation and private law: the Equal Treatment Act.

Criminal legislation has a long-standing tradition in the history of the struggle to prevent and overcome discrimination. Yet criminal legislation has been shown to be far from effective in every case. The reason is that it is still difficult to report incidents of discrimination to the police, and that dealing with these cases is given insufficient priority, if any at all. It is true that in April 2003, new, clearer Guidelines on Discrimination for police and the Public Prosecution Service were announced, but this does not guarantee improved compliance. It is imperative that police turn their attention to complying with these regulations. Another pressing problem is that compliance with the prohibition of discrimination on the Internet is lagging far behind as the number of complaints of discriminatory material on the world wide web continues to grow.

The Equal Treatment Act (the Algemene Wet Gelijke Behandeling, or the AWGB), with its Equal Treatment Commission (Commissie Gelijke Behandeling, or the CGB), provides victims of discrimination with a low-threshold forum for lodging complaints. Each year, the Commission settles approximately 200 cases by means of a non-binding judgement. In practice most of these judgements are being complied with. The AWGB has yet to be adjusted to conform to the Racial Equality Directive (2000/43/EC). The Dutch lawmakers did not submit the relevant bill to the Lower House until the beginning of 2003, and the implementation time limit (19 July 2003) has now been exceeded. Although speed is called for, the lawmakers should make sure that the law pays sufficient attention to offering effective remedies for discrimination.

In the matter of transposing international non-discrimination law, the Racial Equality Directive is not the only regulation in which the Dutch government has been too slow in its response. The same is true for the Framework Convention for the Protection of National Minorities, which has been held up for consideration in the Upper House for three years now. And the so-called E-commerce Directive (2000/31/EU), which should provide protection against the circulation of material with discriminatory content in services on the Internet, has not yet been transposed into law either. The implementation time limit expired on 17 January 2002. It ought to be clear that non-discrimination law is no longer a national concern but is increasingly becoming a matter of supra-national importance. The Dutch government seems to be having difficulty adapting existing legislation to the requirements of the international legal community (UN, EU) within the stipulated time limits.

The infrastructure for enforcing legislation in order to prevent and combat discrimination is partly maintained by private initiatives. The Anti-Discrimination Agencies (Anti-Discriminatie Bureaus, or ADBs) of the Netherlands, of which there are about forty, play an important role in providing legal aid to the victims of discrimination. The ADBs investigate the complaint, attempt to arbitrate, and if necessary help the citizen make a

declaration or lodge a complaint with the Equal Treatment Commission. Each year the ADBs deal with approximately four thousand complaints, 65% of which have to do with racial discrimination.

The Dutch Complaints Bureau for Discrimination on the Internet (Meldpunt Discriminatie Internet, or MDI) is another private initiative. The MDI deals with complaints of discrimination on the Internet. In 2002, the number of complaints increased once again; complaints of Islamophobia and anti-Semitism were especially worrisome. Other reports also revealed a striking increase in the number of incidents involving Muslims as victims, and an increase in anti-Semitism. These developments are connected with 11 September 2001 and the heightened tensions in the Middle East. The Equal Treatment Commission judged three cases in 2002 in which the immediate cause for the job dispute was '11 September 2001'. The DUMC believes that the influence of this event on inter-ethnic relations should not be underestimated.

The Ministry of Justice is planning to take responsibility for a recurring Racism Monitor. The DUMC's response to this initiative is positive. In this regard it is important that efforts be made by governmental services to adequately undertake the registration of incidents of discrimination. As far as the current state of affairs is concerned, this registration is still not being properly handled by the police. It has undergone considerable improvement in the Public Prosecution Service, thanks to the National Expertise Centre for Discrimination, but their registration should be extended to include crimes under ordinary law that are racially motivated. A similar expertise centre was established for the police in September 2002; hopefully it will make an essential contribution to improved registration.

2. Table of Contents

1.	Executive Summary.....	3
2.	Table of Contents	5
3.	Glossary	7
4.	Introduction.....	9
5.	Background	10
5.1.	Definition	10
5.2.	Demographics	10
5.3.	Short overview of current legislation and policy on migration	15
5.3.1.	Aliens Act	15
5.3.2.	Foreign Nationals Employment Act	16
5.3.3.	Newcomers Integration Act	17
6.	Legislation aimed at racial discrimination	20
6.1.	Article 1 of the Constitution.....	20
6.2.	Equal Treatment Act.....	20
6.3.	Equal Treatment Commission	21
6.4.	Criminal law.....	22
6.5.	Act on the Promotion of Ethnic Minorities in the Labour Market	23
6.6.	Bill to increase sentences for structural discrimination	23
6.7.	Framework Convention	25
6.8.	Directive on e-commerce.....	27
6.9.	Protocol 12 of the European Convention on Human Rights	27
6.9.1.	28
6.10.	Racial Equality Directive.....	28
6.10.1.	General remarks.....	28
6.10.2.	Implementation.....	30
7.	Impact of anti-discrimination legislation	32
7.1.	Complaints	32
7.2.	Anti-Semitism	34
7.3.	Roma & Sinti	35
7.4.	Internet	35
7.5.	Guideline on Discrimination.....	36
7.5.1.	Pro-active investigation	37
7.5.2.	Investigation	38
7.5.3.	Prosecution	38
7.5.4.	Sentencing	38
7.6.	Public Prosecution Service	38
7.6.1.	Inflow	39
7.7.	Equal Treatment Commission	41
8.	Strategies, initiatives and good practices	45
8.1.	National Platform against Racism and Discrimination	45
8.2.	National Action Programme.....	45
8.3.	Professionalising anti-discrimination agencies	46
8.4.	Registration and monitoring.....	46

8.5.	Upgrading police and judicial expertise	47
8.6.	Investigation of the integration policy.....	47
9.	Summary and conclusions	49
10.	Tables.....	51

3. Glossary

Discrimination: any distinction, exclusion, restriction, or preference, which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise on an equal footing of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of social life. Discrimination is either direct (a) or indirect (b).

a) direct discrimination: discrimination between persons based on religion, belief, political opinion, nationality, race, sex, heterosexual or homosexual orientation or civil status;

b) indirect discrimination: discrimination based on other characteristics or behaviour than those meant under (a), resulting in direct discrimination.

Ethnic Minority: see Non-Western foreign background. For the purposes of this report, persons belonging to ethnic minority groups are defined as people born in, or of whom at least one parent was born in, Africa, Asia (excluding Japan and former Dutch East Indies and Indonesia), South America and Turkey. The largest groups are Moroccans, Turks, and people from Surinam and the Netherlands Antilles/Aruba.

First- and second-generation foreigners: Persons are considered to have a foreign background if at least one parent was born abroad. A distinction is made between persons born abroad (first generation) and persons born in the Netherlands (second generation). The foreign background is determined by the country of birth of the person (first generation) or the country of birth of the mother (second generation). If the mother was born in the Netherlands, the person is classified according to the father's country of birth.

Non-Western foreign background (Du.: Niet-westerse allochtoon): People born in, or of whom at least one parent was born in, Africa, Asia (excluding Japan and former Dutch East Indies and Indonesia), South America or Turkey. The largest groups are Moroccans, Turks, and people from Surinam and the Netherlands Antilles/Aruba. Reference to this term is made in connection with statistical data compiled by the Central Statistical Agency.

Persons with a foreign background (Du.: allochtoon): Persons are considered to have a foreign background if at least one parent was born abroad. A distinction is made between persons born abroad (first generation) and persons born in the Netherlands (second generation). The foreign background is determined by the country of birth of the person (first generation) or the country of birth of the mother (second generation). If the mother was born in the Netherlands, the person is classified according to the father's country of birth.

Refugee: Person residing in the Netherlands on the basis of a permanent residence permit issued on the basis of recognition as a refugee, according to the Geneva Convention.

In this report, anti-discrimination legislation refers to legislation that focuses on discrimination on the grounds of race and nationality. The concept of 'race' is interpreted in the sense of article 1 of the International Convention on the Elimination of all Forms of Racial Discrimination. Article 1 of this Convention lays down that "racial discrimination" shall mean any distinction, exclusion, restriction or preference based on

race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.’ In this study, the concept of nationality is understood to mean citizenship.

4. Introduction

The European Union's two anti-discrimination Directives, which were announced in 2000, have consequences for all the Member States (Council Directive 2000/43/EC and Council Directive 2000/78/EC), including Dutch anti-discrimination legislation. This report provides an analysis of Dutch legislation against racial discrimination and discrimination based on nationality. The concept of 'race' in this context is broadly interpreted: religious and cultural minority groups can be included as well. The report will also examine the extent to which Dutch legislation has been brought into line with the requirements of European lawmakers. An underlying assumption of this study is that the legislation is not only a national matter; most of it is based on international obligations that the Netherlands has entered into. Anti-discrimination legislation is increasingly becoming supra-national.

The study of anti-discrimination legislation was carried out at the request of the European Monitoring Centre (EUMC) and within the framework of RAXEN4.

This report begins with an overview of the background of migration, integration and diversity policies in the Netherlands (chapter 4). Anti-discrimination legislation will be discussed in chapter 5, with a look at how the Racial Equality Directive affects this legislation and at the steps that have been taken to fit the guideline into Dutch law. The impact of anti-discrimination legislation will be discussed in chapter 6. Chapter 7 turns to strategies, initiatives and good practices. The study ends with conclusions (chapter 8) and recommendations (chapter 9).

In compiling this report a study was undertaken of the literature being published in this field: various types of publications such as books, articles or other more or less scholarly works. In addition, remarks on legislative proposals made by both governmental and non-governmental organisations are taken into account.

Judicial and pseudo-judicial decisions are also included in this study, since it is the intention here to make observations not only concerning the law as it appears in the law books but also the law as it functions in practical situations. Use was also made of the expertise in this area that is available within the DUMC network.¹ For this analysis, the inventories and analyses that are periodically published as part of the Racism and the Extreme Right monitoring project were also drawn on.²

This report includes important contributions by Henny Brandhorst (Anne Frank House).

¹ See <http://www.dumc.nl> (8.07.2003).

² J. van Donselaar and P.R. Rodrigues, Monitor Racisme en Extreem Recht [Monitoring Racism and the Extreme Right], Fifth report, Amsterdam: Anne Frank Stichting/University of Leiden 2002.

5. Background

5.1. DEFINITION

The Dutch statistical and analytical literature refers to immigrants with the term 'allochtonen'. This term cannot be literally translated into English (the word 'allochtoon' is derived from ancient Greek and means something like 'originating elsewhere'). The Central Statistical Agency (Centraal Bureau voor de Statistiek, or CBS) uses the description 'population with a foreign background'. The CBS considers persons to have a foreign background if at least one parent was born abroad. A distinction is made between persons born abroad (first generation) and persons born in the Netherlands (second generation). The foreign background is determined by the country of birth of the person (first generation) or the country of birth of the mother (second generation). If the mother was born in the Netherlands, the person is classified according to the father's country of birth.³ This population group is broader than the one usually associated with ethnic minorities. For example, Belgian persons living in the Netherlands have a foreign background but are not considered ethnic minorities. Persons with a foreign background are classified by the CBS as Western or non-Western, depending on their country of birth. The category 'non-Western' includes persons from Turkey and countries in Africa, South America or Asia except for Indonesia and Japan. The latter two countries are included with the Western countries on the basis of their socio-economic and socio-cultural position. For practical purposes, the population of non-Western origin will be referred to here as ethnic minorities.

5.2. DEMOGRAPHICS

As of January 1, 2002, the CBS estimated the population of the Netherlands at 16,105,285 (in rounded figures: 16.1 million): 13,140,336 (13.1 million) native-born Dutch and 2,964,949 (3 million) people with a foreign background (see Annex: Table 1). 1,558,353 (1.6 million) of the people with a foreign background are of non-Western origin. That is 9.7% of the total population. Compared with January 2001, when the number of persons of non-Western origin amounted to 1,483,175 (1.5 million), this group has grown by 75,178 (75 thousand) people.

There are indications of an increase in the proportion of the second generation ethnic minority population. The first generation comprises 971,706 persons (62%), and the second generation 586,656 persons (38%) as of 1 January 2002. The growth of the second generation is steadily accelerating. Around one-third of the ethnic minority individuals are second generation, and this group is growing at an ever-faster rate. Their number increased by 152,000 within the last five years. In terms of percentage, growth among the second generation exceeds that of the first generation. The proportion of second-

³ For terminology used and details about this conceptual definition, see: M. Alders (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/nl/publicaties/publicaties/maatschappij/bevolking/papers/classification-foreign.pdf> (08.04.2003).

generation individuals is increasing among the 'classical' ethnic minority groups in particular, such as the Turks, Moroccans and Surinamese. Three-quarters of the second generation have two parents born in foreign countries.⁴

The total population of the Netherlands has increased by 3.5% since 1997. The ethnic minority population grew approximately eight times faster than that during the same period. Recent sharp increases in size have been especially prevalent among the 'new' groups of non-Western origin such as the Afghans and Iraqis. The 'classical' ethnic minority groups – Turks, Moroccans, Surinamese and Antilleans/Arubans – are the largest groups by far. These four groups together consisted of more than one million persons (1,054,980) in 2002, including 330,709 persons of Turkish origin, 315,177 of Surinamese origin, 284,224 of Moroccan origin and 124,870 of Antillean/Aruban origin. The distribution in terms of percentages from earlier migration countries is as follows: Turkey 26.6%, Surinam 25.4%, Morocco 22.9%, Antilles/Aruba 10.0%. Together they comprise approximately two-thirds of all ethnic minorities. The Turks clearly have become the largest ethnic minority group.⁵

Yet the new ethnic minority groups have become increasingly significant in terms of numbers. According to the CBS counts, nine new groups, comprising more than 16,000 persons each, could be distinguished as of 1 January 2002. These are persons of Iraqi (41,323), Somali (28,979), Afghan (31,167), Iranian (26,789), Ghanaian (17,232), Pakistani (17,325), Egyptian (16,108), Vietnamese (16,012) and Chinese (55,117) origin.⁶ In the year 2002, these nine groups numbered approximately 250,000 persons in total. One notable point is the drop in the number of Somalis. In 2001 there were 29,631 Somalis living in the Netherlands. This drop has to do with the migration of Somalis to other countries, such as Great Britain.⁷

Included among the ethnic minorities are the Moluccan population group (42,300 persons),⁸ caravan dwellers (23,000),⁹ and Roma and Sinti (3,500).¹⁰

Also living in the Netherlands are 187,700 Southern Europeans, 74,640 of whom are from the various countries of former Yugoslavia, 35,193 Italians, 30,897 Spanish, 15,881 Portuguese, 12,077 Greeks and 19,012 Cape Verdeans.¹¹

In addition, there are an estimated 112,000 to 163,000 persons living in the Netherlands illegally.¹²

⁴ CBS (2003), *Allochtonen in 2002* [Ethnic minorities in 2002], Voorburg: CBS, p. 15, <http://www.cbs.nl/nl/publicaties/publicaties/maatschappij/bevolking/b-52/b-52-02.pdf> (08.04.2002).

⁵ *Ibid.*, p. 14.

⁶ *Ibid.*, p. 91.

⁷ Parliamentary Documents II 2002/03, 28 612, no. 2, p. 4.

⁸ G. Beets, E. Walhout, S. Koeseobjono (2002), *Demografische ontwikkeling van de Molukse bevolkingsgroep in Nederland* [Demographic developments of the Moluccan population group in the Netherlands], in: *Maandstatistiek van de Bevolking*, vol. 50, no. 6, pp. 13-17, <http://www.cbs.nl/nl/publicaties/publicaties/maatschappij/bevolking/b-15/b-15-02-06.pdf> (22.04.2003).

⁹ Parliamentary Documents II 2002/03, 28 612, nr. 2, p. 4.

¹⁰ The figure concerning the number of Roma and Sinti is taken from: ECRI (2001), *Second report on the Netherlands*. Strasbourg: Council of Europe, p. 14.

http://www.coe.int/T/E/human_rights/Ecri/1-ECRI/2-Country-by-country_approach/Netherlands/CBC2_Netherlands.pdf (22.04.2002). The Dutch government estimates the number of Roma and Sinti at 2,000; the National Organization of Roma and Sinti estimates 5,000.

¹¹ CBS (2003), *Allochtonen in 2002* [Ethnic minorities in 2002], Voorburg: CBS, p. 91.

Many population groups of non-Western origin have been in the Netherlands only for a short time. This factor, coupled with the young average age of non-Western immigrants, determines to a great extent the age distribution of these groups. The age distribution of non-Western groups reveals striking differences when compared with the native Dutch population. In most cases, these ethnic minority groups are considerably younger, and the men are in the majority. Such a skewed ratio of men to women is most pronounced among those population groups that settled in the Netherlands relatively recently, such as the Iranians (see Annex: Table 2). The population pyramids for these groups greatly resemble those of the Turks and Moroccans living in the Netherlands in the 1970s (see Annex: Table 3).¹³

At the moment, four out of ten members of the ethnic minority population are younger than 20 years of age. This proportion is almost twice as large as that of foreigners of Western origin and native Dutch people. The proportion of second-generation people in the ethnic minority population younger than 20 years of age is even greater: eight out of ten.

The percentage of people over 65 among ethnic minorities is extremely low: 2%. This percentage will slowly increase in the coming years. In 2010, 4% of the ethnic minority population will be 65 years of age or older. It will be quite some time before this population group will have to deal with any significant ageing phenomenon.¹⁴

Ethnic minorities contribute significantly to the population growth of the Netherlands. At the present time, almost half the population growth can be ascribed to immigration. Immigration, combined with the higher average fertility rate among ethnic minorities, has meant that two-thirds of the population increase in the past five years has consisted of ethnic minorities. The expectation is that in 2010 there will be two million persons of non-Western origin in the Netherlands.¹⁵ Although the average number of children among ethnic minorities is dropping, the fertility rate of Moroccan and Turkish women is still significantly higher than the Dutch average.¹⁶

In recent years, almost half of the influx of immigrants not of Dutch nationality consisted of 'follow-up migrants'. They are persons who come to join their families in the Netherlands or persons who come to live in the Netherlands to marry or live in partnership. The inflow of persons who have immigrated for purposes of family reunification has shrunk and the number of persons creating new families has increased.¹⁷

In 2001, 133,404 (133 thousand) immigrants came to the Netherlands – 14.2 thousand non-Dutch immigrants for purposes of family reunification and 20.4 for family formation. Most of the immigrants coming for family reunification and family formation have come from Turkey and Morocco. In 2001, 3.3 thousand Turks and 3.2 thousand Moroccans

¹² G. Engbersen et al., *Illegalen vreemdelingen in Nederland, Omvang, overkomst, verblijf en uitzetting* [Illegal foreigners in the Netherlands: Number, arrival, residence and deportation], Rotterdam: RISBO Contractresearch bv/Erasmus University June 2002.

¹³ CBS (2003), *Allochtonen in 2002* [Ethnic minorities in 2002], Voorburg: CBS, p. 18.

¹⁴ *Ibid.*, p. 20.

¹⁵ *Ibid.*, p. 15.

¹⁶ *Ibid.*

¹⁷ *Ibid.*, p. 17.

came to the Netherlands to form new families. Those who came for family reunification from these countries were 1.0 thousand and 1.2 thousand respectively.¹⁸

Immigration resulting from family formation and family reunification is extremely high. Asylum migration, however, is dropping. In 2001, the number of asylum seekers was 32,579. This number was a decrease of almost 25% with respect to 2000 (43,895).¹⁹ In 2002 the number of registered asylum seekers was 18,667, a decrease of at least 43%. As a result, the Netherlands underwent the largest change in rank in Western Europe. Whereas the country had received the third highest number of claims in 2000, it fell to the fourth position in 2001 and ranked seventh in 2002.

Besides the differences in age and sex, there are also differences in educational level and vocation. The relative number of less educated people is higher among the ethnic minorities than among the native Dutch (see Annex: Table 4). But differences can also be observed among the various ethnic minority groups themselves. The educational levels among Turks and Moroccans in particular are lagging behind – half of them have received no more than primary school education. Men of non-Western origin are somewhat better educated than women of non-Western origin, while more second-generation than first-generation individuals have received some form of higher education.²⁰

The ethnic minority population of the Netherlands is more unevenly distributed across the country than the native Dutch population.²¹ Large concentrations of ethnic minorities are located in the western part of the country, partly due to the appeal of the four big cities. The western provinces – Noord-Holland, Zuid-Holland, Utrecht and Zeeland – exert a stronger attraction on ethnic minorities than on immigrants of Western origin. On 1 January 2001, 13.4% of the total population of this region of the Netherlands consisted of ethnic minorities. In the northern provinces – Groningen, Friesland and Drenthe – that proportion was 3.7%. Of those ethnic minorities, it is mostly persons with Surinamese or Moroccan backgrounds who are so intensely concentrated in the western provinces. This is also true of the Antilleans and Turks, but to a lesser degree. The Turks are also to be found relatively frequently in the eastern Netherlands, especially in southwest Overijssel. This has to do with the nature of the initial immigration from Turkey and Morocco. Many less educated immigrants from these countries settled as guest workers in the Randstad – the western conurbation – and the industrial cities of Twente and Noord-Brabant during the 1960s and 1970s. For this reason, these groups are still strongly represented in these areas.

¹⁸ A. Sprangers and J. Garssen, Migratie in 2001 per saldo afgenomen [Migration in 2001 decreased on the whole], in: Centraal Bureau voor de Statistiek Webmagazine (10.06.2002),

<http://www.cbs.nl/nl/publicaties/artikelen/algemeen/webmagazine/artikelen/2002/0985k.htm> (08.04.2003);

Europese immigrantenstroom verandert [European immigration stream changes], in: Centraal Bureau voor de Statistiek Webmagazine (23.09.2002),

<http://www.cbs.nl/nl/publicaties/artikelen/algemeen/webmagazine/artikelen/2002/1040k.htm> (08.04.2003); H.

Nicolaas, A. Sprangers, Toename aandeel asielzoekers in immigratie [Increase in number of asylum seekers in immigration], in: Centraal Bureau voor de Statistiek Webmagazine (05.08.2002),

<http://www.cbs.nl/nl/publicaties/artikelen/algemeen/webmagazine/artikelen/2002/1019k.htm> (08.04.2003).

¹⁹ UNHCR (March 2003) Asylum applications lodged in industrialized countries: levels and trends, 2000-2002, <http://www.unhcr.ch> (25/04/2003).

²⁰ W. Portegijs, A. Boelens, S. Keuzenkamp (2002), Emancipatiemonitor 2002 [Emancipation Monitor 2002], The Hague: Sociaal Cultureel Planbureau, Centraal Bureau voor de Statistiek, pp. 52-53,

<http://www.cbs.nl/nl/publicaties/publicaties/maatschappij/leefsituatie/emancipatiemonitor-2002.pdf> (27.05.2003).

²¹ CBS (2003), Allochtonen in 2002 [Ethnic minorities in 2002], Voorburg: CBS, pp. 23-25.

Among the four largest ethnic minority groups – those from Turkey, Morocco, Surinam and the Netherlands Antilles/Aruba – it is especially striking that the pattern of spatial distribution and concentration changes very little. Only among the Surinamese a dispersal is taking place from the western to the eastern Netherlands. This is mainly the consequence of a heavy flow of people moving from Amsterdam to Almere. Notable developments are in evidence among the ‘younger’ groups of non-Western origin. There is no longer any concentration of Somalis in the northern Netherlands, for instance, although there is a stronger concentration in the western and southern Netherlands. Tilburg in particular seems to exert a great attraction on this group. Afghans, on the other hand, who initially were underrepresented in the northern Netherlands, have become uniformly distributed across all the parts of the country in recent years. It is becoming significantly less common to encounter persons from Iraq and Iran in the southern provinces.

Most second-generation persons aged 25 and older have left their parents’ home by now. The size of this group is 620 thousand persons. The second generation of immigrants of Western origin has spread itself more uniformly across the Netherlands (except for the southern Netherlands) than the Western first generation. By contrast, the concentration of ethnic minorities in the western Netherlands has increased from the first to the second generation, although a shift did take place among second-generation Surinamese and Moroccans over the age of 25 from the western to the eastern and southern Netherlands.

There is a substantial overrepresentation of ethnic minorities in the four big cities. In 2001, almost 30% of the population of these cities was of non-Western origin, in comparison with 9.3% for the Netherlands as a whole. Of the four big cities, the proportion of ethnic minorities is highest in Amsterdam and Rotterdam, with almost 32%, and lowest in Utrecht, with upwards of around 19%.

About three-quarters of the total population of non-Western origin in the four big cities consists of Surinamese, Moroccans, Turks and Antilleans/Arubans.

There are substantial differences among the big cities themselves, however, in the distribution based on origin. In Amsterdam and The Hague, Surinamese make up approximately one-third of the total number of ethnic minorities, while in Utrecht that proportion is only one-seventh. There, Moroccans are the largest group by far, with 42% of the total. In The Hague and Rotterdam there are considerably fewer Moroccans. Turks are more uniformly spread throughout the four big cities, although their proportion in Amsterdam is relatively low. Finally, Antilleans and Arubans are most strongly represented in Rotterdam and The Hague.

By imposition of the Dutch government, Moluccans were settled ‘temporarily’ in rural, sometimes even remote, areas of the country. Though they are increasingly moving away from these areas, they are still the least likely of all the immigrant groups to be found in big cities.

5.3. SHORT OVERVIEW OF CURRENT LEGISLATION AND POLICY ON MIGRATION

This overview makes use of the descriptions that Fermin employed in his study on the justification of mandatory integration programmes for new immigrants.²²

5.3.1. Aliens Act

The Dutch government expects the proportion of ethnic minorities to increase, despite measures that will be taken to limit the inflow of such groups.²³ A stricter immigration policy for those entering the Netherlands from countries outside the European Union was the aim of the new Aliens Act 2000 (Vreemdelingenwet 2000).²⁴ For immigrants with a temporary residence permit (*machtiging tot voorlopig verblijf*, or MVV), the most significant change in the Aliens Act, which came into force in April 2001, is that there is now only one status (in theory) in the Netherlands.²⁵ A person can be granted a single form of temporary status for one year (renewable twice) if he or she fulfils one of the following criteria:

He is a Convention refugee (someone with objective reasons to claim that he or she will face genuine risk if deported -- risk of torture, inhuman or cruel treatment or punishment);

He is a person who, for humanitarian reasons (such as, but not exclusively, a violent widespread conflict), has fled the situation in his country of origin;

He is the spouse or minor child of someone of the same nationality who has been granted status in the Netherlands on one of the above grounds, and who has travelled with, or followed, the main applicant within a period which does not exceed three months;

He is the dependent partner or child over 18 of the recognised person (Article 29, Dutch Aliens Act 2000).

The status of those fulfilling these criteria is converted to that of permanent resident if, at the end of three years of temporary status, returning to the country of origin proves impossible. The government is also committed to a maximum six-month processing period to assess each claim. In exceptional circumstances, such as a mass influx, the government has allowed an additional year to process some claims.

Reports in the Netherlands suggest the new law is having some effect. While the level of asylum claims in Western Europe as a whole remained stable, the number of asylum

²² A. Fermin, The justification of mandatory integration programmes for new immigrants. Summary of the Dutch report 'Verplichte inburgering van nieuwkomers' (Utrecht University, European Research Centre on Migration and Ethnic Relations, ERCOMER Research Paper 2001/01), http://www.ercomer.org/publish/reports/Alfons_report_Verplichte_Inburgering.pdf (25/04/2003).

²³ Parliamentary Documents II 2002/03, 28 612, no. 2, p. 4.

²⁴ A. Fermin, The justification of mandatory integration programmes for new immigrants. Summary of the Dutch report 'Verplichte inburgering van nieuwkomers' (Utrecht University, European Research Centre on Migration and Ethnic Relations, ERCOMER Research Paper 2001/01), http://www.ercomer.org/publish/reports/Alfons_report_Verplichte_Inburgering.pdf (25/04/2003).

²⁵ Wet van 23 november 2000 tot algehele herziening van de Vreemdelingenwet [Act dated 23 November 2000 for a general revision of the Aliens Act 2000], Staatsblad [Bulletin of Acts and Decrees] 2001, 142.

applications in the Netherlands dropped from 43,895 in 2000 to 32,579 (a 25% decrease) in 2001, to 18,667 (a 43% decrease) in 2002.²⁶

Any discussion of asylum in the Netherlands must make note of one unusual feature of the pattern of arrivals to the country in recent years. In 2000, 15% (6,705) of all the asylum seekers in the Netherlands were unaccompanied minors. The top five countries of origin were Angola, China, Guinea, Sierra Leone and Somalia. Fully two-thirds of all asylum claims from China in the Netherlands were being made by children arriving alone. This figure was 59% for Guinea and 49% for Angola. The level of claims by unaccompanied minors was not nearly this high in other European countries. The EU average in 2000 was 3.5% of the total asylum claims. For Germany the figure was 1% (946 unaccompanied minors), for the UK 3% (2,733 unaccompanied minors) and for Portugal 5% (10 out of the 200 total asylum claims).²⁷

Various factors are presumed to contribute to the high numbers of unaccompanied minors in the Netherlands. Suggestions range from the level of educational opportunities offered to asylum seekers and refugees to the existence of a thriving sex industry. However, the real motives remain unknown. In response to this phenomenon, the Ministry of Justice created a new policy on unaccompanied minors in 2000, which began to be implemented in 2001. The focus is to return these children to their countries of origin, with provisions such as special monitoring arrangements via the International Organisation for Migration in China. The policy also provides for a medical examination of the claimant to make sure the child is indeed under 18; this is primarily done using x-rays of the collarbone.

5.3.2. Foreign Nationals Employment Act

The Foreign Nationals Employment Act (Wet Arbeid Vreemdelingen, or WAV)²⁸ controls the take-up of employment by non-EU foreigners and their integration into the Dutch labour market.²⁹ This law went into effect in January 1995 and replaced the Foreign Workers Employment Act (Wet Arbeid Buitenlandse Werknemers, or WABW) of 1979. Under this law employers will not be issued a work permit for non-EU foreigners as quickly as in the past, and the work permit will only be granted subject to a number of conditions. In addition, the central labour market authority will set a time limit for such work permits. A modification to the Dutch employment law stipulates that non-EU foreigners who are not permitted to work in the Netherlands will not be able to register with the employment office.

In principle employers wishing to hire a foreign national in the Netherlands require a work permit. For this purpose, an employer is any person who has somebody working for him. This means that the employment of foreign nationals for domestic or other personal services is covered by the law. And unlike previous legislation, this requirement now also applies to public administration. In the case of sub-contractors or agency work, it is the

²⁶ UNHCR (March 2003) Asylum applications lodged in industrialized countries: levels and trends, 2000-2002.

²⁷ UNHCR (November 2001), Trends in unaccompanied and separated children seeking asylum in Europe, 2000, <http://www.unhcr.ch> (25/04/2003).

²⁸ Wet van 21 december 1994, tot vaststelling van de Wet arbeid vreemdelingen [Act dated 21 December 1994 for the adoption of the Foreign Nationals Employment Act], Staatsblad [Bulletin of Acts and Decrees] 1994, 959.

²⁹ A. Fermin, The justification of mandatory integration programmes for new immigrants.

final contractor who is responsible. The final contractor does not, however, require a new permit if the sub-contractor or the placement agency has already presented a work permit. For the purpose of the law, foreigners are all those not in possession of Dutch nationality. The law does not apply to au pairs.

A work permit is not required for the employment of persons from member states of the European Union or countries of equivalent status (Scandinavia and Iceland). No work permit is required for foreigners possessing a residence permit issued by the Ministry of Justice, provided it is clear from this residence permit that no restrictions have been placed on taking up paid employment. The Ministry of Justice has removed these restrictions on foreigners who are entitled to live and work in the Netherlands, that is foreigners with a residence entitlement, refugees, or those who have held a residence permit for more than three years. In future employers will be able to see from all new residence permits whether the foreigner in question is allowed to work in the Netherlands or not.

An employer seeking to fill a vacancy should do everything in his power to fill this vacancy with a person from the so-called 'priority labour supply', which is made up of persons requiring no work permits. At least five weeks before the employer applies for a work permit he must have registered the vacancy with the employment office. In addition he must also conduct an active search himself, e.g. by placing advertisements or offering retraining or further training opportunities. If it becomes apparent that the employer is unable to fill the vacancy and no suitable person can be found by the employment office, the central labour market authority is empowered to grant a work permit. Normally a work permit will be granted within five weeks.

5.3.3. Newcomers Integration Act

In the early sixties the Dutch government assumed that labour migrants would stay temporarily. Policy focusing on the integration of these groups was not under discussion. In practice, however, it became apparent that these migrants had come for good, had brought their families over, and that their children were growing up in the Netherlands. As a result the government's perception of the assumed temporary stay of these people gradually changed.³⁰

The people who chose to settle in the Netherlands had a lot of catching up to do in comparison with the native Dutch population, and at the same time society was insufficiently equipped to handle them. Most immigrants encountered gaps in education, work and housing that seemed impossible for them to overcome on their own. In addition, there were barriers in society that thwarted the integration process. Intervention by the government was required. The Ministry of Interior and Kingdom Relationships played a coordinating role.

In 1998 a separate portfolio was created within the Ministry of Home Affairs and Kingdom Relationships for the Large Cities and Integration Policy. The Netherlands

³⁰ F. van Beetz (2000), The legal instruments required in the strategy for a successful integration policy in The Netherlands. Strategies for implementing integration policies proceedings (Prague, 4-6 May 2000), <http://www.social.coe.int/en/cohesion/action/publi/migrants/beetzen.htm> (25/04/2003).

indicated it was more serious than it had been about the integration of minorities by appointing a special state secretary (or junior minister).³¹

The most important tasks of this state secretary are promoting and guarding the coherence of the integration policy; checking the extent to which the objectives of the integration policy have been realised; determining whether the relevant policy intentions of the various departments are compatible with the objectives of the minorities policy and signalling when announced intentions fail to materialise; where necessary taking the initiative to develop, adjust and evaluate policy; promoting communication among all organisations involved in the minorities policy; and making a coherent presentation of the minorities policy.

One of the main priorities of this policy is to ensure that newcomers are able to manage for themselves in society as quickly as possible. Getting acclimated is a first step in the integration process. Acclimation procedures ensure that newcomers learn the Dutch language, learn something about the social and political relationships in the Dutch society and acquire some knowledge of the Dutch labour market. This integration strategy is laid down in the Newcomers Integration Act (Wet Inburgering Nieuwkomers, or WIN).³²

On 30 September 1998, WIN went into force in the Netherlands, establishing the rights and obligations of newly arrived adult immigrants concerning settlement or integration programmes.³³ The rationale behind the policy is that newly arrived adult immigrants should acquire a basic knowledge of the Dutch language, society and labour market as soon as possible, because this is essential for functioning independently in Dutch society in general and for participating in further education and the labour market in particular. They should be offered preparation and guidance in taking their first steps in the new society as soon as possible, to avoid the formation of new disadvantaged groups and dependence on public support. The primary responsibility for implementing the integration policy lies with the municipalities. But the central government defines the parameters of the policy by means of financial support, rules and laws such as WIN.

The WIN target group consists of newly arrived immigrants aged 16 years or older who are settling in the Netherlands for the first time on a non-temporary basis. An exemption is made for persons who, pursuant to international treaties, may not be obliged to participate in such programmes, especially citizens of the European Union. Included in the target group, however, are Dutch nationals from the overseas parts of the Kingdom, from the Netherlands Antilles and Aruba.

Newcomers are obliged to report for an integration inquiry within six weeks after arriving in a municipality or receiving a residence permit. Exemptions are possible on certain grounds. The integration inquiry is conducted to determine how much of a programme is needed and what it should consist of. Previous knowledge, previous training and work experience are taken into account in the inquiry, to determine to what extent the newcomer is at risk of becoming underprivileged and in which parts of the integration

³¹ Following the change of government in 2002 a Minister for Integration and Immigration was appointed.

³² Wet van 9 april 1998, houdende regels met betrekking tot de inburgering van nieuwkomers in de Nederlandse samenleving (Wet inburgering nieuwkomers) [Act of 9 April 1998, providing for regulations concerning the integration of newcomers in Dutch society (Newcomers Integration Act)], Staatsblad [Bulletin of Acts and Decrees] 1998, 533.

³³ A. Fermin, The justification of mandatory integration programmes for new immigrants.

programme participation is necessary. The inquiry is concluded with a decision by the municipality specifying the programme that the newcomer is obliged to follow.

Within four months after applying for integration the newcomer is required to enrol at an educational institution. The integration programme consists of an educational section of approximately 600 hours: courses in Dutch as a second language (NT2), Social Orientation and Vocational Orientation. The programme concludes with a final test on NT2 and Social Orientation no later than 12 months after the enrolment at the educational institution. In addition to these courses, the newcomer receives general programme coaching and social counselling. The general programme coach should personally assist the newcomer, providing support if necessary and helping to motivate the newcomer. The total programme is concluded no more than six months after the final test with a referral to the labour exchange, a follow-up course or other follow-up activities. So the total duration of the programme is close to two years at the most.

WIN specifies the obligations of newcomers and municipalities concerning the settlement programme. The newcomer is obliged to apply for the integration inquiry, to register with the educational institution and participate in the training, to take the final test and to participate in other parts of the integration programme. The Act stipulates sanctions for newcomers who fail to meet their obligations: reduction of benefit payments, or fines. In turn, the municipalities are obliged to ensure that all newcomers in need of a settlement programme are offered an adequate one.

Local integration policy was given new impetus with the introduction of WIN.³⁴ The educational supply improved gradually, both quantitatively and qualitatively. However, in 2001 even the central government recognised that the policy had not yet succeeded due to several problems with its implementation at the local level. Evaluation studies revealed that many municipalities have problems with organising the cooperation of the many organisations and agencies concerned. Most newcomers failed to acquire sufficient command of the Dutch language within the allotted 600 hours for a referral to the labour exchange, although this was a central goal of the policy. The disappointing results were also caused by the fact that municipalities could rarely provide made-to-measure programmes for the heterogeneous group of newcomers, and by high dropout and absenteeism rates. At the same time, municipalities seldom impose the sanctions WIN stipulates because they consider the sanctions ineffective or unjustified given the actual low supply of programmes. Another reason is that municipalities prefer positive sanctions to negative ones. Furthermore, as an unintended side effect, the increase in the number of newcomers has occurred at the expense of the number of Dutch courses for those immigrants who have been in the Netherlands for quite some time without having acquired enough language skills for self-sufficiency (these immigrants are known as 'oldcomers').

In response to these disappointing results, the central government set out to initiate improvements and adjustments in the newcomer integration policy. An integration task force was established by the government to further this aim and a separate policy for the integration of oldcomers was developed. At the same time WIN's target group was redefined. First, an act was passed to oblige specific groups of immigrants who have

³⁴ A. Odé, M. Brink, (2002) Evaluatie effectiviteit Wet Inburgering Nieuwkomers: verscheidenheid in integratie [Evaluation of the effectiveness of the Newcomers Integration Act: diversity in integration], in: Migrantenrecht, vol. 17, no. 5, pp. 154-158.

temporary residence permits but fulfil functions of social importance – such as clergymen (especially imams) – to participate in an integration programme. Second, the introduction of the Aliens Act 2000 was accompanied by another change in the target group; from then on immigrants with temporary residence were also included in WIN.

6. Legislation aimed at racial discrimination

This chapter provides an overview of Dutch legislation against discrimination based on race and nationality.³⁵ Legislation in preparation is also included. Most of these legislative procedures are obligatory on the basis of supra-national law. Special attention is given to transposing the Racial Equality Directive into Dutch law. For the current situation pertaining to the so-called National Action Plan, see section 8.2.

6.1. ARTICLE 1 OF THE CONSTITUTION

The first article of the Dutch Constitution contains both the principle of equality and the ban on discrimination.³⁶ It stipulates that all individuals living in the Netherlands are to be treated equally under equivalent circumstances. Discrimination, including racial discrimination, is not permitted. The article provides the citizen with protection in his or her relationship with the government, but it cannot be directly invoked in the horizontal relationships between citizens themselves. This legal relationship is provided for in the Equal Treatment Act.

6.2. EQUAL TREATMENT ACT

The Equal Treatment Act (Algemene Wet Gelijke Behandeling; AWGB) forbids discrimination in labour relationships, the professions and the provision of goods and services. The concept of labour relationships is broad and includes volunteers, interns and flexiworkers. The labour process covered by this protection begins with recruitment and selection, continues to remuneration, treatment and promotion, and ends in termination. The offering of goods and services includes health care, housing, education, and advice on school and career choices. Discrimination in the above-mentioned areas is forbidden under article 1 of the AWGB, if the matter concerns one of the following: religion, belief, political conviction, race, sex, nationality, hetero- or homosexual orientation or civil status. Under legal precedent, race should be understood to include skin colour, descent, or national or ethnic origin³⁷.

³⁵ M. Kroes et al., *Gelijkheid en rechtvaardigheid: staatsrechtelijke vraagstukken rondom 'minderheden'* [Equality and justice: constitutional questions concerning 'minorities'], Staatsrechtconferentie 2002, Deventer: kluwer 2002. See also T. Loenen, *Het gelijkheidsbeginsel en andere grondrechten in de multiculturele samenleving – ontwikkelingen sinds 1983* [The principle of equality and other basic rights in the multicultural society – developments since 1983], NJCM-Bulletin 2003, pp. 259-275.

³⁶ Van Boven et al., *Het verbod van artikel 1 Grondwet: nationale en internationale perspectieven* [The prohibition in article 1 of the Constitution: national and international perspectives], Leiden: Stichting NJCM-Boekerij 2003.

³⁷ The Netherlands, The Supreme Court (Hoge Raad, or HR; 15.06.1976, *NJ* 1976).

The prohibition has to do with both direct and indirect discrimination. Indirect discrimination is discrimination that occurs on grounds other than those listed above, but that results in discrimination on those grounds.

An example is to require *a good command of the Dutch language* when hiring people to work in the flower bulb fields, which produces indirect discrimination on the basis of race and nationality. Such discrimination is forbidden unless the person who commits the discrimination can demonstrate that the requirement is objectively justified. This will be the case if the job opening is for that of an editor, for instance.

Concerning the evaluation of the Equal Treatment Act, the government has decided that the act does indeed satisfy what the legislators had in mind when it was developed³⁸. There is no reason to make drastic changes in the act or its system, although minor improvements are called for that are mostly connected with the interrelationships of the various equal treatment laws. To this end, a proposal for a so-called AWGB evaluation law will be submitted in 2003 to the Council of State for recommendation.

6.3. EQUAL TREATMENT COMMISSION

The AWGB provides for an Equal Treatment Commission (Commissie Gelijke Behandeling; CGB), to which requests for judgements can be submitted.³⁹ The task of the CGB is to contribute to upholding the right to equal treatment. This construction is essential for the effective suppression of discrimination, since research shows that for victims of discrimination the obstacles they must overcome when taking a case to court are higher than in disputes over labour, housing or the sale of goods.⁴⁰

Requests to the CGB must be submitted in writing. The procedure is free of charge, and legal assistance is not required. An injured person can go directly to court on the basis of the AWGB, but can first make an appeal to the Commission. This creates a low-threshold forum where victims of discrimination can present their cases. The request can be submitted by the injured person or by governmental organs and businesses or institutions that want to know whether their own policy is compatible with equal treatment legislation. The path to the CGB is also open to judges or other settlers of disputes who want to know the Commission's opinion.

So far, no settlers of disputes have made use of this possibility. Interest groups are entitled to undertake collective action if, in conformity with their statutes, they promote the interests of those who can derive protection from equal treatment legislation.⁴¹ The right to undertake collective action is an important instrument for bringing before a court of law any combination of infringements that affect the interests of several citizens.

This is interesting not only from the perspective of legal economics but also because it prevents complaints from being incompletely presented. Finally, the CGB can appear in

³⁸ Parliamentary Documents II, 2001/02, 28 481, no. 1.

³⁹ D.J.B. de Wolff, *De Algemene wet gelijke behandeling en vergelijkbaar gelijkebehandelingsrecht* [The Equal Treatment Act and comparable equal treatment legislation], *Ars Aequi* 2003, 15-21.

⁴⁰ P. Rodrigues (1997) *Anders niets? Discriminatie naar ras en nationaliteit bij consumententransacties* [Will that be all?

Discrimination based on race and nationality in consumer transactions], Lelystad: Vermande, p. 19.

⁴¹ The Netherlands, Article 12 paragraph 2 subparagraph e of the AWGB.

an official capacity, but when it does its authority is limited to public service or to one or more sectors of society.⁴² The legislators wanted to prevent any company or institution from becoming the subject of an inquiry, unless the case had to do with the holding of a monopoly. The notion of ‘sector’ can refer to a certain branch of business, a branch of service or one of the social services. The Commission has made scant use of this authority. None of the investigations undertaken by the Commission on its own initiative concern race or nationality.

In principle, after the investigation has been conducted a hearing is held and a non-binding judgement is pronounced. The judgement only determines whether a violation of the equal treatment legislation has taken place. The Commission is not authorised to make pronouncements concerning the right to compensation or redress. The CGB can make recommendations and can bring the judgement to the attention of ministers, branch organisations or interest groups, if necessary.

6.4. CRIMINAL LAW

The current criminal bans on discrimination are included in the Dutch legislation of 1971.⁴³ After these provisions were introduced, only a few amendments in the Penal Code (Wetboek van Strafrecht; Sr) proved necessary.

First, article 429quater – which forbids discrimination in the practice of running a business or following a profession – was tightened up in 1981.⁴⁴ This was in response to the non-Jewish declarations that Dutch businesses were issuing to Arab countries in the Middle East. The government decided that an amendment was necessary in order to bring the issuing of these declarations under the prohibition of article 429quater of the Penal Code.

Then on 1 February 1992 the criminal bans on discrimination were tightened up and expanded (with new grounds for discrimination).⁴⁵ The basic principle is that people are not to be hindered by discrimination in carrying out their social functions. The law is meant to protect groups that have to contend with discrimination. Since that time, the following articles have been in force.

- Article 90quater lays down the (criminal) definition of discrimination
- Article 137c forbids discriminatory defamation
- Article 137d makes inciting to hatred a punishable offence
- Article 137e forbids the publicising of discriminatory remarks, and since 1992 this prohibition has also applied to the unsolicited sending of discriminatory publications
- Article 137f determines that since the amendment of 1992, providing support for discriminatory activities is no longer a summary offence but a crime

⁴² The Netherlands, Article 12 paragraph 1 AWGB.

⁴³ Bulletin of Acts and Decrees, 1971, p. 96.

⁴⁴ Bulletin of Acts and Decrees, 1981, p. 306.

⁴⁵ Bulletin of Acts and Decrees, 1991, p. 623.

- Article 137g, since the amendment of 1992, contains not only the ban on deliberate discrimination in the running of a business or the practice of a profession but also in the exercise of official duties

Article 429quater forbids the same offence as 137g, but without the requirement that the discrimination be deliberate. It is the summary offence variant. Most of the articles mentioned here were expanded in 1992 to cover discrimination based on ‘homosexual orientation’ and ‘sex’.⁴⁶

6.5. ACT ON THE PROMOTION OF ETHNIC MINORITIES IN THE LABOUR MARKET

The Act on the Promotion of Ethnic Minorities in the Labour Market (Wet SAMEN) been prolonged until 2004. The Act pertains to enterprises (the government included) in which at least 35 persons are employed. Each entrepreneur must try to put together a workforce with a representative number of minorities that is proportional to their share in the regional population. Qualifications and skills are taken into account. The government lists final percentages that should be reached for in each region.

The entrepreneur registers those employees belonging to the minorities. A public annual report makes known the number of persons from the target group and the measures to be taken in the coming year to reach a better proportional representation of minorities. The annual report is submitted to the Works Council. It must be deposited with the regional Centre for Work and Income on 1 June of the next year at the latest. The Labour Inspectorate checks this and informs the Works Council and organisations of employees and employers, if necessary. A copy of this information is available at the Regional Centre for Work and Income and can be consulted by interest groups. Interest groups may now sue the employer after they have appealed to him first. Compliance with the Act may be claimed, but there are no sanctions for non-compliance.

6.6. BILL TO INCREASE SENTENCES FOR STRUCTURAL DISCRIMINATION

On 11 June 2001, the government presented a bill for the amendment of the Penal Code (Sr) to the Lower House of Parliament.⁴⁷ The bill would change – wherever relevant – the offences involving personal expression in articles 137c, d and e of the Penal Code. If the offence is committed by a person who has turned it into a profession, or who commits it habitually, or in association with one or more persons, the sentence is doubled. In the clarification it is recognised that the sentence is not so much decisive as that in the case of discrimination the force of the criminal code is to be found primarily in a consistent and unambiguous response on the part of the Public Prosecution Service and in judicial

⁴⁶ See also P. van Sasse van Ysselt, *Wetgeving en toezicht betreffende de strafrechtelijke aanpak van discriminatie op grond van ras* [Legislation and monitoring concerning the criminal prosecution of racial discrimination], NJCM-Bulletin 2003, pp. 411-427.

⁴⁷ Parliamentary Documents II, 2000/01, 27 792, nos. 1-2.

power.⁴⁸ At the same time, case law shows that maximum sentences are seldom if ever imposed in cases of discrimination. For example, when discrimination occurs in hotels, restaurants and cafés, the rule has applied since 1981 that with a second irrevocable sentence of a 450 Euro fine within the period of five years the city council should suspend the business's licence. Despite the persistent problem formed by this kind of discrimination, this authority is yet to be exercised.⁴⁹ Nevertheless, the government decided that increasing the sentence for structural forms of discrimination was justified. This kind of discrimination refers chiefly to the remarks of extreme right-wing organisations and to the way freedom of speech challenges the limits of the ban on discrimination. However, factors such as recidivism, complicity and organised association are already grounds for increasing the sentence which the Public Prosecution Service can take into account in its argument.

Is this bill's value merely symbolic?⁵⁰ Actually, the surplus value of the bill can be found in the extra enforcement measures it offers, such as arresting someone not caught in the act, and telephone tapping.

The Public Prosecution Service informed the government that these means of coercion were sorely missed, especially in criminal investigations involving the Internet. As an example, take the case against two board members of the extreme right-wing party VNN, apprehended for making discriminatory statements made on this organisation's website. The court announced a stay of proceedings for an unlimited period of time in order to clear up a large number of questions related to the VNN's website and the VNN itself. The defendants themselves could have answered most of those questions with relative ease if they had been interrogated at an earlier stage by the police. This did not happen, however, because they chose not to comply with an invitation from the police. In another case, the defendant was guilty of repeatedly making discriminatory statements on the Internet. Summonses from the police were ignored. The only way the man could be arrested was to catch him in the act. The judge has not yet issued an opinion concerning this investigative technique.⁵¹ The government, however, expect these investigative problems to increase due to the growing popularity of the Internet. For this reason the request by the Public Prosecution Service to increase the means of coercion was honoured.

The Public Prosecution Service's request for extra means of coercion in Internet cases seems fully appropriate. What is surprising, however, is that a problem that concerns primarily the Internet is being introduced under the heading 'structural forms of discrimination'. Is the making of an *offensive* website a structural act? Or does someone make a habit of such an activity by maintaining the website? The government has already modified its original point of view, which was that the same norms should apply, whether on-line or off-line.⁵² The fact that circumstances occur on the Internet that do not occur in the analogue world has now been recognised. In addition, the legal framework meant to

⁴⁸ Parliamentary Documents II, 2000/01, 27 792, no 3.

⁴⁹ P. Rodrigues (1997) Anders niets? Discriminatie naar ras en nationaliteit bij consumententransacties [Will that be all?

Discrimination based on race and nationality in consumer transactions], Lelystad: Vermande, pp. 23-24.

⁵⁰ According to Peter Rehwinkel in *de Volkskrant*, 7.09.2001.

⁵¹ Both examples were taken from Parliamentary Documents II, 2000/01, 27 792, no. 3, pp. 5-6.

⁵² See the memorandum Internationalisering en rechtsmacht, Parliamentary Documents II, 1999/00, 25 880, no. 10, p. 11.

apply to material existence is sometimes inadequate when it comes to the digital environment.

There should be no hesitation in switching to specific regulations in such situations. The question is whether the justification of the bill should not have been based on developments related to the Internet.

The same probably applies to politically inspired race crimes as well. The vague choices in connotations concerning discrimination in pursuit of a profession (which is not actually the problem when it comes to offences involving personal expression) or discrimination committed out of habit seem unfortunate choices. The National Bureau against Racial Discrimination (LBR) has previously warned that these notions will in turn contribute to new problems regarding evidence.⁵³ When the VNN board members made their statements on the website, were their actions related to the pursuit of their profession or were they habitual? Neither one, in our opinion. For this reason it would have made more sense to label the domain of the Internet as an environment in which increased sentences are called for, along with the essential extra means of coercion for the Public Prosecution Service.

As of July 2003 the law was still being dealt with in the Upper House.

6.7. FRAMEWORK CONVENTION

On 4 February 1999, the bill for the approval of the Framework Convention for the Protection of National Minorities that was drawn up on 1 February 1995 was presented to the Lower House.⁵⁴ In this bill, the term 'national minorities' was understood to mean Frisians and persons authorised to reside in the Netherlands who belong to the groups targeted by integration policy. 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 as defined by the integration policy are also national minorities obtained insufficient support.⁵⁵

Since 22 May 2000 the bill has been pending in the Upper House.⁵⁶ A discussion has also arisen there concerning the definition of national minorities applied by the Netherlands.⁵⁷ The spokespersons of the various parties have expressed their objections to the proposed and, in their estimation, overly liberal definition.

⁵³ Parliamentary Documents II, 27 792, no 3, p. 7.

⁵⁴ Parliamentary Documents II, 1998/99, 26 389, nos. 1-3

⁵⁵ Parliamentary Documents II, 1998/99, 26 389, no. 6

⁵⁶ Parliamentary Documents I, 2000/01, 26 389, no. 236

⁵⁷ See Y. Donders (2002) Invulling begrip nationale minderheid struikelblok bij Nederlandse goedkeuring kaderverdrag

inzake de bescherming van nationale minderheden [Interpretation of the notion of national minorities is proving an obstacle.

in the Dutch approval of the framework convention for the protection of national minorities], in: *NJCM-Bulletin*, 2002, pp.

131-138. Also see S. Kamphorst (2002) Gelijkheid en diversiteit [Equality and diversity], in: *NJCM-Bulletin*, 2002, pp. 715-717.

On the basis of the parliamentary documents, four arguments against the proposal to approve stand out:

Keeping in mind its birth and development, the notion of national minorities is not meant to include such a large group as all the legal aliens residing in the Netherlands who belong to groups targeted by the integration policy;
Interpreting the notion of national minorities from conventional law on the basis of a ministerial memorandum is inadequate from the constitutional perspective;
Interpreting the notion of national minorities as proposed by the government will lead to more far-reaching substantive protection of ethnic minorities than is desired or intended;
The Framework Convention can lead to claims by ethnic minorities against the government on grounds of the direct effect than can be attributed to the convention.

It should be pointed out that the new obligations under the Framework Convention do not make the Netherlands any more attractive for migrants. Indeed, individual migrants derive rights from the integration policy only insofar as these rights are laid down in law and after the migrant has been authorised to stay.

Access to the European Union and the Netherlands is regulated in detail to such a degree that absolutely no (new) residency rights are created and no existing residency rights are enlarged on the basis of the Framework Convention alone.⁵⁸

The approval of the Framework Convention should not be withheld, since this would wrongfully result in the denial of international guarantees to full protection to linguistic and religious national minority groups. In addition, it would harm the authority concerning human rights, human dignity and equal treatment that the Netherlands strives to generate within the international community. The dynamic of the Dutch interpretation of the definition of national minorities certainly has its advantages from a policy point of view. In this regard it is advisable that for a change in the integration policy target groups, explicit parliamentary approval be demanded.

⁵⁸ K. Alfenaar (2001) De toegang tot het grondgebied van de Europese Unie en de rol van Nederland daarin [Access to the territory of the European Union and the role of the Netherlands], in: E. Brouwer and C. Groenendijk (ed.) *Derdelanders in de Europese Unie, Europees migratierecht vanuit Nederlands perspectief*, Utrecht: Forum, pp. 19-42.

6.8. DIRECTIVE ON E-COMMERCE

For protection against discrimination on the Internet, the European directive of 8 June 2000 concerning electronic commerce is important.⁵⁹ This e-commerce directive excludes the provider's liability under civil law insofar as it pertains to the mere transport of data (*mere conduit*), including temporary storage in connection with achieving an effective transport (*cache*).

Insofar as there is evidence of storage, distributing information or making it available by a provider, the directive makes it possible to lay down special regulations. The providers are only liable for complicity in a punishable offence if they store the statements on their computers for further consultation (*hosting*). The principle that applies here is that of conditional intention: knowingly and wilfully taking a risk (by no means imaginary) that through the storage of certain data an offence will be facilitated.⁶⁰

A bill aimed at implementing the guideline was submitted to the Lower House on 23 January 2002; it was still pending in July 2003.⁶¹ Concerning *hosting*, this bill comments that there is no liability if the provider does not know or does not have to know that the contents are illegal, and if he promptly destroys the information as soon as he finds out or should have found out (art. 6:196c lid 4 BW). With *mere conduit* and *cache*, the provider is indemnified against liability if he observes certain conditions. It is especially important that the provider have absolutely no connection with the illegal contents. Should that prove otherwise, liability or punishability may ensue. The indemnity of the provider does not alter the possibility that the court will demand to terminate the violation. The provider is not bound to check the contents of the conveyed information. In addition, the bill only applies to electronic trade and not to all Internet traffic. The bill (and the guideline) for the *mere conduit* and *cache* situations in which the provider has knowledge of the illegal contents is unclear. This suggests to us that the provider should be the one to take action. The same should hold if a request is made to remove material and the provider has no reasonable doubt concerning the appropriateness of the request. In keeping with the verdict in the Scientology case, he should immediately begin the process of removal.⁶² In this case, the Scientology church took legal action against the distribution of incriminating court documents via the Internet.

6.9. PROTOCOL 12 OF THE EUROPEAN CONVENTION ON HUMAN RIGHTS

The European Convention on Human Rights (ECHR) contains a limited ban on discrimination in article 14. Citizens can appeal to this article only in connection with the other provisions of the ECHR.

⁵⁹ OJL 17 July 2000, L 178/1, and see the Memorandum on the liability of intermediaries on the Internet, Parliamentary Documents II 1998/99, 25 880, no. 7.

⁶⁰ Parliamentary Documents II, 2000/01, 23 530, no. 45, p. 10.

⁶¹ Parliamentary Documents II, 2001/02, 28 197, nos. 1-3.

⁶² Scientology/XS4all Court of The Hague 9 June 1999, 96/1048, *Computerrecht* 1999, 2000, esp. Hugenholz.

To promote better protection against discrimination, a general ban on discrimination is laid down in the 12th Protocol annexed to the ECHR.⁶³

The fundamental right to be protected from discrimination is contained in article 14 of the ECHR. Because of the way article 14 of the ECHR is formulated, the ban on discrimination applies only to the rights and freedoms included in the ECHR. These rights and freedoms are listed in title 1 of the ECHR. An appeal to article 14 is possible only in connection with one of the provisions from this title. Discrimination in areas other than those mentioned in title 1 cannot be challenged through an appeal to article 14 of the ECHR.

The text of Protocol 12 was accepted by the Committee of Ministers on 26 June 2000. Protocol 12 contains an independent right to be protected from discrimination. The Protocol, consisting of a Preamble and six articles, contains a general ban on discrimination. On 4 November 2000, 25 of the 41 members states of the Council of Europe signed the Protocol. Protocol 12 annexed to the ECHR has yet to be ratified. In accordance with the terms set in article 5 of Protocol 12, ten ratifications are necessary before the Protocol can take effect. The approval of the Protocol was still pending in the Lower House on July 2003.⁶⁴

6.10. RACIAL EQUALITY DIRECTIVE

On 29 June 2000, Council Directive 2000/43/EC, directing application of the principle of equal treatment of persons regardless of race or ethnic origin, was announced in the Official Journal.⁶⁵ The government has stated what consequences for national law are expected from the directive. These expectations are partly based on the opinion issued by the Interdepartmental Committee on European Law.⁶⁶ The most important consequences of the directive for the Dutch legal system are given below.⁶⁷

6.10.1. General remarks

The Racial Equality Directive requires that the provisions of the directive concerning dividing the burden of proof be incorporated into the Equal Treatment Act. Initially the Dutch government showed some reserve towards this provision.⁶⁸ For this reason it seemed wise to do as much as possible to clear up the misunderstandings regarding the provision's scope. On 24 February 2000, the Minister of Justice submitted a legislative

⁶³ A. Kellermann and C. de Fey (2001) *Mensenrechtenverdrag uitgebreid met algemeen discriminatieverbod (1) – 12^e*

Protocol moet beperktheid van artikel 14 ECHR opheffen [Human Rights Treaty expanded by addition of ban on discrimination (1) – 12th Protocol should cancel out the limitations of article 14 of the ECHR], in: *Zebra Magazine*, 2001,

no. 1, pp. 18-19.

⁶⁴ Parliamentary Documents II, 2002/03, 28 100 (R 1705), no. 8

⁶⁵ Official Journal 2000 L 180/22.

⁶⁶ See Parliamentary Documents II, 1999-2000, 22 112, no. 155, pp. 7-10.

⁶⁷ P. Rodrigues (2000) *De richtlijn tegen rassendiscriminatie bezien vanuit polderperspectief* [The guideline against racial

discrimination seen from the polder perspective], in: *Nederlands Tijdschrift voor Europees Recht*, 2000, pp. 279-284

⁶⁸ Also see Parliamentary Documents II, 1999-2000, 22 112, no. 145, p. 15.

proposal on the burden of proof in cases of sexual discrimination.⁶⁹ The reaction in most of the country's daily newspapers was unequivocal.⁷⁰ the proposal turned the burden of proof upside down. If an employer is accused of sexual discrimination, it is up to him to prove his innocence. The Dutch legislative proposal is based on the above-mentioned European directive.⁷¹ Both documents stipulate the following: if someone is thought to have been discriminated against, he is to produce the facts or circumstances on which that suspicion is based. Only then is the other party to show that the accused person has acted in violation of the law. The mere allegation of discrimination is therefore not enough. The burden of proof is not reversed, but it is shifted to the other party if the plaintiff has made a reasonable case for his argument.⁷²

This division of the burden of proof also applies to the Racial Equality Directive. For that matter, this shifting of the burden of proof is not new in Dutch law. In civil cases, this mitigation of the burden of proof is also used when the standard division of the burden of proof leads to unreasonable results, such as cases of medical liability.⁷³

The Equal Treatment Commission has been applying the shifting of the burden of proof to cases of discrimination since its establishment in 1994.⁷⁴

For the European countries that support the enforcement of the non-discrimination directive in criminal cases, this division of the burden of proof does not necessarily mean a violation of the *presumptio innocentiae*. In the provision in question, an exception is made for criminal proceedings. The directive necessitates a modification of the law of evidence in the Equal Treatment Act. In the pending bill concerning proof in cases of sexual discrimination, the government have indicated that they are still unhappy with this extension because of the running evaluation of the Equal Treatment Act.⁷⁵

Apart from Article 1 of the Constitution, there is no provision in Dutch law forbidding discriminatory treatment. It is true that such treatment is brought and tested under the Equal Treatment Act by the Equal Treatment Commission, but a general provision on this subject does not exist. That is why adaptation is necessary. The directive stipulates that laws and regulations that conflict with the directive must be revoked. It is not clear within what period of time this must take place. The view expressed by the Interdepartmental Committee on European Law, which proposes a period of two years after the law or regulation has taken effect, seems fair. On these grounds, the provision in the Equal Treatment Act – that discrimination on the basis of preceding legislation remain unaffected (article 4, paragraph c) – can be terminated.⁷⁶ The government still doubts, however, whether this kind of legislative clean-up job can be done in two years.⁷⁷

⁶⁹ Parliamentary Documents II, 1999-2000, 27 026, nos. 1-3.

⁷⁰ *de Volkskrant*, 25.02.2000 and *NRC Handelsblad*, 25.02.2000.

⁷¹ See note 10.

⁷² Also see C. Bosse (2000) Richtlijn inzake bewijs van discriminatie [Guideline concerning proof of discrimination], in:

SMA, 2000, pp. 64-68.

⁷³ Nederland, Hoge Raad [Supreme Court], HR 20.11.1987, *NJ* 1988, 500, annotated by Heemskerk (*Timmer/Deutman*) and

repeated in the Netherlands, Hoge Raad, HR 18.02.1994, *NJ* 1994, 368 (*Schepers/De Bruin*).

⁷⁴ M. Leenders (1997) *Bewijsrecht en discriminatie bij de arbeid* [Law of evidence and discrimination in the workplace].

Zwolle: Tjeenk Willink, p. 64.

⁷⁵ Parliamentary Documents II, 1999-2000, 27 026, no. 3, p. 7.

⁷⁶ Such is also viewpoint of the Interdepartmental Committee on International Law, Parliamentary Documents II, 1999-2000, 22 112, no. 155, p. 10.

⁷⁷ Parliamentary Documents II, 1999-2000, 22 122, no. 155, p. 13.

The legal protection under the Equal Treatment Act is limited to natural persons. As was mentioned earlier, the Equal Treatment Commission has deemed organisations admissible under certain circumstances, but a legal basis for expanding the circle of interested parties in the Equal Treatment Act seems inevitable.

Expanding the definition by adding the phrase ‘instruction to discriminate’ should be taken up in the Equal Treatment Act as well, though ‘to instruct’ is an unfortunate choice of words. ‘To incite’ would have been a better choice.

The government announced its decision to address the implementation of this directive, together with the evaluation of the Equal Rights Act, and hoped to be able to make its report to the Lower House in the spring.⁷⁸ Since then the government has abandoned this plan, and the two legislative procedures will take place separately. This means abandoning a systematic approach, which won’t help the cause of consistency.

6.10.2. Implementation

In the summer of 2001, the government drafted a preliminary report and sent it to various organisations, including non-governmental organisations, for comment. After receiving the comments, the government started working on the draft legislation. The draft legislation was completed in April 2002 and was then sent to the Council of State. The text was made public on 28 January 2003 when it was submitted to Parliament.⁷⁹ In June 2003 the bill was still pending in Parliament and the deadline for implementation of the Racial Equality Directive – 19 July 2003 – has been exceeded.

The proposal fails to satisfy the guideline on a number of points. The Preamble to the Racial Equality Directive states that should the occasion arise, Member States should also protect legal entities if they are being discriminated against on account of their members’ race or ethnic origins. But the AWGB only pertains to natural persons.⁸⁰ In a few incidental cases, however, the Equal Treatment Commission decided that legal entities could be considered substructures for natural persons and could lodge their complaints with the Commission on that basis.⁸¹ In the parliamentary hearing, the government stated that the AWGB can be applied to a legal entity if the discrimination committed against that entity results in indirect discrimination against natural persons. The result of this reasoning is that in the case of discrimination towards a legal entity an objective justification is always possible, since indirect discrimination against natural persons falls under legal protection. The DUMC is of the opinion that the bill should be explicitly furnished with legal protection for legal entities insofar as these legal entities experience discrimination on account of the race or ethnic origins of their members.

Article 15 of the Racial Directive states that sanctions must be effective, proportionate and deterrent. The AWGB has almost no sanctions at its disposal; only nullity can be

⁷⁸ Letter from the Minister of the Interior of 31.01.2001.

⁷⁹ Voorstel voor wijziging van de algemene wet gelijke behandeling en enkele andere wetten ter uitvoering van richtlijn nr. 2000/43/EG en richtlijn nr. 2000/78/EG (EG-implementatiewet Awgb) [Proposal for altering the Equal Treatment Act and several other acts in implementation of guideline no. 2000/43/EB and guideline no. 2000/78/EG (EG implementing legislation for the AWGB)], Parliamentary Documents II, 2002/03, 28 770, nos. 1-3.

⁸⁰ Article 1 AWGB.

⁸¹ CGB 1996-110 and 1998-31.

invoked in cases of discrimination or victimisation when a person is dismissed from a job⁸² and in cases of general terms and conditions.⁸³ The government believes that general sanctions from civil law are sufficient in the case of discrimination. This keeps the Equal Treatment Commission from being given the authority to impose sanctions. In the context of sound legal protection (art. 6 EVRM), this authority would make it possible to make an appeal against these sanctions. Embedding the work of the Equal Treatment Commission in this kind of judicial assessment framework would seriously reduce the accessibility of the Commission for those being brought before a court of law. The process would become more like a judicial procedure, which is exactly what the lawmakers were trying to avoid, given the Commission's intended low-threshold function. Yet the strengthening of sanctions is what is desired. The DUMC recommends that in the assignment of sanctions in civil cases and in the size any compensation, the obligation lie with judges to regard the disputed activity as discrimination, which should therefore result in an increase in the sanction.

The Racial Equality Directive requires member states to provide for an effective protection against victimisation (article 9). Organisations in the Netherlands have requested the Dutch government to extend this protection to those situations where the discriminating party has knowledge of the victim's intention to file a complaint. In comparison, the existing British and Irish legislation contains such a provision.

The Member States, in accordance with article 13 of the Racial Directive, should be provided with so-called 'specialised bodies' to grant independent assistance to victims, undertake investigations and publish reports. According to the government, the Equal Treatment Commission fulfils this role for the Netherlands.⁸⁴ This is only partly the case, however, because the Commission does not offer legal assistance to victims. It provides a means by which complaints can be submitted to the legal system. Considering its role as independent and impartial resolver of disputes, the Commission is not in a position to assist individual plaintiffs. In the Netherlands, this role is fulfilled by the network of local Anti-Discrimination Agencies (Anti-Discriminatie Bureaus, or ADBs). These ADBs are represented by the National Federation of Anti-Discrimination Agencies and Hotlines (Landelijke Vereniging van Anti Discriminatie Bureaus en Meldpunten, or LV-ADB). Along with the Equal Treatment Commission and with the legal support of the National Agency to Combat Racial Discrimination (Landelijk Bureau ter bestrijding van Rassendiscriminatie, or LBR), they perform the tasks listed in article 13 of the Racial Equality Directive. In the opinion of the DUMC, this network composed of the LV-ADB, the LBR and the Equal Treatment Commission deserves the support of the government so it can fulfil the role of 'specialised body'.

⁸² Article 8 AWGB.

⁸³ Article 9 AWGB.

⁸⁴ Parliamentary Documents II, 2002/03, 28 770, no. 3, p. 20.

7. Impact of anti-discrimination legislation

7.1. COMPLAINTS

In 2002, 3,902 complaints and reports of discrimination were registered with local and regional Anti-Discrimination Agencies (ADBs) in the Netherlands.⁸⁵ There are approximately forty active local ADBs in this country. It is striking that the four big cities together account for 44% of the total number of complaints. Part of the explanation for this may have to do with the population distribution in the Netherlands: most of the ethnic minorities live in the western conurbation known as the 'randstad'. In addition, the ADBs in the big cities have greater name recognition because they have been established for a longer period of time and are capable of handling a larger staff. Such agencies are more able to develop preventive and educational activities, so more people become aware of the structures for lodging complaints. There is also considerable difference in the size of the areas covered by the various ADBs.

The figures from the 24 agencies that provided information on 2001 and 2002 have been compared. This comparison shows that in 2002 a drop of 3% took place, which means a break in the trend since the number of complaints in the previous years was steadily rising. The year 2001 was especially high, with an increase of 11%.

Table 1 Number of complaints per type of discrimination

Place / region	anti-Semitism	length of employment	civil status	sex	religion	disability	origin/colour/race	age	personal convictions	nationality	political convictions	sexual orientation	other	total
Amersfoort	3	2					22	1				4	5	37
Amsterdam	105		5	17	66	5	359	10		7	2	26	27	629
Apeldoorn	3			1	1	5	111	3		1		2	18	145
Den Bosch		2		1	5	4	140	6		2		7	18	185
Dordrecht	1				2	2	142					3	2	152
Ede			2		3		36	2		1			3	47
Eindhoven					2	1	46	4	1	2		4	8	68
Flevoland	1					3	32	3		5		1	2	47
Friesland	3		11		8	7	49	8		14	8	3	16	127
Haaglanden	5	1	1	14	30	9	262	12		7	5	21	42	409
Haarlem	18			6	10	6	90	10				5	49	194
Hilversum							25					1	4	30

⁸⁵ Kerncijfers 2002, Klachten en meldingen over ongelijke behandeling [Complaints and reports of unequal treatment], Landelijke Vereniging van ADB's en Meldpunten [National Federation of Anti-Discrimination Agencies and Hotlines], www.lvadb.nl.

Hoogeveen					1								1	2
Leiden				5	3		48	2				3	22	83
Maastricht	4		1	2	1	4	57	1			7	3	10	90
Noord and Midden Limburg			2	1	2		23						5	33
Noord-Holland Noord	3		1	6	17	3	110	1	1	2	2	2	25	173
Nijmegen					2	3	47	3		4	1	2	6	68
Overijssel	11		3	6	14	5	99	9		5		6	6	164
Rotterdam	6	2		7	43	7	372	11	1	4	16	16	47	532
Sittard	1			4			7			2		3		17
Tilburg	1				2	3	60	4		5	1		27	103
Utrecht	1			3	12	6	86	6				4	34	152
Veenendaal					18		64	2					30	114
West Brabant (Breda)	1			2	10	3	85	3		4		4	20	132
Zaanstreek Waterland	1			7	12	6	45	3	2	17	10	3	5	111
Zeeland	1		1	1	4	2	34			2		4	9	58
	169	7	27	83	268	84	2451	104	5	84	52	127	441	3902
In percentages	4	0	1	2	7	2	63	3	0	2	1	3	11	

Source: National Federation of Anti-Discrimination Agencies and Hotlines, 2002

The category of complaints in which skin colour, origin or race forms the basis for unequal treatment is the highest, with 63%. During the past four years, this percentage was subject to almost no fluctuations. Interestingly enough, the same is true of all types of discrimination except for complaints of religious discrimination.

In 2002 the number of complaints of religious discrimination increased further after the percentage had already risen from 3% in 2000 to 6% in 2001. This increase is partly due to incidents in which Muslims were the victims of unequal treatment. Many of these incidents were discriminatory reactions to visible manifestations of Islam such as headscarves and mosques. The effect of 11 September 2001, the reporting about Muslims in the media and the rise of the List Pim Fortuyn seem to explain this increase.

The ADB registration system distinguishes thirteen social areas in which complaints of discrimination can have some bearing.

The category of 'labour market' occurred most frequently, followed by a steadily growing number of complaints in the category 'neighbourhood or district'. There was little change in 2001.

Table 2 Social areas

Labour market	neighbourhood/district	community services	commercial services	hotels, restaurants, cafés/entertainment	housing	media and advertising	education	police/aliens registration/public prosecution service	private domain	public/political opinion	sports and recreation	other	n/a	total
591	703	421	306	259	139	227	208	237	93	300	77	302	39	3902
15	18	11	8	7	3	6	5	6	2	8	2	8	1	100 %

Source: National Federation of Anti-Discrimination Agencies and Hotlines, 2002

Since then a reversal has taken place: complaints related to the area of ‘labour market’ and complaints in the area of ‘neighbourhood or district’ had an equally large share in the total number of complaints. In 2002 the area of ‘neighbourhood or district’ had a larger share in the total than the area of ‘labour market’ for the first time. Incidents in the social domain of ‘neighbourhood or district’ have mostly to do with rows between neighbours and neighbourhood campaigns of a discriminatory nature.

7.2. ANTI-SEMITISM

The number of complaints of anti-Semitism made to the ADBs in 2002 was 4%, which was equal to the figure for 2001.⁸⁶ It is striking that many complaints of anti-Semitism were registered with the ADB in Amsterdam. This comparatively high number could be explained by the fact that the capital city has a relatively large Jewish community in comparison with the rest of the country.

On 13 June 2003, the Centre for Documentation and Information Israel (CIDI) published its annual report on anti-Semitic incidents. The report concluded that the number of anti-Semitic incidents increased sharply in 2002. The registered number rose by 140% to 337. One of the areas of significant increase was the number of incendiary e-mails. The number of serious incidents (physical violence, threats with violence and verbal harassment) also rose from 62 in 2001 to 99 in 2002. This worrisome trend began in 1999. It should be noted that CIDI often regards incidents of verbal abuse towards one person or authority as a single reported incident, and that Internet sites and chat boxes are not taken into account at all. This category is maintained by the Dutch Complaints Bureau for Discrimination on the Internet (Meldpunt Discriminatie Internet). Like last year, an important proportion of the incidents appeared to be caused by young people of North African origin. The average age of these young people is going down, according to the complaints received by CIDI concerning the problems that Jewish children suffer at the hands of fellow students at school. Persons who are recognisably Jewish are especially vulnerable to verbal harassment and threats with violence.

⁸⁶ Jaaroverzicht antisemitisme in Nederland 2002 [Annual report on anti-Semitism in the Netherlands], Center for Documentation and Information Israel (CIDI), www.cidi.nl.

The report draws special attention to three developments:

- There is a strong connection between anti-Semitic expressions and the events in the Middle East. CIDI does not include criticism of Israel in its report, except when Jews in the diaspora are addressed concerning the politics of Israel, or Israel is compared to Nazi Germany. Because of the influence of the Arabic media on second and third generation migrants, there is a tendency among these young people to make no distinction between Israelis and Dutch Jews, and to see the latter as their enemy.
- In some circles it is again becoming fashionable to assign Jews a special role in politics or in the economy. More and more Dutch personalities are making remarks in the media suggesting that Jews are society's fundamental evil. This conspiracy theory runs parallel with the 'Protocols of the Elders of Zion', which is becoming more popular on Internet sites and in the Arab world. This is an anti-Semitic diatribe from the time of the Czar that claims that the Jews are striving for world domination.
- Anti-Semitic material on the Internet is appearing in increasing amounts. Remarks that are forbidden in ordinary life seem to be flourishing in the virtual world. This is partly because countries like the United States appeal to the right to 'freedom of speech' and are therefore not prepared to intervene. It is also because the judicial system has not followed up on criminal complaints against Dutch people involved in this activity. Consequently, racist and anti-Semitic Internet sites have so far been able to avoid prosecution.

Among the recommendations in this report are the improved implementation of anti-racist legislation by Dutch police and law courts, a more active attitude on the part of politics and the government in opposing all expressions of anti-Semitism, the strengthening of the dialogue between Arab groups and Jewish organisations in the Netherlands, and an international approach to anti-Semitism and racism across national borders.

7.3. ROMA & SINTI

The Anti-Discrimination Agencies have received almost no complaints of discrimination against Roma and Sinti in the Netherlands, nor do the national organisations of Roma and Sinti in the Netherlands have any statistics at their disposal. It appears that complaints from this community are not submitted to the regular infrastructure of anti-discrimination bureaus and interest organisations. A registration of complaints is also lacking.

7.4. INTERNET

There were 1,008 reports made to the Dutch Complaints Bureau for Discrimination on the Internet (Meldpunt Discriminatie Internet, or MDI).⁸⁷ In the past year, the MDI received 1,008 reports as opposed to 691 in 2001: a 30% increase. The MDI evaluated 1,798 discriminatory statements in 2002 (there are usually several statements for each report). Of those 1,789 statements, the MDI found that in 1,238 cases there was evidence of

⁸⁷ Annual report 2002, Internet Discrimination Hotline (MDI), www.meldpunt.nl.

punishable material. As a result, 881 requests to remove the objectionable material were made. In 557 cases this request resulted in removal, and in 324 cases it did not. Reports will be issued concerning 143 of these 324 statements (26 dossiers), and 169 will be submitted to the Public Prosecution Service for further examination.

Once again, the accent in 2002 was on reports of websites and discussion forums on websites. There has been a spectacular growth in the number of reported material on web forums (899), which is keeping pace with the popularity and growth of web forums as discussion vehicles on the Internet.

The year 2002 was not only the year of the web forum, but it was also the year of anti-Semitism and hatred of Muslims on the Internet. The rise of the List Pim Fortuyn (LPF), the murder of Pim Fortuyn, and the resulting social unrest and political reactions made for an avalanche of anti-Muslim and anti-foreigner statements on the Internet. The motto 'you ought to be able to say what you think' produced a substantial rise in the level of hatred and intolerance on the Internet. In 2002 there were 291 anti-Islamic statements reported, with another 316 statements directed towards Moroccans and Turks.

The situation in the Middle East led many people to make critical remarks in which they lost sight of the difference between criticism of a state or government (Israel in this case) and anti-Semitism. This was especially true on the Internet, where unfortunately it must be concluded that 90% of the reported anti-Semitic remarks were made on Muslim web forums. Some of these remarks amounted to a recycling of classical anti-Semitic products such as the Protocols of the Elders of Zion. Denial of the Holocaust was also a major component of the anti-Semitic remarks.

With 607 remarks made against Muslims, Moroccans and Turks and 584 remarks made against Jews, it can be concluded that hatred of Muslims and anti-Semitism on the Internet have both increased substantially (in 2001 there were 125 anti-Muslim and 194 anti-Semitic remarks reported) and kept pace with each other during the past year. Discrimination on the Internet is no longer the exclusive domain of extreme right-wing groups of right-wing extremists. Of the 1,798 reported statements in 2002, only a small portion – 207 – were from this group of extremists.

Considering the large number of complaints, the activities of the Public Prosecution Service to combat discrimination on the Internet are very limited. In 2001 only five cases were brought to court. In most instances moreover, these cases do not result in a sentence on account of technical failures made during prosecution.⁸⁸

7.5. GUIDELINE ON DISCRIMINATION

In 1981 the Minister of Justice first formulated policy regulations that stipulate how the police and the Public Prosecution Service are to act in cases of discrimination. The purpose of these regulations was to attach a higher priority to combating discrimination and to promote compliance with anti-discrimination legislation. Ever since the regulations took effect in 1981, the Guideline has served as a guiding principle for ADBs, the police

⁸⁸ J. van Donselaar and P.R. Rodrigues, *Monitor Racisme en Extreem Recht* [Monitoring Racism and the Extreme Right], Fifth report, Amsterdam: Anne Frank Stichting/University Leiden 2002, pp. 92-107.

and the Public Prosecution Service in preventing and combating discrimination. The Guideline constitutes the formal basis for cooperation between the ADBs, the police and the Public Prosecution Service.

In the past two decades, the names of the policy regulations have changed a number of times.

The current *Guideline on Discrimination* dates from April 2003 and is based on a re-evaluation of the old *Guideline*. The National Federation of Anti-Discrimination Agencies and Hotlines (Landelijke Vereniging van Anti Discriminatie Bureaus en Meldpunten, or LV-ADB) and the National Bureau against Racial Discrimination (Landelijk Bureau ter bestrijding van Rassendiscriminatie, or LBR) also conducted research for the *Guideline*.⁸⁹ On the basis of this research, these NGOs have concluded that current practice leaves much to be desired. The *Guideline* is not being sufficiently followed, especially by the police. Declarations are not being recorded, individual police officers dismiss cases on their own authority or investigate cases with an aloof attitude. Partly on the basis of these findings, the Public Prosecution Office has adjusted the *Guideline* and announced a revised text as of 1 April 2003.⁹⁰ It should also be noted that police compliance with the rules is a structural problem that tightening up the *Guideline* will not overcome.

In cases of discrimination, criminal enforcement, along with a preventive approach and sanctions based on civil and administrative law, should make an essential contribution to the demarcation of the legal and moral norm. Cases of discrimination often attract a great deal of media attention and give the Public Prosecution Service a good opportunity to highlight the contribution that civil law makes to the discrimination problem. In this regard, the revised *Guideline* provides rules for tracking down and prosecuting discriminatory acts; it also lays down procedural regulations for the Public Prosecution Service and the police concerning declarations and complaints of discrimination. The basic rule is that the violation of anti-discriminatory regulations should always be regarded as a criminal offence as long as the case reasonably lends itself technically to prosecution, in view of the negative effect produced by insufficient enforcement and the fact that prosecution tends to serve as a deterrent. Preconditions have also been formulated to provide a basis for local cooperation between the Public Prosecution Service, local government, the police and the Anti-Discrimination Agencies. The Public Prosecutor directs the approach to be taken by the police in dealing with discriminatory incidents. The following points are incorporated in the *Guideline*:

7.5.1. Pro-active investigation

The police and the courts should deliberate with the municipal authorities and the Anti-Discrimination Bureaus on a regular basis. The nature and intensity of the deliberation depends on the nature and extent of the regional discrimination problem.

⁸⁹ Rapportage Evaluatie Aanwijzing Discriminatie [Report on the evaluation of instructions for dealing with discrimination], LV-ADB and LBR, January 2003 (www.lvadb.nl and www.lbr.nl).

⁹⁰ Staatscourant 2003, 61.

7.5.2. Investigation

According to the *Guideline*, an official declaration must be made of all reports and complaints having to do with discrimination that are submitted to the police. Such declarations may be omitted only after prior consultation with the Public Prosecution Service concerning the actual case. The police should be alert to any discriminatory elements in offences under ordinary law, even if these are not held to be directly discriminatory by the person reporting the incident. The Public Prosecution Service is responsible for maintaining an active policy of investigation and is not to adopt a wait-and-see position in cases of discrimination. This applies especially to situations that are threatening to minorities, and to discriminatory utterances at sports events and other public gatherings.

7.5.3. Prosecution

The main rule is that any violation of the regulations on discrimination is always to be regarded as a criminal offence if the case can reasonably be seen to lend itself to such a response. In principle a summons must be issued; in minor cases a settlement can be offered. Under no circumstances is possible martyrdom or exploitation of the form function an argument for omitting the summons. When the prosecution is conducted the position of the victim must be taken into account, and if the charges are dropped the victim is entitled to an explanation concerning the decision not to prosecute.

7.5.4. Sentencing

In cases of crimes under ordinary law, any discriminatory background to the case should be emphasised in the prosecutor's closing speech and should be included in the demand as an aggravating circumstance. In such cases, the demand is to be increased by 25%.

7.6. PUBLIC PROSECUTION SERVICE

The National Expertise Centre for Discrimination (Landelijk Expertise Centrum Discriminatie, or LECD) is the centre within the Public Prosecution Service that is specifically charged with the matter of discrimination; it is part of the Amsterdam District Public Prosecutor's Office. The goal of the LECD is the promotion of effective criminal enforcement in discrimination cases. This goal includes policy formation, investigation, legal action and reporting. The tasks of the LECD include setting up a central registry for cases of discrimination, providing advice to the public prosecutor's office and coordinating current investigations.

In the early spring of 2002, the LECD published its second report, *Cijfers in beeld* (Figures at a glance).⁹¹ The figures for 2002 have not yet been released.

⁹¹ *Cijfer in beeld: Discriminatiecijfers 1998-2001* [Figures at a glance: Discrimination statistics 1998-2001], LECD: Amsterdam April 2002.

This report shows how cases of discrimination were dealt with in the criminal courts in 1998-2001. This information was obtained through two channels. The first was by conducting a query into the automated judicial registration system. This file provides data concerning inflow and settlement by the Public Prosecution Service and settlement by the courts, on the basis of the anti-discrimination regulations. This method fails to recognise discriminatory acts that are listed in (general) articles of the law such as threats, vandalism or assault and battery. Second, information from case files are requested (what, where, how) by means of a uniform list of questions, which is sent to all district public prosecutor's offices. The courts of justice and the Supreme Court are not included, since this method is restricted to cases of first instance.⁹² The LECD then stores the data generated from the various public prosecutors' offices in a computer file and analyses it.

7.6.1. Inflow

Concerning the system being used, the following is deserving of attention. The numbers gathered by the LECD have to do with discriminatory *offences* and not *cases*. A case can consist of several offences. Thus a suspect can be found guilty of racial defamation as well as of inciting racial hatred. The offences are registered when the public prosecutor's office books the case for the first time. Then the file is examined and articles of the law are attached to the various offences by the public prosecutor.

Table 3 Number of newly registered discriminatory offences registered by the Public Prosecution Service (inflow) 1998-2001

Year	1998	1999	2000	2001
Total	216	193	214	198

Source: National Expertise Centre for Discrimination, 2002

It is striking that the totals for the years 1999 and 2001 lag behind those of 1998 and 2000. In 2001, discriminatory defamation forms the bulk of the case load, followed at a distance by ban on dissemination. In 2000 inciting to hatred was still in second place, but the registrations for this article show a notable drop over the past four years: the number of offences more than halved during that period. Wilful discrimination in the practice of a profession or the running of a business or office was dropped in 2001. It is quite conceivable that victims would prefer to report these cases to the Equal Treatment Commission. Yet that does not explain why not a single offence is registered in 2001 for discrimination (wilful or not) in the practice of a profession or the running of a business or office. Reports from the LECD, for example, show that 18 discriminatory offences were registered in 2001 having to do with discrimination in restaurants, cafés and hotels. These could only refer to another instance of refusing admission, the pre-eminent example of discrimination in the running of a business.

Table 4 Settlement in courts of first instance 1998-2001

	1998	1999	2000	2001
Conviction	91	105	94	98

⁹² First instance means the court in which the case was introduced: the subdistrict courts and the district courts.

Acquittal	10	6	10	4
Invalidated summons	1	1	2	2
Public Prosecution Service barred	2	0	0	0
Discharge from further prosecution	0	1	1	0
Total	104	113	107	104

Source: National Expertise Centre for Discrimination, 2001

The legal success of the Public Prosecution Service is high. In 94% of the cases in 2001 the court pronounced judgement.⁹³ The general national percentage in 1999 was 63%.⁹⁴ Comment should be made concerning the high percentage of convictions. This percentage can also be influenced by an overly cautious prosecution policy. An indication of this could be the relatively high number of dismissals, which could suggest that cases in which the chance of winning are small are withdrawn from a court judgement by means of dismissal.

Another comment concerns the low inflow of cases from the police. Because the police are generally reluctant to record incoming reports, carry out investigations and send cases to the Public Prosecution Service, it is mainly the more obvious cases that are sent to the office of the public prosecutor.⁹⁵ When the police improve their rate of handling discrimination cases, it will have unmistakable consequences for the high success rate of the Public Prosecution Service. The rising amount of complex or less clear-cut cases will certainly increase.

We have already noted that the number of anti-Semitic incidents is remarkably high. In 2001, the number of cases of anti-Semitism registered with the Public Prosecution Service was also relatively high (21% as opposed to 23% in 2000).

Table 5 Type of discrimination per incident 1998-2001

Type of discrimination	1998	1999	2000	2001
Multiple types	25	27	23	22
Anti-Semitism	47	34	48	41
Surinamese / Antilleans	7	13	11	6
Turks / Moroccans	42	27	48	46
Blacks / Coloured	47	33	40	52
Homosexuality	6	1	9	10
Religion / personal convictions	5	4	3	4
Sex	0	0	1	1
Other types	17	17	23	7
Unknown	18	35	8	9

⁹³ The court pronounces judgement on a case, so here it is not the offences but the court cases that are counted.

⁹⁴ Huls, F.W.M. e.a.: *Criminaliteit en rechtshandhaving 2000*. Den Haag: WODC, 2001.

⁹⁵ Eitjes, H.: *Onderzoek naar verloop en registratie discriminatieklachten in Haaglanden*, Den Haag: Pro Zorg, mei 2002.

Total	214	191	214	198
-------	-----	-----	-----	-----

Source: National Expertise Centre for Discrimination, 2001

Although an unambiguous conclusion cannot be derived from the various categories listed in table 5 concerning which cases can be regarded as discrimination based on ethnicity, a cautious estimate does seem possible. On average, almost 80% of the offences have something to do with discrimination based on ethnicity.⁹⁶ Starting in 1999, the proportion of cases of racial discrimination has risen with respect to the other types of discrimination. Since ‘other types’ usually means nationality or is related to race, in reality this percentage is actually higher than lower.

The category ‘other’ includes grounds for discrimination that do not fit into any other category (discrimination against Germans, for instance). After a strong increase (from 18 to 35) in 1999, the number of offences in which the grounds for discrimination is unknown dropped with remarkable speed in 2000 (from 35 to 8), and maintained that low level in 2001 (9).

It is undeniably true that the creation of the LECD within the Public Prosecution Service was a substantial improvement in criminal proceedings. In September 2002, the same kind of expertise centre was started with the police (the National Agency for Discrimination Affairs; Landelijk Bureau Discriminatiezaken, or LBD), and it is hoped that this agency will be just as successful as the LECD has been. The DUMC has noted that the police are the weak link in the criminal proceedings chain. The intention here is not to cast the police in a bad light but to show how important a well-organised structure is with regard to how this theme is dealt with by the police. As we all know, the strength of a chain is determined by its weakest link.

7.7. EQUAL TREATMENT COMMISSION

The Equal Treatment Act (Algemene Wet Gelijke Behandeling; AWGB) forbids discrimination in labour relationships, the professions and in the offering of goods and services (also see section 5.3). Discrimination in these areas is forbidden on the basis of article 1 of the AWGB if it is committed on the grounds of religion, personal conviction, political conviction, race, sex, nationality, hetero- or homosexual orientation or civil status.

The AWGB provides for an Equal Treatment Commission (Commissie Gelijke Behandeling; CGB) to which appeals for a judgement can be made. The task of the CGB is to contribute to the preservation of the right to equal treatment.⁹⁷ Normally, after research is carried out a hearing is held and a non-binding judgement is then pronounced. The judgement only determines whether the equal treatment legislation has been violated. The Commission is not authorised to pass judgements on the right to compensation or restitution. The CGB can make recommendations and, if necessary, bring the judgement to the attention of relevant ministers, branch organisations or interest groups.

⁹⁶ This is regarding an accumulation of the categories Surinamese, Turks, anti-Semitism, blacks and multiple grounds.

⁹⁷ The equal treatment legislation consists of the AWGB, the Equal Treatment Act for men and women and articles 646 through 648 of Book 7 of the Civil Code.

The AWGB prescribes that the law be evaluated every five years.⁹⁸ The first evaluation was undertaken in 1999 by the Faculty of Law of the Catholic University of Nijmegen.⁹⁹ The focus of the related research is whether in practice the AWGB and other regulations dealing with equal treatment have satisfied the goals that were intended when the legislation was drafted. The research consists of a juridical analysis and a legal-sociological analysis. One of the results of the legal-sociological analysis is that although the judgements of the CGB are not binding, parties usually agree to conform to these judgements. If they do not, the injured party at least has a fully reasoned judgement to make it easier to take the case to court. The judge does not always follow the judgement of the Commission, but in most cases the judgement is adopted. Taking the case to court is also the obvious way to go if the injured party desires compensation. The court in The Hague, for instance, awarded 2,000 guilders (approximately 908 Euros) in damages to a man who had been subjected to racist treatment at his place of work, according to the judgement.¹⁰⁰

Because of its investigative power,¹⁰¹ the CGB is able to uncover factual material that would not be accessible to the victim or to an interest group. In this respect the Commission can act as a gateway to civil procedures. On the other hand, the CGB also serves as a filter by preventing many cases from ending up in court. Another conclusion of the research is that the ADBs play a very important role in bringing cases before the court, especially cases of discrimination on the grounds of race and nationality.

Table 6 Types of discrimination by petition, 1999-2001

Type of discrimination	2000	2001	2002
Sex	86	149	102
Race / nationality	54	91	91
Religion	20	15	15
Personal conviction	1	1	1
Sexual orientation	7	7	6
Civil status	13	24	16
Political conviction	1	1	0
Part-time / length of employment	11	50	35
No grounds indicated	3	126	27
Total	232	464	304

Source: Equal Treatment Commission

As table 6 shows, the number of petitions submitted in 2002 took a significant drop. Most complaints have to do with discrimination on the basis of sex, race and nationality, and

⁹⁸ Article 20 AWGB.

⁹⁹ Asscher-Vonk, I.P. & C.A. Groenendijk: *Gelijke Behandeling: regels en realiteit, een juridische en rechtssociologische analyse van de gelijke behandelingswetgeving*. Den Haag: Sdu, 1999.

¹⁰⁰ Court of The Hague, 12 September 2001, De Wolff, D.J.B. de (red.): *Gelijke behandeling: oordelen en commentaar 2001*.

Deventer: Kluwer, 2002: 309-311.

¹⁰¹ Article 19 AWGB.

length of employment. Strikingly, there were almost as many petitions for sexual discrimination as there were for discrimination on the basis of race or nationality. The CGB dealt with more than 300 cases in 2002. Recent legislation has been adopted for discrimination on the basis of disability, but it has not yet been determined when the law will go into effect.¹⁰² Legislation aimed at discrimination on the basis of age is still being dealt with in Parliament.¹⁰³ In its 2001 annual report, the Commission announced that there has still been no evidence of an increase in cases of discrimination on the basis of race, nationality or religion after the events of 11 September 2001. Nevertheless, such complaints, such as discriminatory treatment in the workplace, did reach the Commission in the course of 2002.¹⁰⁴

A Muslim woman of Moroccan origin began work on 27 August 2001 on the basis of an annual contract. Tensions quickly mounted between herself and one of her colleagues, partly because of the petitioner's religion and the way her colleagues viewed her religion. These tensions intensified to such an extent after 11 September 2001 that on 21 September 2001 the employer decided to terminate the labour contract, effective immediately. In doing so, the employer illegally discriminated on the grounds of religion. The dismissal was based solely on the judgement of colleagues who were directly involved and who had a negative opinion of the petitioner. The Commission decided that the employer should have undertaken an investigation in response to these tensions and, if necessary, have taken appropriate measures to ensure a discrimination-free working environment.¹⁰⁵

The Commission's last annual report indicates that the majority of those turning to the Commission are women, and that this has developed into a trend. In 2002, 58% of the petitioners were women as opposed to 29% men. The remaining percentages consist of organisations or agencies. In 2001, 62% of the petitioners were women and 25% men. Regarding cases of discrimination based on race and nationality, a temporary reversal has taken place. While those who lodged complaints of discrimination on these grounds in 2000 were overwhelmingly men, the women took the lead in 2001. This change was only temporary, however, since in 2002 the men were back in first place.

Table 7 Judgements of discrimination based on race, nationality and ethnicity in religion 1999-2001

Judgements	2000	2001	2002
Race / nationality	44	54	64
Religion	3	11	13
Total ethnic cases	47	65	73 ¹⁰⁶

Source: *Equal Treatment Commission*

¹⁰² Staatsblad [Bulletin of Acts and Decrees] 2003, 206.

¹⁰³ Parliamentary Documents I and II 28 170.

¹⁰⁴ See CGB 2002-62, 84 and 127.

¹⁰⁵ CGB 2002-67.

¹⁰⁶ Four of the judgements concern discrimination on the grounds of race as well as religion. For this reason the total number of cases is 73 and not 77.

Strikingly, the number of petitions made to the CGB dropped in 2002, but the total number of judgements in ethnic cases has increased in recent years. The thirteen religious cases are only included insofar as they also touch on ethnic aspects. Ten of the cases have to do with Muslims; six of these concern the wearing of a headscarf as the source of the labour conflict.¹⁰⁷ In two instances this conflict is connected with 11 September 2001:¹⁰⁸ in one instance it was the refusal to shake hands,¹⁰⁹ and in another case a temporary teacher who professed the Muslim faith was denied permanent employment in a Christian Protestant school.¹¹⁰ Following legal precedent, the Commission also holds employment agencies responsible if they pass on requirements made by employers that are found to be discriminatory.

A Muslim woman wore a headscarf out of religious convictions and registered with an employment agency. During the registration, the intermediary asked if she was prepared to take off her headscarf. She said no. The intermediary responded that this would make her less employable. The Commission is of the opinion that by treating the petitioner as difficult to employ and thereby as different from other job-seekers who do not wear a headscarf, the employment agency was guilty of illegal discrimination on the grounds of religion.¹¹¹

There was a slight increase in religious cases with an ethnic component in 2002. This increase may be related to the developments following 11 September 2001. In only five of the thirteen religious cases in 2002 the Commission decided in favour of the plaintiff. The total percentage of petitioners to be proven right in ethnic cases is only 27%, considerable lower than the percentage for 2001 (50%). The total percentage of all plaintiffs (for all types of discrimination) to be proven right by the Commission dropped sharply in 2002: from 53% to 35%.¹¹²

¹⁰⁷ CGB 2002-28, 2002-123, 2002-124, 2002-125, 2002-126 and 2002-164.

¹⁰⁸ CGB 2002-62 and CGB 2003-2002-127.

¹⁰⁹ CGB 2002-22.

¹¹⁰ CGB 2002-01.

¹¹¹ CGB 2001-14.

¹¹² Annual report 2002, Equal Treatment Commission, Utrecht.

8. Strategies, initiatives and good practices

This chapter will focus on strategies, initiatives and so-called good practices.¹¹³ In the opinion of the DUMC, the concept of good practices is less appropriate for discussing developments in the area of legislation.

8.1. NATIONAL PLATFORM AGAINST RACISM AND DISCRIMINATION

In 2001 the cabinet devoted itself to bringing about better cooperation between local agencies and partners in the prevention and combating of prejudice, discrimination and racism.¹¹⁴ To this end two conferences were organised in 2001 that were aimed at giving local agencies and partners the opportunity to talk about better cooperation on the basis of best practices. During this conference, the Minister for Urban and Integration Policy announced his intention to take the initiative to set up a National Platform for consultation and cooperation against Racism and Discrimination (Nationaal Platform voor overleg en samenwerking tegen Racisme en Discriminatie, or NPRD). The NPRD was launched on 9 April 2002 by the minister.

The NPRD is intended as a periodical encounter for the exchange of ideas and the coordination of initiatives. Sitting on the NPRD are independent experts who are nominated by national representatives of governmental and social organisations for the benefit of drawing up a joint agenda. The experts in the NPRD participate without mandate or consultation. As such the NPRD plays a role in the infrastructure for combating racial discrimination.

One of the areas of attention will be towards groups that could become victims of multiple forms of discrimination, such as persons who are subject to discrimination because of their ethnic origins, but are also subject to discrimination because of their sex or sexual orientation.

8.2. NATIONAL ACTION PROGRAMME

The NPRD is expected to provide important input in the creation of the National Action Programme for combating racism and racial discrimination. This Action Programme is an international obligation of the Dutch government based on the results of anti-discrimination conferences held by the Council of Europe in Strasbourg (October 2000) and the United Nations in Durban (September 2001).

In its advice to the Minister of Justice in March 2003, the NPRD said that despite the fact that non-discrimination and the principle of equality are widely supported principles in the Netherlands, the NPRD believes there is insufficient recognition of the fact that

¹¹³ H.M.A.G. Smeets et al., *Jaarboek 2003 Minderheden* [Minorities Yearbook 2003], The Hague: Sdu/Koninklijke Vermande 2003.

¹¹⁴ Parliamentary Documents II, 2002/03, 28 612, no 2, p. 46

racism and discrimination are structural social problems. This means that a structural approach is necessary. The NPRD is especially concerned about exclusion in the labour market and segregation in schools and neighbourhoods, which it regards as the biggest problems at the moment.

Dutch laws and regulations do satisfy the criteria enumerated in Durban. The right to equal treatment and the effort to resist discrimination are firmly anchored in our laws. In daily practice, however, the law is not always complied with. Various types of discrimination in the workplace are experienced by employees every day. The high rate of unemployment among ethnic groups is not only the consequence of actual disadvantage but also of discrimination. The lagging participation in the labour market is partly caused by far-reaching segregation in the housing market, which in turn reinforces the problem of black schools. These are problems that demand measures and control, according to the NPRD. To this end the minister has made a number of concrete proposals.

As of July 2003 the government had not yet established the National Action Plan.

8.3. PROFESSIONALISING ANTI-DISCRIMINATION AGENCIES

In March 2001, the Minister for Urban and Integration Policy established the Incentive Scheme for the professionalising of anti-discrimination agencies.¹¹⁵ This Incentive Scheme is also aimed at improving local cooperation. In response to this subsidy regulation, various plans for professionalising the anti-discrimination agencies have been submitted by municipalities and provinces. These plans have been developed by municipalities and provinces in cooperation with the anti-discrimination agency that is active in their area. An amount of more than € 2,750,000 has been made available for the Incentive Scheme during the period 2001-2004.

8.4. REGISTRATION AND MONITORING

The Ministry of Justice has started making preparations for the creation of a Racism Monitor, which will lend itself to many different objectives (i.e. reports).¹¹⁶ Sources for the Racism Monitor will be the various registries and reports that are being maintained and drawn up by agencies within the government (such as the policy and the Public Prosecution Service) and by other organisations such as NGOs and anti-discrimination agencies.

The main task of the new Racism Monitor is to make a contribution to improving knowledge of discrimination based on ethnic origins and to improving knowledge of racism in the Netherlands. In addition, the Monitor is expected to produce conclusions that contain suggestions and/or initiatives for the formation of new policy, since the goal of the Racism Monitor is to use this information to take policy measures (developing new

¹¹⁵ Parliamentary Documents II, 2002/03, 28 612, no 2, p. 47.

¹¹⁶ Parliamentary Documents II, 2002/03, 28 612, no 2, p. 50.

policy and adjust existing policy) for the prevention and combating of discrimination and racism as well as for drawing up reports for the Lower House. The information provided by the Racism Monitor is also expected to contribute to the formulation of reports and questionnaires that the Dutch government can present to international organisations such as EUMC, ECRI and CERD. The information provided by the Racism Monitor should contribute to a system to be used or developed by these organisations. The Racism Monitor will also be used with a view to the reporting obligations required by the Racial Equality Directive (2000/43/EC). In this context, the Racism Monitor can serve as a supplementary part of a so-called 'living document', yet to be created, in which all adjustments and changes in Dutch laws and regulations, as well as policy measures having to do with overcoming discrimination and racism, will be followed. The relevant data from the Integration Monitor will also be recorded in such a 'living document'. The Racism Monitor should be mainly functional and complementary with regard to the Integration Monitor. As of June 2003 the monitor project had not yet been contracted out by the Ministry of Justice.

8.5. UPGRADING POLICE AND JUDICIAL EXPERTISE

On the matter of upgrading police and judicial expertise in the struggle to combat discrimination and racism, there are two developments from the Ministry of Justice that can be reported from the period 2001-2002.¹¹⁷ The National Expertise Centre for Discrimination (Het Landelijk Expertise Centrum Discriminatie; LECD), the knowledge centre for the Public Prosecution Service in the area of combating discrimination and activity from the extreme right, has set up a registration system for discrimination cases that provides insight into the extent and nature of discrimination cases. One point of special interest for the coming years is obtaining insight into the extent of civil offences that have a discriminatory background. The National Agency for Discrimination Affairs (Landelijk Bureau Discriminatiezaken; LBD) became operational as of 1 September 2002. The LBD, which is located in the Rotterdam-Rijnmond police district should fulfil the same role for the 25 police corps in the Netherlands that the LECD does for the Public Prosecution Service: it provides support in carrying out relevant tasks, and it functions as a help desk. Those police corps that have not been appointed a contact person for discrimination affairs will be given one.

8.6. INVESTIGATION OF THE INTEGRATION POLICY

The Lower House, in response to a motion from the Socialist Party, decided to seek advice concerning the integration policy of the past thirty years.¹¹⁸ The goal of this investigation is 'To enable the Lower House to form an opinion on the integration policy that the Dutch government has been following over the past thirty years, and to form an opinion on the intended effects and the actual results of this investigation and on the coherence of the policy within the various sub-areas. The investigation is also expected to provide building blocks for future integration policy.'

In its report, the temporary investigative Commission is to answer the following questions:

¹¹⁷ Parliamentary Documents II, 2002/03, 28 612, no 2, p. 51.

¹¹⁸ Parliamentary Documents II, 2002/03 28 689, nos 1-5.

- • What integration policy has the Netherlands been following over the past thirty years?
- • What were the aims and results of this policy in the major sub-areas such as housing and recreation, income and work, and education?
- • Is there evidence of a coherent and consistent integration policy, such as policy that has had influence in the various sub-fields?
- • To what extent can this policy be considered successful, given the projected goal?
- • Are there any foreign urban experiences with integration policy from which our country can profit?

The temporary Commission presented its interim report to the Lower House on 17 April 2003 and is hoping to have the final report ready before the end of 2003.

9. Summary and conclusions

In enforcing the anti-discrimination laws in the Netherlands, the Anti-Discrimination Agencies (Anti-Discriminatie Bureaus, ADBs) play an important role. In 2002 the ADBs registered almost four thousand complaints of discrimination. This is a slight drop with respect to 2001. It is striking that the number of religious cases has increased. This may be related to developments following 11 September 2001. The ADBs assess the complaints, attempt to mediate, and help the plaintiffs secure their rights. This role has now been institutionalised: the rules for settling cases of discrimination through the criminal courts – the so-called *Guideline on Discrimination* – pays special attention to the ADBs. These agencies are expected to work closely with the police and the Public Prosecution Service. One thorny area is the role of the police. Making declarations of incidents of discrimination remains problematic, and the police corps apparently do not know about the *Guideline on Discrimination* or do not carry it out. Although the *Guideline* has been adapted and tightened, this lack of compliance is a much greater stumbling block in the work of criminal enforcement.

The number of complaints of discrimination on the Internet continued to rise in 2002. The Dutch Complaints Bureau for Discrimination on the Internet (Meldpunt Discriminatie Internet, or MDI) has registered a 30% increase and has observed a striking rise in Islamophobia and anti-Semitism. The activity of the Public Prosecution Service against discrimination on the Internet is still lagging far behind these developments. Proceedings are instituted only in incidental cases, and only a few of these are successful.

The Public Prosecution Service registers about 200 cases of discrimination a year, with about 100 resulting in a judicial decision. The Public Prosecution Service is quite successful in this regard: in 2001, 94% of the cases went to court for sentencing. The Public Prosecution Service is supported by the National Expertise Centre for Discrimination (Landelijk Expertise Centrum Discriminatie; LECD), which functions as a knowledge centre. The LECD provides an annual statistical overview of the cases of discrimination but offers no insight into civil offences in which a racist motive may have played a role. Thus a case of racially motivated arson remains outside its registry. The only cases that are included are those involving violation of the criminal ban on discrimination. The percentage of cases based on anti-Semitism that are registered by the Public Prosecution Service has been above 20% in recent years, which should be regarded as high. A knowledge centre analogous to the efficient LECD was created for the police and opened in September 2002 to improve the settling of cases of discrimination.

The Equal Treatment Commission (Commissie Gelijke Behandeling; CGB) dealt with more than 300 requests for judgement in 2002, 200 of which resulted in a judgement. During that year, the number of cases based on sex or race and nationality was about equal. In 2001 there were no complaints as yet based on increasing ethnic or religious tension as a result of 11 September 2001. These cases did reach the Commission in 2002, however. In such cases, it is the opinion of the CGB that the employer has offered insufficient protection against discriminatory treatment in the workplace. The number of cases based on religion with an ethnic component rose slightly. This may also be attributed to developments since 11 September 2001. The ADBs (Anti-Discrimination Agencies) have proven to be an important link for the CGB as well. Many cases

involving discrimination on the basis of race, nationality or religion end up with the Equal Treatment Commission by way of the ADBs.

In the area of legislation, two matters stand out. First, it was not until the beginning of 2003 that the government sent a bill to the Lower House for the implementation of the Racial Equality Directive. This means that the adoption of the Equal Treatment Act was undertaken at a very late date, so it is not surprising that the implementation limit of 19 July 2003 was exceeded.

Second, the act sanctioning the Framework Convention for the Protection of National Minorities has been held up in the Upper House for more than three years. This act is in danger of never being adopted. The government must search for a solution to this situation, or the Netherlands will fall badly out of step with regard to the rest of the international legal community.

10. Tables

Table 8 People with a foreign background by group of origin ¹¹⁹

People with a foreign background by group of origin, 1 January				
		Total first and second generation	Total first generation	Total second generation
Group of origin	Periods	x 1000		
Total non-Western	1997	2 554	1 310	1 243
	2000	2 775	1 431	1 344
	2001	2 870	1 488	1 381
	2002	2 964	1 547	1 417
	1997	1 221	785	435
	2000	1 408	886	522
	2001	1 483	928	554
	2002	1 558	971	586
Morocco	1997	232	142	90
	2000	262	152	109
	2001	272	155	117
	2002	284	159	124
N. Antilles and Aruba	1997	88	56	32
	2000	107	69	37
	2001	117	76	40
	2002	124	82	42
Surinam	1997	285	179	105
	2000	302	183	119
	2001	308	184	124
	2002	315	186	128
Turkey	1997	279	169	110
	2000	308	177	131
	2001	319	181	138
	2002	330	185	144

© Central Statistical Agency, Voorburg/Heerlen 2003

¹¹⁹ Source: Centraal Bureau voor de Statistiek [CBS], Kerncijfers Bevolking, Statline Tabellen [Central Statistical Agency, Key Population Figures, Statline Tables], <http://statline.cbs.nl> (08.04.2003).

Table 9 People with a foreign background by sex and group of origin ¹²⁰

People with a foreign background by sex and group of origin, 1 January, 2002				
	First generation		Second generation	
	Men	Women	Men	Women
Continents	x 1000			
Africa	159	121	93	90
America	151	178	107	104
Asia	172	172	170	163
Europe	279	309	341	339
Oceania	3	4	6	6
Non-Western				
Afghan	16	12	1	1
Brazilian	2	4	2	2
Cape Verdean	6	6	4	4
Chinese	12	13	6	5
Egyptian	7	3	3	3
Ghanaian	6	5	3	3
Hong Kong Chinese	5	5	4	4
Indian	5	3	2	2
Iranian	13	10	2	2
Iraqi	22	14	3	3
Moroccan	87	72	63	61
N. Antillean and Aruban	40	42	22	21
Pakistani	7	4	3	3
Philippine	2	6	2	2
Somali	12	9	4	4
South African	4	4	3	3
Surinamese	86	100	65	64
Turkish	97	89	75	70
Vietnamese	6	5	3	3
Other non-Western	69	62	29	28
Total	503	469	300	287
© Central Statistical Agency, Voorburg/Heerlen 2003				

¹²⁰ CBS (2003), Allochtonen in 2002 [Ethnic minorities in 2002], Voorburg: CBS, p. 94.

Table 10 People with a foreign background by age and group of origin ¹²¹

People with a foreign background by age and origin, 1 January, 2002							
	0-9 yrs	10-19 yrs	20-29 yrs	30-39 yrs	40-49 yrs	50 yrs and older	Total
Continents	x 1000						
Africa	8.0	33.9	67.7	83.7	46.8	39.4	279.4
America	12.1	29.2	59.6	86.9	75.0	65.8	328.6
Asia	15.0	33.7	45.0	62.5	62.9	124.7	343.9
Europe	12.1	43.1	110.3	153.2	99.4	161.4	588.4
Oceania	0.4	0.6	1.8	2.1	1.2	0.7	6.8
Non-Western							
Afghan	4.1	7.6	5.5	5.9	3.2	2.2	28.4
Brazilian	0.4	0.8	1.4	2.0	1.1	0.4	6.3
Cape Verdean	0.1	0.8	1.4	3.1	3.2	2.6	11.2
Chinese	1.1	3.7	5.8	5.8	3.7	4.5	24.6
Egyptian	0.6	0.3	1.1	3.9	3.0	0.9	9.8
Ghanaian	0.1	0.8	1.7	3.8	4.2	0.6	11.3
Hong Kong Chinese	0.1	0.5	1.2	2.4	3.6	2.5	10.2
Indian	0.4	0.5	1.7	2.4	1.7	1.8	8.6
Iranian	0.8	4.4	3.5	7.1	4.8	2.4	23.0
Iraqi	3.4	7.5	7.1	10.0	5.1	2.8	35.9
Moroccan	2.4	13.5	41.3	47.1	25.0	30.3	159.6
N. Antillean and Aruban	6.0	11.3	19.5	17.4	15.0	13.2	82.2
Pakistani	0.5	1.0	2.2	3.3	2.7	1.1	10.8
Philippine	0.3	0.6	1.5	2.1	1.7	1.0	7.2
Somali	1.1	5.5	5.6	6.0	1.9	1.1	21.1
South African	0.6	1.1	2.2	1.9	1.1	0.9	7.9
Surinamese	1.9	11.0	28.0	52.8	48.2	44.4	186.3
Turkish	2.7	11.6	42.5	63.9	30.4	34.8	185.9
Vietnamese	0.1	0.7	2.8	3.3	2.8	1.3	11.0
Other non-Western	7.7	21.3	29.7	37.9	22.3	11.5	130.5
Total	34.4	104.4	205.8	282.0	184.9	160.2	971.7
© Central Statistical Agency, Voorburg/Heerlen 2003							

¹²¹ Ibid., pp. 97.

Table 11 Educational levels of people aged 15-64 with a foreign background by sex and group of origin¹²²

Educational levels of people aged 15-64 by sex and group of origin, 2001 (in %)									
		primary education	lower general secondary education	lower vocational education	higher general secondary education	intermediate vocational education	higher vocational education	university education	total = 100% (x 1000)
Women									
total		15	11	15	7	31	15	5	5 332
Dutch		12	11	16	7	33	16	5	4 324
foreign background		27	11	11	8	23	13	6	1 007
	first generation	33	10	11	8	20	12	6	654
	second generation	15	14	12	9	27	15	6	351
Western		15	11	12	9	27	17	9	514
	first generation	17	9	12	10	24	17	11	246
	second generation	13	12	12	8	30	17	7	267
non-Western		40	12	10	8	18	9	3	493
	first generation	43	10	10	7	17	9	3	408
	second generation	23	20	11	13	20	10	2	83
	Turkish	58	8	12	6	12	3	0	102
	Moroccan	57	11	10	5	12	3	2	82
	Surinamese	23	19	10	6	27	13	2	116
	N. Antillean/Aruban	29	15	14	7	22	10	3	43
	other non-western	35	9	9	13	16	13	6	150
Men									
total		13	8	15	7	33	15	9	5 469
Dutch		11	7	15	6	36	16	8	4 443
foreign background		25	9	14	9	22	13	9	1 025
	first generation	30	8	14	8	19	12	9	631
	second generation	15	12	13	11	26	14	10	392
Western		13	8	13	10	27	17	13	497
	first generation	15	7	13	8	24	17	16	208
	second generation	11	9	13	11	29	17	11	289

¹²² Portegijs, W., Boelens, A., Keuzenkamp, S. (2002), Emancipatiemonitor 2002 [Emancipation Monitor 2002], Den Haag: Sociaal Cultureel Planbureau, Centraal Bureau voor de Statistiek, p. 53, <http://www.cbs.nl/publicaties/publicaties/maatschappij/leefsituatie/emancipatiemonitor-2002.pdf> (27.05.2003).

non-Western		36	10	14	8	17	9	6	527
	first generation	38	8	14	8	17	9	6	423
	second generation	26	19	13	11	19	7	5	103
	Turkish	48	9	18	6	11	4	3	112
	Moroccan	51	9	12	6	16	5	1	95
	Surinamese	26	13	16	6	24	10	7	104
	N. Antillean/ Aruban	22	12	17	9	27	7	7	41
	other non-western	29	9	12	12	15	13	9	175