





NETHERLANDS HELSINKI COMMITTEE

ANNUAL REPORT 2009

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Foreword

For 23 years now the Netherlands Helsinki Committee has been working for the promotion of human rights and the rule of law in Eastern Europe and countries of the former Soviet Union. This work continues to be very necessary, and as the new director of the Committee I am happy to be able to work on this together with the staff at our office, with our partners in other countries, with our network of experts, with our donors and with the NHC board.

This Annual Report covers a period during which I was not yet involved at the NHC. I intend to build on the strong track record of the NHC in managing projects for the improvement of the respect for human rights and the rule of law across the OSCE region. This can involve the strengthening of services or programmes of different branches of government; it may also involve the reinforcement of civil society actors. The need to improve respect for human rights and the rule of law is most obvious in a range of countries of the non-Baltic former Soviet Union; indeed, some are talking about 'backslide' of freedoms in these countries during the past decade.¹ The risk of outbreak of violent internal or interstate conflict continues to exist in a number of these countries, as we witnessed in Kyrgyzstan as recently as June of this year. But we should not underestimate the need for attention for problems in other countries in the OSCE region. That includes member states of the European Union. The overview of human rights developments in the Netherlands included in this Annual Report is testimony of the wide range of human rights issues that come up in a well-developed Western European democracy. Vigilance continues to be important to avert backslides in these countries as well.

We should stay modest in judging our capacity to influence developments, but I do think serious efforts are required to try and find new and innovative approaches. This of course, is not something we can take up as the Netherlands Helsinki Committee alone; contributions from other NGO's, and, I hope, friendly governments and committed funders are essential.



Harry Hummel,
Executive Director of the Netherlands Helsinki Committee

June 2010

¹ Arch Puddington, 'Freedom in the World 2010: Erosion of Freedom Intensifies', 12-01-2010 [http://www.freedom-house.org/uploads/fiw10/FIW_2010_Overview_Essay.pdf]



Introduction

The twentieth anniversary of the fall of the Berlin Wall on 9 November 1989 received a lot of attention in 2009. Many at that time had high hopes that security and the rule of law would inevitably come to all of Europe. The states participating in the Helsinki process declared that 'Europe is liberating itself from the legacy of the past,' and that 'ours is a time for fulfilling the hopes and expectations our peoples have cherished for decades: steadfast commitment to democracy based on human rights and fundamental freedoms; prosperity through economic liberty and social justice; and equal security for all our countries.'¹

This positive mood has turned out to be only partially justified. A number of states put themselves on a reform path that led to major improvements in political and civil rights, and to their integration in the European Union. The Netherlands Helsinki Committee (NHC) has over the past twenty years run many projects aimed at assisting in this process, both by strengthening the operations of governmental or semi-governmental agencies and by helping to build the capacity of civil society actors. Currently, we still have activities running in Bulgaria (prison reform, support for an independent judges' association, expert advice to Bulgarian anti-discrimination body) and Romania (probation related to drug addicts).² These are not the only countries in the European Union in which challenges remain; indeed, in both 'new' and 'old' member states continued vigilance as to human rights compliance is called for, as shown by judgments of the European Court of Human Rights and by documents issued by, inter alia, Amnesty International, Human Rights Watch and the Open Society Institute. The overview of human rights issues in the Netherlands, included in this Annual Report, makes this clear also where our home country is concerned. The NHC, therefore, will continue to work to find partners and funding for activities on rights and freedoms inside the European Union.

A very different path was taken by a number of states and regions that descended into armed conflict and wide-spread and extreme violations of human rights: the former Yugoslavia and the Caucasus region. In the former Yugoslavia, after long years, a gradual building up of properly operating states and of institutions for the protection of citizens' rights is now seen. Freedom House notes in its report Freedom in the World 2010 that five countries in the western Balkans experienced gains for freedom during the year.³ Many of these countries have attained the status of EU candidate member states, the same as Turkey. It is on this category of countries that the majority of NHC projects focuses at the moment: Croatia (two prison reform projects, and development of a database on war

¹ Charter of Paris for a New Europe, 1990

² and in early 2010 the NHC started collaborating with local partners on a further project on transparency in prison budgets and improvement of prison inspection in Romania and Hungary.

³ Freedom in the World 2010 [<http://www.freedomhouse.org/template.cfm?page=505>]

crimes), Serbia (human trafficking, database on proponents of past policies), Macedonia (prison reform) and Turkey (a prison reform project)⁴.

The Caucasus region did not experience a similar positive development after the eruption of armed conflict in the early nineties. Severe tensions continue to linger, aggravated by the operations of armed groups and sometimes leading to international conflicts (the latest case being the Georgian - Russian war of 2008). The NHC continued its work on a multi-year program of assisting human rights lawyers and NGOs in applying the European Human Rights Convention in cases in Armenia, Azerbaijan and Georgia and in sending cases to the European Court for Human Rights. This region shows the same trend towards authoritarian government that is seen in other countries in the former Soviet Union, with the exception of the Baltic States and the Ukraine. It is obvious that support for the struggle for human rights protection and promotion in this part of the world remains highly necessary. The NHC is continuing its efforts to develop projects in these countries.

One effort in this direction was a visit paid to Kazakhstan in July 2009, aiming at developing ideas for activity connected to the OSCE chairmanship in 2010. During the visit, Yevgeni Zhovtis, a prominent Kazakh human rights defender, got involved in a car accident, for which in September he was convicted in a heavily biased trial. This unfortunately served as an illustration of just the type of problems of authoritarianism that need reform (for more information on this case, see page 38, and a report by the International Commission of Jurists⁵). Plans for activities linked to the Kazakh OSCE chairmanship did not materialize in 2009.

In addition to developing and implementing projects, the NHC has a role in stimulating policy improvements with respect to human rights, peace and security across wider Europe. The journal *Security and Human Rights* continued to be the main vehicle for describing and debating developments in this respect.

When Jan ter Laak died in early 2009, we lost an important and indeed essential driving force behind activities the NHC used to hold under its lobbying and public information role: conferences and seminars. The 2008 Annual Report already memorized Mr Ter Laak's key role in the work of the NHC. He is sadly missed. In 2009 we also saw the departure of Jos Kösters, our long-term director, to take up an other job. Under his leadership, the NHC developed a truly professional project management capacity. We remember his commitment and enthusiasm with gratitude. The board appointed Harry Hummel as our new director, starting on 1 January 2010. Mr Hummel has a long career in NGO human

⁴ A second prison reform project on Turkey started in early 2010.

⁵ Report of the Appeal Hearing of the case of Evgenyi Zhovtis
[http://www.icj.org/dwn/database/ZhovtisReport_English.pdf]

rights work, and we look forward to a fruitful tenure as NHC director. After the departure of Mr Kösters, deputy director Kirsten Hawlitschek acted as director for a couple of months; the board wants to thank her for the skilful way in which she carried out the substantial additional work.

So while we are going through considerable personnel changes, the mandate of the organisation, the promotion of security, rights and the rule of law in the wider Europe, remains as relevant as ever. As before, in 2009 our activities are made possible by the valued assistance from all our donors, efforts by many local partner organisations and input from the different project experts. I would like to express my sincere thanks for all of their contributions. Only with their support can we continue our work towards the improvement of human rights into 2010 and beyond.

A handwritten signature in black ink, appearing to read 'Tiddo Hofstee', with a long horizontal flourish extending to the right.

Tiddo Hofstee,
Chairman of the Netherlands Helsinki Committee



I. The Netherlands Helsinki Committee

In 1974, the Soviet Union, Canada, the United States, and all European countries with the exception of Albania gathered in Helsinki for a Conference on Security and Co-operation in Europe (CSCE), a diplomatic conference facilitating East-West dialogue in Europe. The outcome of this conference was the Helsinki Final Act, an historical international agreement to promote peace and stability in Europe, signed by thirty-five Heads of Government. In subsequent years, the CSCE developed into the world's largest regional security organization. In November 1990, heads of state from the CSCE countries gathered for a summit in Paris, and the CSCE was transformed into the Organization for Security and Co-operation, which today consists of fifty-six states and has its own institutional framework and human rights mechanisms.

In order to implement the commitments of the Helsinki Act of 1975, Yuri F. Orlov, a prominent Soviet physicist and human rights activist, on May 12th, 1976 announced the formation of the Moscow Helsinki Group. Together with ten other founders, Orlov set up a watchdog organization based on the provision in the Helsinki Final Act, Principle VII, which establishes the rights of individuals to know and to act upon their rights and duties. Inspired by this example, many other Helsinki watch groups were established both inside the Soviet Union and Warsaw Pact-states, and in Western Europe. In January 1977 a group called Charta 77 was established in Czechoslovakia. In September 1979, another Helsinki watch group was formed in Poland. Although the Moscow Helsinki Group was forced to disband in 1982, its pioneering efforts inspired others to draw attention to violations of human rights. In 1982, representatives of Helsinki committees around the world founded the International Helsinki Federation, of which the NHC was a member until its dissolution in 2007.

The Netherlands Helsinki Committee was founded in 1987 in order to advance the rule of law at the international and country level, under which human rights can be fully realized. In its early years, the activities of the NHC focused on monitoring the Helsinki process in the Netherlands and other European countries. These activities were mainly academic in nature and included organizing conferences in the OSCE fields and reporting on OSCE developments.

With the fall of the Soviet-dominated block, the activities of the NHC increased. The states of Central and Eastern Europe entered a period of transition from a state-planned economy to a free market, had to transform their political system to meet standards of democracy and accountability, and started developing systems to safe-guard the rule of law. The progress in this field has been marked by the accession of all European former Soviet

and Warsaw-pact states (with the exception of Belarus) to the Council of Europe, and the integration of a number of these countries in both NATO and the European Union. Within this context, the NHC cooperates with non-governmental organizations, public bodies and international organizations that focus on improving human rights in a variety of ways. The NHC is part of an international network of like-minded human rights organizations in the OSCE region, which includes the various local Helsinki Committees that the NHC works with.

Apart from the activities the NHC supports in the OSCE area, it also monitors and promotes human rights in the Netherlands, and publishes a quarterly journal, 'Security and Human Rights', formerly 'Helsinki Monitor'. In this publication, scholars, officials and experts offer their reflections on human rights issues in the OSCE region. To further share current debate regarding human rights with a wider public, the NHC organizes annual round-table conferences and seminars on issues surrounding the Helsinki process.

Since 2004, the NHC has been a member of Partos, the umbrella association for Dutch non-governmental organizations in the international development cooperation sector. The NHC is also a member of the Coalition for the International Criminal Court (CICC), a network of over 2000 organisations that strive to improve international cooperation with the ICC. In the Netherlands, the NHC is one of the participants in the creation of a National Instituut for Human Rights (NIRM). Additionally, the NHC has since 2007 been a member of the Broad Human Rights Platform (Breed Mensenrechtenoverleg), a coalition of fourteen Dutch human rights organizations that aim to promote human rights in Dutch foreign and (since 2008) domestic policy.

Recently the NHC has been expanding its area of operations: The *Bridging the Gulf* initiative was set up, with the intention to stimulate state and citizen attention for human rights and security in the Gulf region. In 2006 *Bridging the Gulf* became a separate foundation, but it retained close ties, mostly of an administrative nature, with the NHC.

2. Activities in 2009

In accordance with its objectives, the NHC undertakes two kinds of activities: Projects; research, monitoring, lobbying and public information.

The projects run by the NHC in cooperation with local partners, have grown to become the most time-consuming part of the organisation's work. They touch on a wide variety of subjects, ranging from the prevention of torture to databases of war crimes, and are organised across Eastern and Central Europe, the Caucasus and on occasion also outside the OSCE area (in 2009 Egypt and the United Arab Emirates).

The activities in the fields of lobbying, research and monitoring are very much interconnected. Within the Netherlands and abroad, the NHC monitors the compliance with human rights standards and, where necessary and appropriate, presses the issue. Much of this work takes place in the context of (international) conferences where information is also exchanged with other, like-minded, organisations.

The NHC also publishes the quarterly journal 'Security and Human Rights'. This periodical focuses on issues related to or inspired by the work of the Organisation for Security and Cooperation in Europe (OSCE). It features contributions by experts, both from academia and from the field, and offers experts' views on developments in the OSCE region.

2.1 Projects

The projects organised by the NHC are aimed at the professional groups that have to apply international (legal) standards regarding human rights, democracy and the rule of law in their everyday work. By striving for a change in the actual application of human rights standards, the NHC is convinced that all stakeholders in its projects will see the benefits of adherence to international human rights standards, and that they will continue to build on their experience by promoting human rights by themselves.

In cooperation with its partner organisations and a wide variety of (international) experts, the NHC works in the fields of:

- Improving the capacity of legal professionals;
- Professionalization of prison systems and the probation service;
- Strengthening human rights organisations and institutions;
- Contributing to post-conflict rehabilitation;
- Reinforcing the establishment of effective legal aid systems.



Improving the capacity of legal professionals

An independent and impartial judiciary is an essential building block for a state in which the rule of law reigns supreme. The NHC aims to strengthen the independent position of judges and prosecutors in Eastern Europe by promoting international dialogue and professionalization. By communicating across state boundaries, judicial officials can learn much from the practices of their colleagues abroad. Uniting and seeking representation as a single professional group serves to solidify the independent position of the judiciary vis-à-vis the government, the population and other groups in civil society.

Belarus - Promotion of a wider application of international human rights standards in the administration of justice, study visit

Donor: UNDP
 Expert: Council for the Judiciary (Raad voor de Rechtspraak)
 NHC: Mr Jos Kösters, Ms Emma Oosten
 Duration: March 2009

At the request of the Belarus Office of the UNDP, the NHC jointly with the Council for the Judiciary organised a study visit by two Belarusian legal officials. This visit took place in March of 2009. In order to learn more about RechtspraakQ, the quality assurance system currently in use in the Dutch judicial system, the Belarusian experts spoke to representatives from the Council for the Judiciary and senior officials and employees of the court in Arnhem.

Bulgaria - Strengthening the Bulgarian Judges Association

Donor: Netherlands Ministry of Foreign Affairs - Matra programme
 Experts: Dutch Association for the Judiciary (Nederlandse Vereniging voor Rechtspraak)
 Czech Union of Judges (CUJ)
 Partner: Bulgarian Judges Association (BJA)
 NHC: Mr Jos Kösters, Ms Ineke van de Meene
 Duration: 2008-2011

In close cooperation with the Czech Union of Judges (CUJ, who themselves were a project partner in 1998-2003), this project aims to strengthen the Bulgarian Judges Association, in

order to give the BJA the possibility to become an organisation that can effectively represent its members and influence legal reform in Bulgaria.

Due to their own experience in previous years, the input from the CUJ has been proven invaluable in helping the BJA live up to their potential. With the assistance of the project experts, the BJA has produced a strategic outlook for 2008-2011 that has been accepted by its members, and that provides a framework for the strengthening of the organisation over the coming period. Furthermore, four thematic commissions have been set up to achieve the results foreseen in the Strategic Plan. These committees (the Organisational Development Committee, the Communication Committee, the Legal and Ethical Committee, and the Finance Committee) are assisted by the Czech and Dutch experts to increase the capacity of the Committees and their members in implementing their activities.

Caucasus - Strategic human rights litigation in the South Caucasus

Donor: Netherlands Ministry of Foreign Affairs - TMF Programme
British Strategic Programme Fund - Reuniting Europe Programme

Expert: Interights
European Roma Rights Centre
Polish Helsinki Foundation for Human Rights
European Human Rights Advocacy Centre

Partners: Article 42 of the Constitution, Tbilisi
Armenian Institute for Development, Yerevan
Legal Education Society, Baku

NHC: Ms Kirsten Hawlitschek, Ms Kamala Laghate

Duration: January 2006-December 2010

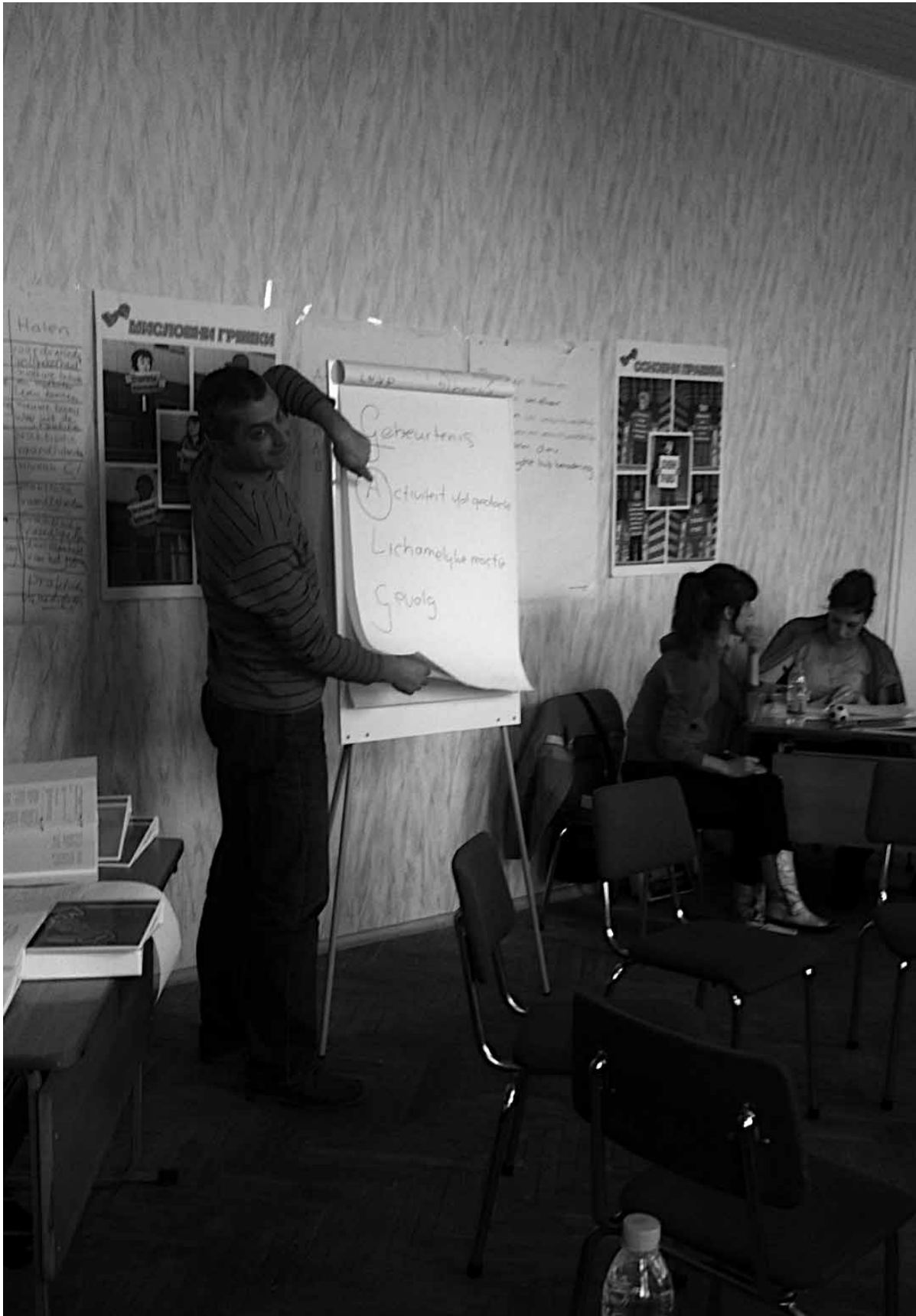
The objective of the project is to develop the capacity of local human rights organizations and human rights lawyers to effectively litigate strategic human rights cases. With the support of international and local experts, the Armenian, Azeri and Georgian lawyers have gained practical knowledge of the European Convention on Human Rights (ECHR) and skills to successfully apply and litigate cases at the European Court of Human Rights (ECtHR) in Strasbourg.

The main activities in 2009 have included stakeholders conferences in Azerbaijan and Armenia with among others the Armenian Minister of Justice and the Armenian judge at the ECtHR. Also various training sessions on Articles of the ECHR were organized in all three

countries and the three local partners met in Georgia to exchange experiences in their case work and efforts to establish themselves as strategic litigation organization. A study visit by the Azeri partner organization to the Polish Helsinki Federation for Human Rights had the same objective. One Armenian lawyer worked for three months as an intern at Interights in London. In addition to this, the local partners built an extensive network of local lawyers that meet regularly to discuss cases and judgements of the ECtHR. The websites and printed publications of our local partners have become an important source of information about European human rights law for the legal community in their country. Heart of the project are the cases that have been 'adopted' and that are constantly coached by an experienced human rights lawyer from Interights. By the end of 2009 a total of 32 cases had been taken into the project. In one case from 2006 a judgment was issued by the European Court concerning a case on Article 2 (Right to Life) against Azerbaijan. The Court found the government guilty concerning non-effective investigation into the death of an IDP (Internally Displaced Person). Also, one Georgian lawyer who works on two cases, addressing claims that are related to the war between Russia and Georgia in 2008, is advised by lawyers from the European Human Rights Advocacy Centre (EHRAC) in London.



Participants attending a human rights legislation training in Tbilisi in April 2009



Professionalisation of prison systems and the probation service

Prison systems are one of the points in a society where a lack of functioning human rights becomes painfully clear. It is also within this context that the supposedly inevitable clash between human rights and security occurs. By facilitating twinning and cooperation between Dutch prisons and those in Eastern Europe, the NHC aims to assist officials in these countries to develop the knowledge and practical skills to implement human rights standards as well as to more professionally carry out their day-to-day tasks. In order to do so, the NHC organises training sessions, seminars and working visits.

To help former inmates rehabilitate and to try to reduce recidivism, the NHC assists in the establishment of probation systems and programmes to help offenders reintegrate in society after release. These programmes include training sessions in the fields of social skills, preventive therapies regarding (among other subjects) drug abuse, and aggression reduction training.

Bulgaria - Introduction of correctional and therapeutical programmes for work with juvenile offenders at the Reformatory in the town of Boychinovtsi

Donor: Netherlands Ministry of Foreign Affairs - Matra Pre-Accession Programme
 Experts: Netherlands Prison Service (Dienst Justitiële Inrichtingen)
 Youth Penitentiary JJI Den Heyacker
 Youth Penitentiary JJI Teylingereind
 EQUIP Netherlands
 Work-Wise
 Partners: Bulgarian Ministry of Justice - General Directorate Execution of Penalties
 Reformatory in Boychinovtsi
 NHC: Ms Julia Koster
 Duration: January 2009-December 2010

The current programmes for juvenile offenders in the Reformatory of Boychinovtsi, which is the only institution for juveniles in Bulgaria, lack a pedagogic approach. In order for Bulgaria to reach European standards for treatment of juvenile offenders, appropriate therapy programmes aimed at juveniles need to be developed and implemented. The focus of attention of this project and its treatment programmes is on behavioural problems and the lack of social skills of juvenile offenders in the Reformatory of Boychinovtsi. With this project, the Reformatory aims to contribute to a structural improvement of the handling of juvenile detainees and by this set an example for other facilities for the treatment of

juvenile offenders in Bulgaria, such as boarding schools and half-open institutions. Additionally, training sessions and educational material have been provided in order to improve the quality of therapeutical treatment.

In October, a conference and a seminar were held, during which the EQUIP training programme was presented and discussed, which allowed all local stakeholders in the project to meet and interact. The central theme of the seminar was aftercare and this will also be the main subject for a research activity later in the project. From the result of this research a long-term Action Plan for the improvement of aftercare in Bulgaria will be designed by the Bulgarian and Dutch project partners. The fact that all stakeholders from the chain of care were present at the conference and working together shows that there is an opportunity for substantial improvement in this field, and for a lasting relationship between Bulgarian and Dutch prison authorities.

Macedonia - Strengthening the national penitentiary system in line with international and European standards

Donor: Ministry of Foreign Affairs - Matra Flex Programme
 Expert: Netherlands Prison Service (Dienst Justitiële Inrichtingen)
 Partners: Macedonian Ministry of Justice - Directorate for Execution of Sanctions
 NHC: Ms Barbora Pomsarova
 Duration: November 2009-November 2010

The Dutch Prison Service (DJI) has asked the NHC to coordinate this project, aimed at the strengthening of the Macedonian prison system, stimulating the cooperation between treatment and security staff, and assisting with the introduction of risk assessment. The approach taken here consists of two parts: On the policy level, best practices and lessons learnt from the Dutch experience are offered to Macedonian institutions while on the level of individual staff members training and coaching is offered in the field of cooperation, communication, and risk assessment.

In November staff representatives from the chosen pilot prisons and from the Directorate for Execution of Sanctions participated in a study visit to Netherlands, where they visited two Dutch penitentiaries and the headquarters of the Netherlands Prison Service. For 2010 a number of training and coaching sessions are planned, and the project will conclude with a conference to evaluate the project and explore the possibilities to continue cooperating in future follow up projects.

Turkey - Work and education in the prison system

Donor: Netherlands Ministry of Foreign Affairs - Matra Pre-Accession Programme
Expert: Netherlands Prison Service (Dienst Justitiële Inrichtingen)
Partners: Turkish Ministry of Justice - General
 Directorate of Prisons and Detention Houses
 Turkish Ministry of Education - Educational
 Research and Development Directorate
NHC: Ms Barbora Pomsarova, Mr Jos Kösters
Duration: January 2009-June 2011

The purpose of this project is to contribute to the reform of the Turkish prison system and to exchange best practices in order to improve the quality of both vocational education and training for inmates in Turkish prisons, and of the coaching of inmates in these institutions. By exchanging views and experiences the Dutch and Turkish experts will together develop an approach and curricula concerning vocational education and training, and coaching of inmates that suits the Turkish situation.

Much of 2009 has been taken up by pre-project deliberations. At the end of September, however, a delegation of Dutch experts visited Ankara, and representatives of the Turkish Ministry of Education have been to The Hague to talk to their counterparts to determine a suitable course of action. In addition, another team consisting of three Dutch experts have visited a juvenile and a female prison in Ankara in order to prepare the internship for Turkish prison staff which will take place in the beginning of 2010.

Croatia - Management of the organisational ethos and the development of human resources within the Croatian Ministry of Justice - Prison Administration

Donor: Netherlands Ministry of Foreign Affairs - Matra programme
 Expert: Netherlands Prison Service (Dienst Justitiële Inrichtingen)
 Netherlands Probation Service
 Netherlands Organisation for Applied Scientific Research (TNO)
 Partners: Croatian Ministry of Justice - Prison Administration Directorate
 NHC: Ms Kirsten Hawlitschek
 Duration: January 2009-June 2011

The Croatian Prison Administration aims to achieve an improvement of the internal management of prison institutions through the development of a modern working culture and the introduction of more transparent and less authoritative management styles. The project intends to support the Prison Administration head office and penitentiary institutions to develop annual plans on the basis of a mission and vision for the Prison Administration. This process will be supported by the development of a Human Resource Management Plan. Starting in September of 2009, the head office and three pilot institutions have been trained in and started to work on the development of an annual plan for their institutions. They have been introduced to methods such as Management on Output, Planning and Control, and Management dialogues. By the end of the year all of them had established an annual plan for 2010 and received the required mandates in order to work according to this plan in the coming year.

Croatia - Treatment of violent offenders in Croatian prisons and penitentiaries

Donor: Netherlands Ministry of Foreign Affairs - EVD
 Expert: Netherlands Prison Service (Dienst Justitiële Inrichtingen)
 Netherlands Probation Service
 Partner: Croatian Ministry of Justice - Prison Administration Directorate
 NHC: Ms Kirsten Hawlitschek
 Duration: January 2008-June 2009 (extended until January 2010)

The purpose of this project is to assist the Croatian Prison Administration with the improvement of its capacity to reduce violent behaviour in Croatian prisons and penitentiaries, and accomplish a decrease in recidivism. By using train-the-trainer programmes

in Aggression Replacement Training (ART) courses for treatment staff, and in methods of coping with violent inmates for security staff, and by coaching the Croatian trainers afterwards, the project aims at institutionalising the reduction of violence in Croatian prisons and penitentiaries in the long term.

The training on 'Communication and handling aggression' resulted in eleven capable trainers who started providing this training to their colleagues throughout the whole Prison Administration. By the end of the project, these trainers had already trained 544 members of the security staff. Also, this training became part of the standard curriculum for new security staff.

Specifically for treatment staff, fourteen trainers of the Croatian Prison Administration and the Ministry for Social Welfare received an ART diploma and were qualified for applying the ART method in their work with detainees or other target groups. Out of this group, four persons became licensed ART trainers and already started to train their first group of treatment staff.

Thanks to the train-the-trainer approach and the commitment of the Croatian Prison Administration, the further roll-out of the training for the whole security and treatment staff will continue to be implemented after the end of the project.

Ukraine - Creation of a national system for preventing torture and ill-treatment

Donor: EuropeAid
 Partners: Kharkiv Human Rights Protection Group (KhHRG)
 Ukrainian Legal Foundation (ULF)
 NHC: Ms Kirsten Hawlitschek
 Duration: 2008-2010

In cooperation with local partners in Ukraine, the NHC contributes to a system for the prevention of torture and ill-treatment in Ukrainian detention facilities. In this system a mobile monitoring group is set up, in order to monitor the implementation of the Optional Protocol to the Convention against Torture (OPCAT) in a limited number of regions, and to train judiciary and prison staff in order to prevent torture and inhuman treatment.

The results of this process can then be used on the national level to leverage change in policies and laws, and to institutionalise the fight against torture in Ukraine. As of 2009 there have been no activities on the ground yet in which the NHC has been directly involved.



Helsinki

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Netherlands Helsinki Committee



Strengthening human rights organisations and institutions

Though most of the states in Eastern Europe have signed and ratified the most common human rights conventions, and have adopted democratic constitutions, implementation does unfortunately not happen automatically. The NHC supports the establishment of human rights organisations that can monitor the human rights situation and litigate where necessary. By educating local branches of NGOs and their board members, the effectiveness and efficiency of the human rights organisations increase. These organisations can then promote human rights awareness among the general public.

Bulgaria - Exchange of expertise and mutual learning between the Commission for Protection against Discrimination (CPD) of the Republic of Bulgaria and the Dutch Equal Treatment Commission (CGB)

Donor: Ministry of Foreign Affairs - Matra Programme
Expert: Dutch Equal Treatment Commission (Commissie Gelijke Behandeling)
Partners: Commission for Protection against
Discrimination of the Republic of Bulgaria (CPD)
NHC: Ms Emma Oosten
Duration: September 2009-May 2010

The NHC coordinates this project that allows the Dutch Equal Treatment Commission (CGB) to exchange views and expertise with its Bulgarian counterpart, and which consists of two reciprocal visits. The first activity of this project, a conference at the Sofia head quarters of the Commission for Protection against Discrimination, was visited by Dutch officials in November. A visit to the CGB office in Utrecht is planned for early 2010.

United Arab Emirates - Human rights protection in the Netherlands, study visit by the Emirates Human Rights Association (EHRA)

Expert: Court of Appeal, The Hague
Equal Treatment Commission (Commissie Gelijke Behandeling)
Netherlands Institute of Human Rights (Studie- en Informatiecentrum Mensenrechten)
Dutch Section of the International Commission of Jurists (Nederlands Juristen Comité voor de Mensenrechten)
Dutch National Rapporteur on Trafficking in Human Beings
National Ombudsman
Netherlands Ministry of Foreign Affairs

Partners: Bridging the Gulf
Emirates Human Rights Association

NHC: Mr Jos Kösters, Ms Emma Oosten

Duration: July 2009

In July 2009, the Netherlands Helsinki Committee organized a study tour to the Netherlands for the Emirates Human Rights Association. This association is the first non-governmental Human Rights organization in the United Arab Emirates and was founded only 3 years ago. The Netherlands Helsinki Committee organized the visit on behalf of the Embassy of the Kingdom of the Netherlands in Abu Dhabi. The purpose was amongst others to increase the knowledge of the members of the Emirates Human Rights Association on Human Rights protection in the Netherlands.



Visitors from the United Arab Emirates with Bridging the Gulf project director Amal van Hees (left), NHC executive director Jos Kösters (middle) and NHC project manager Emma Oosten (second from the right)



Contributing to post-conflict rehabilitation

In many post-conflict countries, there is the ever-present risk that the memory of past conflict becomes the seed for renewed violence. As a result, security and human rights suffer. The NHC supports rehabilitation efforts in order to prevent conflict from flaring up again. Justice and accountability are necessary in a society that wishes to reconcile after conflict, and the NHC assists organisations that work towards restoring justice in their society.

Croatia - Documenting the past: Establishment of a digital database on war crimes

Donor: Ministry of Foreign Affairs - Matra Programme
 Expert: Netherlands Institute of War Documentation (NIOD)
 Partners: War Crimes Database Project, Law Faculty, Zagreb University
 NHC: Ms Kamala Laghate
 Duration: October 2006-September 2009 (extended until September 2010)

As the secure existence of collective memory is an important prerequisite for a peaceful future, freedom of information regarding past abuses is essential. The NHC has been supporting the Law Faculty of Zagreb University in establishing a database on war crimes in Croatia.

Due to problems with developing the software, the project has been delayed significantly. In 2009 a decision has been made to make a new start with a new developer. To facilitate this new beginning, the project has been granted an extension until September 2010.

Serbia - Institutions at Bay

Donor: Ministry of Foreign Affairs - Matra Programme
 Experts: Serbian editors, experts and international academics
 Partner: YUCOM
 NHC: Ms Julia Koster
 Duration: August 2008-July 2011

Almost a decade after the overthrow of the Milošević-regime, Serbia has not been able to do away with this heritage. This is largely due to the failure of the political and intellectual elites, as well as legislative bodies and law enforcement agencies, to critically examine the

immediate past and take measures aimed at alleviating its consequences, and to design instruments that would prevent the misfortunes of the 1990s from repeating themselves. As a result of the fact that no lustration has taken place in Serbia, the same people that have played prominent roles in conceiving and implementing the policies of war, ethnic cleansing and self-isolation of Serbia in the 1990s, still occupy important positions in various institutions in Serbia today and influence the profile and contents of school books, media programs and much of the general political and cultural communication.

The Lawyers' Committee For Human Rights (YUCOM), supported by the Netherlands Helsinki Committee is responsible for the implementation of the project 'Institutions at Bay'. The general aim of the project is to contribute to and support the transition to an open and pluralist society based on healthy competition and functioning democratic institutions, governed by the rule of law. The role of the most prominent proponents of the policy and actions that led Serbia to war and huge-scale violations in the western Balkans will be researched, identified, documented and published in a book and on an interactive website in Serbian and English.



Reinforcing the establishment of effective legal aid systems

Without adequate and effective access to legal assistance, individuals are kept from realising their full legal rights. This is even more true for human rights victims and other vulnerable or disadvantaged groups. The NHC supports organisations that improve the quality and quantity of the legal assistance they offer themselves, but also supports pilot schemes and lobbying efforts to engage government departments in legal aid reform.

Egypt - The role of the prosecutor in ensuring the right to counsel and protecting human rights in criminal justice, study visit

Donor: USAID
 Expert: Palace of Justice Den Bosch
 International Association of Prosecutors
 Den Bosch Police Department
 Legal Aid Board
 Dutch Section of the International Commission of Jurists (NJCM)
 Legal Service Counter
 Victims Support Office
 Schakenraad (private law firm)
 Peace Palace The Hague
 Partners: Legal Aid Council
 Chemonics International Inc.
 NHC: Ms Kirsten Hawlitschek, Ms Emma Oosten
 Duration: May 2009

Within the framework of the USAID project 'Administration of Criminal Justice in Egypt', the NHC organized a study visit to the Netherlands for a group of ten Egyptian public prosecutors in May of 2009. This was the second study tour within this project to the Netherlands. The NHC also organized the first study tour in November 2008. The purpose of the project was among others to increase access to timely and effective counsel for indigent defendants and to increase prosecutors' knowledge and application of human rights in the criminal justice context. The participants of this study tour observed how the right to counsel is applied and enforced in the Netherlands.

Serbia - Promotion of the rights of trafficked persons in Serbia with an emphasis on legal support - a human rights based approach

Donor: Ministry of Foreign Affairs - Matra Programme
Expert: Annet Koopsen (Dutch lawyer specialised in trafficking cases)
Cees Flinterman (NHC Committee member)
Marjan Wijers (anti-trafficking expert)
La Strada International
Partners: ASTRA
NHC: Ms Julia Koster
Duration: December 2009-November 2012

Too many victims of trafficking in human beings are not aware of their legal rights as victims. To improve this situation, the NHC and Serbian NGO ASTRA have developed a project that will provide training on human rights for Serbian lawyers about the rights of trafficked persons. This is the first anti-trafficking project that the NHC has co-designed and implemented. By training lawyers in international and national law and about the rights of victims, lawyers will be better equipped to improve the legal representation of the trafficked persons and their position in court.

In addition, the project aims at building up knowledge and establish a sustainable network of lawyers in Serbia who are specialised in representing trafficked persons. Within the project a data-base on case law in Serbia will be developed.

After a first visit by NHC staff to Belgrade in December, this project is off to a great start and both the NHC and ASTRA are confident that the cooperation will remain as good as it is now throughout the rest of the project.

2.2 Research, monitoring and lobbying

The NHC is involved in various lobbying initiatives in the field of human rights. It continues to press human rights issues at the appropriate venues. These include OSCE meetings, NHC-organised and other conferences, and talks on specific issues with (Dutch) authorities and other NGOs.

OSCE HDIM Warsaw 2009, 28 September-9 October

Each year in autumn, the Office for Democratic Institutions and Human Rights of the OSCE (ODIHR) organises the Human Dimension Implementation Meeting (HDIM) in Warsaw. With hundreds of representatives from governments and NGOs, this meeting is the largest human rights conference in Europe. At the 2009 HDIM the NHC was represented by its executive director, Jos Kösters.

Intervention on freedom of expression, free media and information

Before its dissolution in 2007, the International Helsinki Federation for Human Rights (IHF) offered the national Helsinki Committees the possibility to give a brief statement during HDIM conferences. This year the NHC decided, because the IHF is now disbanded, to take over this task. Executive director Jos Kösters delivered, on behalf of various national Helsinki Committees, an intervention on the freedom of expression and information, in which specific recommendations were made for improvements in Eastern Europe and Central Asia. He also connected freedom of expression issues in the specific Dutch context with the current debate on 'Islamophobia' in Dutch society.

Side event on irregular migrants

Together with Annemarie Busser of the Dutch section of Amnesty International, NHC director Jos Kösters hosted a side event at the HDIM conference to present the situation of irregular migrants in the Netherlands and other OSCE member states. The event, which consisted of the film 'Still Human, Still Here' and a presentation by Amnesty International, focused inter alia on the compatibility of measures to keep out irregular migrants with human rights standards, and on the applicability of universal human rights on irregular migrants.

National Institute for Human Rights (NIRM)

In 1992 the United Nations, and in 1993 the Council of Europe, called upon their member states to create a National Institute for Human Rights in accordance with the 1991 Paris Principles. In the Netherlands, such an institute still does not exist. The NHC, together with many other organisations, has since 2006 called for the establishment of a National Institute for Human Rights (NIRM) in the Netherlands.

Though in 2008 the government proposed tying the institute to the bureau of the National Ombudsman, in July of 2009 it was decided to combine the NIRM with the Dutch Equal Treatment Commission (CGB) by the start of 2011. Draft legislation was prepared in late 2009 and published for public comment, but had not been submitted to parliament yet when the government collapsed in early 2010. At the moment it is unlikely that the new combined Human Rights and Equal Treatment Board (College Mensenrechten en Gelijke Behandeling – CMGB) will commence its activities soon. The NHC hopes that a fully functional and independent National Institute for Human Rights will be up and running as soon as possible.

Broad Human Rights Platform (BMO-NL)

Together with nine other NGOs active in the field of human rights promotion and protection, the NHC in November of 2008 co-founded BMO-NL, the Broad Human Rights Platform for the Netherlands. A similar cooperation structure (named simply BMO) already existed to influence Dutch foreign policy with regards to human rights, but the ten member organisations found it necessary to establish a counterpart focussing on the domestic human rights policy of the Netherlands.

Apart from its central role in pressing for the creation of the National Institute for Human Rights in 2009, BMO-NL calls attention to themes such as human rights education in schools, a humane asylum policy and procedure, and the fight against discrimination.

The trial of Yevgeni Zhovtis

Prominent human rights defender and director of the Kazakhstan International Bureau for Human Rights and Rule of Law (KIBHR) Yevgeni Zhovtis was convicted for vehicular manslaughter in September of 2009. After an accident that proved fatal for the person hit by his car, Mr Zhovtis was first heard as a witness, then without due notification held and interrogated as a suspect. The trial, which was widely decried as being far from free and

fair, took only two days and resulted in a guilty verdict (that was most probably prepared before the trial had even started) and a four year prison sentence for Mr Zhovtis. An appeal to review the verdict was without result.

The KIBHR was the NHC's main partner in exploring possibilities of activities linked to Kazakhstan's chairmanship of the OSCE in 2010. Therefore the NHC felt a particular responsibility in raising this case. As it seems clear that the trial against Mr Zhovtis was politically motivated and not in compliance with international standards, the NHC has, together with the International Partnership for Human Rights (IPHR) and the Humanist Institute for Development Cooperation (Hivos), brought the case to the attention of Dutch Foreign Minister Verhagen and the Swedish EU presidency, and called upon the authorities of the Republic of Kazakhstan to grant Mr Zhovtis a new and fair trial. As of yet, no such trial has taken place.

2.3 Security and Human Rights

'Security and Human Rights', until 2007 known as the 'Helsinki Monitor', is the quarterly journal of the NHC. It was founded in 1990 and is a legacy of the Helsinki process that was designed in the last phase of the Cold War, to bridge Eastern and Western Europe on the basis of common principles and cooperation in the field of (human) security. 'Security and Human Rights' publishes articles on current (organisational) developments in the OSCE, and on all issues relating to human rights, security, and peace across North America and wider Europe (including Central Asia).

Topics in 2009

The first issue of 'Security and Human Rights' of 2009 was a special issue, entitled 'The Kazakh OSCE Chairmanship: Challenges, Expectations and Opportunities', and was devoted entirely to subjects related to Kazakhstan, its 2010 chairmanship of the OSCE and this state's role in Central Asia. Kazakhstan is the first former member of the Commonwealth of Independent States to attain the chairmanship and the Kazakh bid has elicited critical responses. The special issue took a look at what the Kazakh chairmanship would mean for the OSCE and Kazakhstan itself, in fields as small and precisely-defined as Kazakh judicial independence (in a contribution by Daniyar Kanafin) and as large and broad as the implications of Kazakhstan's chairmanship for Kazakh relations with the other states of Central Asia (an article by Erica Marat).

The other three, regular, issues of 'Security and Human Rights' took on the themes that traditionally belong in the journal without an overarching theme:

- Conflict Prevention
- Human Rights
- Minorities
- Democracy building
- Cooperative Security

Contributions in 2009 included (but where by no means limited to) articles on the elections in Moldova and the OSCE's role in monitoring both the election and possible human rights violations, on the challenge posed by statelessness from both a legal and a human security perspective, and on lessons learned from police-related OSCE activities of the past. Journal contributors wrote on philosophical issues (the ethics of counterterrorism measures), on social-religious issues (Islamophobia in the OSCE region) and on organisa-

tional issues (employment policies of the OSCE Secretariat and Institutions), but also on a range of other issues.

In total, thirty-three articles were published, in addition to the chronicle articles that track OSCE developments, the book reviews and columns.

Members of the editorial board in 2009

In 2009 the Editorial board consisted of the following members:

- **Edwin Bakker**, Senior Researcher at the Netherlands Institute of International Relations Clingendael, The Hague
- **Arie Bloed**, Editor-in-Chief, Former Executive Director of the Constitutional and Legislative Policy Institute, OSJI, Budapest
- **Aage Borchgrevink**, Advisor of the Norwegian Helsinki Committee
- **Krzysztof Drzewicki**, Senior Legal Adviser to the OSCE High Commissioner on National Minorities
- **Harm Hazewinkel**, formerly of the Netherlands Ministry of Foreign Affairs before his retirement and having dealt for many years with the OSCE
- **Wilco de Jonge**, Director of Human Rights Policy at the Dutch branch of Amnesty International
- **Walter Kemp**, Senior Advisor at the UN Office on Drugs and Crime
- **Julia Koster**, Executive Editor, Staff Member of the Netherlands Helsinki Committee
- **Timo Lahelma**, Roving Ambassador for Central Asia, Ministry of Foreign Affairs, Finland
- **Rianne Letschert**, Associate Professor of International Law and Victimology and the Research Director at the International Victimology, Institute of Tilburg University
- **Sabine Machl**, Senior Adviser to the OSCE High Commissioner on National Minorities
- **Branislav Milinkovic**, Special Envoy of Serbia to NATO
- **Tiemo Oostenbrink**, Executive Secretary of the Advisory Council on International Affairs, Dutch Ministry of Foreign Affairs
- **Alexander Vinnikov**, Senior Political Officer at the OSCE Centre in Bishkek, Kyrgyzstan
- **Andrei Zagorski**, Professor at the Geneva Center for Security Police
- **Wolfgang Zellner**, Deputy Director of the Institut für Friedensforschung und Sicherheitspolitik, Hamburg

Mr Alexander Vinnikov, of the OSCE Centre in Bishkek, Kyrgyzstan, joined the editorial board in 2009. Mr Aage Borchgrevink left the editorial board in 2009.



3. Internal Organisation

3.1 Board

Prof. M. van der Stoel is the Honorary Chairman of the NHC. In 2009 the NHC's executive committee consisted of the following persons:

- Mr T.P. Hofstee (Chairperson),
- Ms W.T.Thomassen (Vice Chairperson),
- Ms B.T. van Ginkel LL.M. (General Secretary),
- Mr G.Visser (Treasurer),
- Ms A. Offermans,
- Mr G.J. van Oven.

Mr J. ter Laak was the senior advisor to the executive committee. He passed away on 12 March 2009.

The executive committee held 7 meetings in 2009. On 1 January 2009 Mr A.M. Daane resigned. Mr G.Visser, a chartered accountant at Dubois & Co Registeraccountants, replaced Mr Daane as treasurer. Ms A. Offermans resigned from the executive committee on 1 January 2010.

In 2009 the committee consisted of the following persons:

- | | |
|--------------------------------|--|
| - Prof. E.A. Alkema, | - Prof. J.E. Goldschmidt, |
| - Mr J.G.A. van den Brand, | - Ms S. van Heemskerck Pillis-Duvekot, |
| - Mr A.H. van Delden, | - Mr L.J. Hogebrink, |
| - Mr A.H. Dijkmeester, | - Gen. (ret.) C. Homan, |
| - Mr T. Ety, | - Mr J.H.R.D. van Roijen, |
| - Prof. C. Flinterman, | - Mr E. van Thijn, |
| - Ms H.M. Gelderblom-Lankhout, | - Mr B.N.J. Pompen. |

Mr C.F. Stork and Mr G. Huyser resigned on 1 January 2009.

The committee had two meetings during 2009. For the first meeting, Ms N. Sabanadze and Mr B. Deen from the office of the High Commissioner on National Minorities of the OSCE were invited to speak about the Bolzano/Bozen Recommendations. The committee used their second meeting to express their gratitude to, and take leave of the outgoing executive director, Mr Jos Kösters.

3.2 Staff

In September of 2009 the executive director, Mr Jos Kösters, announced that he would shortly be leaving the NHC. During November and December Ms Kirsten Hawlitschek was acting director, before Mr Harry Hummel could commence as the new executive director from January 2010.

Ms Julia Koster, Ms Kamala Laghate, and Ms Brigitte Dufour remained the project managers. Ms Emma Oosten (from February 2009) and Ms Barbora Pomsarova (from September 2009) joined the NHC as new project managers. Ms Ineke van de Meene joined the NHC on a temporary basis in October 2009 in order to carry some of the NHC's heavy workload during the transition to a new executive director.

Ms Marjolein Boele (office manager) and Ms Carla Huisman (financial officer) remained in their positions. Ms Meriam Haagstam (secretary) left the NHC in March 2009.

Ms Claudia Sarti (Annual Report 2008) worked as a volunteer. Ms Emma Oosten (Human Rights in the Netherlands 2008) worked as an intern.

3.3 Annual Social Report

Every year, the NHC presents a Social Report in which the terms of employment, the Dutch Occupational Health and Safety Act, human resource management and the risk inventory and evaluation (RIE) concerning the NHC are presented.

The terms of employment of the NHC are established in the legal status regulations (Rechtspositiereglement), which are still based upon the terms of employment of Oxfam Novib of 2007 - 2008. The number of employees responsible for providing first aid and emergency evacuations was expanded to two in 2009. In 2009 two emergency evacuation exercises took place.

Mr I.F. Dekker remained the confidential representative of the staff members of the NHC.

3.4 Finances

The 2009 Annual Financial Report is edited as a separate publication and is distributed to all NHC donors. The report includes the audit certificate by the auditing firm HLB Schippers in Amsterdam and is prepared in accordance with the Dutch Guidelines for Annual Reporting 650 for fundraising organizations. A Summary Balance Sheet and an overview of the Income and Expenditures are presented here (Tables 1 and 2).

Table 1: Summary Balance Sheet

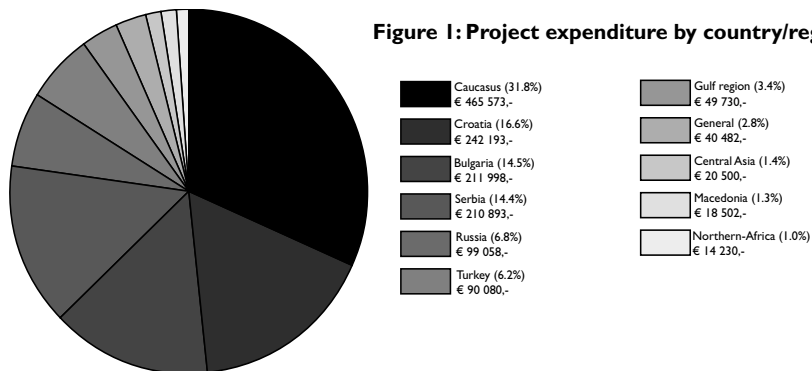
Assets	<i>31-12-2009</i>	<i>31-12-2008</i>
	<i>in euros</i>	<i>in euros</i>
Fixed Assets		
Tangible Fixed Assets	4 783	9 882
Current Assets		
Debtors	390 592	138 012
Liquid Resources	794 274	650 666
	1 189 649	798 560
Liabilities	<i>31-12-2009</i>	<i>31-12-2008</i>
	<i>in euros</i>	<i>in euros</i>
Unrestricted Reserve	138 864	158 015
Restricted Reserve	17 043	36 194
Current Liabilities		
Project Subsidies	918 690	444 893
Creditors	115 052	159 458
	1 189 649	798 560

Table 2: Income and expenditure

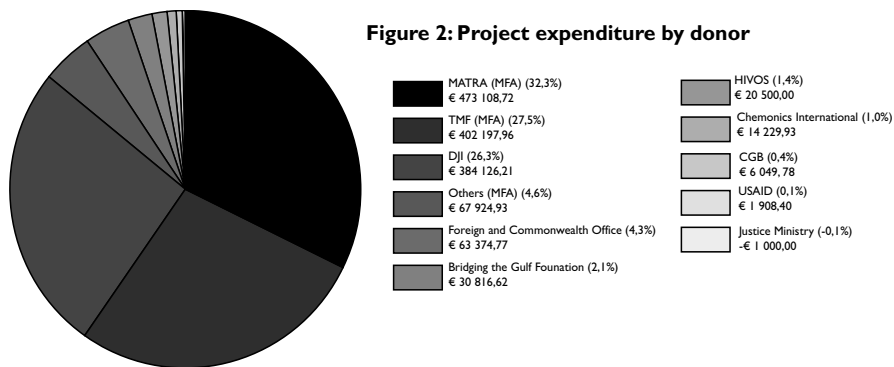
Income	2009 in euros	2009 budget in euros	2008 in euros
Project Subsidies	1 463 238	2 027 834	2 371 294
Other Income	15 930	7 600	8 866
	1 479 167	2 035 434	2 380 159
Expenditure			
Projects and Programmes	1 310 735		2 261 433
Public Debate and Lobbying	68 130		52 411
Fundraising Costs	46 381		20 372
Administration and organisation costs	92 224		94 669
	1 517 469	2 106 146	2 428 884
Result of Operations	-38 302	-70 712	-48 724

The NHC closed 2009 with a negative Result of Operations of € 38 302, which was a better result than forecast in the (revised) budget. This negative result is partly due to the low rates set by the funders. Furthermore, there were several other expenses that were not covered by income, such as costs made for a preparatory mission for a conference in Kazakhstan of € 6 849, costs for the Security and Human Rights journal 2009 of € 12 668, and more costs than budgeted for developing new project proposals totalling € 18 727.

In 2009 the Netherlands Helsinki Committee managed 35 activities in 10 countries or regions. In terms of project expenditures the southern Caucasus received the largest contribution, followed by Croatia, Bulgaria and Serbia (Figure 1).



In terms of funds disbursed the Ministry of Foreign Affairs' MATRA Programme remained the largest source of funding (32%) followed by the TMF Programme (27%) and the Netherlands Prison Service (DJI - Dienst Justitiële Inrichtingen) (26%). (Figure 2).





4. Human Rights in the Netherlands

I. Introduction

The Netherlands Helsinki Committee (NHC) reports on an annual basis on human rights developments in the Netherlands. The purpose of these overviews is to contribute to raising awareness and, as a result, to improve the actual human rights situation in the Netherlands.

Methodology

This overview is based on reports of official international and national bodies, parliamentary discussions, press reports and statements and reports by human rights NGOs. Where possible, several sources are used in the description of events. This report is limited to the European part of the Kingdom of the Netherlands; the NHC has insufficient resources to be able to cover also the Caribbean parts of the Kingdom. In the choice of issues to cover, the focus has been on situations in which new developments or reporting took place in 2009; human rights issues that saw no changes are mostly not included in the report.

The chapters of the report follow the framework used by the Office of the High Commissioner for Human Rights in its compilations of human rights information for the United Nations Universal Periodic Review, because of its comprehensiveness in covering all aspects of human rights compliance.

Many of the cases and issues mentioned in this report are still in the news and/or unresolved and have had or will have repercussions in 2010. The most relevant follow-up news in 2010 on these cases and issues is included up to April.

General assessment and trends

The Netherlands government in 2009 continued to be explicitly committed to respecting and protecting human rights. Some long-standing human rights problems that required government action came to a solution. The placement of psychologically troubled youths who have committed no crime in regular detention facilities came to an end, based on government decisions already taken in 2005, a change in legislation in 2008 and the building up of capacity to be able to treat these young people, who have committed no crime, outside of the prison system (see page 68). Another improvement was the entering into force of legislation requiring all municipalities to make available an easily accessible anti-discrimination complaints facility (page 59). Discrimination continued at a worrying level, however, with additional government policies needed to counter this phenomenon.

Of some importance here is the treaty obligation to provide human rights education to all students, which was not taken up fully by government. This area is all the more pressing as adherence in society to human rights values and norms suffered some erosion. In public and political debate, support increased for setting aside fundamental human rights if these would obstruct political aims, for example in limiting immigration or in prohibiting the expression of certain religions. In some fields, this attitude has unfortunately entered government policy, for example in the treatment of migrants and asylum seekers.

Striking a balance in cases of real or apparent conflict between different rights appeared particularly difficult. The hesitation about fully providing for human rights education is largely explained by a perceived clash with freedom of education, which guarantees that education be in conformity with the (religious) convictions of the parents. The constitutional provision on freedom of education has also led to a legalized option for schools to exclude homosexuals from teaching jobs.

In several cases, conflicts, or perceived conflicts, between rights were subject of considerable debate. Freedom of speech is seen by many as an absolute right, while in reality there always are limitations. An informed and healthy debate about why which limitations to freedom of speech would be warranted has been lacking all too often. On the protection of privacy, which too often has been seen as a negligible factor in the face of (security) measures deemed necessary by authorities, some debate started in 2009 and a number of civic initiatives were begun! Also in this field more informed and intense discussion is of great importance.

2. General matters

This chapter covers a number of issues related to the general observance and promotion of human rights in the Netherlands. These relate to the implementation of international human rights commitments by the Netherlands and to the interaction with international monitoring bodies. Also, information is included on the position of the National Ombudsman, one of the constitutional bodies charged with protecting citizen's rights.

¹ See overview at <http://privacy.startpagina.nl>

National Institute for Human Rights

The 1991 Paris Principles and resolutions by the United Nations and the Council of Europe in the following years, request all states to establish a National Institute for Human Rights. Up to now, the Netherlands does not have such an institution, though in recent years various proposals have been put forward in discussions between the government, parliament, other institutions involved and civil society organizations.

The government proposed in 2008 to link the institute (Nationaal Instituut voor de Rechten van de Mens – NIRM) with the office of the National Ombudsman, but to still make it a new institute in its own right.² In parliamentary deliberations however, it was noted that this was against the general policy of not creating new public bodies. After a further exploration by the Ministry of the Interior the cabinet decided that the already existing Equal Treatment Commission (Commissie Gelijke Behandeling – CGB) should be enlarged so as to take up the NIRM tasks as well. This new proposal delayed the formation of the NIRM, but by the end of the year draft legislation had been written (though not formally presented to parliament yet). In their letter proposing the merger of the CGB and the new NIRM into the Human Rights and Equal Treatment Board (College Mensenrechten en Gelijke Behandeling – CMGB), the Ministers of Justice and the Minister of the Interior stated that they want the necessary legislation to come into effect on January 1 2011.³

National Ombudsman

For the Dutch National Ombudsman, the year 2009 can be characterized as one of continuous friction with the government coalition. After clashing with Prime Minister Balkenende in 2008 over remarks on the political climate in the Netherlands⁴, Alex Brenninkmeijer, National Ombudsman since 2005, came into conflict with three more government Ministers in 2009.

The first issue concerned a case of identity theft, where the Ombudsman found that the Ministry of Justice had done too little to compensate the victim. This led to an exchange in which Justice Minister Hirsch Ballin argued that the Ombudsman's research was incomplete and simply incor-

2 'Nederland krijgt Nationaal Instituut voor de Rechten van de Mens', 11-07-2008 [http://www.regering.nl/Actueel/Persberichten_ministerraad/2008/juli/11/Nederland_krijgt_Nationaal_Instituut_voor_de_Rechten_van_de_Mens]

3 'Nationaal instituut mensenrechten kan in 2011 van start', 03-07-2009 [http://www.regering.nl/Actueel/Persberichten_ministerraad/2009/juli/03/Nationaal_instituut_mensenrechten_kan_in_2011_van_start]
Handelingen van de Tweede Kamer der Staten Generaal 2008-2009, 31 700 VII no. 95

'Conceptwetsvoorstel College voor mensenrechten en gelijke behandeling', 11-12-2009 [<http://www.internetconsultatie.nl/collegevoormensenrechtenengelijkebehandeling/document/57>]

4 See e.g. 'De overheid is hardleers', *Trouw* 07-04-2008

rect in some aspects. Mr Brenninkmeijer reacted by stating that the Minister was contributing to a roughening political climate.⁵

An article on youth care written by Mr Brenninkmeijer in November attracted the attention of Deputy Prime Minister Rouvoet, who is in charge of youth and family issues. Mr Rouvoet accused the Ombudsman of analyzing only superficially and carelessly jumping to conclusions.⁶

In December, in a lecture at Tilburg University, Mr Brenninkmeijer raised the question whether human rights had a sufficiently central place in Dutch law enforcement policy. He linked this question to the case of a man being shot and killed by police in large scale riots on the beach of Hoek van Holland in August of 2009. Deputy Prime Minister Bos stated on behalf of the cabinet that he considered this question inappropriate and irresponsible.⁷

These issues, combined with the prominent media coverage sought by the Ombudsman, have polarized the relationship between the office of the National Ombudsman and the cabinet. Though both parties have stated that peace has been restored after a year of clashes,⁸ the Ombudsman's reports have raised discussion not only about the Ombudsman and his approach in fulfilling his mandate to protect the citizen against improper and arbitrary government actions, but also on his relationship with the government and its ability to simply put aside the Ombudsman's advice.⁹

UN Human Rights Committee Report on the Netherlands

As part of its activities in its 96th session, the UN Human Rights Committee reviewed and commented on the human rights situation in the Netherlands.¹⁰ During the two day review meeting, Justice Minister Hirsch Ballin mostly received praise for the Netherlands' human rights policy. There were, however, some aspects that the Human Rights Committee members took issue with. Minister Hirsch Ballin could answer most questions relating to asylum procedures, which was one of the main focus point in the review of the Netherlands, with relative ease and to the satisfaction

5 'Hoog College kapittelt minister', *NRC Handelsblad* 16-04-2009

6 'Ombudsman is onzorgvuldig', *De Volkskrant* 28-11-2009

7 'Kabinet laakt ombudsman in nasleep strandrel', *Trouw* 12-12-2009

8 'Persconferentie na ministerraad van 18-12-2009, 18-12-2009 [http://www.regering.nl/Actueel/Video_sl/2009/december_2009/Persconferentie_na_ministerraad_van_18_december_2009]

'Ombudsman en kabinet tekenen vrede', *Trouw* 19-12-2009

9 'Zachtmoedig en vasthoudend de bureaucratie te lijf', *NRC Handelsblad* 21-12-2009

'Wees blij met zo'n Ombudsman', *Trouw* 19-12-2009

10 'Human Rights Committee considers report of the Kingdom of the Netherlands, the Netherlands Antilles and Aruba', 15-07-2009 [http://www.unog.ch/unog/website/news_media.nsf/%28httpNewsByYear_en%29/52FD501B2B207D6EC12575F4002E3235?OpenDocument]

of the committee members. The problematic issues that remained were euthanasia procedures, and discrimination of women in the Reformed Political Party, a very conservative Christian small party in parliament.

Regarding euthanasia, several committee members voiced their concern about the fact that there is no judicial control before the actual act of euthanasia takes place. Though the committee suggested that having a judge sign off on life-ending treatment would provide better (legal) protection for patients, Minister Hirsch Ballin insisted that the current Dutch system, which works with review committees manned by both legal and medical experts, is an adequate safeguards against abuse. Unconnected to this Human Rights Committee discussion, Els Borst, who was Minister of Health Care at the time of the introduction of the current law on euthanasia, reportedly stated quite the opposite: that there had been too much attention for legalistic rules rather than for medical aspects, in particular for good palliative care as an alternative to euthanasia¹¹.

When confronted with the committee's concern over the discrimination of women by the Reformed Political Party (Staatkundig Gereformeerde Partij – SGP), which doesn't allow any women to stand for elected office, the Minister emphasized that the SGP is only a very small party, with only two of the hundred and fifty seats in the House of Representatives, and that all of the other parties, and the Netherlands government in general, are very active in promoting equal participation by women.¹²

Ratification by the Netherlands of additional Human Rights treaties and protocols

At the annual UN Treaty Event organized in September at the United Nations Headquarters in New York, the Dutch government signed the Optional Protocol to the International Convention on Economic, Social and Cultural Rights on the day it opened for signatures. This protocol provides for a procedure for individuals who feel their rights have been violated, similar to the one that already exists for the International Covenant on Civil and Political Rights.¹³ A bill proposing the ratification of the Optional Protocol is being prepared.¹⁴ The same event saw the ratification by the Netherlands of the Optional Protocol to the Convention of the Rights of the Child on the involve-

¹¹ 'Els Borst betuigt half spijt over euthanasiewet', *Nederlands Dagblad* 01-12-2009

¹² 'Buitenlandse kritiek op SGP en euthanasie; Minister voor VN-mensenrechtencommissie', *NRC Handelsblad* 16-07-2009

¹³ United Nations Treaty Collection, '2009 Treaty Event: Towards Universal Participation and Implementation Daily Report Thursday, 24 September 2009' [http://treaties.un.org/doc/source/events/2009/summary_24-09-09.pdf] Ministerie van Buitenlandse Zaken, 'Ondertekening Facultatief Protocol bij het ESOCUL-Verdrag', 29-09-2009 [http://www.minbuza.nl/nl/Onderwerpen/Verdragen/Actueel/Nieuwsberichten_2009/Nieuwsberichten_september_2009/Ondertekening_Facultatief_Protocol_bij_het_ESOCUL_Verdrag]

¹⁴ Mensenrechtenrapportage 2009, Ministry of Foreign Affairs, March 2010

ment of children in armed conflict, which obliges state parties to take all possible care to ensure that minors who join the armed forces do so voluntarily and to keep them out of direct hostilities.¹⁵

In October the Netherlands acceded to the Convention on the Protection and Promotion of the Diversity of Cultural Expressions, which not only protects cultural expressions themselves, but also the ways in which they are produced. The Convention entered into force for the Netherlands in January of 2010.¹⁶

On the margins of a November European ministerial meeting on lower levels of government, State Secretary for the Interior Ms Bijleveld-Schouten (together with representatives from ten more Council of Europe member states) signed the Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority, which expands democratic rights in signatory states: It gives an international legal guarantee of the right to participate in the affairs of a local authority.¹⁷

The government had planned in November 2008 to use the so-called silent ratification procedure for the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment of Punishment (OPCAT), in which approval by parliament is assumed if no member opposes it. This would have allowed a quick ratification, after long government hesitation in the past to join the OPCAT at all. The silent procedure could not be used however as a formal discussion was requested by the Senate. Finally, in March of 2010, the House of Representatives unanimously approved ratification of OPCAT, and the ratification bill went onwards to the Senate.¹⁸

¹⁵ United Nations Treaty Collection, '2009 Treaty Event: Towards Universal Participation and Implementation Daily Report Thursday, 24 September 2009' [http://treaties.un.org/doc/source/events/2009/summary_24-09-09.pdf]
Ministerie van Buitenlandse Zaken, 'Koninkrijk der Nederlanden bekrachtigt Protocol inzake kindsoldaten', 29-09-2009 [http://www.minbuza.nl/nl/Onderwerpen/Verdragen/Actueel/Nieuwsberichten_2009/Nieuwsberichten_september_2009/Koninkrijk_der_Nederlanden_bekrachtigt_Protocol_inzake_kindsoldaten]

¹⁶ UNESCO, 'Convention on the Protection and Promotion of the Diversity of Cultural Expressions 2005' [http://portal.unesco.org/en/ev.php-URL_ID=31038&URL_DO=DO_TOPIC&URL_SECTION=201.html]
Ministerie van Buitenlandse Zaken, 'Inwerkingtreding Verdrag inzake culturele diversiteit voor Nederland', 21-10-2009 [http://www.minbuza.nl/nl/Onderwerpen/Verdragen/Actueel/Nieuwsberichten_2009/Nieuwsberichten_oktober_2009/Inwerkingtreding_Verdrag_inzake_culturele_diversiteit_voor_Nederland]

¹⁷ Council of Europe, 'Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority' 16-11-2009 [<http://conventions.coe.int/Treaty/Commun/QueVoulezVous.asp?NT=207&CM=8&DF=03/03/2010&CL=ENG>]
Ministerie van Buitenlandse Zaken, 'Ondertekening twee Protocollen van de Raad van Europa' 17-11-2009 [http://www.minbuza.nl/nl/Onderwerpen/Verdragen/Actueel/Nieuwsberichten_2009/Nieuwsberichten_november_2009/Ondertekening_twee_Protocollen_van_de_Raad_van_Europa]

¹⁸ *Handelingen van de Tweede Kamer der Staten-Generaal 2009-2010*, 69

Criticisms by Council of Europe Commissioner for Human Rights

In March Thomas Hammarberg, the Council of Europe Commissioner for Human Rights, published a report on the human rights situation in the Netherlands. Most of the criticism in the report was aimed at the Dutch asylum policy, which according to Mr Hammarberg is too strict and can as such only be applied with due speed to only the most clear cases. The Commissioner considered asylum seekers with more complicated backgrounds, and those belonging to vulnerable groups, such as children, at risk because of the emphasis Dutch authorities place on speedy decisions, rather than conscientiousness in their assessments.

Another concern of Mr Hammarberg was the fact that minors under child protection orders are detained in the same institutions as those facing criminal charges. "It is unacceptable that young offenders and children in need of protection, notably because they are victims of crimes, share the same institutions" he stated on the detention of children with civil protection orders in custodial institutions. He characterizes this treatment as 'stigmatizing' and 'counterproductive and potentially threatening to the child'.

A third matter is the increase in discrimination signaled by Mr Hammarberg. Aside from shortcomings on the government's part – the lawful discrimination of homosexuals in education, and a lack of rights for the disabled – Dutch society has shown some trends towards more discrimination of homosexuals, more racial discrimination, anti-Semitism and Islamophobia.¹⁹

In its reaction, the government argued that for most of the problems signaled by Mr Hammarberg, new policy had already been enacted, or that it was in the process of being implemented.²⁰

Human rights education

The Council of Europe Commissioner for Human Rights also commented on the importance of human rights education. He reported that "in general, knowledge of the Dutch constitution, its fundamental rights and human rights in the Netherlands is not well developed". The Netherlands NGO-Platform on Human Rights Education continued to advocate for a full incorporation on human rights in school curricula in the Netherlands. The Platform welcomed initiatives by the

¹⁹ 'Report by the Commissioner for Human Rights, Mr Thomas Hammarberg', 11-03-2009 [https://wcd.coe.int/ViewDoc.jsp?id=141706I#P408_104255]

'Kritiek raad van Europa op asielbeleid', *NRC Handelsblad* 11-03-2009

'Europees Commissaris voor de Mensenrechten publiceert rapport over Nederland', 17-03-2009 [<http://www.njcm.nl/site/newsposts/show/238>]

²⁰ *Handelingen van de Tweede Kamer der Staten Generaal* 2009-2010, 31 700-V, no. 95

Ministry of Foreign Affairs to develop educational materials on human rights, but considered them insufficient in the light of international commitments, in particular the provisions of the Convention on the Rights of the Child.²¹ A further initiative of the Ministry, in cooperation with the Platform, led to the launch on 10 December 2009 of a National Plan for Human Rights Education (Stimuleringsplan voor de integratie van mensenrechteneducatie in het funderend onderwijs).²² This outlines a strategy for sustainable integration of human rights education into primary and secondary schools in the Netherlands. As part of the plan a curricular framework for HRE will be developed. The plan also includes consultations, provision of learning resources, and regional pilot schools. A coordinating committee consisting of representatives of the Ministry of Education, Culture and Science, Human Rights Education experts, educational policy makers and practitioners and other stakeholders will facilitate the implementation of the plan.

European Court of Human Rights judgments related to the Netherlands

In August the Ministry of Foreign Affairs presented its overview of cases against the Netherlands brought before the European Court of Human Rights (ECtHR) in 2008. Of the 526 new cases brought against the Netherlands before the court, only one new judgment was reached in 2008, in a case in which the ECtHR awarded a compensation of € 1 000,00 in damages and € 5 250,00 in costs and expenses to a man who had been unduly deprived by the state of money from goods that he had not been convicted of stealing. 42 requests for a provisional order were received, of which 9 were awarded and brought to the attention of the Dutch government.²³

2. Equality and non-discrimination

As mentioned above, in the paragraph about the report by Council of Europe Commissioner for Human Rights Thomas Hammarberg, discrimination is a problem that continues to plague the Netherlands. Specific trends can be established for specific groups, such as homosexuals, religious minorities (often directed against immigrants of Moroccan or Turkish descent) and women, which are all mentioned below. Though hostile and sometimes violent treatment of religious minorities

21 Platform Mensenrechteneducatie, 'Raad van Europa kritisch over mensenrechteneducatie in Nederland' [http://www.cmo.nl/pmre/?Actueel%3A_H%E9t_Mensenrechtenonderzoek:Raad_van_Europa_kritisch_over_mensenrechteneducatie_in_Nederland]

22 Stichting Leerplanontwikkeling, Stimuleringsplan voor de integratie van mensenrechteneducatie in het funderend onderwijs, December 2009 [<http://jongeburgers.slo.nl/visie/identiteit/mensenrechten/stimuleringsplan/Stimuleringsplan-voor-de-integratie-van-mensenrechteneducatie-in-het-funderend-onderwijs.pdf>]

23 Ministerie van Buitenlandse Zaken, 'Jurisprudentie 2008 Europees Hof voor de Rechten van de Mens', 11-08-2009 [<http://www.minbuza.nl/dsresource?objectid=buzabeheer:77559&type=org>]

(primarily Muslims and Jews) and homosexuals does occur, discrimination in the Netherlands also often takes the form of exclusion from certain services or jobs. In this form it can even be institutionalised and tied to formal rules, as in the case of homosexual teachers on protestant primary and secondary schools. Discrimination of women remained an issue as well, mostly indirect and subconsciously in wider society, but also overtly and institutionalised in religiously-inspired (orthodox) protestant organisations. These cases show an apparent contradiction in the government's policy: On the one hand it is active in fighting discrimination and improving participation by all, but on the other hand it allows discrimination to occur in an institutional (and in the case of homosexual teachers even legal) framework.

European Commission Equal Treatment Directive

A proposal for a new Directive against discrimination on grounds of age, sexual orientation, religion or handicap, published by the European Commission in 2008 was the source of some debate in 2009. After studying the proposal, the Dutch government announced to parliament that it could not fully support the directive in its current form, as the legal and financial implications would warrant a longer implementation process than originally provided for in the directive.²⁴ The Dutch branch of Amnesty International protested against this reluctance, and that of other governments, to promote equal treatment in the European context, and presented a petition to Members of Parliament.²⁵ As the draft prepared by the European Commission was by no means final, more negotiations on the Equal Treatment Directive between EU member states will follow in 2010.

Municipal anti-discrimination facilities

A new law that has been in the making since the end of 2007 has been approved by the House of Representatives in February and by the Senate in June and entered into force in July of 2009. The Municipal Anti-discrimination Facilities Act aims to create in every municipality local bodies that individuals can submit complaints to about other individuals discriminating against them. Municipal authorities are still responsible themselves for the specific form their local organization will take. In cases where a group of municipalities jointly sets up their anti-discrimination bureau, the individual municipalities have to guarantee easy access for everyone within their territory.²⁶

²⁴ *Handelingen van de Tweede Kamer der Staten Generaal 2009-2010*, 31 544, no. 10

²⁵ Amnesty International Nederland, 'Nederlanders voor antidiscriminatierichtlijn', 23-11-2009

²⁶ Art. 1, 'Ministerraad stemt in met landelijk netwerk van antidiscriminatievoorzieningen', 06-12-2007 [http://www.art1.nl/artikel/7283-Ministerraad_stemt_in_met_landelijk_netwerk_van_antidiscriminatievoorzieningen]
'Wet gemeentelijke antidiscriminatievoorzieningen', *Staatsblad* 313, 25-06-2009 [<http://wetten.overheid.nl/BWBR0026168>]

Rise in number of discrimination cases

Anti-discrimination organization Art. I in December of 2009 published their statistical report on discrimination in 2008. They signaled a substantial rise in the number of discrimination complaints lodged with the municipal complaints bodies referred to above: With a rise of 561 complaints (or just over 11%), the total number of complaints for 2008 is 4 808. In part this increase can be attributed to a rising number and improving accessibility of discrimination reporting centers. The total number, however, is still the tip of the iceberg, according to Art. I, as a majority of those discriminated against still do not find their way to the police or reporting agencies. To counter this, Art. I is continuing a publicity campaign launched in 2009 by the Ministry of the Interior into 2010. As in previous years, discrimination based on race (2 003 cases) and age (970) were most prevalent among the reported cases. Discrimination most often took the form of exclusion from, for instance, a job or a service, or hostile treatment.²⁷ How much of the discrimination had a violent nature is not clear, not even whether all violent incidents are included in the data.

Ethnic-religious discrimination

As cases in which religious minorities are discriminated against are very much related to their right to practice their religion in different aspects of public life, please also refer to section 7 of this report, on Freedom of religion, of belief, expression, association and peaceful assembly, and right to participate in public and political life.

A coalition of NGOs led by Art. I and the Dutch Lawyers Committee for Human Rights in October issued a Commentary on the latest official governmental Periodic Report on the implementation of the International Convention on the Elimination of all Forms of Racial Discrimination (CERD).²⁸ The NGOs 'note with approval that combating discrimination is on the agenda of both the government and of civil society.' However concern is expressed about the government decision not to attend the Durban Review Conference, held in April 2009. The NGOs deplored that a new action plan against racism, announced in 2007, had not yet been issued. The subsequent Letter on Integration (Integratiebrief) by the government gave attention to racial discrimination, announcing steps to address discrimination in the hospitality industry and on the internet, increase the resilience of victims of discrimination, and increase the professionalism of anti-discrimination organizations.²⁹

27 Art. I, 'Aanzienlijke stijging discriminatieklachten', 18-12-2009 [http://www.art1.nl/artikel/9845-Aanzienlijke_stijging_discriminatieklachten]

28 'Commentary on the Seventeenth and Eighteenth Periodic Reports on the International Convention on the Elimination of all Forms of Racial Discrimination (CERD)', 05-10-2009 [<http://www.njcm.nl/site/uploads/download/346>]

29 E.E. van der Laan, Minister for Housing, Communities and Integration, 'Integratiebrief', 17-11-2009

Roma and Sinti

According to the above-mentioned NGO commentary Roma and Sinti experience considerable social disadvantage and exclusion, with their participation in education and on the job market being more problematic than that of other ethnic minorities. The Minister for Housing, Communities and Integration in a progress report stated that the primary responsibility for addressing the matter lies with the so-called 'Roma municipalities'; a limited facility for advice to municipalities will be funded nationally.³⁰

Geert Wilders and the 'head rag tax'

At the parliamentary debate on the cabinet's policy in the new parliamentary year in September, Party for Freedom (Partij voor de Vrijheid – PVV) floorleader Geert Wilders proposed the 'head rag tax', a tax on head scarves directed at Muslim women. His plan to have these women pay thousand Euros per year was met with derision by all other parties in parliament.³¹

EU Minority and Discrimination Survey

Several reports by the European Union Agency for Fundamental Rights (FRA) in 2009 drew attention to widespread discrimination in EU member states. Discrimination, according to the FRA in a report published in April, has for a long time been far more prevalent than official statistics would show: Among the Turkish, North African and Surinamese minorities, far more than half of all interviewed individuals believed that 'discrimination based on ethnic or immigrant origins is widespread in the country'. The reason governments consistently reported low discrimination statistics could be ascribed to the fact that the persons who have been discriminated against are not fully aware of their rights (as is the case in over 80 percent among minorities in the Netherlands), or that they feel that reporting incidents would not be worth their time.³²

A separate report published in May confirmed much of what was stated in the earlier report, but now specifically for minorities self-identifying as Muslim. Though the Netherlands is not singled out

30 E.E. van der Laan, Minister for Housing, Communities and Integration, 'Aanpak voor Roma in Nederland', letter to the House of Representatives, 29-06-2009 [<http://www.vrom.nl/docs/20090629-aanpak-voor-Roma-in-Nederland.pdf>]

31 'Plan Wilders voor belasting op hoofddoek weggehoond', *Trouw* 17-09-2009

32 European Union Agency for Fundamental Rights, *EU-MIDIS at a glance* 22-04-2009
'Meer racisme dan statistieken tonen', *NRC Handelsblad* 22-04-2009

as a worst offender; a high incidence of discrimination and a general lack of awareness of rights and recourse possibilities are reported.³³

Discriminatory expressions on the Internet

The Internet Discrimination Reporting Centre (Meldpunt Discriminatie Internet) in its annual report covering the year 2008 reported on 899 expressions on the Internet that it considered punishable; a large majority of these concerned ethnic-religious discrimination. In 529 cases these concerned Muslims, Moroccans or Turks; anti-Semitism scored 250 times. Requests by the Centre to web site moderators to remove these expressions were successful in 92 % of the cases.³⁴

Gaza war and anti-Semitism

In the course of the Gaza war of December 2008/ January 2009, a surge in anti-Jewish incidents was reported.³⁵ These included nine cases of physical violence or direct threats. Lack of direct police intervention against antisemitic slogans shouted at demonstrations protesting Israeli actions in Gaza became the subject of controversy.³⁶ Similar slogans had been in use by groups of soccer fans with near impunity for many years. Parliament called for increased action against both antisemitic and anti-Islamic expressions.³⁷

Anti-Islamic violence

Continued violence, including several arson attacks, was reported against mosques, although at a level much below that of the peak of November 2004, right after the murder of film-maker Theo van Gogh.³⁸

³³ European Union Agency for Fundamental Rights, *Data in Focus Report 2: Muslims 28-05-2009*

³⁴ 'Voor een leefbaar en tolerant Internet', Meldpunt Discriminatie Internet, June 2009 [http://www.meldpunt.nl/uploads/upload_documents/Jaarverslag2008.pdf]

³⁵ 'CIDI ziet scherpe stijging antisemitisme', *Trouw* 03-09-2009, see also media reports referred to at Dossier Anti-Semitismisme at www.monitorracisme.nl of Anne Frank Foundation

³⁶ 'Justitie onderzoekt demonstraties tegen Israël', *NRC Handelsblad* 14-01-2009

³⁷ 'Kamer wil aanpak anti-islamisme and antisemitisme', *De Telegraaf* 15-01-2009

³⁸ Complete statistics are not available, see listings and references at Dossier Islamofobie at www.monitorracisme.nl of Anne Frank Foundation, and at <http://www.frontaalnaakt.nl/archives/kristalnacht-2.html>

Discrimination against women

The SGP and women's rights

As mentioned in the section about the UN Human Rights Committee review, in July the Dutch government had to answer for not taking action against the Reformed Political Party (Staatkundig Gereformeerde Partij – SGP), which in the eyes of the committee discriminates against women. The party argues that its literal interpretation of the Bible does not allow women to stand for elected office, or to work in any government position.

In November of 2009 the procurator general of the Netherlands Supreme Court advised the Court to confirm the 2007 verdict of the court of appeal in The Hague, which forces the government to take action against this form of discrimination of women.³⁹ As a possible measure to enhance female participation, the procurator general proposes a possible action programme with a transitory period for parties already in parliament.⁴⁰ An end to government subsidies for the party, as demanded by some women's rights organizations in their appeal to the Supreme Court, is unlikely, as the administrative court of the Council of State has earlier ruled that the state was still obliged to continue subsidizing the SGP.⁴¹ In April 2010 the Supreme Court decided to indeed follow the advice of the procurator general and declared the discrimination of women by the SGP to be unlawful. At the time of writing this report, no steps have been taken by either the state or the party, as both say the other party will have to start implementation of the verdict.⁴²

Women's rights in the Netherlands

The Dutch CEDAW Network (Netwerk VN-Vrouwenverdrag) published a report in November, entitled 'Women's rights – some progress, many gaps', as a shadow report on 'the 5th Report from the Netherlands about the Implementation of the UN-Women's Convention, period 2005-2008', written by the Dutch government. A record number of fifty three NGOs signed the report and supported its recommendations to the CEDAW-Committee. Main shortcomings argued against in the report are the lack of protection against (sexual) violence, including legal aid for victims and restraining orders; too little government effort in the way of making sure that women's right are not harmed by third parties; and a general absence of gender specific information in many fields,

³⁹ 'Regering moet SGP onder de loep nemen', *Trouw* 27-11-2009

⁴⁰ 'Conclusie inzake Staat tegen Clara Wichmann ea', 27-11-2009 [http://zoeken.rechtspraak.nl/resultpage.aspx?snelzoeken=true&searchtype=ljn&ljn=BK4547&u_ljn=BK4547]

⁴¹ 'Standpunt SGP over vrouwen knelt opnieuw; Ruzie met ChristenUnie in Delft', *Trouw* 28-11-2009

⁴² 'SGP open voor vrouw, maar hoe?', *NRC Handelsblad* 10-04-2010

such as employment and social security.⁴³ In its February 2010 recommendations, based on both the report by the government and those by the NGOs, the CEDAW-Committee stated that the (administrative) implementation of the treaty was still lacking, as were visibility and awareness of women's right in general.⁴⁴

Discrimination against homosexuals

Underreporting of violence

Research commissioned by government ministries concluded that about 70 % of lesbian, gay, bisexual and transgender (LGBT) persons are affected by discrimination and violence, ranging from verbal violence to (10 % of cases) direct physical violence.⁴⁵ The study reported that in many cases the crimes are not reported to the police, because they feel ashamed, do not want to go through the reporting procedure or do not think it will lead to any result. Government announced a number of steps to improve the situation, raising the accessibility of the police for reports in this field and the priority given to preventive surveillance by police, as well as the priority accorded by public prosecutors to cases relating to discrimination. Root causes were also to be tackled by awareness-raising programs directed at youth.

Schools

Discrimination against homosexuals at schools remained a problem in 2009. This problem of discrimination can be separated into two distinct categories: Informal discrimination, mostly by other students; and institutionalized discrimination, with formal rules against homosexuality in mostly protestant primary and secondary schools.

Early in the year the Amsterdam Discrimination Reporting Centre (Meldpunt Discriminatie Regio Amsterdam – MDRA) reported a number of discrimination cases, amongst which were some cases of discrimination against sexual preference.⁴⁶ Amsterdam aldermen Asscher (youth and education)

43 '53 organisaties: "Maak meer werk van vrouwenrechten in Nederland"', 24-11-2009 [<http://www.aimforhumanrights.nl/actueel/persberichten/persbericht/article/53-organisaties-maak-meer-werk-van-vrouwenrechten-in-nederland-1/>]

44 Committee on the Elimination of Discrimination against Women, *Concluding observations of the Committee on the Elimination of Discrimination against Women*, 05-02-2010 [http://www.steo.nl/_documenten/vvnl/Genevefeb2010/COBS2010.pdf]

45 'Homo's doen zelden aangifte van discriminatie of geweld', press release of Ministry of Justice, 9-12-2009

46 'Amsterdam – veel discriminatie op scholen', 06-01-2009 [http://www.coc.nl/dopage.pl?thema=jongeren&pagina=vie_wartikel&artikel_id=2729]

'Meldpunt telt 21 incidenten met discriminatie', *Het Parool* 07-01-2009

and Ossel (diversity issues) concluded that these reported abuses were a signal of a wider culture of discrimination in all schools, and that hit all groups, including Jewish and Muslim students. Later, in June, a nationwide survey among school administrators showed that over sixty percent of them are uncertain whether there is any commitment to emancipation of homosexuals among the school population.⁴⁷ To address this problem, a majority in the House of Representatives requested that Education Minister Plasterk add sexual diversity to the government mandated curriculum in primary and secondary schools.⁴⁸ The Minister was reluctant to accept the request, which has evoked mixed reactions in schools: Reformed schools generally are critical of government interference in their curriculum.⁴⁹

The institutional discrimination of homosexuals by reformed schools was further brought to the fore by the case of a teacher in a primary school in Emst (Gelderland), who was suspended after he declared that he was homosexual and currently in a relationship with another man. The school stated that this lifestyle choice was incompatible with the school's principles, which implied he would not be able to continue working there as a teacher.⁵⁰ The COC (Cultuur en Ontspannings-Centrum, the leading Dutch gay rights organization) had contemplated taking this case to the Dutch Equal Treatment Commission (Commissie Gelijke Behandeling – GCB) because a decision there would set a precedent,⁵¹ but ultimately decided not to do so, after having spoken to the teacher in the Emst case.⁵² Minister Plasterk (education) claimed he was unable to overturn the school's decision, because of the 'single fact-construction' in the 1994 Equal Treatment Act (Algemene Wet Gelijke Behandeling – AWGB), which forbids schools to dismiss staff members on grounds of the single fact of their sexual preference, but allow them to do so when additional circumstances arise, such as a teacher acting on his sexual preference and entering into a relationship with another man.⁵³ The Council of State, which had been asked to advise on the subject in 2008 because of disagreement within the cabinet, stated that the law could be changed in such a way that the 'single

47 'Homobeleid op scholen blijft steken in mooie woorden', 26-06-2009 [http://www.coc.nl/dopage.pl?thema=jongeren&pagina=viewartikel&artikel_id=3027]

48 'Kabinet: Voorlichting niet verplicht op scholen', 13-11-2009 [http://www.coc.nl/dopage.pl?thema=jongeren&pagina=viewartikel&artikel_id=3155]

'Kamer wil seksualiteit in kenniseisen scholen', *Trouw* 18-12-2009

49 'Geen verplichte les over homo's; Scholen voelen niets voor wens van Kamermeerderheid', *Trouw* 21-12-2009

50 'School met de Bijbel: relatie strookt niet met doelstelling onderwijs – Homo-leraar wacht ontslag', *Algemeen Dagblad* 16-05-2009

51 'CGB-ordeel homo-kwestie Emst zaak van algemeen belang', 21-05-2009 [http://www.coc.nl/dopage.pl?thema=jongeren&pagina=viewartikel&artikel_id=2965]

52 'COC legt zaak 'Emst toch niet voor aan CGB', 30-12-2009 [http://www.coc.nl/dopage.pl?thema=jongeren&pagina=viewartikel&artikel_id=3254]

'COC ziet af van zaak homoleraar', *Trouw* 31-12-2009

53 'Homo-docent niet welkom op School met de Bijbel', 15-05-2009 [http://www.coc.nl/dopage.pl?thema=jongeren&pagina=viewartikel&artikel_id=2946]

fact-construction' would go, but proposed a new law that would still make it possible for denominational schools to demand staff to adhere to the school's principles in their behavior. Minister of the Interior Ter Horst plans to present a law based on the Council of State's advice in early 2010, but the advice has already been widely criticized for continuing to be vague and even making it easier for religious schools to fire homosexual staff members.⁵⁴

'Homo-healings'

In January Minister Plasterk (emancipation issues) decided to stop funding 'OnzeWeg' ('OurWay'), an organization that seeks to effect 'inner change' in homosexuals in order to have their feelings tone down or even disappear. Mr Plasterk decided that the organization did not comply with the guidelines for government subsidies and was in fact harming rather than helping social acceptance of homosexuality in religious circles.⁵⁵

The municipality of Amsterdam decided in February to start a campaign aimed at combating the so-called homo-healing meetings organized by some religious communities.⁵⁶ In these meetings, that are attended mainly by members of the Antillean, African, and Surinamese communities, religious leaders claim to be able to cure homosexuality and HIV. Health Minister Klink has supported the campaign by getting the Health Care Inspectorate (Inspectie voor de Gezondheidszorg) involved, after stating earlier in the year that he did not want to limit the freedom of choice or religion.⁵⁷

Discrimination based on nationality

Iranian students and the 'knowledge embargo'

In April a group of Iranian students pressed charges against the Dutch state for not allowing them to partake in any classes related to processes that could be used in the nuclear industry. Because of the Dutch interpretation of a 2006 UN Security Council resolution, Iranian nationals cannot be

54 'Raad van State blijft vaag over homoleraar; School mag beroepseisen stellen', *Trouw* 10-06-2009
'Een ongemakkelijke werkelijkheid; Homo op christelijke school: Onderwijsvrijheid of discriminatie?' *De Volkskrant* 11-06-2009

'Advies over de enkele-feitconstructie in de Algemene wet gelijke behandeling (Awgb)', Raad van State 29-09-2009 [http://www.raadvanstate.nl/adviezen/samenvattingen/samenvatting/?summary_id=26]

'Kabinet wil 'enkele feit-constructie' schrappen', 29-09-2009 [http://www.regering.nl/Actueel/Pers_en_nieuwsberichten/2009/september/29/Kabinet_wil_enkele_feitconstructie_schrappen]

'Wetswijziging levert homo niets op: Alles blijft bij het oude, of toch een stap terug in de tijd?' *Trouw* 30-09-2009

55 'Reli-hulp homo's verliest subsidie', *De Volkskrant* 09-01-2009

56 'Stad en COC in gesprek met kerken Zuidoost', *Het Parool* 04-07-2009

57 'Amsterdam start campagne tegen hiv-healings', *Trouw* 18-09-2009

permitted to acquire access to nuclear material or installations, or information that could be useful for Iran's nuclear program.⁵⁸ The students who started the lawsuit view this as an unlawful and discriminatory distinction based on descent. Furthermore, they argue, the measure mostly affects persons who have already turned away from the regime, or even those who have fled to Europe, instead of being actually used against agents of the Ahmadinejad government.⁵⁹

The court in The Hague ruled in early February of 2010 that the measure was indeed discriminatory, and ineffective as a method of harming Iran's nuclear ambitions.⁶⁰

3. Right to life, liberty and security of the person

The right to life, liberty and security implies a responsibility by the state to protect its subjects, and those within its borders, from harm. What form the protection should take, and how far-reaching government involvement in the private life of individuals must be, is often an issue of discussion within the wider debate on this right. Much of the debate in 2009 regarded the protection of already vulnerable groups, such as children, psychiatric patients and victims of trafficking in human beings. Though legal frameworks for their protection are already in place (and have been for a long time), reports that their factual protection is lacking led to calls for more adequate implementation of protection standards, and in some cases for debate around the protection standards themselves.

Protection of Ayaan Hirsi Ali

Former parliamentarian Ayaan Hirsi Ali decided in November to put an end to her legal proceedings against the Dutch state, in which she demanded that the government should pay for her personal protection. Even since before the deadly assault on filmmaker Theo van Gogh in 2004, Hirsi Ali has been under permanent personal protection. In September 2006 she left the Netherlands for the United States and a year later the government stopped paying for her protection. With her legal action Hirsi Ali had wanted to force the government to continue paying for her protection, and she called on many high profile witnesses that she hoped would confirm her assertion that the government had vowed to indefinitely guarantee her protection. These witnesses, amongst which a former government Minister and the former National Coordinator for Counterterrorism, how-

58 'Gewijzigde sanctieregeling 2007' [<http://www.rijksoverheid.nl/bestanden/documenten-en-publicaties/regelingen/2007/06/23/gewijzigde-sanctieregeling-iran-2007/wijziging-sanctieregeling-iran2007.pdf>]

59 'Iraanse studenten dagvaarden staat', *Trouw* 03-04-2009

'Kennisembargo dieprijst voor Iraniërs', *De Volkskrant* 11-12-2009

60 'Sanctieregeling Iran is discriminerend', *NRC Handelsblad* 03-02-2010

ever stated that it always had been made clear that the protection would end at some point in the future.⁶¹ Hirsi Ali has stated that she has ended her legal battle because she could no longer afford to pay for further proceedings.⁶²

Female Genital Mutilation

To combat female genital mutilation (or 'female circumcision', as it is commonly called in the Netherlands) State Secretary for Health Bussemaker proposed to have parents from 'risk countries' (Egypt, Ethiopia, Eritrea, Somalia and Sudan) sign a contract before travelling to their native country, in which they affirm that they will not have their daughters circumcised while abroad. This new approach has already been proven to work in France, where parents use the contract to resist pressure from family members.⁶³ Most parties in parliament have voiced their support for Ms Bussemaker's plan.⁶⁴ Towards the end of the year, this proposal was put in motion in the shape of a 'Declaration against Female Genital Mutilation' to be presented by employees of the preventive youth health care organizations.⁶⁵

The first Dutch case against female genital mutilation came before court in February of 2009, against a then twenty nine year old Moroccan man. The case attracted much attention, not only because it was the first of its kind, but also because experts widely expected something else to be going on, as female genital mutilation is extremely rare in the Moroccan community.⁶⁶ In September the court in Haarlem ruled that the father's guilt could not be proven.⁶⁷

Solitary confinement in psychiatric care

Troubling reports in the first months of 2009 about the use of solitary confinement in psychiatric hospitals, for adults as well as for adolescents, evoked a lively discussion about the use of forced isolation in mental care facilities. Research by the Health Care Inspectorate showed that in the years 2004 through 2008 151 patients had been isolated for longer than a year, and 3 500 patients for less than a year.⁶⁸ The House of Representatives was shocked by these figures, and by reports

61 'Hirsi Ali geeft zaak op', *Het Parool* 02-10-2009

62 'Ayaan Hirsi Ali staakt strijd om beveiliging', *De Volkskrant* 02-11-2009

63 'VWS: contract tegen besnijdenis meisjes', *NRC Handelsblad* 28-01-2009

64 'Kamer steunt plan tegen besnijdenis', *De Volkskrant* 29-01-2009

65 'Nederland voert Verklaring tegen Meisjesbesnijdenis in', speech by Secretary of State Bussemaker, 26-11-2009
[<http://www.rijksoverheid.nl/documenten-en-publicaties/toespraken/2009/11/26/Nederland-voert-verklaring-tegen-meisjesbesnijdenis-in.html>]

66 'Het raadsel van de Marokkaanse besnijdenis', *NRC Handelsblad* 14-02-2009

67 'Vrijspraak inzake besnijden dochter', *De Volkskrant* 12-09-2009

68 'Te veel patiënten in isoleer', *Het Parool* 08-04-2009

on individual patients, and asked Health Minister Klink to improve oversight in order to limit inappropriate use of isolation.⁶⁹ Psychiatrists and employees of mental hospitals have stated that there is already a downward trend in the use of solitary confinement, but that in some cases, there are few alternatives. The fact that in other countries fewer patients get isolated, they say, is due to cultural differences: In the Netherlands, there is a strong sentiment against coerced medication, which is used in many other countries. Besides this traditional tendency, in most Dutch institutions there are simply too few psychiatric nurses available to offer the kind of personal assistance that could in theory replace isolation as a tool to calm down patients.⁷⁰

Psychologically troubled youths placed in regular detention facilities

A debate that is connected with the one above, on (over-)use of solitary confinement, is the issue of unwarranted detention of psychologically troubled youths in regular detention facilities, which was also taken up in the report by Thomas Hammarberg, the Commissioner for Human Rights of the Council of Europe. Due to the long waiting lists for placements in youth care facilities, children and young adolescents with psychological and/or behavioral problems are often (temporarily) placed in regular penitentiary youth institutions. Here, they are intermixed with a population with a criminal background and do not receive adequate care for their ailments (if any care is given at all).⁷¹

As outrage over this issue grew, both in the House of Representatives and in society at large, Youth Minister Rouvoet and Justice State Secretary Albayrak announced in May that they would stop placement of youths with psychological problems in youth penitentiaries from August on, and that they would do everything in their power to have all patients unduly placed there transferred to psychiatric youth care institutions by the start of the next year.⁷²

Human trafficking

At the occasion of the presentation of her organization's seventh annual report, Dutch National Rapporteur on Trafficking in Human Beings Corinne Dettmeijer-Vermeulen signaled that human trafficking is still a big problem in the Netherlands and that judges are not always completely aware

⁶⁹ 'Cijfers over isolatie schokken Kamer', *De Volkskrant* 09-04-2009

'Minister Klink laat gebruik isoleercellen onderzoeken', *Algemeen Dagblad* 20-05-2009

⁷⁰ 'Poepen in een doos; In psychiatrische jeugdklinieken belanden veel kinderen in de isoleercel', *NRC Handelsblad* 14-02-2009

⁷¹ 'Een lastige puber in de cel', *NRC Handelsblad* 10-02-2009

⁷² Ministerie voor Jeugd en Gezin, 'Jongeren gesloten jeugdzorg niet meer naar justitiële jeugdinrichtingen', 28-05-2009 [<http://www.jeugdengEZIN.nl/nieuwsberichten/2009/gesloten-jeugdzorg-niet-jii.asp>]

of how to best handle these cases. An examination of relevant jurisprudence has shown that judges struggle with the legal and social context of human trafficking, especially pertaining to prostitution. This led her to call for specialization amongst judges, so they would be able to more adequately address the problem.

Another problem pointed out by the National Rapporteur is a lack of attention to care for victims, who are often held as illegal aliens rather than being cared for. One of the recommendations made by the National Rapporteur is that it be made possible for trafficking victims to apply for a permanent residence much earlier on in their case.⁷³

4. Administration of justice, including impunity and the rule of law

The principles underlying the rule of law, and its centrality as a characteristic of states, oblige government to serve justice to all, in an effective manner, with due process and speed, and in recognition of the equality before the law of every individual. On the one hand, serious questions were raised in 2009 about the rights of suspects in criminal cases and the relevance of tapping large numbers of phone conversations. On the other hand, calls were heard for more attention to the plight of victims, leading to demands for harsher sentences and more speedy investigations and trials. Striking a balance between these two requests has been a challenge and will continue to be in the future.

'Hyper-accelerated criminal proceedings'

In the first days of January of 2009 a total of thirty eight cases were brought before court in so-called 'hyper-accelerated proceedings' ('supersnelrecht' in Dutch) for criminal offences committed during the New Year's festivities. In Amsterdam, Rotterdam, The Hague and Utrecht, these fast proceedings were made possible for offenses that would be relatively easy to prosecute. By putting suspects before a judge within three days of their arrest, Justice Minister Hirsch Ballin had wanted to bring down the number of (violent) incidents that happen every New Year's Eve.⁷⁴

⁷³ 'Foreword of the Seventh Report of the Dutch National Rapporteur on THB', 08-12-2009 [<http://english.bnrm.nl/reports/7th-report/>]

'Aantal vrijspraken in mensenhandel is hoog', *NRC Handelsblad* 29-10-2009

'Rechtshouders moeten meer specialiseren', *Algemeen Dagblad* 19-09-2009

⁷⁴ 'Supersnelrecht rond viering van nieuwjaar', *NRC Handelsblad* 05-12-2008

'OM brengt eerste zaken voor de supersnelrechter', 02-01-2009 [http://www.om.nl/algemene_onderdelen/uitgebreid_zoeken/@149795/om_brengt_eerste/]

Lawyers and the Council for the Judiciary had been critical of the plan. They expected that the limited time available for preparations on both sides would harm the quality of justice. The sessions proved chaotic in some cases and several defense lawyers claimed they had indeed been unable to properly prepare for the proceedings.⁷⁵ In their March evaluation the Council for the Judiciary advised to only use hyper-accelerated proceedings in the most simple of cases: Only if the suspect would confess, if evidence could be gathered easily, and if no external experts or victims had to be involved in legal proceedings would it be worthwhile to continue using the faster system.⁷⁶ A majority in the House of Representatives asked the Justice Minister to consider using hyper-accelerated proceedings in more circumstances, such as riots accompanying football matches. At New Year's Eve 2009 a new attempt was made to get the system to work, but the results and problems were mostly similar to those of the previous year.⁷⁷

Citizen's Committee against Injustice

Joost Eerdmans, a former parliamentarian for the LPF (Lijst Pim Fortuyn), in August presented the Citizen's Committee against Injustice (Burgercomité tegen Onrecht), chaired by himself. According to Eerdmans and the committee, which includes representatives from some victim's associations, current Dutch criminal law focuses too much on the offender and his rehabilitation and resocialization, and not enough on the victim. Proposals by the committee included a system of minimum punishments, life long incarceration of all murderers and pedophiles, and a law forbidding criminals to live within a twenty five kilometer radius from their victims.⁷⁸

Within a few days after the presentation, a considerable falling out between the members of the committee had occurred, with representatives of various victims' associations withdrawing over disagreement with Eerdmans.⁷⁹ This did not mean the end of the committee, however, as Eerdmans still regularly appeared in the news, asking for tougher sentences and end to unsupervised leave for forensic patients.⁸⁰

⁷⁵ 'Niet goed voor kwaliteit van de rechtsgang', *Het Parool* 03-01-2009

'Chaotische zittingen tijdens supersnelrecht', *NRC Handelsblad* 03-01-2009

'Rechtbank kritisch over zittingen via snelrecht', *Het Financieel Dagblad* 03-01-2009

⁷⁶ 'Supersnelrecht werkt alleen bij eenvoudige zaken', *Trouw* 25-03-2009

⁷⁷ 'Rond oud en nieuw weer supersnelrecht', *Het Parool* 14-12-2009

'Niet één vonnis supersnelrecht', *Het Parool* 05-01-2010

⁷⁸ 'Burgercomité wil harder straffen', *Trouw* 01-09-2009

⁷⁹ 'Nabestaanden: geen zin in Eerdmans' initiatief', *De Volkskrant* 03-09-2009

⁸⁰ 'Vrijlating pedo wekt woede', *Algemeen Dagblad* 30-10-2009

'Over het heilige geloof in zwaardere straffen: een mythe of harde noodzaak', *Trouw* 07-11-2009

Access to counsel during police interrogations

In a letter sent to the House of Representatives in April, Justice Minister Hirsch Ballin announced that he wanted to allow suspects the opportunity to speak to a lawyer before their first police interrogation. Police officers would be obliged to explicitly remind suspects of this right. This new rule is a reaction to a verdict reached by the European Court for Human Rights (ECtHR), which ruled that suspects have the right to counsel from the moment they are first considered a suspect in a criminal matter. Mr Hirsch Ballin will not go so far as to allow the defense lawyer to sit in on the interrogation, as he feels a meeting between lawyer and suspect fulfills this criterion posed by the ECtHR.⁸¹

Underage suspects, however, will likely get the right to have a counselor present during their interrogation. This is the outcome of a verdict by the Dutch Supreme Court in reaction to the ECtHR ruling. It confirms the earlier plans of the Justice Minister, but goes further: Statements by suspects made to the police before talking to a lawyer will be deemed inadmissible as evidence in further proceedings. The Dutch Association of Defence Counsel is happy with the Supreme Court ruling and states that it will prevent false confessions given under duress.⁸²

Tapping of phone conversations

In a number of criminal cases in 2009, the prosecution has been under intense criticism for listening in on telephone conversations between defendants and their defence counsel.⁸³ Because of the many mistakes made in this field, and out of recognition of the importance of free communication between a suspect and his lawyer, the Board of Procurators General has reached an understanding with the Netherlands Bar Association to have lawyers submit five telephone numbers that will not be tapped.⁸⁴ Justice Minister Hirsch Ballin has supported this proposal and has presented it to the House of Representatives. In addition to what the prosecutors and lawyers asked, the information relating to the conversation (such as the duration, the phone number on the other side of the line) will be automatically deleted after a given amount of time.⁸⁵

81 'Nieuwe richtlijnen politieverhoor verdachten', 16-04-2009 [<http://www.justitie.nl/actueel/nieuwsberichten/archief-2009/90416nieuwe-richtlijnen-politieverhoor-verdachten.aspx>]

'Recht op advies bij verhoor', *Het Parool* 16-04-2009

'Verdachte krijgt recht vóór verhoor te praten met advocaat', *De Volkskrant* 17-04-2009

82 'Jongere moet meteen na zijn aanhouding een advocaat krijgen', *De Volkskrant* 01-07-2009

83 'Advocatentaps in liquidatiezaak niet vernietigd', *NRC Handelsblad* 28-03-2009

'Geheimhoudersgesprekken' niet vernietigd', *Het Parool* 30-03-2009

84 'Advocaten krijgen 'vrije' GSM-lijnen', *Trouw* 04-04-2009

85 'Kamer stemt in met maatregel tegen aftappen', *Trouw* 17-04-2009

Per capita more people have their phone tapped in the Netherlands than anywhere else in the world. A response by the Justice Ministry to questions asked in parliament shows that in 2008 26,425 phone numbers were tapped. In absolute figures only Germany taps into more phone lines, with about 44,000 numbers under surveillance. Though one in every six hundred individuals in the Netherlands has their phone tapped, the Justice Ministry warned against premature conclusions based on these statistics: Other states may tap less because of legal or cultural differences, but they might make more liberal use of other methods of investigation.⁸⁶

Possible sharia courts in the Netherlands

Over the summer, a British report on sharia courts operating in the UK raised fear about the possible existence of similar courts in the Netherlands. Though experts pointed out that, if anything resembling sharia courts would exist in the Netherlands, this would be limited to mediation and voluntary disciplinary action in family cases, some politicians painted pictures of extrajudicial courts condemning people to being stoned to death or having their hands amputated.⁸⁷ Justice Minister Hirsch Ballin ordered a comprehensive investigation into some mosques that were suspected of being connected with sharia courts. In a preliminary statement to parliament, Mr Hirsch Ballin stated that voluntary mediation by Islamic religious leaders would be accepted, but that violations of Dutch law by sharia courts would not be tolerated.⁸⁸ The full investigation was presented in April 2010 with the conclusion that there are no sharia courts in the Netherlands; advice and mediation based on Islamic principles and jurisprudence is practiced on a limited scale.⁸⁹

5. Right to privacy, nationality, marriage and family life

New digital developments of the last few years have opened up the possibility for the government to gather an increasing amount of information about its citizens. This information may be useful to serve the greater good of national security, but very often also involves invasion of the private sphere of an individual. Privacy issues have been an aspect of discussions about the implementa-

⁸⁶ 'Evaluatie van hoofdstuk 13 van de Telecommunicatiewet', Tweede Kamer, vergaderjaar 2008-2009, 30 517, nr. 14 'Justitie in de fout, omdat ze te veel telefoons tapt', *Trouw* 19-09-2009

⁸⁷ 'Ophef over status 'shariarechtbanken' in Nederland', *Trouw* 10-07-2009

⁸⁸ 'Kabinet: geen parallelle samenleving laten ontstaan', 01-09-2009 [<http://www.justitie.nl/actueel/persberichten/archief-2009/90901-kabinet-geen-parallelle-samenleving-laten-ontstaan.aspx>]

⁸⁹ 'Geen sharia rechtbanken in Nederland', Radboud Universiteit Nijmegen, 23-04-2010 [http://www.ru.nl/actueel/persberichten/item_784781/geen/]

tion of new technologies in government policies, but they were hardly the most prominent parts of these debates. In overview, though, it becomes clear that the ongoing digitalisation of government services and monitoring will have real and possibly far-reaching implications for the privacy of Dutch citizens.

New passports and a national finger print database

In response to a 2004 EU directive, in which member states agreed to enhance the safety features of their travel documents, the Dutch government decided to not only store two fingerprints on a chip in new passports, as stated in the directive, but to also store them in a central database.⁹⁰ Privacy activists have decried this move as a step away from verification of the person towards universal identification.⁹¹ Because the police and prosecution will have access to the database in the case of very serious crimes, every Dutch national will over time become part of this large pool of fingerprint data. Combined with the shaky scientific status of fingerprinting in general, this leaves many worried about the possibilities of innocent individuals becoming suspects in criminal cases.⁹²

Though hacking or loss of data through careless behavior have been cited as major concerns by critics, State Secretary for the Interior Bijleveld has dismissed these issues, citing the high grade protection of the database.⁹³ Ms Bijleveld was supported by a majority in parliament and has been able to implement the new passport without any meaningful obstacles. A request for an interim measure that was brought before the European Court for Human Rights at the last possible moment by Vrijbit, a privacy pressure group, was thrown out because no one was harmed by the measure yet as no passports had yet been issued. The substantive case brought before the court by Vrijbit is still under consideration.⁹⁴

Storing telecom and internet traffic data

In July the Dutch Senate deliberated on the application in the Netherlands of the European Union Data Retention Directive, under which member states are obliged to make legal arrangements for storing telecom and internet traffic data. It decided to endorse the law, but only if the period of

⁹⁰ 'En weer een database', *NRC Handelsblad* 10-06-2009

⁹¹ 'Sla vingerafdrukken niet centraal op', *De Volkskrant* 26-06-2009

⁹² 'Bij het vastleggen van vingerafdrukken dreigt misbruik door de overheid', *De Volkskrant* 18-09-2009

⁹³ 'Staatssecretaris niet bang voor misbruik persoonsgegevens', *Trouw* 22-09-2009

⁹⁴ 'Hof weigert – zonder motivering – schorsing van opslag vingerafdrukken', 18-09-2009 [<http://vrijbit.nl/dossier/registratie/dossier-vingerafdrukken/item/710-hof-weigert-zonder-motivering-schorsing-van-opslag-vingerafdrukken.html>]

'Hof: vingerafdruk mag in databank', *NRC Handelsblad* 19-09-2009

retention would be brought down from one year, as proposed after debate in the House of Representatives, to the European minimum of six months. Senators have raised doubts about the effectiveness of the measure, and some have voiced their concern about possible abuse of the system by using other channels than those monitored.⁹⁵

Registration of ethnicity

The Rotterdam branch of GreenLeft (GroenLinks), which was part of the municipal executive, called for an end to ethnic registration of problematic youths. Though the system, implemented in 2002, had been approved by the Data Protection Board (College Bescherming Persoonsgegevens – CBP) in 2006, it now ruled that there is no base in law to record anyone's ethnicity.⁹⁶ The other parties in the Rotterdam executive, who still want to continue documenting ethnicity in order to offer more fitting resolutions to problematic situations, are supported by Integration Minister Van der Laan, and a majority in the House of Representatives asking the Minister to amend the law to allow the recording of ethnicity in the Problematic Youths Reference Index.⁹⁷

Privacy issues related to traffic

Apart from concerns about technical and economic issues, a system proposed by Traffic Minister Eurlings to have motorists charged per kilometer they drive evoked wide debate about the right to privacy. Critics have drawn attention to weak security measures of both the equipment proposed, and of the protocols used to transport data, a point of view further supported by the Council of State, which has warned against possible technical shortcomings of the system.⁹⁸ Mr Eurlings, however, has stated that it is technically impossible for third parties to gain access to any individuals' traffic data and that the system is no more dangerous for privacy than the use of a cell phone.⁹⁹ Still,

95 'Kabinet: bewaartermijn internetgegevens zes maanden' 04-09-2009 [http://www.regering.nl/Actueel/Persberichten_ministerraad/2009/september/04/Kabinet_bewaartermijn_internetgegevens_zes_maanden]
'Internetdata half jaar bewaren', *Het Financieële Dagblad* 08-07-2009
'Senaat moet privacy burgers bewaken', *De Volkskrant* 06-07-2009

96 'Verlopen ontheffingstermijn maakt registratie etniciteit onrechtmatig' 10-04-2009 [http://www.cbppweb.nl/Pages/med_20090410_registratie_etniciteit_onrechtmatig.aspx]
'College: noteren etniciteit jongeren verboden', *NRC Handelsblad* 10-04-2009

97 'Mogelijk toch registratie etniciteit', *NRC Handelsblad* 03-07-2009

98 'Kastje kilometerheffing is zo lek als een mandje', *Het Parool* 01-12-2009

99 "Ophef km-heffing is bankmakerij", *De Volkskrant* 27-11-2009

privacy activists are not content, as the system offers many possibilities to add functions at a later date that are in fact invasions of privacy.¹⁰⁰

A system to streamline ticketing in public transport has raised similar concerns. The so-called OV-chip card tracks where and when a passenger checks in and out of a bus, train, tram or subway car. The new system, which has been in place in the Rotterdam subway system for some years, has gone live for the whole country at the start of 2010, but the preparatory track has been burdened with problems. One student was able to apply for a card using the name and photograph of the queen, after earlier acquiring a card bearing the likeness of Osama bin Laden, proving that it is very easy to commit fraud under the new system.¹⁰¹ Though the privacy policy of the company managing the cards explicitly states that data can be supplied to the police in cases where they are legally obliged to do so, relatively few have protested against this and other possible privacy implications of the OV-chip card system.¹⁰²

Digital body scans

A plan to introduce body scans that was unveiled in November was further accelerated in the last days of December, after a terrorist attempted to ignite explosive materials aboard a flight from Amsterdam to Detroit. In the first days after the incident, security at Schiphol airport was sharpened, with all passengers and luggage being manually searched.¹⁰³ The body scan machines, which the airport had already purchased, had been tested on a voluntary basis, pending approval by Dutch and European lawmakers. After the abortive terrorist attack, a majority in the Dutch House of Representatives was in favor of introducing obligatory body scans for every passenger. The European Commission had already approved voluntary use, but was still engaged in debate with the European Parliament about privacy concerns and efficacy of the scans.¹⁰⁴ The fact that two of the body scan machines operated by Schiphol are monitored by computers instead of actual security officers

¹⁰⁰ 'Vraag en antwoord kilometerprijs: privacy en fraude', [http://www.verkeerenwaterstaat.nl/onderwerpen/mobiliteit_en_bereikbaarheid/kilometerprijs/vraag_en_antwoord/privacy_fraude/index.aspx]

'Geen opslag privégegevens automobilisten', *Trouw* 17-11-2009

¹⁰¹ 'Student krijgt moeiteloos ov-kaart op naam Beatrix', *Algemeen Dagblad* 25-11-2009

¹⁰² 'Reiziger ziet wel degelijk voordelen in ov-chipkaart', *Algemeen Dagblad* 28-01-2009

'Big Brother stuit op weinig weerstand', *De Volkskrant* 14-09-2009

'De OV-chipkaart en uw persoonsgegevens', 16-09-2009 [<http://www.ov-chipkaart.nl/pdf/22246/ovchipenuwpersoonsgegevens>]

¹⁰³ 'Digitale bodyscan Schiphol', *Het Parool* 27-11-2009

'Een uur voor de landing moeten de riemen vast', *NRC Handelsblad* 28-12-2009

¹⁰⁴ 'Het lichaam gescand', *NRC Handelsblad* 29-12-2009

'Scan vist terrorist er sneller uit', *Trouw* 29-12-2009

mitigates some privacy issues, but leaves concerns about the growing body of invasive measures implemented under the pretext of bolstering security.¹⁰⁵

National Electronic Health Records

In February the House of Representatives gave its approval to a bill submitted by Health Minister Klink, which provides for the creation of a personal Electronic Patient Record (Electronisch Patiëntendossier – EPD) for every individual in the Netherlands. This system, which does not create a new national database, but allows medical professionals to connect their databases and access each other's information, sparked wide debate over privacy issues and flow of communication, but also over whether it would actually help doctors in their treatment of patients.¹⁰⁶

Due to a multitude of problems, including the discussion mentioned above, but also reluctance among primary care physicians, the implementation of the EPD has been delayed until some time in 2010.¹⁰⁷

Double nationalities and passports

The installation of Moroccan-born politician Ahmed Aboutaleb as mayor of Rotterdam in January stirred up debate about double nationalities. The fact that Mr Aboutaleb is at the same time a Dutch and a Moroccan national had already been a point of concern for some parties in parliament when he was appointed State Secretary for Social Affairs in 2006, and much of the discussion that accompanied the Rotterdam nomination closely resembled the earlier debate: Aboutaleb was alleged to serve two masters, and would have to renounce his Moroccan nationality in order to gain the trust of the city council. Mr Aboutaleb stated that he appreciated that the subject was now under discussion, but that this should be handled bilaterally between the Minister of Foreign Affairs and the Moroccan authorities.¹⁰⁸

The problem is that Moroccans have no legal possibility to denounce their nationality. Mr Abouta-

¹⁰⁵ 'Security Scan op Amsterdam Airport Schiphol geen privacy issues' 01-01-2010 [<http://www.schiphol.nl/Reizigers/Nieuws/SecurityScanOpAmsterdamAirportSchiphol.htm>]

'Alleen de computer ziet de naakte lichamen', *NRC Handelsblad* 31-12-2009

¹⁰⁶ 'Tweede Kamer: overhaast invoeren patiëntdossier heeft te veel risico's', *De Volkskrant* 21-01-2009

'Landelijk dossier zo betrouwbaar als wikipedia', *Het Financieele Dagblad* 09-02-2009

'Standpunt Klink inzake EPD is verbluffend naïef', *Het Financieele Dagblad* 23-03-2009

¹⁰⁷ 'De rauwe kanten van het patiëntendossier', *De Volkskrant* 19-02-2009

'EPD is opgedrongen', *Het Parool* 09-12-2009

¹⁰⁸ 'Aboutaleb stuurt zijn paspoort niet terug', *De Volkskrant* 06-01-2009

'Aboutaleb verdient geen lege enveloppe als welkom in Rotterdam', *Trouw* 06-01-2009

'Notulen van de raadsvergadering van 5 januari 2009' 05-01-52009 [<http://www.bds.rotterdam.nl/content.jsp?objectid=195511>]

leb did raise this issue with Moroccan Foreign Minister Fassi-Fihri when he was on a working visit in Morocco, but the Dutch Ministers of Justice and of Foreign Affairs reminded him that these deliberations were to take place on the cabinet-level.¹⁰⁹ So far, the Moroccan authorities have been adamant that all descendants of Moroccans abroad are to receive a Moroccan passport, as a sign of eternal loyalty to the king.¹¹⁰

Similar issues existed with children being made Turkish nationals against the wishes of their parents. The Association of Netherlands Municipalities has stated that municipal officials who register nationality of newborns according to the laws of the countries themselves simply follow the rules and that it is up to parliament to change these laws.¹¹¹ A majority in the House of Representatives has indeed asked the cabinet to change the procedures and stop registration of the second nationality of newborns.¹¹²

Moroccan government policy regarding first names was also a subject of debate in 2009. If Moroccan nationals want their children to have full Moroccan citizenship, parents have to choose names that are on a list of pre-approved names supplied by the Moroccan government, even in the Netherlands. Because they assume parents will want their children to also be Moroccan citizens, municipal officials in some Dutch cities have in the past screened names by using this official list. Beside the fact that many Berber names are excluded from the list (which as such can be seen as an instrument of the cultural policy of Morocco), many Dutch politicians have taken offence to the fact that the Moroccan government limits the freedom of its citizens in choosing the names they want their children to have. In April of 2009 the mayors of Rotterdam and Amsterdam announced that the list would no longer be used in their municipalities.¹¹³

Privacy violations by 'pedohunters'

On several different occasions, self-proclaimed 'pedohunters' posted names, addresses and in some cases even pictures of alleged pedophiles on the internet. In most cases pedophiles who had (long) served their sentence were targeted, or those who were under current police investigation, but

¹⁰⁹ 'Kamerbrief inzake beantwoording vragen van leden Ten Broeke en De Krom over werkbezoek van burgemeester van Rotterdam aan Marokko', 21-08-2009 [http://www.minbuza.nl/nl/Actueel/Kamerstukken/2009/08/Kamerbrief_inzake_beantwoording_vragen_van_de_leden_Ten_broeke_en_De_Krom_over_het_werkbezoek_van_de_burgemeester_van_Rotterdam_aan_Marokko]

¹¹⁰ 'Aboutaleb ging zijn boekje te buiten in Rabat', *Trouw* 03-07-2009

'Marokko wijst discussie paspoort 'keihard' af', *Elsevier* 08-07-2009

¹¹¹ 'Geboorteaangifte naar ambassades', *Algemeen Dagblad* 02-04-2009

¹¹² 'Kamer: Stop registratie dubbele nationaliteit', *Algemeen Dagblad* 03-04-2009

¹¹³ 'Marokkaanse namenlijst ook weg uit Amsterdam', *Trouw* 10-04-2009

one case also included an anonymous accusation against a mentally disabled man who, according to the police, had never before been connected to a vice case.¹¹⁴ Most 'pedohunters', who operate their websites in the US, as they would be illegal under Dutch law, claim they only want to inform the public about the criminals living among them, but threats and actual violence against the men mentioned on the site are fairly common.¹¹⁵

Though the 'pedohunters' regularly lose lawsuits, their sites cannot easily be taken down by Dutch authorities. Ownership of the website can't be proven conclusively, and the 'pedohunters' are willing to devote a large amount of time and resources to continually appealing verdicts.¹¹⁶

6. Freedom of movement

Within the Netherlands, and in fact the European Union, everyone is free to travel and settle anywhere. If there is a threat to public order, however, local authorities can prohibit an individual from residing or simply being present in a specific area. As noted in the section on the Citizen's Committee against Injustice, calls have been made to prohibit released criminals to live near their victims. At this time, there is no legal framework in place for this kind of policy. This did not prevent a case built on exactly this premise from making national headlines in October.

Prohibition of residence for pedophile

After Eindhoven mayor Rob Van Gijzel banned a pedophile who had served his full prison sentence from settling in his city, legal experts decried the decision as illegal and a violation of the man's fundamental rights. Mr Van Gijzel had stated that he would allow the pedophile to settle in Eindhoven if he would agree to wear a GPS ankle bracelet. The man, who is known as Sytze van der V., would not agree to this and could not be forced to do so, as his appeal was still under review by the Supreme Court.¹¹⁷ The mayor's decision had been informed by fears for Van der V.'s safety, as some neighbors had already stated that they would take care of him themselves, if the municipality would not. The administrative court in Den Bosch ruled that the ban was unlawful and went too far: If neighbors would riot in reaction to the pedophile returning, it would be up to Mr Van Gijzel

¹¹⁴ "Dit is een actie van een paar idioten", *De Volkskrant* 23-07-2009

¹¹⁵ 'Bedreigingen na publicatie van privégegevens pedofielen', *NRC Handelsblad* 09-02-2009

¹¹⁶ "Pedojaagster" moet links van website verwijderen', *Trouw* 25-03-2009

¹¹⁷ Een digitale kruistocht tegen pedoseksuelen', *NRC Handelsblad* 23-03-2009

¹¹⁷ Pedofiel na straf geweerd uit stad', *De Volkskrant* 06-10-2009

¹¹⁷ 'Weigeren pedofiel gaat 'veel te ver'', *Trouw* 07-10-2009

to take action against this, and not against Van der V.¹¹⁸

A month later, in October, Van der V. had taken up residence in Utrechtse Heuvelrug, as his attempts to find a place of residence in Eindhoven had been without success. The mayor of Utrechtse Heuvelrug, Mr Naafs, had him removed from a holiday resort, as he feared Van der V. would repeat his offence.¹¹⁹ After an administrative court had again ruled that this was unlawful, the municipality of Eindhoven agreed to help look for a home for Van der V., a search that, according to city officials, is being harmed by his uncooperative attitude.¹²⁰

7. Freedom of religion, belief, expression, association and peaceful assembly, and right to participate in public and political life

The freedom of expression in all its possible facets has been a permanent matter of debate in the Netherlands in the past few years. The border between freely speaking one's mind and hate speech is constantly being tested, in a society where several different groups are (re-)establishing and strengthening their identity. The tension here is between freedom of speech and the right not to be discriminated: What is legitimate free expression for one might be hurtful for another person and his or her community. Though there is no clear direction to the debate, the general trend seems to be that more hurtful comments are increasingly seen as acceptable by society as a whole. Yet, statements by prominent Muslims that are critical towards Dutch society a number of times have become the subject of controversy, without it being clear that they had abused the right to freely express.

Absolute freedom of speech

Parliamentary party leader Mark Rutte of the liberal People's Party for Freedom and Democracy (Volkspartij voor Vrijheid en Democratie – VVD) contributed to the nation-wide debate on freedom of expression by stating, in January, that in his opinion there should be absolute freedom of speech, with only incitement to hatred and incitement to violence remaining criminal offences. This

¹¹⁸ 'Burgemeester mag veroordeelde man toegang Eindhoven niet ontzeggen' 27-10-2009 [<http://www.rechtspraak.nl/Actualiteiten/Burgemeester+mag+veroordeelde+man+toegang+Eindhoven+niet+ontzeggen.htm>]

'Afwijzen pedoverbod wekt beroering', *De Volkskrant* 28-10-2009

¹¹⁹ 'Pedoseksueel is 'vogelvrij'', *Trouw* 26-11-2009

¹²⁰ 'Rechter schorst gebiedsverbod veroordeelde zedendelinquent' 03-12-2009 [<http://www.rechtspraak.nl/Gerechten/Rechtbanken/Utrecht/Actualiteiten/Rechter+schorst+gebiedsverbod+veroordeelde+zedendelinquent.htm>]

'Op zoek naar huis voor pedo', *Het Parool* 04-12-2009

statement was a direct response of the charges brought against Geert Wilders. Prime Minister Balkenende and most other parties in parliament rejected Mr Rutte's plans, as they would open the door to defamation of groups and of individuals and because this new viewpoint contradicted the VVD's earlier statement that extremist imams should be deported.¹²¹

As he had promised in January, Mr Rutte presented first plans for a bill in May, in which he stated that the absolute freedom of speech should be guaranteed. To illustrate his point, Mr Rutte stated that Holocaust-denial would be legal, and that denialists would then be dealt with in public debate, instead of by criminal law. This example proved fatal, as the legalization of Holocaust-denialism became the focal point of public debate, with Mr Rutte presented as its proponent. A full bill was never proposed by the VVD, but the discussion did lead to a proposal by the Christian Union (ChristenUnie) party to explicitly prohibit denial of the Holocaust or any other genocide. This idea, again, was criticized, in large part because the Council of State had reported that the proposal would be of little added value and that existing laws could already be used to the same effect.¹²²

Geert Wilders on trial

After the Public Prosecution Service had decided in June of 2008 to dismiss all cases brought against Geert Wilders relating to him allegedly inciting hatred, the Amsterdam court of appeal overturned this decision in January of 2009 and ordered the Prosecution to start a prosecution case. The court questioned the acceptability of the radical and generalizing statements made by Wilders and views prosecution as an effective way to draw the line between public democratic debate and unreasonable discrimination.¹²³ Wilders has tried to have this case thrown out of court by directly appealing to the Supreme Court,¹²⁴ but the procurator general dismissed the appeal, stating that he was unable to assess the procedure of the case without getting into the facts of it, which the Supreme Court cannot do.¹²⁵

Full proceedings started in January 2010, but even before that, the case was widely debated. This started with criticism of the order to prosecute Wilders. According to some, the document in which the court of appeal demanded Wilders be brought up on charges was in itself too conclusive,

¹²¹ 'Rutte: Wet vrijheid van meningsuiting op de schop', *Elsevier* 25-01-2009

'Rutte alleen in debat over vrije woord', *NRC Handelsblad* 28-01-2009

¹²² 'Ophef in VVD om uitspraak Rutte Holocaust', *NRC Handelsblad* 28-05-2009

'ChristenUnie: boete of straf voor ontkennen en bagatelliseren genocide', *De Volkskrant* 09-07-2009

¹²³ 'Hof: Wilders moet worden vervolgd', *NRC Handelsblad* 21-01-2009

¹²⁴ 'Wilders vraagt Hoge Raad om vernietiging', *NRC Handelsblad* 03-02-2009

¹²⁵ 'Vervolging Geert Wilders kan doorgaan', *De Volkskrant* 20-05-2009

'Wilders toch vervolgd', *NRC Handelsblad* 20-05-2009

and the court had apparently already reached a verdict before the case was even opened.¹²⁶ Another procedural difference of opinion was about the number of witnesses Wilders summoned. He had originally called up eighteen witnesses, including a radical imam, law experts and Mohammed B., the convicted murderer of Theo van Gogh. By publicly interrogating radical Muslims, Wilders had presumably wanted to prove that his statements about Islam were 'facts' that could not be subject to limitation of freedom of speech. The court, however, decided in February 2010 that it would be unnecessary to hear all but three of these 'expert witnesses', because they would add little to the facts under consideration.¹²⁷

More substantive debate surrounded the question whether Wilders should be prosecuted at all. Some commentators held that the trial here was not against Wilders, but against the freedom of expression. Others have criticized Wilders for his attempt to prove that his statements about Islamic beliefs and Muslims are factual, rather than an opinion. As before, Wilders is also still under criticism for branding himself a champion for freedom of expression, while at the same time arguing for limited (religious) freedoms for others.¹²⁸

Regardless of the debate surrounding the case, it will probably take quite some time before a final and irrevocable verdict will be reached. The sessions held in January of 2010 were only meant to arrange procedures for further sessions, and the substantive hearing will take place no earlier than July. After that, there are still multiple levels on which either Wilders, the prosecution, or the persons who asked the court of appeals to demand prosecution can appeal a verdict. Experts have stated that it will probably take until 2015 before justice has run its full course (up to the level of the European Court for Human Rights) and a final verdict will be reached.¹²⁹

Tariq Ramadan: controversy and dismissal

Swiss-Egyptian philosopher Tariq Ramadan, who had been employed by the municipality of Rotterdam as Islam and integration advisor since January 2007, became the subject of controversy in late March of 2009, after the *Gay Krant*, a periodical aimed at homosexuals, published some statements Mr Ramadan had allegedly made on cassette tapes. These quotes were very critical of the

¹²⁶ 'Kritiek op motivering hof bij vervolging Wilders', *Trouw* 23-01-2009

¹²⁷ 'Wilders mag drie getuigen horen', *Trouw* 04-02-2010

¹²⁸ 'Het woord moet vrij zijn', *De Volkskrant* 06-06-2009

'Rechtszaak tegen Wilders bepaalt grens uitingsvrijheid', *Trouw* 09-01-2010

'Wilders wil gewoon af van godsdienstvrijheid', *Trouw* 04-02-2010

'Geert Wilders staat voor niets met zijn vrijheid', *Trouw* 23-01-2010

'Het proces tegen Wilders is anti-liberaal', *NRC Handelsblad* 18-01-2010

¹²⁹ 'Definitieve uitspraak vermoedelijk niet voor 2015', *De Volkskrant* 23-01-2009

emancipation of homosexuals and women, contrary to other statements by Ramadan.¹³⁰ This led to demands by the liberal VVD party to demand Mr Ramadan's dismissal from the municipality's service. The philosopher himself has stated that he has been misquoted, and that these fragments of material should not be seen outside of their broader context.¹³¹ This same conclusion was reached by the municipal executive after more extensive research, and it was decided to keep Mr Ramadan on, though VVD-representatives in the executive chose to resign over the issue.¹³²

His position became subject of renewed debate in August after it was brought to light that Mr Ramadan presented a weekly discussion programme on the Iranian government-supported PressTV channel. He had done so since the spring of 2009 and claimed that the Iranian government had never interfered in the production or the choice of subjects for his programme. The municipal government stated that now Mr Ramadan had become part of the discussion himself, he could no longer be expected to manage the dialogue between Muslims and others, which meant he would have to be dismissed. The same decision was reached by the board of Erasmus University, which employed him as visiting professor for Citizenship and Identity.¹³³ Mr Ramadan had stated that he would take the case to court, but this, and an effort by Erasmus University staff to have the decision overturned, were not enough to change the minds of the municipal government.¹³⁴

Military imam Ali Eddaoudi

A majority in the House of Representatives raised doubts, in April, over the appointment of Ali Eddaoudi as Islamic military chaplain. Though the need had been stressed by persons in and around the military for some years, the military did not yet employ any Islamic spiritual care worker. Mr Eddaoudi had in the past published columns critical of Dutch involvement in Afghanistan. State secretary of Defence De Vries stated that he had read the columns, and that he had been shocked by them, but that Eddaoudi had in the meantime changed his mind about the Dutch mission and no longer supported his previous statements. According to Mr De Vries, a comprehensive review

¹³⁰ 'Gay Krant laat Ramadans twee gezichten zien', 18-03-2009 [<http://www.gk.nl/index.php?id=9&a=bericht&bericht=6020&>]

¹³¹ 'Tariq Ramadan: 'Citaten nooit gedaan'', 20-03-2009 [<http://www.gk.nl/index.php?id=9&a=bericht&bericht=6038&>]

¹³² 'Islamoloog mag blijven in Rotterdam', *NRC Handelsblad* 15-04-2009

'College Rotterdam wil samenwerking Ramadan voortzetten', 15-04-2009 [http://www.coc.nl/dopage.pl?thema=any&pagina=viewartikel&artikel_id=2870]

¹³³ 'Opnieuw ophef over Ramadan in R'dam', *NRC Handelsblad* 13-08-2009

'Rotterdam ontslaat Tariq Ramadan', *NRC Handelsblad* 18-08-2009

'Tariq Ramadan's appointment in Rotterdam ended', 19-08-2009 [http://www.eur.nl/english/news/detail_news/article/13028/]

¹³⁴ 'Ramadan vecht zijn ontslag bij rechter aan', *NRC Handelsblad* 19-08-2009

'Erasmus-medewerkers tegen ontslag Ramadan', *De Volkskrant* 24-08-2009

of Mr Eddaoudi had found no grounds to not appoint him.¹³⁵ Supporters of Mr Eddaoudi pointed out that it was important to appoint someone who would not be afraid to speak his mind, and who was sensitive to feelings that might be present with Islamic soldiers, who also might be concerned over fighting other Muslims.¹³⁶ In the end, the House of Representatives voted in favor of the appointment by a difference of one vote, and State Secretary De Vries went ahead in supporting Mr Eddaoudi.¹³⁷

Ending the ban on blasphemy

A proposal to erase the ban on blasphemy from Dutch criminal law (article 147) was another addition to the society-wide discussion about freedom of expression. In January, a majority in the House of Representatives seemed to be in favor of striking the relevant article from the books, but the Labour party (Partij van de Arbeid – PvdA) which is part of the governing coalition, supported Christian Democratic Appeal (Christen-Democratisch Appèl – CDA) Justice Minister Hirsch Ballin, asking him to only look into a possible future amendment.¹³⁸ Less than one week later, though, the party voted in favor of striking the article, which in its current form dated from 1932 and had not been put to use since 1968.¹³⁹

Mr Hirsch Ballin decided not to send to parliament a bill to strike article 147, because of jurisprudence from a case brought before the Supreme Court in March 2009, in which the Court decided that the article did not in fact imply that defamation of a religion was to be equated with defamation of its followers. This refusal by Mr Hirsch Ballin led to the announcement by several parliamentarians that they would compose a proposal themselves, which was eventually sent to the Council of State in November.¹⁴⁰

'Sitting lawyer' Mohammed Enait

Mohammed Enait, the lawyer who raised heads in 2008 by not agreeing to rise out of respect for entering judges, which he claimed would go against his understanding as a Muslim that all persons

¹³⁵ 'De Vries zit in zijn maag met leger-imam', *Trouw* 10-04-2009

'Ali Eddaoudi laat zich niet zomaar wegsturen', *De Volkskrant* 10-04-2009

'Islamitische geestelijk verzorger alsnog aan de slag' 17-04-2009

¹³⁶ "Dubbele moraal over legerimam", *De Volkskrant* 14-04-2009

¹³⁷ 'Nipte steun Kamer voor aanstelling van legerimam', *De Volkskrant* 22-04-2009

¹³⁸ 'De coalitie wint het van godslastering, voorlopig', *De Volkskrant* 15-01-2009

¹³⁹ 'Verbod op smalende godslastering uit Wetboek van strafrecht geschrapt', *De Volkskrant* 21-01-2009

¹⁴⁰ 'Kamer: schrap verbod op godslastering wél', *NRC Handelsblad* 29-05-2009

'Verbod op godslastering uit de wet', *De Volkskrant* 06-11-2009

were to be considered equal before God, remained adamant in a disciplinary hearing before the Board of Discipline in March and stated that he would take his case to the European Court for Human Rights if necessary.¹⁴¹ In May the Board decided to reprimand him, but to leave open the possibility of disbarment at a later stage, if Mr Enait would not change his ways.¹⁴²

However, the highest disciplinary authority, the Disciplinary Appeals Tribunal, ruled in December that Mr Enait's behavior had not been inappropriate and that not rising because of a particular understanding of religious rules was not to be punished. In addition, the Tribunal ruled that Mr Enait's clothing, which the Board had not considered in its ruling, was to be allowed as well, as it constituted 'acceptable clothing with a religious background'.¹⁴³

In response to this disciplinary decision, State Secretary for Justice Albayrak announced that she would impose a measure to force lawyers to rise herself, if the bar association would not do so.¹⁴⁴

Freedom of the press in the Netherlands

Though according to a Freedom House report published in May the freedom of the press has declined all over the world,¹⁴⁵ an October report by Reporters Sans Frontières (RSF) reported that in the Netherlands freedom of the press was on the rise. Where in 2008 the country had been in eighteenth place, it now ranked seventh-most free in the world. There still was some criticism from the part of the RSF, especially concerning lawsuits brought to court by the royal family over alleged violations of their right to privacy by news photographers.¹⁴⁶

In August Justice Minister Hirsch Ballin proposed to put an end to a discussion that had been going on for more than a century: In a new law journalists would be granted the right to refuse to give evidence and to protect the identities of their informers, except in cases where national security or pressing interests of investigation. The rest of the cabinet agreed to submit a bill on this, but some members of parliament have raised doubts, and it is unclear whether the House of Representatives

¹⁴¹ 'Advocaat blijft weigeren op te staan voor rechters', *De Volkskrant* 03-03-2009

¹⁴² 'Zittende advocaat' Enait krijgt berisping', *NRC Handelsblad* 05-05-2009

¹⁴³ 'Islamitische advocaat mag blijven zitten', *Trouw* 12-12-2009

¹⁴⁴ 'Albayrak: advocaat moet gewoon opstaan', *Algemeen Dagblad* 16-12-2009

¹⁴⁵ 'Freedom of the Press 2009' [<http://www.freedomhouse.org/template.cfm?page=251&year=2009>]

'Persvrijheid gaat nu op alle continenten achteruit', *Trouw* 02-05-2009

¹⁴⁶ 'Press Freedom Index 2009' [<http://en.rsf.org/press-freedom-index-2009,1001.html>]

'Nederland stijgt op lijst persvrijheid', *NRC Handelsblad* 21-10-2009

will consent with the law as proposed by Mr Hirsch Ballin.¹⁴⁷ As the current status of the bill is unknown, whether or not the collapse of the government in February will have any effect on this new law is at the moment of writing still unclear.

Phone taps of journalists leaking state secrets

An employee and a former employee of the General Intelligence and Security Service (Algemene Inlichtingen- en Veiligheidsdienst – AIVD) were arrested in June for possession of classified materials, and providing state secrets to members of the press. The AIVD had started its investigation after a publication in the newspaper *De Telegraaf* in March, which was based on material from inside the service.¹⁴⁸ To find the leak, the AIVD tapped into the phone of *Telegraaf*-reporter Jolande van der Graaf.

This revelation generated wide debate, and several lawsuits: Though the Supreme Court had ruled in 2008 that the intelligence service could in fact tap into journalist's phones, it would only be allowed to do so in cases where national security was at risk. As Ms Van der Graaf had not published any material that created an imminent threat to Dutch security, a judge ruled that the information gained from the wiretap could not be used by the service or turned over to the prosecution.¹⁴⁹ The Amsterdam court of appeal confirmed the ruling in October, stating that other means of finding the leak had also been available to the AIVD.¹⁵⁰

The conclusion of the case was offered by the Review Committee on the Intelligence and Security Services, the official independent oversight body, which decided that the wiretapping order had not been inappropriate in itself, but that it was given too early.¹⁵¹

Aleid Wolfsen and freedom of the press

Utrecht mayor Aleid Wolfsen came under criticism after he was alleged, in April, to have stopped publication of an article about the housing allowance he had received pending his move to Utrecht. Though chief editor Van der Horst stated that the mayor prevented the publication of the issue

¹⁴⁷ 'Verschoningsrecht journalist na eeuw geregeld', *De Volkskrant* 05-08-2009

'Kabinet: wettelijke regeling bronbescherming journalisten', 04-12-2009 [http://regering.nl/Actueel/Persberichten_ministerraad/2009/december/04/Kabinet_wettelijke_regeling_bronbescherming_journalisten]

'Kabinet akkoord met wet bronbescherming', *Het Financieële Dagblad* 05-12-2009

¹⁴⁸ 'Stel opgepakt wegens AIVD-lekken', *De Volkskrant* 19-06-2009

¹⁴⁹ 'Uitspraak in afluisterzaak Telegraaf', *De Volkskrant* 23-07-2009

¹⁵⁰ 'Hof: AIVD had De Telegraaf niet mogen afluisteren', *Trouw* 14-10-2009

¹⁵¹ 'Ter Horst: Telegraaf te snel afgeluisterd', *NRC Handelsblad* 17-12-2009

of the 'Ons Utrecht' ('Our Utrecht') containing the article, Mr Wolfsen contends that he merely wanted to delay publication, to give the editorial staff the chance to check their story. According to the mayor it was due to a miscommunication that this was interpreted as a threat, or an outright ban. In the municipal council, Mr Wolfsen offered his apologies and admitted that he never should have called the publisher.¹⁵²

8. Right to social security and to an adequate standard of living

Though poverty does exist in the Netherlands¹⁵³, in general the standard of living is fairly high, and the proportion of people living in poverty is low compared to other European countries.¹⁵⁴ Yet, there still are persons who do not actually have access to all benefits they are entitled to. In addition, current Dutch law only extends a limited package of social benefits to undocumented migrants. Because immigration is such a hotly debated topic, problems related to social security for undocumented migrants are likely to remain high on the public agenda.

International Covenant on Economic, Social and Cultural Rights

A shadow report to the official government report on the implementation of the International Covenant on Economic, Social and Cultural Rights was issued by the Dutch section of the International Commission of Jurists (Nederlands Juristen Comité voor de Mensenrechten – NJCM) in cooperation with a number of NGOs and civil society actors.¹⁵⁵

The shadow report notes with regret that the Dutch government does not accept direct applicability of the provisions of the Covenant: they cannot be enforced by parties before Dutch courts. This approach is supported by the highest courts of the Netherlands. The rights contained in the Covenant are seen as rights requiring progressive realization, implying an instruction for the government but not an absolute standard that can be invoked before a court. Now a bill on the ratification of the Optional Protocol to the Covenant has been announced by the government, this

¹⁵² 'Aleid Wolfsen onder vuur vanwege persrel', *Het Financieële Dagblad* 15-04-2009

'Utrechtse Wolfsen diep door het stof', *Trouw* 17-04-2009

¹⁵³ Around 6% of Dutch households is 'poor' according to the Sociaal en Cultureel Planbureau, see http://www.scp.nl/Onderwerpen/A_t_m_l/Armoede

¹⁵⁴ The Netherlands had the lowest 'misery-index' of all of the European Union countries, see Sociaal en Cultureel Planbureau, *De sociale staat van Nederland* 26-11-2009

¹⁵⁵ Joint Parallel Report to the Combined Fourth and Fifth Periodic Report of the Netherlands on the International Covenant on Economic, Social and Cultural Rights', 28-10-2009 [<http://www.njcm.nl/site/uploads/download/351>]

position is likely to change as the protocol allows individual complaints about the implementation of the provisions of the Covenant.

The report points to a number of provisions of the covenant that are not applied fully to undocumented migrants residing in the Netherlands. This applies to the enjoyment of basic subsistence, to access to housing and to elements of health care (see below) and education. Even though education is available to undocumented persons under 18, schools that have an internship as part of the curriculum cannot be finalized by them. The internships require a work permit, which is not available for any purpose to undocumented persons.¹⁵⁶

Health care for undocumented migrants

In two reports, two organizations independently of each other called attention to the issue of access to health care for undocumented migrants. In May the Netherlands Institute for Health Services Research Nivel published an evaluation of ten years of policy related to access to medical care. Though some improvement is noted, many doctors and emergency rooms still refuse to treat illegal migrants or refer them to specialists, because of the simple reason that they cannot pay. There are, however, special funds for care for undocumented migrants, but because this is largely unknown, many undocumented migrants go untreated and are reluctant to seek medical care in the future.¹⁵⁷

According to a report by Médecins du Monde (MDM) in September, access to health care for undocumented migrants is inadequate in most of Europe, including the Netherlands. In most countries among the eleven surveyed by MDM, there are provisions to give irregular migrants access to care and payment options, but they are often sent away by the persons they come into first contact with (often hospital desk clerks), who are unaware of these provisions. A new law to give migrants better access to health care came into force in January of 2009 and could not be evaluated in the Nivel report because of the timing of the research, but according to MDM it did not in fact improve the access to health care for irregular migrants.¹⁵⁸

¹⁵⁶ Joint Parallel Report to the Combined Fourth and Fifth Periodic Report of the Netherlands on the International Covenant on Economic, Social and Cultural Rights', 28-10-2009, page 30 [<http://www.njcm.nl/site/uploads/download/351>]

¹⁵⁷ 'Toegankelijkheid van gezondheidszorg voor 'illegalen' in Nederland: een update' May 2009 [<http://www.nivel.nl/pdf/Rapport-toegankelijkheid-illegalen.pdf>]

¹⁵⁸ 'Report of the European Observatory – Médecins du Monde' September 2009 [http://www.doktersvandewereld.be/IMG/pdf/Rapport_ANGLAIS_final_sans_cover.pdf]
'Hulp betalen direct', *De Volkskrant* 24-09-2009

Emergency service for rejected asylum seekers

Amsterdam alderwoman Vos launched a plan in April to have the municipality provide emergency services to asylum seekers who can no longer officially stay after having exhausted all legal possibilities. Though some in the House of Representatives and the municipal council have criticized the plan for making the city too attractive for illegal aliens, Ms Vos contends that the number of asylum seekers to whom the rule will apply will be very low. Because of a deal between municipalities and the national government made in connection to the 2007 general amnesty for illegal asylum seekers, structural assistance to this group was to be drawn down and eventually ended before 2010, but according to Ms Vos emergency situations warrant immediate action by municipal officials.¹⁵⁹

The 2007 deal also obliged the national government to make an effort to not just eject rejected asylum seekers into the street, but to instead deport them. Because many of the sixty eight municipalities housing former asylum seekers are not content with government efforts, they do not plan to close emergency accommodation facilities and will continue offering all necessary services.¹⁶⁰

9. Migrants, refugees, and asylum seekers

For some years now immigration has been one of the biggest topics in Dutch society at large, and in politics. Legislation that is drawn up to deal with immigration and related issues (including asylum policies and integration measures) are often devised and presented as methods to limit the 'pull' of migrants to the Netherlands, and as such often are not fully thought through from the perspective of the migrant, resulting in a lack of regard for their rights and well being.

Changes in the Aliens Act

As promised in the coalition agreement in 2007, the government set out in 2009 to reform the Dutch asylum procedure laid down in the Aliens Act of 2000. The procedure for asylum seekers in an application centre, in which a decision had to be made within 48 working hours, was widely considered to put too much pressure on immigration service officials, and did not provide enough time for the asylum seekers themselves to prepare and present their case. While the government

¹⁵⁹ 'Wethouder wil uitzondering kunnen maken', *Het Parool* 16-04-2009

'Hulp aan illegalen blijft toch', *Het Parool* 23-04-2009

¹⁶⁰ 'Albayrak verwacht nog dit jaar sluiting noodopvang asielzoekers', *Trouw* 04-09-2009

'Asielzoeker in nood blijft welkom', *Trouw* 11-12-2009

wanted to change the procedure (to a maximum of eight days), it also stated its wish to quickly reach a final decision, so asylum seekers wouldn't have to stay in the Netherlands for any longer than necessary, if their application would be rejected.¹⁶¹ Organizations supporting refugees considered the new proposals to be an improvement in some respects, but also pointed to drawbacks.¹⁶²

In the new system, the Agency for the Reception of Asylum Seekers (Centraal Orgaan opvang Asielzoekers – COA) will provide shelter in all stages of the procedure and continue to house those who will have to leave for a maximum of four weeks. Though the early phase of the asylum procedure will be longer under the new law, it is expected that more careful consideration and research in the early stages will prevent later phases from being drawn out, and that the new system will provide a clear and final answer much sooner.¹⁶³

Transfer of asylum seekers to Greece

According to the Dublin Regulation of 2003, the member state responsible for an asylum seeker and his or her asylum procedure is the one through which he or she entered the European Union. This means that Italy, Spain and Greece are responsible for large numbers of asylum seekers, some of which travel on through the EU and end up in the Netherlands. In May the Council of State ruled that the transfer of asylum seekers back to Greece from the Netherlands could resume, because the Greek asylum system was not in fact as inhumane as had been concluded in a decision by a lower court.¹⁶⁴

Several measures were proposed to help the southern member states cope with their asylum seekers, such as organizational assistance for immigration services,¹⁶⁵ or simply solidarity from northern European states in taking up their share of the new arrivals.¹⁶⁶

The German Constitutional Court ruled in September that further transfer of asylum seekers back to Greece should cease, as it could not guarantee that cases would be reviewed in a fair manner, that asylum seekers would not be sent back to a dangerous situation, or that their circumstances

¹⁶¹ 'Wijziging van de Vreemdelingenwet 2000 in verband met het aanpassen van de asielprocedure', Tweede Kamer, vergaderjaar 2008-2009, 31 994, nr. 3

¹⁶² See e.g. the opinion of the Dutch Refugee Council at <http://www.vluchtelingenwerk.nl/asiel/vreemdelingenwet.php>

¹⁶³ 'Veranderingen in de vreemdelingenketen' in Centraal Orgaan opvang asielzoekers, *COA in beeld* 3-3, December 2009 [http://www.coa.nl/NED/cms/data/attachments/405/download/COA_in%20beeld_nr3_2009_v8%5B1%5D.pdf]

¹⁶⁴ 'Asielzoekers weer terug naar Griekenland', *Het Financieële Dagblad* 29-05-2009

¹⁶⁵ 'EU streeft naar één Europees asielbeleid', *Trouw* 07-05-2009

¹⁶⁶ 'Bijstand voor Grieken bij weren illegalen', *NRC Handelsblad* 17-07-2009

¹⁶⁶ 'EU moet 'solidair' zijn bij migratie', *NRC Handelsblad* 05-06-2009

would be acceptable. This led to further calls on the Dutch government to stop sending back asylum seekers to Greece.¹⁶⁷ The Dutch government, however, proposed to not only continue sending back asylum seekers, but to also speed up the process: In a proposal presented to parliament in December, Justice State Secretary Albayrak proposed that the Dublin Regulation should be the first thing checked in the case of any new asylum seeker. This way, substantial procedures within the Dutch system would not be opened, if it would be clear from the start that the individual should turn to another country with his request for a residence permit.¹⁶⁸

Country-based asylum policy

Under the 2000 Aliens Act, the Dutch government can temporarily admit asylum seekers without extensive procedures, based on the countries they are coming from and the situation there. In recent years, this policy has been applied to asylum seekers from Iraq (initially for individuals from the whole country, later only for those from the central part of the country) and from Somalia, though critics have stated that many asylum seekers who enter on the basis of the country-based policy have no right to do so and are in fact abusing this system. After already having abolished the rule granting refugees from Central Iraq special status in 2008, Justice State Secretary Albayrak decided in April to also decide cases of asylum seekers from Somalia on a case-by-case basis. This was not, as was the case with Central Iraq, in reaction to the improving situation in the region of origin, but because too many instances of fraud were reported. As a result, thousands of cases will have to be reviewed by immigration service officials, who now have to determine the dialect, residence and family background of every individual asylum seeker.¹⁶⁹

In December, Ms Albayrak proposed to abolish the country-based policy altogether. She stated that the body of European rules and case law had evolved to a point where sufficient safeguards were in place, and attention for the situation in the country of origin was a part of the regular individual procedure. On a more basic level, the increase of fraud mentioned above was another reason to call for an end to the current system, as was the possibility that the Netherlands would become

¹⁶⁷VluchtelingenWerk Nederland, 'Duitsland verbiedt uitzetting asielzoekers naar Griekenland – Nu Nederland nog', 15-09-2009 [http://www.vluchtelingenwerk.nl/index.php?option=com_content&view=article&id=537:duitsland-verbiedt-uitzetting-asielzoekers-naar-griekenland-nu-nederland-nog&catid=13:actueel&Itemid=35]
'Duitse rechter wijst Griekse asielprocedure af', *NRC Handelsblad* 17-09-2009

¹⁶⁸Vluchtelingenwerk, 'Nieuwe maatregel tast rechten asielzoekers aan' 03-12-2009 [http://www.vluchtelingenwerk.nl/index.php?option=com_content&view=article&id=616:nieuwe-maatregel-tast-rechten-asielzoekers-aan&catid=13:actueel&Itemid=35]

¹⁶⁹Ministerie van Justitie, 'Albayrak: beoordeling asielverzoeken Somalië alleen op individuele gronden' 03-04-2009 [<http://www.justitie.nl/actueel/nieuwsberichten/archief-2009/90403beoordeling-asielverzoeken-somalie-alleen-op-individuele-gronden.aspx>]

'Als groep zijn Somaliërs niet meer welkom', *NRC Handelsblad* 16-04-2009

too popular with some groups, who would not all be able to stay.¹⁷⁰ Critics have predicted that many asylum seekers will be unduly rejected because they have a much heavier burden of proof, and condemn the fact that many individuals fleeing from real danger are now suffering because of the crimes of a minority that abuses the system.¹⁷¹

Policy regarding unaccompanied underage aliens

As unaccompanied underage asylum seekers are an especially vulnerable group, they are afforded a special status in Dutch asylum policy. If their application is rejected, they are allowed to stay in the Netherlands (as 'unaccompanied underage aliens') up to the moment they turn eighteen. Since 2007 a relative increase in applications by unaccompanied underage asylum seekers (after a dramatic decline since 2001) has caused problems, most of all regarding to housing and their eventual expulsion. Because of this, young unaccompanied aliens often end up being housed in (parts of) detention facilities, where they are held under a regime comparable to that of regular criminal detainees.¹⁷²

As a solution, Justice State Secretary Albayrak proposed to simply abolish the residence permit for unaccompanied underage aliens. She claimed this would present a clearer signal to these aliens with regards to their status in the Netherlands. Additionally, by repatriating them more quickly, they would have a lower risk of ending up living on the streets in the Netherlands. In the past it has proven difficult to send unaccompanied underage aliens back, because of problems in finding adequate care for them in their homeland, but Ms Albayrak has been in consultation with international organizations in an attempt to mitigate this concern. Action groups for asylum seekers remain critical, though, as they fear decisions will still be made without due regard for the child's best interests.¹⁷³

¹⁷⁰ Ministerie van Justitie, 'Staatssecretaris Albayrak wil groepsgewijze bescherming asielzoekers afschaffen' 12-12-2009 [<http://www.justitie.nl/actueel/persberichten/archief-2009/91212staatssecretaris-albayrak-wil-groepsgewijze-bescherming-asielzoekers-afschaffen.aspx?cp=34&cs=579>]

¹⁷¹ Vluchtelingenwerk, 'Afschaffing categoriaal beschermingsbeleid onverantwoord' 12-12-2009 [http://www.vluchtelingenwerk.nl/index.php?option=com_content&view=article&id=624:afschaffing-categoriaal-beschermingsbeleid-onverantwoord&catid=13:actueel&Itemid=35]

¹⁷² 'Lang in de cel omdat je hier niet mag zijn', *NRC Handelsblad* 07-07-2009
Defence for Children, 'Geen alleenstaande minderjarige vreemdelingen in de cel!' 15-07-2009 [http://www.defenceforchildren.nl/p/53/1659/mo89-mc1537/mo124-m0/mo125-cg196j24=*/geen-alleenstaande-minderjarige-vreemdelingen-in-de-cel!]

¹⁷³ Ministerie van Justitie, 'Herijking beleid (alleenstaande) minderjarige vreemdelingen', 11-12-2009 [http://www.justitie.nl/images/herijking%20beleid%20alleenstaande%20minderjarige%20vreemdelingen_17880_tcm34-240239.pdf]
'Overheid minder geduldig met minderjarige asielzoeker', *De Volkskrant* 11-12-2009
'Jonge asielzoeker snel naar huis', *NRC Handelsblad* 12-12-2009

Level of fees for residence permits and naturalization

In September of 2009, the Court of Justice of the European Communities in Luxembourg found that the Netherlands had asked too high a price for residence permits for individuals from Turkey. Though it stated that the level of fees to be paid for a residence permit was a matter of national law, the Court held that the difference between amounts paid by EU and Turkish nationals was disproportionate, with Turkish migrants paying up to five times as much in some periods.¹⁷⁴

When Justice State Secretary Albayrak announced plans in November to increase the fees paid for residence permits and naturalization, this evoked criticism from both migrant's rights organizations and from the Confederation of Netherlands Industries and Employers (VNO-NCW). The new rates, which include a two hundred percent rise of the fee for a temporary residence permit and a doubling of the fee for a residence permit for an indefinite period of time, have been criticized as being used as an instrument to fight immigration to the Netherlands. VluchtelingenWerk Nederland, a refugee organization, stated that a large number of migrants and asylum seekers would no longer be able to find a way to pay for the permit, after the dramatic rise of the fees.¹⁷⁵

Ms Albayrak has claimed that the new rates are necessary and now better reflect the real costs made in processing applications. A majority in the House of Representatives accepted the new fees, but asked the State Secretary to consider implementing a family discount for the residence permit for an indefinite amount of time. The State Secretary, however, did not honor this request, as she felt the budgetary argument had to take precedence.¹⁷⁶

Compulsory integration courses

As a result of the 2007 Integration Act, newly arriving non-Western foreigners who have settled in the Netherlands have to pass an integration exam. In order to prepare for this exam, municipalities are obliged to offer integration courses, which cost around two hundred and seventy Euros.

¹⁷⁴Ministerie van Justitie, 'Uitspraak Hof van Justitie van de Europese Gemeenschappen in zaak C-242/06 Sahin', 23-09-2009 [http://www.justitie.nl/images/uitspraak%20Hof%20van%20Justitie%20van%20de%20Europese%20Gemeenschappen%20in%20zaak%20C%20242%2006%20Sahin_16428_tcm34-218863.pdf]

¹⁷⁵Ministerie van Justitie, 'Staatssecretaris verhoogt leges voor verblijfsvergunning' 03-11-2009 [<http://www.justitie.nl/actueel/nieuwsberichten/archief-2009/91103staatssecretaris-verhoogt-leges-voor-verblijfsvergunning.aspx>]
VluchtelingenWerk Nederland, 'Verblijfsvergunningen fors duurder' 10-11-2009 [http://vluchtelingenwerk.nl/index.php?option=com_content&view=article&id=602:verblijfsvergunningen-fors-duurder&catid=13:actueel&Itemid=35]
'Werkgevers laken hogere leges migrant', *Het Financiële Dagblad* 13-11-2009

¹⁷⁶Ministerie van Justitie, 'Motie Anker en Heerts betreffende leges', 17-11-2009 [http://www.justitie.nl/images/Motie%20Anker%20en%20Heerts%20betreffende%20Leges_17417_tcm34-233668.pdf]

In January Integration Minister Van der Laan proposed to let municipalities decide for themselves whether they wanted to oblige newcomers to pay for the course.¹⁷⁷

Municipal officials in many large cities have stated that their efforts at working towards integration are not adequately supported and in some cases even harmed by the national government: The expected numbers of graduates are too high and the participants get entangled in an ever-growing web of bureaucratic institutions and regulations. According to Mr Van der Laan, the fact that the numbers set by the Integration Ministry are not achieved is a result of a lack of effort on the part of the municipalities.¹⁷⁸ In September Utrecht city officials proposed to cut welfare benefits for those unwilling to partake in an integration course, but this announcement doesn't seem to have been followed by any real change in policy.¹⁷⁹

10. Human Rights and Counterterrorism

In the fight against terrorism, basic rights such as due process and privacy can easily suffer. Two independent reports published in 2009 concluded that there should be more regard for human rights when devising counter-terrorist measures.

Reports by the International Commission of Jurists and by the Suyver Committee

In February a report was published by the Eminent Jurists Panel of the International Commission of Jurists regarding terrorism, counter-terrorism and human rights, entitled 'Assessing Damage, Urging Action'. In this report, the authors signal a trend all over the world, of human rights being violated in the context of combating terrorism. Though the Netherlands are not explicitly singled out in the report, the authors mention that human rights are 'being questioned and at times ignored ... also by liberal democracies that used to be in the forefront of promoting and protecting human

¹⁷⁷ Van der Laan: schrap eigen bijdrage voor inburgering', *De Volkskrant* 28-01-2009

'Extra maatregelen bij inburgeringscursus' 30-01-2009 [http://www.regering.nl/Actueel/Pers_en_nieuwsberichten/2009/januari/30/Extra_maatregelen_bij_inburgeringscursus]

¹⁷⁸ 'Inburgeraar knel tussen de formulieren', *De Volkskrant* 31-03-2009

'Inburgeraar laat zich lastig verleiden', *NRC Handelsblad* 26-08-2009

¹⁷⁹ 'Geen inburgering, minder uitkering', *De Volkskrant* 23-09-2009

rights.' The solution, as proposed in the report, is to move beyond the 'us and them' approach and to strengthen civil society to fight terrorism, and to uphold the principles of international law.¹⁸⁰

The Suyver Committee, established at the request of the Dutch House of Representatives to evaluate counter-terrorism policy since 2001 found that measures to fight terrorism had only scarcely been coordinated and often showed considerable overlap. In addition, the commission found that some current laws might already be in violation of human rights. A system of structured periodic evaluation should be implemented according to the commission, in order to better analyze compatibility, efficacy and legitimacy of counter-terrorism efforts.¹⁸¹ The government announced it accepted all conclusions of the Committee, and it requested the Senate to suspend its discussion of the bill on Administrative National Security Measures. This proposed legislation, already approved by the House of Representatives in 2007, would allow preventive limitations to freedom of movement without the intervention of magistrates.¹⁸²

¹⁸⁰ 'Report: Leading Jurists Call for Urgent Steps to Restore Human Rights in efforts to counter terrorism', 16-02-2009 [http://ejp.icj.org/hearing2.php3?id_article=167&lang=en]

'Effecten van antiterrorismemaatregelen op mensenrechten onderschat', 17-02-2009 [http://www.njcm.nl/site/press_releases/show/23]

¹⁸¹ 'Overlap bij wetten tegen terrorisme', *NRC Handelsblad* 10-07-2009

¹⁸² 'Kabinetsreactie op rapport Commissie Suyver', 10-07-2009 [http://www.nctb.nl/Actueel/persberichten/2009/persbericht_090710.aspx]



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The work of the Netherlands Helsinki Committee would not have been possible without the active support of our donors, experts, and partners. Their financial contributions, extensive input and hard work have enabled the NHC to contribute to human rights compliance in 2009.

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