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ECRI REPORT ON THE NETHERLANDS

(fourth monitoring cycle)

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FOREWORD

The European Commission against Racism and Intolerance (ECRI) was established by the Council of Europe. It is an independent human rights monitoring body specialised in questions relating to racism and intolerance. It is composed of independent and impartial members, who are appointed on the basis of their moral authority and recognised expertise in dealing with racism, xenophobia, antisemitism and intolerance.

In the framework of its statutory activities, ECRI conducts country-by-country monitoring work, which analyses the situation in each of the member States regarding racism and intolerance and draws up suggestions and proposals for dealing with the problems identified.

ECRI's country-by-country monitoring deals with all member States of the Council of Europe on an equal footing. The work is taking place in 5 year cycles, covering 9/10 countries per year. The reports of the first round were completed at the end of 1998, those of the second round at the end of 2002, and those of the third round at the end of the year 2007. Work on the fourth round reports started in January 2008.

The working methods for the preparation of the reports involve documentary analyses, a contact visit in the country concerned, and then a confidential dialogue with the national authorities.

ECRI's reports are not the result of inquiries or testimonial evidences. They are analyses based on a great deal of information gathered from a wide variety of sources. Documentary studies are based on an important number of national and international written sources. The in situ visit allows for meeting directly the concerned circles (governmental and non-governmental) with a view to gathering detailed information. The process of confidential dialogue with the national authorities allows the latter to provide, if they consider it necessary, comments on the draft report, with a view to correcting any possible factual errors which the report might contain. At the end of the dialogue, the national authorities may request, if they so wish, that their viewpoints be appended to the final report of ECRI.

The fourth round country-by-country reports focus on implementation and evaluation. They examine the extent to which ECRI's main recommendations from previous reports have been followed and include an evaluation of policies adopted and measures taken. These reports also contain an analysis of new developments in the country in question.

Priority implementation is requested for a number of specific recommendations chosen from those made in the new report of the fourth round. No later than two years following the publication of this report, ECRI will implement a process of interim follow-up concerning these specific recommendations.

The following report was drawn up by ECRI under its own and full responsibility. It covers the situation up to 22 March 2013 and any development subsequent to this date is not covered in the following analysis nor taken into account in the conclusions and proposal made by ECRI.

SUMMARY

Since the publication of ECRI's third report on Netherlands on 12 February 2008, progress has been made in a number of fields covered by that report.

The Public Prosecution Service has issued new detailed instructions, providing, inter alia, for: the appointment of regional prosecutors and police officers specialised in dealing with discrimination and racist offences; and the obligation for the police to register specific racist offences, as well as general offences with racist motivation. A regional online form has been set up by the police and has been publicised so that victims can report hate crime, also on an anonymous basis. Awareness-raising campaigns aimed at increasing victims' willingness to report incidents on discrimination and equal rights have been run by the authorities. A dense and well performing network of local anti-discrimination services (ADVs) is now in place. ADVs provide protection against and register complaints of racism and racial discrimination[1]. The Equal Treatment Commission has been incorporated into the Netherlands Institute for Human Rights (NIHR).

Several annual studies have been commissioned on extremism, racism and racial discrimination; one of their aims is to assess the situation of groups of concern to ECRI in the field of employment. The use of door policy panels in the entertainment industry has expanded. These panels examine customer complaints relating to entrance policies and may take action in this connection.

The Reference Index Antilleans[2] has been abolished. A government-funded Platform for Roma municipalities has been set up to share experience, good practice and to communicate with the government. Programmes have been carried out at the local level to assist Roma families, with the help of mediators, with issues such as debt relief and education.

ECRI welcomes these positive developments in the Netherlands. However, despite the progress achieved, some issues continue to give rise to concern.

The acts listed in the criminal law provisions against racism and racial discrimination are not prohibited on grounds of citizenship and language. There is no provision explicitly establishing racist motivation as a specific aggravating circumstance in sentencing. There is concern over the interpretation given to the provisions prohibiting racist insults and incitement to hatred, discrimination and violence, particularly when applied in the context of political discourse. The authorities have cut the funds of the Complaints Bureau for Discrimination, which receives complaints about racist offences committed through the Internet. Funds have been withdrawn from Art.1, which is the national expertise centre and backbone of the anti-discrimination bureaus. There is no comprehensive Action Plan for Combating Racism at national level.

Studies show that the practices of recruitment officers and of employment agencies are often discriminatory. Polish nationals who are temporary agency workers and who are employed, inter alia, in the agriculture sector are often subject to discriminatory treatment and exploitation. Racial discrimination in the entertainment industry remains a recurrent problem.

The settlement of Eastern Europeans in the Netherlands, as well as Islam and Muslims have been portrayed by politicians and media as a threat to Dutch society.

[1] For ECRI, this concept includes discrimination on grounds of ethnic origin, colour, citizenship, religion and language.

[2] The index contained information on "problematic" young Antilleans who were not in the Municipal Database.

Antisemitic chants during football matches continue to pose a serious problem. Two consecutive bills with discriminatory implications were announced to regulate the settlement of Dutch citizens from Aruba, Curacao and St. Maarten in the Netherlands. No national inclusion strategy on the Roma, Sinti and Traveller communities has been adopted by the authorities. Although integration is still perceived as a two-way process, the onus is increasingly placed on migrants. There are plans to cut funds earmarked for integration. The new requirements introduced in the integration abroad examination, affect disproportionally spouses with low education, elderly persons and persons who are illiterate; therefore, they are likely to hamper family reunification for these categories of persons. Further to amendments of the Civic Integration Act, persons who wish to stay in the Netherlands must pass the civic integration examination within three years from their arrival; otherwise they will be subject to: a fine; non-extension of their temporary residence permit; or, in some cases, the withdrawal of their temporary residence permit. The high fees applicable for residence permits, coupled with the costs related to the civic integration courses and the examination, may impede migrants from applying for and obtaining residence permits.

In this report, ECRI requests that the Dutch authorities take further action in a number of areas; in this context, it makes a series of recommendations, including the following.

The acts listed in Articles 137c-137g, and 429 quater of the Criminal Code should be prohibited also on grounds of citizenship and language. A provision to the effect that racist motivation constitutes a specific aggravating circumstance in sentencing should be introduced in the Criminal Code*. The existing legislation against racism and racial discrimination should be applied in all cases, in the public and private sphere. Adequate resources should be made available by the authorities to the Complaints Bureau for Discrimination on the Internet so that it can carry out its work effectively. State funding of Art. 1 should be resumed. The independence of the NIHR should be ensured from a financial point of view. A sufficient number of staff should be entrusted with the complaint handling function of this institute and it should make broad use of its powers to bring cases before courts. A national strategy and policy against racism and racial discrimination covering various fields of life (including employment, education, access to services and access to public places), which sets out national common targets, mechanisms for implementation, monitoring and evaluation, should be developed*.

The problem of exploitation of temporary agent workers should be addressed by: setting up, if need be, a system of licences for temporary employment agencies; regularly inspecting the same; and ensuring that the above-mentioned category of workers benefit from the safeguards and work conditions provided for under the law*. In addition to maintaining and strengthening the door policy panels, the authorities should ensure a more vigorous enforcement, in the field of access to places of entertainment, of the equal treatment legislation and the criminal law provisions against racism and racial discrimination.

All political parties should take a firm stand against discourse targeting a group of persons on grounds of their “race”, religion, nationality, language or ethnic origin.

All legislative proposals, which provide for differential treatment to Dutch citizens from Aruba, St. Maarten or Curacao as concerns their freedom of movement within the Kingdom and their freedom not to be expelled from territories of the Kingdom, should be abandoned. The authorities should withdraw the declaration made under Article 5 of

* The recommendations in this sentence will be subject to a process of interim follow-up by ECRI no later than two years after the publication of this report.

Protocol No. 4 to the ECHR. A national inclusion strategy on the Roma, Sinti and Traveller communities should be adopted in close co-operation with them and the municipalities. A policy providing for integration as a two-way process should be introduced, whereby affirmative action towards groups of concern to ECRI is resumed and respect for diversity and knowledge of different cultures is promoted. The provisions of the Civic Examination Abroad Act introducing a reading examination and increasing the passing score should be repealed. The provisions in the Civic Integration Act according to which failure to pass the civic integration examination shall be a ground for imposing a fine or withdrawing a temporary permit to stay should be abrogated. Care should be taken that family reunification is not jeopardised by the provision of the Civic Integration Act establishing that failure to pass the civic integration examination shall be a ground for refusing the extension of a temporary residence permit. The costs associated with residence permits and the fees required for family reunification purposes under the regime which is applicable to all migrants, should be substantially reduced.

FINDINGS AND RECOMMENDATIONS

I. Existence and Application of Legal Provisions

International legal instruments

1. In its third report, ECRI recommended that the Netherlands sign and ratify the Additional Protocol to the Convention on Cybercrime and the International Convention for the Protection of the Rights of All Migrant Workers and Members of their Families. ECRI is pleased to note that the Netherlands ratified the Additional Protocol to the Convention on Cybercrime on 22 July 2010, which entered into force on 1 November 2010. As concerns the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, the authorities have informed ECRI that they do not intend to sign or ratify it, as they object to the section of this Convention stating that migrants who are not lawfully present in the country and/or are unlawfully employed there should have equal access to social security. In the authorities' view, given that this category of persons does not pay taxes or social security contributions, they should not be granted the same socioeconomic rights as those who are lawfully present in the country.

2. ECRI notes, however, that the ratification of this Convention would assist the authorities in their efforts to control irregular migration by eliminating incentives for labour exploitation and work in abusive conditions. Furthermore, Art. 27 (1) of the Convention states with respect to social security that migrant workers and members of their families shall enjoy in the State of employment the same treatment granted to nationals only in so far as they fulfil the requirements[3] provided for by the applicable legislation.

3. ECRI reiterates its recommendation that the Netherlands sign and ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families.

Criminal law provisions

4. In its third report, ECRI encouraged the Dutch authorities to ensure that the criminal justice system provide adequate protection against all instances of incitement to racial hatred, discrimination and violence.

5. Articles 137c[4], 137d[5], 137e[6], 137f[7], 137g[8] and 429 quater[9] prohibit, respectively: racist insults; incitement to racial hatred, discrimination and violence; the

[3] Article 27 (2) of the Convention provides the following: Where the applicable legislation does not allow migrant workers and members of their families a benefit, the States concerned shall examine the possibility of reimbursing interested persons the amount of contributions made by them with respect to that benefit on the basis of the treatment granted to nationals who are in similar circumstances.

[4] Under 137c "(1) Any person who orally or by means of written material or images gives intentional public expression to views insulting to a group of persons on account of their race, religion or belief, sexual orientation, or physical, psychological or intellectual disability is liable to a term of imprisonment not exceeding one year or to a third-category fine. (2) If a person makes an occupation or habit of committing the above offence, or if it is committed by two or more persons acting in concert, the penalty may be increased to a term of imprisonment not exceeding two years or to a fourth-category fine."

[5] Under 137d "(1) Any person who orally or by means of written material or images publicly incites hatred of or discrimination against other persons or violence against the person or the property of others on account of their race, religion or belief, sex, sexual orientation, or physical, psychological or intellectual disability is liable to a term of imprisonment not exceeding one year or to a third category fine. (2) If a person makes an occupation or habit of committing the above offence, or if it is committed by two or more persons acting in concert, the penalty may be increased to a term of imprisonment not exceeding two years or to a fourth-category fine." In Article 90 quater discrimination is defined as "as any form of distinction, any exclusion, restriction or preference, the purpose or effect of which is to nullify or infringe

dissemination of racist material; the participation in or provision of financial assistance to activities which aim to discriminate; and racial discrimination committed in the exercise of one's public office, profession or trade. ECRI notes that the above-mentioned provisions largely reflect the content of ECRI's General Policy Recommendation on national legislation to combat racism and racial discrimination (GPR No. 7). However, the acts listed in these provisions are not prohibited on grounds of citizenship and language[10]. ECRI has been informed that this lacuna creates some difficulties in the prosecution of certain racist offences.

6. ECRI recommends that the range of acts listed in Articles 137c-137g, and 429 quater of the Criminal Code be expressly prohibited on the grounds of citizenship and language as per ECRI's General Policy Recommendation No. 7.

7. ECRI further notes that although according to the case law of the Supreme Court, the public denial of genocide is punishable under Article 137c and e of the Criminal Code[11], it does not explicitly prohibit the public denial, trivialisation, justification or condoning, with a racist aim, of crimes of genocide, crimes against humanity or war crimes, nor the public expression with a racist aim of an ideology which claims the superiority or which denigrates a group of persons on the grounds of "race", colour, language, religion, nationality or ethnic origin. ECRI considers that given the eminently preventive character of criminal law provisions, the above-mentioned offences should be clearly provided for by statute.

8. ECRI recommends to include the following offences in the Dutch Criminal Code: the public denial, trivialisation, justification or condoning, with a racist aim, of crimes of genocide, crimes against humanity or war crimes; and the public expression with a racist aim of an ideology which claims the superiority or which denigrates a group of persons on the grounds of "race", colour, language, religion, nationality or ethnic origin, as per ECRI's General Policy

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upon the recognition, enjoyment or exercise on an equal footing of human rights and fundamental freedoms in the political, economic, social or cultural fields or any other field of public life".

[6] Under 137e "(1) Any person who for reasons other than the provision of factual information: makes public an utterance which he knows or can reasonably be expected to know is insulting to a group of persons on account of their race, religion or belief, sexual orientation, or physical, psychological or intellectual disability or which incites hatred of or discrimination against other persons or violence against the person or property of others on account of their race, religion or belief, sex, sexual orientation, or physical, psychological or intellectual disability; distributes any object which he knows or can reasonably be expected to know contains such an utterance or has in his possession any such object with the intention of distributing it or making the said utterance public; is liable to a term of imprisonment not exceeding six months or to a third category fine. (2) If a person makes an occupation or habit of committing the above offence, or if it is committed by two or more persons acting in concert, the penalty may be increased to a term of imprisonment not exceeding one year or a fourth-category fine."

[7] Under Article 137f "Anyone who participates in or provides financial or other material support to activities aimed at discrimination against people because of their race, their religion, their beliefs, their gender, their heterosexual or homosexual orientation or their physical, psychological or mental disability, shall be punished with imprisonment of not exceeding three months or a fine of the second category."

[8] Under Article 137g "(1) Any person who, in the exercise of his office, profession or business, intentionally discriminates against persons because of their race shall be liable to a term of imprisonment not exceeding six months or a fine of the third category. (2) If the offence is committed by a person who makes a habit of it or by two or more persons in concert, a term of imprisonment not exceeding one year or a fine of the fourth category shall be imposed."

[9] Under Article 429quater "(1) Any person who in the exercise of his profession or business makes a distinction between persons on account of their race is liable to a term of detention not exceeding one month or a third category fine. (2) ..."

[10] The authorities have informed ECRI that the Supreme Court has examined citizenship and language in the context of cases involving allegations of racial discrimination.

[11] Supreme Court of the Netherlands, jurisprudence number, 01362/02 U.

Recommendation No. 7. The relevant provisions should provide for proportionate and dissuasive sanctions.

9. In its third report on the Netherlands, ECRI reiterated its recommendation that the Dutch authorities introduce a provision explicitly establishing racist motivation as a specific aggravating circumstance in sentencing.

10. To date such a provision has not been introduced into the Criminal Code. In its third report (paragraph 6), ECRI noted that the instructions of the Public Prosecution Service required prosecutors to request that the sentence be increased by 25% in cases of offences committed with racist motivation. At the end of 2007 the Public Prosecution Service issued new detailed instructions (hereinafter "the instructions"). The instructions were to remain in force until 30 November 2011; however their period of validity was prolonged until 30 November 2013. They provide, inter alia, that where racist motivation or discrimination can be established, prosecutors must request that the sentence be increased by 50% to 100%. Reports have highlighted, however, that the instructions are not complied with in this respect[12].

11. The authorities have informed ECRI that they are against introducing a provision explicitly establishing racist motivation as an aggravating circumstance in the Criminal Code, as it would require that such motivation be proven. In this respect, ECRI is doubtful that courts would comply with the prosecutor's request to increase the penalty on grounds of racist motivation, if this element is not proven. Moreover, ECRI notes that courts are not bound by the Public Prosecution Service's instructions concerning the application of aggravating factors. In ECRI's view, therefore, it is of the utmost importance to include racist motivation as an aggravating factor in the Criminal Code. This measure would have an eminently preventive effect and provide a clear legal framework for all the relevant actors in the criminal law system.

12. ECRI reiterates its recommendation that the Dutch authorities introduce a provision to the effect that racist motivation constitutes a specific aggravating circumstance in sentencing.

13. In its third report, ECRI recommended that the Dutch authorities raise awareness of the instructions of the Public Prosecution Service concerning criminal law provisions against racism and racial discrimination among the police. In its third report on the Netherlands ECRI also recommended that the Dutch authorities improve the response of the criminal justice system to racially motivated offences and more generally to manifestations of racism and racial discrimination.

14. ECRI notes that the instructions provide for: the appointment of regional prosecutors and police officers specialised in dealing with discrimination and racist offences; the obligation for the police to register specific racist offences, as well as general offences with racist motivation; the systematic detection and monitoring of racism and discrimination by the police and the prosecutors; and cooperation with local government on this issue on the basis of an exchange of views taking place at least every six months[13]. The instructions also highlight that breach of criminal law provisions against racism must entail a firm response by the competent authorities[14]. While ECRI welcomes the importance given to the

[12] CommDH(2009)2: Report by the Council of Europe Commissioner for Human Rights, Mr. Thomas Hammarberg on his visit to the Netherlands; Strasbourg, 11 March 2009, § 131.

[13] See also the Poldis report 2011, p. 3, http://www.radar.nl/sites/radar/files/20120830113846_1_poldis_2011.pdf.

[14] Prosecutors, in particular, must reflect the prohibition of racism and discrimination in their indictments and the penalties requested.

fight against racism and racial discrimination, it notes that, unfortunately, the authorities have not carried out an official evaluation on the effectiveness of these instructions or the extent to which they are known to or applied by the competent authorities.

15. ECRI recommends that the authorities carry out an evaluation on the effectiveness of the instructions of the Public Prosecution Service.

16. ECRI is, on the one hand, pleased that the National Discrimination Expertise Centre (LECD–Prosecutor) described in ECRI's third report continues to advise the prosecutors on racist offences. On the other hand, ECRI is concerned about the authorities' plans to transfer to the police the competencies of the National Bureau on Discrimination issues (LECD- Police)[15].

17. According to statistics provided by the authorities, in 2007-2011[16] the Public Prosecution Service recorded 947 counts of alleged breach of the criminal law provisions against racism and racial discrimination (Articles 137c-g and 429 quarter of the Criminal Code). Out of these, 660 counts were brought to court leading to 485 convictions and 99 acquittals. Unfortunately, the authorities have not provided any data on: general offences with a racist motivation; the number of investigations opened by the police in relation to the above-mentioned criminal law provisions per reference year; and on the convictions and acquittals, broken down per offence and per reference year. The lack of data, regrettably, makes it difficult for ECRI to analyse whether there has been an improvement in the response of the criminal justice system to racially motivated offences. More generally, the data provided by the Ninth Racism & Extremism Monitor[17] on the number of arrests and cases referred to the prosecutor of breach of criminal law provisions against racism and racial discrimination shows that, between 2006 and 2009, there has been a decrease in the number of arrests and cases referred to the prosecutor for all the relevant offences.

18. Nonetheless, ECRI welcomes the cases in which the criminal law provisions to combat racism and racial discrimination have been applied by the Dutch courts. In one such case, the Arab European League (AEL) was brought to court for having republished a cartoon suggesting that the number of Jews murdered in the Shoah has been exaggerated in the interest of the Jewish community[18]; freedom of speech was invoked by the defendant to justify its conduct. After the AEL's acquittal by the Utrecht District Court, the Court of Appeal found the cartoon "unnecessarily offensive" and ordered the AEL to pay a fine of €2 500 (€1 500 of which conditional)[19] for breach of Article 137c of the Criminal Code. The Supreme Court rejected the appeal made against this last judgment[20]. This judgement shows that there is an understanding in Dutch society that incitement to discrimination and hatred must be punished and that freedom of speech can in

[15] The LECD-Police, inter alia, advises the police in the field of diversity management and discrimination and is in charge of monitoring diversity developments within the police forces.

[16] In 2011 the police recorded 2 802 incidents of alleged discrimination; each incident could involve one or several counts of alleged breach of Articles 137c-g or 429 quarter of the Criminal Code or other criminal-law provisions (if the suspect's motives were allegedly discriminatory).

[17] This report used to be drafted by the Anne Frank Foundation and Leiden University; the Verwey-Jonker Instituut took over in 2011.

[18] Gans, Evelien. On Gas Chambers, Jewish Nazis and Noses. In: Peter R. Rodrigues and Jaap van Donselaar (eds.) Racism and Extremism Monitor: Ninth Report. Anne Frank Stichting/Leiden University, 2010, p. 83.

[19] Gans, Evelien. On Gas Chambers, Jewish Nazis and Noses. In: Peter R. Rodrigues and Jaap van Donselaar (eds.) Racism and Extremism Monitor: Ninth Report. Anne Frank Stichting/Leiden University, 2010, p. 83.

[20] Supreme Court of the Netherlands jurisprudence number LJN: BV5623, 10/03978, 27 March 2012.

certain cases be subject to limitations (as per ECRI's GPR No. 7 § 18 and relevant EU legislation).

19. However, ECRI notes with concern the interpretation given to Articles 137c and 137d (on racist insults and incitement to hatred, discrimination and violence) in connection with the court case on Mr Geert Wilders, the founder and leader of the Party for Freedom (the PVV)[21]. The statements on the basis of which he was indicted include the following: (a) "You will see that all the evils that the sons of Allah perpetrate against us and themselves come from the Koran." (b) "We have to stop the tsunami of Islamisation." (c) "One in five Moroccan boys is registered with the police as a suspect. Their behaviour results from their religion and culture. You cannot separate the one from the other." (d) "The Koran is the Mein Kampf of a religion that intends to eliminate others." (e) "I have had enough of Islam in the Netherlands: no new Muslim immigrants." (f) "There is a battle going on and we must defend ourselves." Mr Wilders was also prosecuted on the basis of the inflammatory movie on Islam, Fitna, posted on the Internet on 27 March 2008. Mr Wilders was acquitted on all grounds by the Amsterdam District Court on 23 June 2011[22]. The District Court stated that some of the comments were found to be addressed to a religion (Islam) rather than to the people who practice it and therefore would fall out of the remit of Articles 137c and 137d of the Criminal Code and would not incite to hatred or discrimination, while others had been made in the context of a social debate, in Mr Wilders' role as a politician[23], which made them admissible. The judgment was not appealed[24].

20. ECRI welcomes that the Public Prosecution Service and the Amsterdam District Court have cited the European Court of Human Rights' (ECtHR) case law[25] emphasising that the utmost importance has to be accorded to freedom of expression in the context of a political debate and that political discourse cannot be restricted without irrefutable reasons[26]. ECRI also welcomes the District Court's efforts to distinguish between offending a religion and offending the followers of a religion. However, in its judgment Féret v. Belgium concerning comments made by Mr Daniel Féret, a Belgian politician, the ECtHR pointed out that tolerance and respect for the equal dignity of all human beings is the foundation of a democratic and pluralistic society. Citing ECRI's General Policy Recommendations and country reports on Belgium, the Court stated that it is of the highest importance to fight against racial discrimination in all its forms and manifestations. Therefore, in principle, sanctioning and preventing all forms of expression which spread, encourage, promote or justify hatred based on intolerance (including religious intolerance) can be considered to be necessary in democratic societies, if the "formalities", "conditions", "restrictions" or "penalties"

[21] Initially, the Public Prosecution Service had decided not to institute proceedings against Geert Wilders for statements he had made about Muslims and their faith in the media in the course of 2007 and 2008, and more in particular on the Internet, through the film Fitna. Following a number of complaints contesting the prosecutor's decision, the Amsterdam Court of Appeal ordered him on 21 January 2009 to serve a writ of summons on Wilders for incitement to hatred and discrimination (Article 137d of the Criminal Code) and for insulting a group of persons, in so far as he drew comparisons to Nazism (Article 137c of the Criminal Code). In the Appeal Court's opinion, Wilders' comparison of Islam to Nazism warranted prosecution for insulting Muslim believers. Amsterdam Court of Appeal, 21 January 2009, LJN: BH0496.

[22] Amsterdam District Court, 23 June 2011, LJN: BQ9001.

[23] The authorities have pointed out cases in which politicians have been successfully prosecuted for "hate speech" or in which an appeal is pending against their acquittal.

[24] Some of the complainants have lodged a case against the Netherlands for not providing sufficient protection against incitement to discrimination with the UN Human Rights Committee, the monitoring body that oversees compliance with the International Covenant on Civil and Political Rights (ICCPR).

[25] ECtHR-Factsheet on Hate speech, http://www.echr.coe.int/NR/rdonlyres/D5D909DE-CDAB-4392-A8A0-867A77699169/0/FICHES_Discours_de_haine_EN.pdf.

[26] Amsterdam District Court, 23 June 2011, LJN: BQ9001 under 4.3.1.; ECtHR, Féret v. Belgium, no. 16515/07, 16 July 2009, § 63.

imposed are proportionate to the legitimate aim pursued[27]. The ECtHR held that interfering with a politician's freedom of expression by a criminal conviction can pursue the legitimate aim of protecting the reputation or the rights of others. In another decision concerning a politician's comments (Le Pen v. France[28]) the ECtHR stated that the interference by a criminal conviction was necessary, as the applicant's comments certainly had presented the "Muslim community" as a whole in a disturbing light likely to give rise to feelings of rejection and hostility. According to the ECtHR, the applicant had opposed the French to a community whose religious convictions were explicitly mentioned and whose rapid growth was presented as a latent threat to the dignity and security of the French people. Furthermore, as concerns the District Court's argument that some of the statements made were addressed to a religion and not to its followers, ECRI underlines that the statements mentioned in paragraph 19 points (a) and (c) of this report do address followers of Islam in particular and would, in ECRI's view, qualify as racist speech or incitement to hatred.

21. Due to the above considerations, in ECRI's view, an appeal against the District Court's judgement in order to reflect appropriately the ECtHR's jurisprudence in the Dutch case law would have been warranted. This applies all the more as the Court of Appeal (see footnote 21) had ordered his prosecution.

22. ECRI recommends that the authorities ensure that the existing legislation against racism and racial discrimination and the case law of the European Court of Human Rights is applied in all cases, in the public and private sphere, including when the statements at issue have been made by politicians.

23. In its third report, ECRI recommended that the Dutch authorities promote a more vigorous prosecution and sentencing practice in respect of offences committed through the Internet.

24. Complaints about racist offences committed through the Internet are submitted to the Complaints Bureau for Discrimination (Meldpunt Discriminatie Internet, MDI), a non-governmental organisation. In 2011 the MDI received 1 039 reports on discrimination or racist speech (1 174 in 2010, 1 238 in 2009 and 1 226 in 2008)[29]. If the MDI considers that a statement is discriminatory or racist, the website administrator is asked to remove it. If this request is not complied with, the MDI files a complaint with the prosecutor[30]. Due to the increasing unwillingness of website administrators to remove such statements from their websites (there has been a decrease in compliance from 95 % to 75 %), the MDI has had to file 14 complaints in 2011 with the prosecutor (four in 2010 and six in 2009)[31]. ECRI was informed that the lack of cooperation from website administrators may be due to the acquittal of Mr Wilders and the debate around it. ECRI is very concerned that, even though the MDI is presented by the authorities as a best practice in combating racism and racial discrimination on the Internet, the government has recently stopped funding it[32].

[27] ECtHR, Féret v. Belgium, no. 16515/07, 16 July 2009, §§ 64 and 72-74.

[28] ECtHR, Le Pen v. France [Decision on the admissibility], no. 18788/09, 20.04.2010, under B 1.

[29] The largest numbers of complaints concerned discrimination against Muslims (in 2011: 319 statements, out of which 122 were punishable by law according to MDI; in 2010: 276 statements, 104 punishable). In 2011 antisemitism went down to 252 reported incidents (165 punishable); in 2010 there were 414 such statements (212 punishable). In 2011, 182 statements concerned Black people, 141 concerned Moroccans and 44 concerned Turks.

[30] Persons may also lodge a complaint directly with the prosecutor.

[31] The Complaints Bureau for Discrimination, Annual report 2011, p. 6.

[32] The authorities consider that M. (Meld Misdaad Anoniem or Report Crime Anonymously- the Dutch version of Crime Stoppers) can perform MDI's tasks. This is a call centre, set up as a public-private

25. ECRI reiterates its recommendation to the Dutch authorities to continue to support the work of the Complaints Bureau for Discrimination on the Internet (MDI), including by ensuring that adequate resources are available to this organisation to carry out its work effectively.

26. In its third report ECRI stressed the need for all levels of the criminal justice system to make progress towards a consistent monitoring system as concerns the application of criminal law provisions against racism and racial discrimination.

27. According to civil society there is the need to create a central data collection system to record racist incidents.

28. In this respect, while the authorities have transmitted to ECRI data on the number of cases referred to the prosecutor broken down by type of offence and by year and the cases which have been settled by the prosecutor or referred to court, ECRI notes that certain data is not available and that a comprehensive monitoring system is lacking (see paragraph 17 of this report in this respect). ECRI stresses that a central and consistent monitoring system as concerns the application of criminal law provisions against racism and racial discrimination is one of the means to assess their effectiveness.

29. ECRI reiterates its recommendation to the Dutch authorities to develop a central and consistent monitoring system as concerns the application of criminal law provisions against racism and racial discrimination.

30. In its third report ECRI strongly recommended that the Dutch authorities address the role of the police in monitoring racist incidents and racially motivated offences. It recommended the following measures: the adoption of a definition of a racist incident; initiatives to encourage victims and witnesses of racist incidents to report such incidents; and the adoption of a racist incident report form to be used by the police and other agencies.

31. ECRI is pleased to note that the LECD-Police has provided a regional online form (through the website www.hatecrimes.nl) to victims to report hate crime to the police. The online form gives the possibility of anonymous reporting. The LECD-Police has also carried out an information campaign about the above-mentioned website. ECRI further notes that in 2008 the police began using a "uniform case review" system for the registration of offences with racial motivation together with offences related to racism and racial discrimination and a manual to provide guidance as to the use of this form has been produced[33]. Based on this data, since 2009, the LECD-Police has commissioned yearly criminal discrimination reports (POLDIS). According to the statistics contained in the 2011 POLDIS report, a total of 2 802 cases for breach of criminal law provisions against racism and racial discrimination were reported[34]. This represents an increase of about 10 %[35]. ECRI notes that the increase in registered reports may be due to greater priority given to registration of racist incidents within the police[36]. On the other

foundation. The Ministry of Justice, the Ministry of Interior, the Association of Chiefs of Police and the Association of Insurers are represented on its board. It is subsidised by the Dutch Government.

[33] Davidović, Marija. Anti-discrimination restrictions and criminal prosecution in 2009. In: Peter R. Rodrigues and Jaap van Donselaar (eds.), Basic Rights Clashing. Racism and Extremism Monitor: Ninth Report. Anne Frank Stichting/Leiden University 2010, p. 120.

[34] This data includes breach of criminal law provisions prohibiting discrimination on grounds of sexual orientation, gender, physical, psychological or intellectual disability. Nonetheless, 61 % of these cases, are related to racism and racial discrimination, see the 2011 Poldis report, p. 18, http://www.radar.nl/sites/radar/files/20120830113846_1_poldis_2011.pdf.

[35] In 2008 there were 2 238 cases, in 2009 2 212 cases, in 2010 2 538.

[36] About 900 of these cases were on discrimination on grounds of race, about 300 on antisemitism and about 450 on religion or belief. The broad majority of the perpetrators as well as of the victims are men.

hand, the number and the priority given to registering cases related to racism and racial discrimination still varies between police districts[37]. According to the 2011 POLDIS report, new methods for extracting racist incidents from the police registration system were presented in autumn 2012[38].

Civil and administrative law provisions

32. In its third report ECRI recommended that the Dutch authorities extend the material scope of the General Equal Treatment Act (AWGB) to important public authority activities that were not covered at the time, such as the activities of the police, other law enforcement officials and border control officials, as provided for in its GPR No. 7 on national legislation to combat racism and racial discrimination.

33. The General Equal Treatment Act (AWGB)[39] provides protection against discrimination on grounds covered by ECRI's mandate, with the exception of language and ethnic origin. ECRI was informed by the Dutch authorities that they do not plan to extend the material scope of the AWGB to cover public authorities, as the protection offered by the Article 1 of the Constitution and the General Administrative Law Act are deemed to provide sufficient guarantees. ECRI acknowledges that the Ombudsman provides a considerable level of protection against discrimination by civil servants and police officers[40]. Victims of discrimination perpetrated by civil servants also can sue in civil courts in order to obtain compensation for damages.

34. ECRI recommends that the General Equal Treatment Act provide protection against discrimination also on grounds of language and ethnic origin as per ECRI's General Policy Recommendation No. 7.

35. The Equal Treatment Commission (ETC)[41], which has been incorporated into the Netherlands Institute for Human Rights (NIHR) as of October 2012, received, between 2008 and 2011, 1 987 petitions[42]. In the same timeframe, the ETC issued 710 opinions[43]. ECRI notes that victims of racial discrimination, in most

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However, only 23 of the 25 regions registered the sex of the perpetrator and the victims; in half of the remaining cases, the sex of the persons involved is unknown. 500 victims are civil servants on duty. 100 of these cases are on race and another 100 on antisemitism. 1 717 cases are on insults, 564 on destruction, 476 on the application of right-wing texts, 446 on graffiti or scratching, 365 on threats. Burglaries (five) and robberies (two) with a discriminatory character are rare. From 2010 to 2011 there is an increase on registered insults and a trend-reversal to fewer incidents with right extremist symbols or graffiti/scratching.

[37] See the 2011 Poldis report, p. 5 and 7, http://www.radar.nl/sites/radar/files/20120830113846_1_poldis_2011.pdf.

[38] See the 2011 Poldis report, p. 34 http://www.radar.nl/sites/radar/files/20120830113846_1_poldis_2011.pdf.

[39] This Act contains general rules to provide protection against discrimination on grounds of religion, belief, political opinion, race, citizenship, sexual orientation or civil status.

[40] See the sub-section on anti-discrimination bodies and policy.

[41] This Commission is provided for under Article 11 of the AWGB and is a semi-judicial independent body with the task of investigating, mediating and adjudicating on alleged violations of Dutch anti-discrimination legislation (see paragraph 27 of ECRI's third report).

[42] In particular, according to data provided by the ETC, in 2011 11% of petitions were related to race, against 17%, 16% and 15%, respectively for the years 2010, 2009 and 2008. As concerns discrimination on grounds of nationality, in 2011 4% of all petitions were related to this ground, against 4%, 4% and 7%, respectively in 2010, 2009 and 2008. As for cases of multiple discrimination, in 2011 2% of all petitions were lodged on this ground, against 4%, 2% and 1% respectively in 2010, 2009 and 2008.

[43] According to data provided by the ETC, in 2011 16% of the opinions issued were related to discrimination on grounds of race, against 20%, 22% and 16%, respectively for the years 2010, 2009 and 2008. As concerns opinions issued related to discrimination on grounds of nationality the figures are 2% for 2011 against 3%, 0% and 3%, respectively for the years 2010, 2009 and 2008. As for opinions related to multiple discrimination, the figures are: 3% in 2011 against 5%, 2% and 1% respectively in 2010, 2009 and 2008.

cases, first solicit a local anti-discrimination bureau. If the latter does not resolve the problem, it often files a complaint with the NIHR (ETC's successor). Almost half of the discrimination complaints on grounds covered by ECRI's mandate have been filed with the ETC with the assistance of a local anti-discrimination bureau. ECRI welcomes the consensual approach taken by Dutch society and the authorities to deal with disputes related to discrimination; it notes that in many cases this leads to a positive outcome. For example, in one case the ETC received a complaint concerning the regulation of the Utrecht Marathon which provided that athletes who did not reside in the Netherlands would receive a smaller prize[44] in case of victory. After the ETC had ruled that this provision was discriminatory, the organisers changed their regulation.

36. At the same time, in its third report, ECRI recommended that the Dutch authorities ensure that the law provide for effective, proportionate and dissuasive sanctions for cases of racial discrimination, including the payment of compensation for both material and moral damages.

37. ECRI has been informed that while 75% of the rulings of the NIHR (formerly ETC) are complied with, the NIHR may not order the payment of compensation. Under Article 15(1) of the AWGB and Article 13(1) of the NIHR Act, the NIHR may refer a case to court if it deems that a conduct is in breach of the AWGB, requesting that it be declared unlawful/prohibited or that the court order "that the consequences of such conduct be rectified". ECRI regrets that the NIHR and its predecessor, the ETC, have never used this power. More generally, ECRI is concerned about the low number of cases brought before civil or administrative courts[45]. The authorities have informed ECRI that they are not aware of any case, in which a civil or administrative court has ordered the payment of compensation for racial discrimination. Moreover, taking in account that 25% of the rulings of the NIHR (formerly ETC) are not complied with, this reflects an essential lack of effectiveness of the sanctions. ECRI notes that the low number of cases brought before a civil or an administrative court may be due to the fact that the AWGB does not provide expressly for the possibility to order the payment of compensation for material and moral damage suffered as a result of discrimination; this may dissuade plaintiffs from lodging complaints. ECRI further considers that the number of cases before the above-mentioned courts would increase if the NIHR were to exercise its power to refer a case to court when it deems that a conduct is in breach of the AWGB.

38. ECRI recommends that the authorities amend the General Equal Treatment Act and other pieces of equal treatment legislation so that they provide expressly for the possibility for the courts to order the payment of compensation for material and non-pecuniary damage suffered as a result of discrimination, in line with ECRI's General Policy Recommendation No. 7, paragraph 12.

39. In its third report on the Netherlands, ECRI encouraged the Dutch authorities to raise awareness among potential victims of their rights and among the general population of their non-discrimination obligations under the AWGB.

40. The Dutch Government has run highly effective awareness-raising campaigns on discrimination and equal rights to increase victims' willingness to report incidents. A survey conducted in 2008 showed that 89% of the respondents with Turkish background, 85% of the respondents with North African background and 81% of those with Surinamese background were not aware of any organisation offering

[44] 100 Euros instead of 10 000.

[45] The Dutch authorities have not provided ECRI with data on the number of court cases dealing with breaches of the AWGB. However, according to a Dutch legal database around 60 court decisions have been published. See http://zoeken.rechtspraak.nl, search criterion "AWGB".

support and advice to people who had been discriminated against[46]. Moreover, 50% of the respondents with North African background and 33% of those with Turkish origin believed there was no law in the Netherlands prohibiting discrimination against people on the basis of their ethnicity or immigrant background when applying for a job[47]. A six week national campaign titled "should I leave my identity at home when I go out?" was launched in 2009 and was repeated a second time in 2010 in order to raise awareness about all forms of discrimination and increase people's willingness to report it. The campaign used TV, radio commercials, newspapers and posters and opened a national helpline. A website[48] was also set up to enable persons who had experienced or witnessed any type of discrimination to be referred to the appropriate local antidiscrimination bureau - simply by entering their zip code in the website - in order to file a complaint or to receive information on their rights. ECRI was informed that this resulted in a 42 % rise of reports in 2009 and an extra 6 % in 2010. In 2011 the numbers decreased, probably due to the fact that the campaign was not repeated.

41. ECRI recommends that the authorities conduct awareness-raising campaigns on racial discrimination, the avenues available to obtain redress and the type of redress which can be obtained, at least every two years.

Anti-discrimination bodies and policy

- *The National Ombudsman*

42. The National Ombudsman's mandate encompasses the handling of complaints concerning the action of administrative authorities. However, this institution is not competent to receive complaints on government policy or on the content of laws. The number of complaints received by the Ombudsman's Office in 2011 rose by 25% to 14 000; ECRI has been informed that this is linked to the economic crisis. About 700 of the above-mentioned cases concern racism and racial discrimination. The Ombudsman can investigate on his own initiative. Even though his decisions are not binding, the Ombudsman has informed ECRI that 95% of his recommendations (as for example requiring an apology or compensation) are complied with by the authorities. If recommendations relating to important cases are not complied with, the Ombudsman may raise the matter with the Parliament. In recent years, the Ombudsman has focused his attention on the selection of police staff, police violence, preventive body searches, immigration detention and Roma rights.

- *Local anti-discrimination bureaus and Art. 1*

43. In its third report ECRI encouraged the Dutch authorities in their efforts to establish a functioning network of local anti-discrimination bureaus which provide protection against and register complaints of racism and racial discrimination. It recommended that they raise local authorities' awareness of their responsibilities to carry out anti-discrimination work and ensure that such bureaus are actually established throughout the country

44. ECRI notes that the Dutch authorities pursue the strategy to combat racism and racial discrimination as much as possible at the local level in order to be closer to victims. The Municipal Anti-discrimination Services Act entered into force in 2009, requiring every municipality to provide its inhabitants with access to an anti-

[46] European Union Agency for Fundamental Rights (FRA). European Union Minorities and Discrimination Survey (EU-MIDIS): EU-MIDIS at a glance, 22 April 2009, p. 7.

[47] European Union Agency for Fundamental Rights (FRA). European Union Minorities and Discrimination Survey (EU-MIDIS): Data in Focus/Muslims, 2009, p. 10.

[48] www.discriminatie.nl.

discrimination service (ADV)[49] and to set up a nationwide network of ADVs. Since ECRI's third report, the authorities have indeed succeeded in this task, and a dense and well performing network of local ADVs, which provide protection against and register complaints of racism and racial discrimination, is now in place[50]. The success and the importance of these ADVs are clear given the high number of cases lodged before the ETC (now NIHR) by these bureaus. Their success is further supported by the statistics provided by the authorities, showing that the ADVs of 418 municipalities received a total of 6 794 complaints from residents and non-residents in 2011[51]. As it is pointed out in other sections of this report, ADVs cooperate closely also with the police and the prosecutor at the regional level.

45. ECRI notes that approximately 6.2 million Euros are earmarked for the municipalities and their ADVs. ECRI has been informed by representatives of these bureaus that this sum is not sufficient to treat in an efficient way – in addition to other tasks – over 6 000 discrimination cases[52]. The considerations mentioned above, on the contrary, warrant an increase in their budgets.

46. In its third report, ECRI recommended that the Dutch authorities ensure that funding arrangements of Art.1. reflect its extended mandate, which covers discrimination on all grounds covered by Dutch equal treatment legislation.

47. Art.1 is the national expertise centre and backbone of the anti-discrimination bureaus. Its main functions are to: monitor discrimination in the Netherlands, influence policy and legislative activities, promote social cohesion, maintain a nationwide network to oppose discrimination and provide professional expertise to ADVs. These functions are ensured through: legal consultation; policy guidance; the provision of information, courses and training; and educational projects. More specifically, Art.1 runs a documentation centre which includes, inter alia, extensive case law on anti-discrimination cases, and which also gives advice, carries out research and lobbying. ECRI deeply regrets that the Dutch Government has withdrawn all funding from Art. 1, which has consequently been converted into a private foundation. Notably, whereas in the past its annual budget consisted in 2.5 million Euros and it employed 30 staff members including a number of lawyers within its legal department, as of 1 July 2012 its staff has been reduced to 5 people and lawyers are no longer employed. ECRI notes that the withdrawal of funding from Art. 1 threatens the success achieved during the last 5 years in the fight against racial discrimination and in the provision of support to ADVs. ECRI has been informed that the government has proposed that ADVs from now on cooperate with universities or other anti-discrimination experts in order to receive the expertise previously provided by Art. 1. ECRI deems that such expertise would not be comparable to that developed by Art. 1, and that, consequently, this will lead to a loss of important knowledge painstakingly accumulated through time. Finally, given that the responsibility for helping victims of discrimination and enforcing their rights is delegated to the

[49] The statutory tasks of these services are complaint handling and registration, provision of information, awareness-raising activities, and preparation of policy advice. The anti-discrimination services must be provided by independent bodies.

[50] An impact assessment and evaluation of the network of ADVs was carried out in 2010; it showed that most municipalities (97% of municipalities covering 99% of the population of the Netherlands) had provided access to an anti-discrimination service.

[51] Most of the complaints are registered in highly urbanised areas. By far, the most complaints concerned discrimination on the grounds of race (44 % or 2 727 cases). 318 cases (5,1 %) were related to religion, 240 cases to nationality (3,9 %) and 111 to antisemitism (1,8 %). 1 725 complaints made by residents concerned the labour market, 634 occurred in the local neighbourhood, 593 in a public area and 538 were related to public services.

[52] For example, RADAR, the biggest local anti-discrimination service covering 73 municipalities, has a total annual budget of only 2.5 million Euros.

municipalities, it is essential to provide their anti-discrimination bureaus with their own expertise center.

48. ECRI strongly recommends that the authorities resume the funding of Art. 1. It also recommends that the authorities increase the funding of the local anti-discrimination bureaus.

- *Netherlands Institute for Human Rights (NIHR)*

49. In its third report ECRI recommended that the Dutch authorities provide all the necessary political support to the Equal Treatment Commission and contribute to backing the authority of its decisions and their enforcement.

50. The competencies of the Equal Treatment Commission (ETC) with respect to equal treatment have been taken over by the newly created Netherlands Institute for Human Rights (NIHR)[53]. More specifically, Article 9 of the NIHR Act states that a separate division within this new body will be responsible for the activities previously carried out by the ETC. As a semi-judicial independent body, the ETC dealt with complaints on violations of the General Equal Treatment Act (AWGB) and issued recommendations with a view of implementing equal treatment standards. The ETC also had a range of instruments at its disposal (mediation, the power to involve independent arbitrators, etc.) which could be used to solve disputes. It acted either further to the lodging of a complaint or ex officio.

51. ECRI, in line with Recommendation(97)14 of the Committee of Ministers of the Council of Europe on the establishment of independent national human rights institutions, welcomes the establishment of the NIHR on 2 October 2012. The NIHR's mandate encompasses conducting investigations, reporting and making recommendations on the protection of human rights, dealing with the complaints previously handled by the ETC, providing advice and information, and encouraging the ratification and observance of human rights treaties and European and international recommendations related to human rights. The NIHR can provide advice on laws and regulations either upon request of the authorities or on its own initiative[54]. It has the right to institute onsite investigations and to gain access to all places, with or without permission, except for places designated by law as secret places[55]. ECRI notes that, while under Article 4 of the NIHR Act the NIHR is independent in the performance of its duties, it is funded by the State. In this respect, ECRI deems that, because its work will increasingly focus on the provision of advice to the government, it is important to ensure that its work will not be influenced by budgetary concerns. The lack of financial independence therefore may be a cause for concern. At the same time the NIHR has informed ECRI that the authorities would like to secure an A status with respect to the standards of the Paris Principles[56] and that this will be possible only if the NIHR's funding is independent.

52. ECRI has been informed that the NIHR will have approximately 60 staff members, 55 of whom will be former ETC staff. ECRI welcomes the increase in staff of the new institution and stresses the importance of drawing on the expertise of the former ETC staff members. ECRI, however, is concerned that a

[53] More specifically, the ETC has been incorporated into the NIHR.

[54] Article 5 of the NIHR Act.

[55] Article 7 of the NIHR Act.

[56] The International Coordinating Committee on NHRIs (ICC), with the assistance of the United Nations Office of the High Commissioner for Human Rights (OHCHR), assesses NHRIs for compliance with the Paris Principles in order to determine their accreditation status. Depending on the extent to which NHRIs comply with the Paris Principles, they may be awarded 'A', 'B' or 'C'. Only full members ('A' status) of the international NHRI network may exercise voting rights in the ICC and full participation rights in international fora (for example, the UN Human Rights Council).

number of ETC staff will be assigned new tasks other than complaint handling and that, as a result, this function of the NIHR and more particularly, the enforcement of the AWGB, will be weakened.

53. As noted earlier, the ETC has never used its power to bring legal actions to court. ECRI encourages the NIHR to make broad use of the above-mentioned power, as provided under Article 13 (1) of the NIHR Act.

54. ECRI recommends that the authorities ensure the independence of the NIHR from a financial point of view. It recommends that a sufficient number of staff be entrusted with the complaint handling function of the NIHR. ECRI further recommends that the NIHR make broad use of its powers to bring cases before courts, provided under Article 13 (1) of the NIHR Act.

- *The National Consultation Platform on Minorities*

55. Groups of concern to ECRI (vulnerable groups) are represented in the National Consultation Platform on Minorities (Landelijk Overleg Minderheden, LOM), a national consultation structure established in 1997 in accordance with the Act on Minority Policy Consultation. LOM's role is to discuss policy matters of interest to "ethnic minority groups"[57] with the government. While meetings between LOM as a body and the government were due to be organised three times a year, ECRI has been informed by representatives of the groups currently represented on LOM that this is hardly ever the case. The groups in question are the Chinese, Turkish, Southern European, Caribbean, Surinamese and Moroccan. The Roma and Sinti have been excluded from this consultative body, because, according to the authorities, they have difficulties in identifying a single representative for their community. ECRI has always stressed the importance of consultations with vulnerable groups on cultural issues, policies and legislative acts which affect them; it is therefore naturally concerned by the fact that a bill proposing the dismantlement of this consultative body is pending before Parliament. The authorities have informed ECRI that they wish to abolish this institutionalised platform for "ethnic minority groups" and create more flexible forms of cooperation, which would be activated by the "minorities" themselves. ECRI notes that this decision is to be placed in the context of the authorities' general rethinking of the integration policy[58], which no longer focuses on special policies for vulnerable groups. In effect, ECRI has been informed by LOM that local authorities have cut funds to organisations representing vulnerable groups already at the local level. LOM has underscored that, while LOM and the forms of consultation with the government should be modernised, LOM is the last body in the country which can truly represent vulnerable groups and voice opinions on issues that affect them.

56. ECRI strongly recommends that the authorities in charge of fighting racism and racial discrimination maintain, strengthen and modernise the mandate of the National Consultation Platform on Minorities. ECRI further recommends that the authorities consult the National Consultation Platform on Minorities on cultural issues, policies and legislative acts which may affect groups of concern to ECRI.

- *Anti-discrimination policy*

57. In its third report, ECRI encouraged the Dutch authorities to continue their efforts to develop overall strategies and policies against racism and racial discrimination which contain mechanisms for implementation, monitoring and evaluation.

[57] Eight representative organisations have been admitted to LOM. These jointly represent more than 1.8 million citizens of Caribbean, Chinese, Moroccan, Moluccan, Surinam, Turkish and South European descent and refugees in the Netherlands.

[58] See the sub-section on other migrants and their integration.

58. ECRI notes that the Dutch Government lacks a comprehensive Action Plan for Combating Racism at the national level. In the Integration Memorandum 2007-2011, the government had announced that it would present such a plan in the first half of 2008. However it was never published. In 2009 the government stated that the general letter on integration sent to parliament by the Ministry of Housing, Spatial Planning and the Environment contained a chapter on racism which set out the government's strategy in this regard. The action programme on anti-discrimination policy contained in a policy letter of 13 September 2010 has a strong focus on discrimination on the ground of sexual orientation and on antisemitism. It does not bring to the fore, however, the importance of fighting discrimination on the ground of "race", language, citizenship, national or ethnic origin and religion. The government has informed ECRI that the absence of a nationwide Action Plan is due to the decentralised approach taken in combating discrimination: bodies like the local anti-discrimination services and the NIHR can deal with all discrimination grounds and are accessible to everyone. ECRI considers that, while setting up a network of local anti-discrimination bureaus is positive, it does not relieve the central government from developing a national strategy which establishes national common targets, standards and provides for a monitoring mechanism which verifies whether the targets have been met. Local bodies cannot, for example, effectively combat racist speech or acts of the PVV nor put an end to the discriminatory practices on the labour market. In addition, in ECRI's view, it is not consistent to delegate the protection against racial discrimination to local bodies and, at the same time, remove the funding to their knowledge centre, Art. 1. Furthermore, ECRI is concerned that as a result of the withdrawal of funds from Art. 1, the cooperation between the various anti-discrimination bodies may have been affected[59]. ECRI considers that an Action Plan for Combating Racism at the national level could address this problem.

59. ECRI reiterates its recommendation to the authorities to develop a national strategy and policy against racism and racial discrimination covering various fields of life (including employment, education, access to services and access to public places), which sets out national common targets, mechanisms for implementation, monitoring and evaluation.

II. Discrimination in Various Fields

Education

60. In its third report on the Netherlands ECRI recommended that the Dutch authorities continue to address de facto segregation in Dutch schools, in line with its GPR No. 10 on combating racism and racial discrimination in and through school education. In particular, ECRI recommended that measures aimed at improving the quality of schools with a significant population of vulnerable groups of concern to ECRI[60] should be combined with initiatives aimed at providing incentives for parents to send their children to schools in their own neighbourhoods.

61. While a number of measures have been taken by the authorities in order to tackle the issue of school segregation, the situation described in ECRI's previous reports on the Netherlands in this respect continues to give rise to concern. There continue to be high concentrations of pupils belonging to vulnerable groups in some schools, which cannot be explained solely on socio-economic grounds[61]. It

[59] See paragraph 47 of this report.

[60] These are persons who may be discriminated against on grounds such as "race", colour, language, religion, citizenship or national or ethnic origin.

[61] Socio-ethnic school segregation is often referred to in Dutch public debate as the distinction between "black" schools and "white" schools, the former being one with pupils of immigrant descent (including Turkish and Moroccan) and the latter being one with pupils of native descent (see International

is widely recognised, in fact, that many ethnic Dutch people living in neighbourhoods with a large population of vulnerable groups (mixed neighbourhoods) send their children to schools in other areas ("white flight")[62]. Segregation, however, is also present, in ethnically homogenous neighbourhoods; in these cases it is related to socio-economic factors and more specifically to the problem of segregation present in the housing sector. ECRI notes that the phenomenon of segregation in the field of education can be attributed partly to the prominence given under Dutch law to parents' freedom to choose their children's school.

62. Since ECRI's third report, between 2007 and 2010, the authorities have encouraged municipalities to develop projects to reduce segregation in mixed neighbourhoods so that the schools mirror the neighbourhood population. Notably, 12 municipalities have implemented pilot projects and have received extra funding to this effect. Because of the precedence given to parents' freedom of choice, these projects required the full consensus of parents, local authorities and school boards. Three types of initiatives were taken: in two municipalities a centralised application system was adopted for pupils in primary schools, whereby parents could indicate by order of preference the schools of their choice. A set of rules, however, were applicable in determining which school the pupil would be accepted to: 1. siblings would be given priority and be accepted to the same school; 2. pupils who live the closest to the school are given second priority; 3. children whose acceptance would contribute to the goal of 30% disadvantaged pupils and 70% advantaged pupils would be accepted. The second rule aimed to discourage highly educated parents who lived in mixed neighbourhoods from choosing schools in the suburbs, as under these rules their chance to have their child accepted to these schools would be diminished[63]. The second initiative consisted in providing information to parents on the various schools present in their neighbourhood, coordinating, for instance, the dates and times of the visits to the schools and organising group visits to several schools. This way, parents would consider as an option schools which otherwise they would have avoided. A third measure to counter school segregation were "parent initiatives"[64] consisting in groups of highly educated parents choosing, together, to enrol their children in a school located in their neighbourhood performing well and having a majority of disadvantaged pupils, so that their child would not be the only one in the school with a different background.

63. On the one hand, according to the study International Perspectives on Countering School Segregation of the Mixed Knowledge Centre[65], the measures and projects carried out thus far aimed at desegregation are promising[66]. On the other hand, the authorities have informed ECRI that their impact has been very modest. For this reason, they no longer focus on measures to reduce school segregation, but in improving the quality of schools in disadvantaged

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Perspective on Countering School Segregation, Josep Bakker, Eddie Denessen, Dorothee Peters and Guido Walraven, 2011, Mixed Knowledge Centre).

[62] Out of the four largest cities in the Netherlands (Amsterdam, Rotterdam, The Hague and Utrecht), segregation was the highest in The Hague.

[63] Parents, however, are allowed to file a complaint concerning this system. While few of them have, no complaints have been filed before a court of law.

[64] 38 were on-going in 2010.

[65] The Mixed Knowledge Centre is supported by the Dutch Ministry of Education, Culture and Science. It has a clearing house function: creating and maintaining a database with extensive information regarding school segregation. The Centre also aims to activate and empower participants to combat segregation and promote integration in schools.

[66] At the same time, according to this study, the state of the art of the evaluation studies does not allow very firm conclusions about these measures' effectiveness.

neighbourhoods[67]. More specifically, municipalities receive 260 million Euros in government funds every year for this purpose. They are required to use these funds to finance pre-school education, bridging classes and summer school, and have the option of organising other activities aimed at improving children's language skills. Summer school programmes offered during school holidays are also aimed at improving pupils' Dutch language skills. According to the authorities, over the course of the next few years, an additional 100 million Euros will be invested in preschool education, bridging classes and summer schools. Furthermore, approximately 400 million Euros a year are available for children whose parents have a low level of education. Schools use these funds to pay for additional teaching staff and reduce the size of the class so that disadvantaged pupils can be given more attention. Secondary schools receive extra funds for staff if over the course of two or more years a certain percentage of their pupils come from neighbourhoods identified as having multiple poverty-related problems. Schools can use these funds to reduce the drop-out rate and provide more intensive guidance to individual pupils in order to help them improve their academic performance. The authorities have informed ECRI that, as a result, the language skills of pupils belonging to vulnerable groups have improved, as well as the performance in maths of pupils of Moroccan and Turkish origin. ECRI welcomes the authorities' initiatives aimed at improving the quality of schools with a significant ethnic minority population. It stresses however, that such measures should go hand in hand with initiatives aimed at countering de facto segregation in Dutch schools, in order to decrease prejudices, increase acceptance of persons with different ethnic origins and ultimately achieve greater integration. For this reason, ECRI is hopeful that the desegregation measures mentioned above will be resumed, incentivised and supported financially from the central government.

64. ECRI recommends that the national authorities resume, encourage and financially support desegregation measures in the field of education. ECRI further recommends that the national authorities carry out studies and assess the desegregation measures carried out thus far, so as to improve, if need be, the initiatives taken.

65. ECRI has also been informed by the NIHR (ETC's successor) that, since ECRI's third report, several students had lodged complaints on grounds of racial discrimination against the University of Applied Sciences in The Hague. The ETC, at the time, had found that these complaints had been founded and had therefore launched, with the cooperation of the university, an investigation on whether and at what levels racial discrimination occurred at this university. The investigation concluded that indeed racial discrimination occurred at the university against students and staff and consisted, inter alia, in: underestimating academic/professional qualifications; jokes and comments on origin, religion or skin colour; fewer career opportunities; and lack of a response to discrimination complaints lodged internally. Further to its investigation, the ETC made recommendations to the university; ECRI has been informed that the latter have been complied with.

Employment

66. In its third report, ECRI strongly recommended that the Dutch authorities improve the position of vulnerable groups (groups of concern to ECRI) in the labour market. It encouraged them in their efforts to combat discrimination and recommended that positive measures in the field of employment aimed

[67] However, under the legislation on education, municipalities and school boards must meet at least once a year to discuss how to achieve an even distribution of disadvantaged pupils among schools.

specifically at vulnerable groups should be used more widely and should target the most disadvantaged, particularly Moroccans, Turks and Antilleans.

67. As concerns the authorities' policy in employment, ECRI notes regrettably that the analysis contained in its third report on the Netherlands remains valid. Notably, the authorities have confirmed that: they have discontinued all targeted policies based on improving the position of certain vulnerable groups in the labour market; and that they privilege general labour market policies targeted at persons in need of support, regardless of their ethnicity. More generally, as was confirmed by the authorities, no comprehensive study was commissioned to evaluate the results of the former policy. ECRI further notes that the Expertise Centre on Diversity and Employment (DIV), set up in 2004 to promote diversity management amongst employers, was closed down at the end of 2010. It advised employers and employer organisations on how to develop and implement policy plans in order to facilitate cultural diversity. It also advised state and local institutions on how to diversify culturally their workforce[68]. Yet, according to data provided by the authorities, discrimination complaints in the field of employment remain the highest category of complaints received by local anti-discrimination services, with discrimination on grounds of "race" being the most frequent type of complaint[69].

68. ECRI recommends that the Dutch authorities resume targeted policies based on improving the position of certain vulnerable groups in the labour market.

69. Nonetheless, since ECRI's third report, some projects targeting refugees have been implemented. One of the projects launched was the Job Offensive for Refugees between 2006 and 2009, which aimed to find 2 600 jobs for refugees in three and a half years. According to the authorities, during this period, 2 327 found employment and, further to the extension of the programme to 2011, 500 additional refugees were assisted in finding employment. However, ECRI has been informed that the economic crisis is expected to affect the refugee unemployment rate, which has traditionally been very high[70] [71].

70. In ECRI's view, the findings of the two studies, which are described below, beg for a more firm response from the authorities as concerns discrimination in employment and for more targeted action in this respect as concerns vulnerable groups[72]. The 2010 Discrimination Monitor published by the Social and Cultural Planning Bureau, upon request of the Ministry of Social Affairs, focused on the situation of non-Western migrants in the Dutch labour market. The study included interviews with 106 recruitment officers and enquired into their recruitment practices, concluding that they were discriminatory. The study highlights that the applications of candidates of non-Western origin were not retained because of : lack of language proficiency; the way they presented themselves during job

[68] ECRI has been informed by the authorities that some of its competencies have been transferred to the Dutch Foundation for Psycho Engineering (NSvP).

[69] The authorities have requested advice from the Social and Economic Council on combating discrimination in employment. This is due by the end of 2013.

[70] For this reason, the Foundation for Refugee Students (UAF) has launched the project Durable and diverse: Keeping talented refugees on the labour market.

[71] According to the 2008 ENAR (the European Network Against Racism) shadow report on Racism in the Netherlands, due to the economic crisis, certain groups have been disproportionally affected by unemployment, notably: in 2010, 14% of the "allochtone " population of the Netherlands (people born abroad or with at least one parent born abroad - those who gained Dutch citizenship at birth are excluded) lost their job, compared to 7% of the "autochtone" population (see also the section on monitoring racism and racial discrimination for a definition of allochtone and autochtone).

[72] According to the statistics of the Dutch Statistics Agency (CBS), in 2010 there were 342 000 persons of Surinamese origin, 349 000 of Moroccan origin, 383 000 of Turkish origin and 138 000 of Antillean origin living in the Netherlands. Together these ethnic groups represent about 8% of the total Dutch population.

interviews; marked religious characteristics (such as a beard or a headscarf); and previous negative experiences with employees of non-Western origin. The Monitor highlights, in particular, that persons of Antillean and Moroccan origin are the least desired candidates. In addition, the Discrimination Monitor contained a component on situation testing, whereby two fictitious candidates with the same qualifications and experience, would apply for a given vacancy. The results showed that 16% fewer job applicants of non-Western origin were invited to job interviews than their ethnic Dutch counterparts. It also emerged that non-Western men are more affected by discrimination that non-Western women. Discrimination was especially identified in lower and middle-ranking jobs (where non-ethnic Dutch had, respectively, 20% and 19% less chance to be invited for an interview)[73], in particular in the hospitality industry and the retail sector. ECRI has also been informed about a second study[74] carried out in 2011 on discriminatory practices of employment agencies. It showed that 76% of the 187 employment agencies which had been contacted for the survey were prepared to impose discriminatory requirements on applicants based on ethnicity, if the (fictitious) employer had specified particular preferences to the employment agency in this respect. ECRI has been informed by the authorities that further to these reports the Secretary of State has held talks with the National Consultation Platform on Minorities[75] and with representatives of the private employment agencies and has asked such agencies to implement measures to prevent and combat discrimination. At the same time, various sources have highlighted that the authorities have not done enough to ensure that these agencies take measures in practice.

71. ECRI welcomes the fact that the authorities have commissioned studies to assess the situation of groups of concern to ECRI (vulnerable groups) in the field of employment. At the same time, ECRI firmly believes that the seriousness of the results of the above-mentioned reports warrants that anti-discrimination measures in the field of employment should not be left to the good will of the employment agencies, but be imposed and enforced by the authorities in the context of a comprehensive anti-discrimination policy.

72. An incident which was widely reported in the media was a court case of 11 October 2010 in which three managers of different supermarket stores and a personnel officer were handed conditional fines for racial discrimination. The store managers had sent an e-mail to the personnel staff requesting that no more Moroccan job applicants be accepted.

73. ECRI's attention was particularly drawn to the working and living conditions and the treatment of temporary agency workers who do not permanently reside in the Netherlands. ECRI expresses concern, in particular, as concerns the situation of Polish nationals who are temporary agency workers and work in the agriculture, construction, industry and fish and meat processing sectors.

74. At the time of ECRI's visit this field of employment was regulated by the Collective Labour Agreement for Temporary Agency Workers of 2009 – 2014 (the collective agreement), which contains a specific chapter for the category of temporary agency workers who do not permanently reside in the Netherlands. As will be described in greater length below, this chapter provides for specific rules as concerns deductions from payable wages, such as those related to costs associated to housing, transportation and health insurance which can be

[73] As concerns higher educated applicants, applicants with a non-Western ethnic origin had 6.5% less chance to be invited for an interview.

[74] This study was carried out in 2011 by two sociology students of the Free University at The Netherlands Institute for Social Research. The study was requested by the Ministry of Social Affairs and Employment.

[75] See the sub-section on anti-discrimination bodies and policy.

provided for by the employer but which the employee is not under an obligation to accept. These deductions, however, may also include penalties for specific "violations" which are provided for under the employment contract (which should also specify the amount of the penalty for the specific violation). ECRI notes that the collective agreement does not provide for any such penalty fines for temporary agency workers who permanently reside in the Netherlands. ECRI sees no objective and reasonable justification for this difference in treatment and deems that it amounts to indirect discrimination on grounds of citizenship. ECRI is aware that a new collective labour agreement for temporary agency workers has entered into force in November 2012. While a number of the above-mentioned issues remain topical and continue to pose a concern to ECRI, it is pleased that several provisions have been introduced, including some that have a positive impact on the situation of temporary agency workers who do not reside in the Netherlands (for instance, safeguards related to housing and information on possible deduction from wages which is to be provided in the worker's language).

75. ECRI recommends that the Dutch authorities encourage that the Collective Labour Agreement for Temporary Agency Workers does not provide for less favourable treatment to persons who do not permanently reside in the Netherlands.

76. ECRI has been informed that one of the ways in which temporary agent workers who do not permanently reside in the Netherlands are recruited is through branch offices of the temporary agency in other countries, for instance, in Poland. According to the information received at the time of ECRI's visit, the prospective employee is proposed an "all inclusive package" which includes: employment, transportation from the country of origin to the Netherlands and between the place of work and the living quarters, housing and health insurance. These services must be paid for by the employee and the sums are deducted from his/her salary. This type of arrangement renders the employees extremely vulnerable and dependent on the employer. ECRI was provided with a specific example of such vulnerability in the mushroom picking industry. In the specific case, given that under the employment contract transportation costs must be paid to the employer, the Polish employee holds a debt towards his/her employer even before arriving to the Netherlands. Furthermore, additional sums of money are deducted for training purposes. As concerns the wages in this specific industry, while under the contract the employee should be paid the minimum wage, additional conditions such as the requirement to pick large amounts of mushrooms in a short span of time result in large amounts of unpaid overtime[76]. Persons working in this industry must consume the lunches provided for by the employer and sums of money are deducted from their salary even when they choose not to eat these meals. Workers of this category have confirmed that they are often subject to penalties, which were not clear to them at the time they signed the contract. Furthermore, there have been reports that, occasionally, employers keep the employees' passports. As concerns in particular the housing arrangements, ECRI has been informed that many workers are placed in overcrowded apartments or rooms and are asked to pay for a bed, instead of a room or an apartment, in violation of housing regulations and the collective agreement[77]. Furthermore, these workers have informed ECRI that the employer carries out unannounced visits to their living quarters in their absence. Lastly, if they complain about their working or living conditions or attempt to find alternative housing, their contract is terminated and they lose their accommodation.

[76] Examples were given of persons having to work 7 days a week for 12 to 14 hours per day to reach the set amount.

[77] See the sub-section on discrimination in housing.

77. ECRI was also informed by civil society that temporary work agencies are not required to obtain licences and that this sector is entirely liberalised. Furthermore, according to these same sources, the Labour Inspectorate does not systematically and frequently carry out inspections of such agencies. ECRI has received information indicating that this issue is being considered with a view of finding a solution.

78. ECRI is aware that any person in the Netherlands may lodge discrimination complaints before the NIHR, the local anti-discrimination bodies and civil courts. However, the particular system devised to recruit temporary agent workers who do not reside permanently in the Netherlands puts these persons in a position of vulnerability which does not facilitate the lodging of complaints. For this reason ECRI strongly urges the authorities to eliminate the exploitation and vulnerability of these workers at the source, by setting up, if need be, a system of licences for temporary work agencies and by carrying out regular inspections of the agencies and the places of work.

79. ECRI strongly recommends that the Dutch authorities address any exploitation of temporary agent workers who are not permanently resident in the Netherlands by: setting up, if need be, a system of licences for temporary employment agencies; regularly inspecting the same; and ensuring that the above-mentioned category of workers benefit from the safeguards and work conditions provided for under the law.

80. In its third report, ECRI recommended that the Dutch authorities monitor the implementation of the legal provisions in force against racial discrimination in employment, in particular, the effectiveness of the provisions prohibiting racial harassment at the workplace and take any necessary corrective action.

81. Under the Working Conditions Act, employers are obliged to identify risks of discrimination at the workplace and to develop preventive measures, if need be. The respect of these obligations is verified by the Social Affairs and Employment Inspectorate, which can issue a fine in case of breach. ECRI was informed that such preventive discrimination plans have been implemented particularly in the public sector but not in the private sector. ECRI's attention was raised, however, to the fact that further to the economic crisis, members of vulnerable groups have been the first to lose their jobs, as compared to ethnic Dutch workers.

82. ECRI recommends that the Dutch authorities ensure that employers comply with their obligation to identify risks of racial discrimination at the workplace and to develop preventive measures, both in the private and in the public sectors.

Housing

83. In its third report, ECRI encouraged the Dutch authorities to continue to counter the disproportionate concentration of ethnic minority groups in disadvantaged neighbourhoods. While recognising the challenges posed by this task, ECRI strongly recommended that the Dutch authorities monitor the impact of measures taken in these fields and ensure that these comply with the prohibition to discriminate directly or indirectly on the basis of grounds covered by ECRI's mandate. It also recommends that policies that are found to be in breach of such prohibition should be discontinued. ECRI further recommended that in their efforts to combat de facto segregation the Dutch authorities give priority to measures aimed at improving the socio-economic conditions prevailing in disadvantaged areas.

84. According to the state funded 2009 Annual Report on Integration (At home in the Netherlands, Trends in integration of non-Western migrants[78]), the degree of segregation in the housing field in the largest municipalities in the Netherlands (Amsterdam, Rotterdam, The Hague and Utrecht) remains high. Furthermore, over the last 10 years almost one in three native Dutch residents has moved out of neighbourhoods which are now occupied by a majority of migrant residents. This, as has been discussed in the sub-section dedicated to discrimination in access to education, has resulted in segregation in the field of education.

85. In his report on the visit to the Netherlands in 2008 the Commissioner for Human Rights of the Council of Europe (the Commissioner) noted that several measures, including extra financial support, promotion of mixed residential areas, improving living standards, and promotion of employment and education, were being implemented to combat segregation in housing. In its report to CERD in 2008, the government had stated that it had been attempting to provide different types of dwellings in the neighbourhoods with high concentration of immigrants, with some housing aimed at residents with high income. The objective had been to offer varied housing in order to cater to different sectors of society (with reference to ethnic origin and socio-economic conditions). The authorities' position on mixed residential areas, however, seems to have changed after 2008, as it emerged that improvements in one area could lead to the worsening of the situation in other areas and could lead to tensions. ECRI acknowledges the difficulties encountered by the authorities and commends the initiatives taken. It encourages the authorities to continue to address segregation in housing through innovative measures such as those mentioned above, in the context of a comprehensive integration strategy.

86. ECRI recommends that the Dutch authorities resume efforts made to address segregation in housing in disadvantaged areas, in the context of a comprehensive integration strategy.

87. The Urban Areas Act[79] described in ECRI's third report on the Netherlands is still in force and has been implemented, for the time being, only in the Municipality of Rotterdam. Rotterdam has designated five neighbourhoods whereby in order to qualify for public housing with a monthly rent below 650 Euros, the tenant must have lived in the city on a continuous basis for six years. Persons who do not meet this requirement must prove that they have an income, through an employment contract, a pension or a student scholarship.

88. On the one hand, ECRI notes that various sources have highlighted that these measures, in practice, affect vulnerable groups (groups of concern to ECRI) from non-Western countries. Furthermore, ECRI has also been informed that, before enacting the Urban Areas Act, 15 additional measures had been proposed in order to tackle the deterioration of certain neighbourhoods, albeit they were abandoned by the municipality, which favoured the solution proposed by the Urban Areas Act.

89. On the other hand, the authorities have stressed that the Urban Areas Act is being implemented in order to improve the designated neighbourhoods, which were inhabited by a high proportion of persons who were unemployed and which were marked by a high rate of criminality. The statistics provided by the authorities show that, between 2007 and 2011, the number of persons who have been refused accommodation in one of these neighbourhoods has varied

[78] The Netherlands Institute for Social Research, The Hague, May 2010, p. 188.

[79] This Act permits municipalities to establish income-related conditions to reside in certain neighbourhoods, so as to stop the deterioration of the latter, subject to the authorisation, in this respect, of the Ministry Interior and Kingdom Relations.

between 2 and 9%. Furthermore, the authorities have assured ECRI that persons who are refused such lodging do have other options in the city and its suburbs. ECRI has also been informed that the effects and the need to implement the Urban Areas Act are assessed every two years. The most recent evaluation showed some positive results in the above-mentioned neighbourhoods, such as an increase of the ratio of the population who are employed and a decrease of persons who depend on social welfare. However, the municipality has found that more time is needed for meaningful, long-term changes. ECRI further notes that a number of judgments of the administrative tribunal have rejected complainants' claims that the refusal to rent the above-mentioned apartments had breached the law; according to the tribunal, although the requirements provided for by the law had not been satisfied, the provisions invoked[80] could be restricted to protect public order and in the general interest of society. ECRI welcomes the fact that the application of the above-mentioned law is regularly monitored and encourages the authorities also to take into account in the monitoring procedure the effects of the law on vulnerable groups.

90. ECRI has also been informed that segregation has begun to affect Polish workers in the Netherlands. In addition to what has already been mentioned in the sub-section on discrimination in employment, temporary employment agencies often provide accommodation to Polish and Eastern European workers in a ghetto-like environment, outside residential areas, with poor sanitary conditions. ECRI has also been informed that old abandoned buildings are increasingly being occupied by Polish workers and offered by temporary employment agencies as accommodation (also called Pole hotels). This practice has led to unrest among the local population. The workers are also lodged in caravans and bungalows in holiday parks and camping grounds.

91. ECRI strongly recommends that the authorities ensure that housing regulations are complied with as concerns the accommodation offered to Polish and Eastern European temporary workers and that they carry out inspections in this respect.

Access to places of entertainment

92. In its third report, ECRI encouraged the Dutch authorities in their efforts to counter racial discrimination in access to places of entertainment. It further recommended that they monitor the effectiveness of measures taken to this end, including the impact of door policy panels.

93. While the authorities have informed ECRI that there has not been a dramatic increase in the number of cases of racial discrimination practiced by the entertainment industry (in particular, hotels, restaurant, bars and discotheques), they, together with representatives of civil society and anti-discrimination bodies, have confirmed that it is a recurrent problem. Since ECRI's third report, the ETC had received numerous complaints from applicants who asserted that they had been refused entry to a bar or discotheques because of their "race". The ETC[81] had issued opinions with respect to a number of those complaints, finding a breach[82]. Likewise, RADAR, the local anti-discrimination Bureau for the Rotterdam area, found in one of its inquiries that a number of discotheques had a discriminatory policy against persons believed to be Muslim and Antillean.

[80] The articles which were invoked in one case were Article 2 of Protocol No. 4 to the European Convention on Human Rights and Fundamental Freedoms (on the freedom of movement) and Articles 12 and 26 of the International Covenant on Civil and Political Rights (respectively, on freedom of movement and on the prohibition to discriminate).

[81] See the section on the existence and application of legal provisions, sub-section on anti-discrimination bodies and policy, for information concerning the role and mandate of the Equal Treatment Commission.

[82] See, for example, cases 2012-50, 2011-196, 2010-105, 2010-54 of the ETC.

Representatives of organisations of other vulnerable groups (groups of concern to ECRI) have also informed ECRI of discriminatory practices adopted in their respect by discotheques.

94. ECRI welcomes the fact that the door policy panels have been maintained and have been expanded (they are currently 15 in the country). As was described in ECRI's third report, they are composed of representatives of the entertainment industry, the local authorities, representatives of vulnerable groups, the police, the local anti-discrimination bureaus and youth associations. While the modalities according to which they function vary from city to city, they examine customer complaints relating to entrance policies and may take a number of actions: talk to the establishment concerned to assess whether it engages in any discriminatory practices; give the establishment a warning; contact the police; contact the local authorities (the mayor may in some cases decide to withdraw the establishment's licence). Clubs who wish to open a business are asked if they want to join the door policy panel. If so, they must submit their entrance policy, which will be reviewed by the panel and, if deemed in conformity with the law, will be posted at the entrance of the club. ECRI has also been informed by a local anti-discrimination bureau that Clubs that do not join the door policy panel will therefore be judged more severely if a complaint which concerns them is brought before the panel. Certain door policy panels have set up an SOS hotline which can be dialled and used to transmit the area code in which the club is located, so that the discrimination complaint will be submitted to the door policy panel competent for that area. As concerns the usual avenues to report incidents of racial discrimination in the entertainment industry, these include: the police at any time within the statutory limits (in addition, in certain municipalities, persons who have been refused access to an establishment will be given a document justifying this decision); the NIHR (formerly ETC); and a local anti-discrimination body.

95. The authorities have informed ECRI that the door policy panels meet regularly and that some awareness-raising activities have been carried out, particularly in the Rotterdam area, so as to inform the public about the existence of these panels. However, representatives of civil society have criticised their effectiveness, noting that the private industry does not always cooperate due to the non-binding nature of the decisions of the door policy panels and their limited powers. ECRI has also been informed that, in April 2012, the Green Party proposed to carry out undercover investigations on admission policies and to withdraw permits as an ultimate remedy. In July 2012, the Dutch Minister for Immigration and Asylum held discussions on discrimination in places of entertainment with entrepreneurs in the entertainment industry (hotels, restaurants, bars and discotheques), a security company that is active in the entertainment industry and anti-discrimination agencies. He reported to the House of Representatives that the goal of the discussion was to discuss the current status of discrimination in the entertainment industry and to assess whether the current approach is sufficient to curb discrimination in places of entertainment.

96. ECRI is pleased that this issue is on the government's political agenda. It further supports the approach taken by the authorities based on the building of the consensus of all of the stakeholders involved. It notices however, that this has not been sufficient to decrease significantly cases of racial discrimination in the entertainment industry. It suggests therefore that the door policy panels go hand in hand with an improved enforcement of criminal law provisions against racism and racial discrimination, as well as equal treatment legislation. ECRI further supports the initiative to withdraw licence permits of businesses in the entertainment industry, when investigations have revealed that their entrance policy is discriminatory.

97. Since ECRI's third report, a number of queries and complaints had been submitted to the ETC by Muslim women wearing headscarves, regarding the policy of some fitness centres not to allow any head covering garments. In all of these cases, the ETC had concluded that the refusal was direct or indirect discrimination without an objective justification. As part of its follow-up procedure, the ETC had brought its opinions to the attention of the State Secretary of Sports.

98. ECRI recommends that, in addition to maintaining and reinforcing the door policy panels, the authorities ensure a more vigorous enforcement of criminal law provisions against racism and racial discrimination, as well as equal treatment legislation in the field of access to places of entertainment. ECRI further recommends that when investigations reveal that an entrance policy is discriminatory, the businesses operating in the entertainment industry be duly punished, including through the withdrawal of the establishment's licence permit.

Access to other services

99. In its third report, ECRI encouraged the Dutch authorities in their efforts to counter racial discrimination in banking services. It recommended that they monitor the effectiveness of initiatives in place to counter this phenomenon.

100. At the time of ECRI's third report, the ETC had investigated the practice of "redlining" i.e. refusing mortgages to applicants residing in certain areas known to be populated predominantly by people of non-Dutch origin, finding that this practice amounted to unjustified indirect discrimination. ECRI is pleased that in August 2011 a new Code of Conduct for Mortgage Loans was adopted which expressly prohibits discrimination on grounds, inter alia, of religion, race, nationality and the refusal of a mortgage on the basis that the property to be mortgaged is in a given area/postcode. Furthermore, complaints concerning the breach of the code may be filed before a Financial Service Complaints Institute, set up, inter alia, to take a decision on these types of complaints and to monitor the respect of the code. Nonetheless, ECRI has been informed that certain non-Dutch nationals, including some Polish nationals, continue to be refused mortgage loans or the opening of a bank account.

101. ECRI recommends that the authorities do their utmost to raise the population's awareness of the Financial Service Complaints Institute, before which complaints on discriminatory refusal/denial of a mortgage loan or of opening of a bank account can be filed.

Social welfare

102. Under the previous government-coalition formed by the Liberals and the Christian Democrats, the parliamentary support agreement with the Freedom Party stated that: "If someone's behaviour or clothing effectively limits their chances on the labour market, their benefit may be refused, reduced or revoked on the basis of the Work and Social Assistance Act". The integration bill proposed in June 2010 indeed suggested measures against those who lower their employment chances by the way they dress. ECRI was informed that, at the time of its delegation's visit to the Netherlands, this law had not been adopted by the Parliament. However, there is already some case law on this subject. Notably, in one case, the Administrative Court of Amsterdam upheld the decision of Amsterdam's local authorities to reduce the welfare benefits of an unemployed person by 200 Euros because the recipient had not done his utmost to find a job. Under the Work and Social Assistance Act, a person who is unemployed and who receives social

assistance must do his/her utmost to reintegrate into the labour market[83]. If this obligation is not met, the authorities reduce the recipient's benefits. In this specific case, the authorities had offered a person two employment opportunities, one in the field of security and another one in a sector in which he would be in close contact with the public[84]. In both cases the applicant was not hired because for religious beliefs he refused to cut his beard (one of the requirements for the first job was to have a beard of a maximum length of 3-5 cm) and was not willing to shake hands with women (a requirement for the second job). The applicant brought his case before the Administrative Court of Amsterdam, which found that the employers' requirements had been justified, as freedom of religious expression can be limited by reasonable requirements to do everything possible to find paid work. ECRI does not wish to enter into the merits of the judgment; however it wishes to stress that imposing specific requirements in employment is legitimate and does not constitute discrimination, when, by reason of the nature of the occupational activity concerned or of the context in which it is carried out, such requirements constitute a genuine and determining occupational requirement, provided that the objective is legitimate and the requirement proportional. In this respect, ECRI is surprised that shaking hands would be considered a genuine and determining occupational requirement in the specific job at issue. Moreover, ECRI considers that, before refusing to pay unemployment benefits, the authorities should ensure that the unemployed person has been offered an employment opportunity whose genuine occupational requirements do not conflict with the person's religious beliefs.

103. ECRI strongly recommends that the provisions refusing, reducing or revoking social benefits on grounds that a person's behaviour or clothing effectively limits their chances on the labour market not be adopted and passed in Parliament. ECRI further recommends that the authorities ensure that any administrative authority who applies the above-mentioned measures be duly punished.

III. Climate of Opinion and Racism in Public Discourse

104. In 2010 a government was formed by the People's Party for Freedom and Democracy (VVD) and the Christian Democratic Appeal (CDA) with the support of the Freedom Party (PVV), the latter known for its anti-Muslim anti-immigrant discourse. A significant part of the agreement on parliamentary support (transposed into the Coalition Agreement and the Policy Statement) focused on immigration. This government fell in April 2012, due to the withdrawal of the PVV's support in connection with the government's approval of budget cuts. At the time of the ECRI delegation's visit a new government had not yet been formed, however, the political landscape had changed further to the parliamentary elections of 12 September 2012, which saw the VVD and the Dutch Labour party (two pro-European parties) acquiring more than the majority of seats in parliament and the PVV losing 11 seats (from 24 to 13). In this section, ECRI will analyse the climate of opinion and political discourse present in the Netherlands since ECRI's third report; it looks with interest and optimism to the policies and approaches which will be adopted by the new cabinet.

105. ECRI notes that a report released in December 2012 by the Netherlands Institute for Social Research (SCP) found that social contact between white native Dutch and certain vulnerable groups (including the Moroccan, Turkish, Antillean and

[83] This may include actively finding a job, the duty to accept job offers from the authorities and/or help and the services, such as (re-)education or a (subsidised) job offer (see Article 9(1)(b) of the Work and Social Assistance Act).

[84] Notably, in a service offered by the municipality to help citizens with administrative issues at the Employment and Income Service.

Surinamese) has shrunk over the past 17 years and that these communities feel less accepted in Dutch society in 2011 than they did in 2002.

106. In its third report, ECRI urged the authorities to promote a public debate on issues of integration and other issues of relevance to ethnic minority groups that avoided polarisation, antagonism and hostility among communities. Furthermore, it strongly recommended that they counter the use of racist and xenophobic discourse in politics and apply the existing legislation against incitement to racial hatred, discrimination and violence.

107. ECRI notes that the integration policy presented in June 2011 distanced itself clearly from the model of a multicultural society. Although it requires efforts from the receiving society and migrants, it vowed to place greater demands on those who desire to settle in the Netherlands. It has, accordingly, introduced very strict requirements to the entry of migrants which have been judged not to be in compliance with EU law by the ECJ[85]. Nonetheless, several initiatives were launched in the period under examination to improve the climate of opinion as concerns vulnerable groups (groups of concern to ECRI) and to raise awareness on the importance of reporting discrimination[86] [87].

108. That said, ECRI notes that, on many occasions, the settlement of Eastern Europeans in the Netherlands for work purposes as well as Islam as a whole and Muslims, as a result, have been portrayed by politicians and media as a threat to Dutch society. After Wilders' statement concerning the need to "stop the tsunami of Islamisation", a member of The Hague city council responsible for integration matters, Marnix Norder of the Labour Party (PvdA), in 2010, complained that the city had to process "a tsunami of Eastern Europeans". In 2011 a MP of the PVV proposed that people from Poland, Bulgaria and Romania should be deported to their country of origin if they are out of work as "they are often drunk and are involved in petty crime." Similarly, Mr Wilders has stated in public that Eastern Europeans commit crimes, are hard drinkers, take advantage of the social system and steal jobs. He has also cited data of the police of The Hague, stating that the criminal offences committed by this segment of the population have increased. Moreover, in early 2012 the PVV party set up a website inviting Dutch nationals to lodge their complaints about Central and Eastern Europeans living in the country on issues such as nuisance, pollution, problems related to housing or competition on the job market[88]. The Dutch Government in place at the time[89], while stating that it did not support the website, refused to condemn it, claiming that it was not responsible for initiatives of other parties. Moreover it invoked freedom of expression to legitimise Mr Wilders' initiative. As concerns this last incident, both the Secretary General of the Council of Europe and the European Commissioner for Justice, Fundamental Rights and Citizenship described the website as xenophobic and as a call for intolerance. ECRI is pleased to note that other Dutch politicians have condemned the website, for instance through a motion launched by an MP of the party Democrats-66, which was accepted in March 2012 by all main political parties with the exception of the VVD (the party represented in the government). Criticism by politicians has also been expressed

[85] See the section on vulnerable/target groups, sub-section on other migrants and their integration.

[86] For instance the projects Name and Build and Holland Loves Muslims or the campaign Do You Have to Hide Yourself to Be Accepted?, which encouraged citizens to report any form of discrimination.

[87] See also the section on the existence and application of legal provisions, sub-section on civil and administrative law provisions.

[88] See also the section on the existence and application of legal provisions, sub-section on criminal law provisions.

[89] Notably Mr Mark Rutte and Mr Gerd Leers, respectively, the Prime Minister and the Minister for Immigration.

towards the VVD, for its unwillingness to condemn the website. ECRI notes, however, that no legal action was taken in reaction to the website[90].

109. ECRI recommends that the authorities reconsider whether any action should be taken in relation to the website inviting Dutch nationals to lodge their complaints about Central and Eastern Europeans living in the country on issues such as nuisance, pollution, problems related to housing, competition on the job market and/or any similar initiatives.

110. ECRI would also like to address certain very worrying statements made in public or broadcast by the PVV, notably its Secretary Geert Wilders. The movie Fitna posted on the internet on 27 March 2008 provides a harrowing and acutely inflammatory portrait of Islam and of Muslims[91]. By using crude, distressing and shocking images, the film runs a parallel between the Koran (notably a number of its Suras) and Imams with terrorism, incitement to genocide, desire to rule the world and violence towards women and LGBTs[9293]. Furthermore, during a parliamentary debate on 16 September 2009, Mr Wilders proposed to introduce a "head rag tax" (a pejorative name for headscarves) which would consist in requiring women to obtain a permit to wear a headscarf and the imposition of a yearly fee of 1 000 Euros. The money, according to the proposal, would be used to finance shelters for women attempting to abandon Islam. In the PVV's 2010-2015 election programme, the word "head rag tax" was not mentioned; however the proposal to tax the wearing of head scarves was included. In this last respect, ECRI is also pleased that a number of political parties condemned this proposal. Once again, however, ECRI notes that no action (judicial or disciplinary) was taken further to this. In this respect, other than Articles 58 to 60 of the Rules of Procedure of the Parliament, prohibiting insults and providing for the possibility of excluding a Member of Parliament (MP) from a session in such case, there is no provision expressly targeting racist insults and providing disciplinary sanctions in case of breach.

111. ECRI has been informed that, in addition to invoking the principle of freedom of expression to justify the statements made by the PVV in the course of the last five years, the Prime Minister has also stated that it was his intention not to react to all of Mr Wilders' provocations, so that his statements would fall flat and there would be no rippling effect at the level of the media. In this last respect, ECRI takes note of the strategy chosen. However, it has highlighted (and continues to do so) in its Declaration on the use of racist, antisemitic and xenophobic elements in political discourse, as well as in its recommendations in country reports, that all political leaders should take a public stance against the expression of racist and xenophobic attitudes for a number of reasons: Europe's history shows that political discourse that promotes religious, ethnic or cultural prejudice and hatred threatens social peace and political stability; this type of discourse conveys prejudices and stereotypes in respect of vulnerable groups and strengthens the racist and xenophobic content of debates on immigration and asylum; and it conveys a distorted image of Islam portraying this religion and its followers as a threat. Therefore, it ultimately damages the long-term cohesion

[90] See also the section on the existence and application of legal provision, sub-section on criminal law provisions.

[91] See also the section on the existence and application of legal provision, sub-section on criminal law provisions.

[92] A number of crude images are shown, including images of : 9/11, the beheading of Western hostages, gay men being hanged, a woman naked from the waist down tied to a bed and being subjected to female mutilation etc.

[93] See also the section on the existence and application of legal provision, sub-section on criminal law provisions, for other instances of racist speech by Mr Wilders.

of society, allows racial discrimination to gain ground and encourages racist violence[94].

112. ECRI was informed that the opinion of the population in the Netherlands was divided as concerns the outcome of the trial against Geert Wilders. While part of the population agreed with the decision, inter alia on freedom of expression grounds, another part of the population was angered because it felt it legitimised the stigmatisation of the Muslim population.

113. ECRI recommends that the authorities ensure that a provision prohibiting racist insults and providing for measures and/or sanctions to be taken in case of its breach be introduced either in the Parliament's Rules of Procedure or in a separate Code of Ethics for Members of Parliament. ECRI further recommends that all political parties take a firm stand against racist discourse targeting a group of persons on grounds of their "race", religion, nationality, language or ethnic origin.

114. ECRI would also like to mention a case reported by Art.1 which concerned a Liberian family who left the village of Waspik in September 2007, due to repeated racist harassment and violence by the local youth. The mayor, the city council and the police had been informed about the criminal activity, but had failed to react. In April 2008 the local government resigned over the issue. The district court of Breda sentenced seven of the 11 youths who had been found guilty to community service and training orders of 40 to 120 hours. Another youth was tried under Article 285 and Article 137c of the Criminal Code for threatening acts with severe bodily harm and discriminatory insults. The research committee appointed to investigate the case found out that in the same village several refugee families had been exposed to racist harassment before.

115. Lastly, according to a study of the University of Amsterdam, since ECRI's third report there have been many non-violent demonstrations against the presence or plans to build a mosque[95]. Parliamentary questions were submitted in 2011 and 2012 to the Minister of Interior and Kingdom Relations by the PVV as concerns plans to build a mosque in two municipalities. In both cases the Minister replied that, while he could understand people's fear about changes in their immediate surroundings, he reassured the population that the mosque would not cause any troubles and that the Netherlands recognises freedom of religion and that part of this principle includes the right to have a place to worship. ECRI welcomes the authorities' stance on this issue.

Media

116. In its third report, ECRI recommended that the Dutch authorities engage in a debate with the media and members of civil society groups on the need to ensure that reporting does not contribute to creating an atmosphere of hostility and rejection towards members of any minority groups, including the Muslim communities.

117. ECRI was informed by the authorities that they do not play a role in raising awareness in the field of media and that the latter is solely responsible for the content of its services. However, in November 2008, Art.1 organised the event Highlights of Multicultural Television, mainly directed at producers and students of journalism in order to sensitise them on the importance of covering news in a

[94] See also Recommendation No. R 97(20) of the Committee of Ministers of the Council of Europe on "hate speech"; and Recommendation 1805 (2007) of the Parliamentary Assembly of the Council of Europe on, inter alia, hate speech against persons on grounds of their religion.

[95] Between 2005 and 2010 there were 39.

balanced way. During this event, multicultural television programmes were shown and discussed by the producers and the public.

118. While the Guidelines of the Netherlands Press Council[96] (more information will be provided below concerning this self-regulatory body), include a provision on the need for journalists to report on the ethnic origin, nationality, race, religion and sexual orientation of persons or groups of persons only if it is required by the context of the news item reported on, ECRI has been informed by various sources that the media do not always abide by the above guideline and mention the ethnicity of the persons who commit criminal offences (particularly in the case of Moroccans and Antilleans), even when it is out of context. Furthermore, ECRI has also been informed by its interlocutors that there have been various instances in which the media has contributed to creating negative stereotypes with reference in particular to Polish nationals and the Roma. ECRI has also been informed by the Netherlands Press Council that no specific training is provided to journalists in order to ensure that vulnerable groups are portrayed in a non-discriminatory way.

119. ECRI reiterates its recommendation that the authorities, if necessary, in cooperation with anti-discrimination bodies and the Netherlands Press Council, sensitise the media and members of civil society groups on the need to ensure that reporting does not contribute to creating an atmosphere of hostility and rejection towards members of any group of concern to ECRI.

120. In its third report, ECRI recommended that the Dutch authorities: (1) support the monitoring of racism and xenophobia in the media; (2) support initiatives aimed at improving representation of ethnic minorities in the media profession; (3) promote a better reflection of cultural diversity of the contents within all media; (4) promote media awareness among the general population, with a particular emphasis on promoting critical thinking among young people and equipping them with the necessary skills to become aware of and react to racist or stereotyping material.

121. As concerns the first point, the Dutch News Monitor, a scientific agency, monitors and analyses the contents of news in the Netherlands, both as regards the printed press, broadcast media and the Internet. Although this agency has closely monitored discussions related to the release of the movie Fitna, it does not focus on discrimination on grounds of interest to ECRI, nor has it released reports in this connection. The Netherlands Press Council (the Press Council) is an independent self-regulatory body for the media. The following are members of the Press Council: regional and commercial broadcasting corporations, associations of newspaper publishers, the Netherlands Union of Journalists, the Association of Editors in Chief, and Internet organisations. Most individual media such as newspapers cooperate with the Council on a voluntary basis, with the exception of the largest newspaper in the Netherlands, de Telegraaf[97]. The Press Council can receive complaints concerning the behaviour of journalists, whether in the broadcast media, the printed press or Internet. Persons whose interests have been directly prejudiced by the publication or organisations which protect collective interests may lodge complaints before the Press Council. The latter may hear the parties and issue a decision which will be published on its website. Thereafter, it may ask the party involved to publish the Press Council's decision on its own media (however, it is not obliged to do so). ECRI regrets that the Press Council does not monitor racism in the media on a regular basis. As concerns in

[96] These Guidelines were introduced in 2007 and amended in 2008 and 2010. They consist in standards derived from the Press Council's practice; their aim is to contribute to the transparency of the decisions of the Press Council.

[97] In case of a complaint filed against this newspaper, the latter will not appear before the Press Council for mediation, nor will it cooperate with this body.

particular complaints related to discrimination on grounds of interest to ECRI, the Press Council has received few complaints. Moreover, the Press Council has informed ECRI that it is not as well known by the public as it should be; ECRI considers that its outreach capacity should be strengthened.

122. ECRI recommends that, without encroaching on the independence of the media, the authorities encourage the Netherlands Press Council to extend its mandate to cover the regular monitoring of the media for racist content and to provide special training for media professionals on the role of reporting in a diverse society. Support to the Netherlands Press Council should also be provided so that its outreach capacity to the public is enhanced and its powers to combat racism in the printed press, the broadcast media and the Internet are strengthened.

123. As concerns the other points mentioned in paragraph 122, ECRI is not aware of any progress made in this respect.

124. In its third report, ECRI recommended that the Dutch authorities continue to support the work of the Complaints Bureau for Discrimination on the Internet (MDI), including by ensuring that adequate resources are available to this organisation to carry out its work effectively.

125. As has already been mentioned in ECRI's second and third reports, in addition to collecting data on manifestations of antisemitism online, the MDI receives complaints concerning racist offences committed through the Internet[98]. The MDI has also trained website moderators on how to recognise discrimination and racist statements and it has developed a workbook on these types of training sessions. ECRI considers the MDI's role very valuable with respect to the fight against racism and racial discrimination through Internet. It is therefore very worried about the fact that the authorities have stopped funding and supporting this body.

Racism in sport

126. In its third report on the Netherlands ECRI encouraged the Dutch authorities to counter racism and antisemitism in football.

127. ECRI has been informed both by the authorities and civil society that antisemitic chants during football matches continue to pose a problem. The Ajax team's supporters are nicknamed the Jews and antisemitic chants are generally shouted before, during or after matches involving this team. The authorities have informed ECRI that they take measures in these cases but that primarily it is the football club's responsibility to take action when racist chants are shouted by their fans or their players. The Royal Dutch Football Association has issued guidelines in this respect. In the above-mentioned cases, as soon as such chants begin, a public announcement is made requesting that they stop immediately. If such measure is not effective, the match may be suspended and the supporters may be sent home with a special train for the team's supporters. In February 2010, for instance, upon request of the Mayor of Amsterdam, the municipal police sent around 700 supporters of the team FC Utrecht home by train before the game against Ajax began, because, in spite of police warnings, they were chanting antisemitic slogans. In March 2011, following a victory over the Ajax team, the ADO Hague team began chanting the slogan "we are going hunting for the Jews" and "Hamas, Hamas, Jews to the gas". One well known player of this team participated in the chants and was recorded on videotape, which was then broadcast on You Tube. The player was fined by his team and was obliged to issue an apology on the club's website; however, he justified the chants stating

[98] See also the section on the existence and application of legal provision, sub-section criminal law provisions.

that they were due to the fact that "Jews" was only a nickname for the Ajax team. The player was not prosecuted for the above-mentioned chants. ECRI has also been informed that several times per year fans are arrested for this type of conduct.

128. ECRI has been informed by representatives of the Jewish community that some of them have stopped going to the stadium because of the threatening and negative atmosphere towards Jews. They have also highlighted that these chants make antisemitism more acceptable in Dutch society. ECRI encourages the Dutch authorities to continue taking seriously this phenomenon and, where possible, to enforce more vigorously criminal law provisions against racism and racial discrimination in this respect in order to deter with greater decisiveness this form of antisemitism.

IV. Racist Violence

129. The Racism & Extremism Monitor compiles data on racist violence and violence of the extreme-right by integrating data from the LECD-Police and local anti-discrimination bureaus. The data available for 2005 to 2009 has shown a steady decline in the number of racist or extreme-right-related violent incidents, from 291 incidents in 2005 to 216 in 2008 and 148 incidents in 2009. The Ninth Racism & Extremism Monitor noted that in 2009 the number of violent incidents with racial or right-wing-extremist motivation had never been so low in the 15-year-long history of the Monitor research project. ECRI welcomes this news. The Monitor's authors, however, admit that this may be due to the underreporting of incidents. ECRI notes that this may be true, particularly as concerns acts of violence against mosques. While according to the 2010 POLDIS report, the number of reported violent acts against mosques decreased from 32 in 2008 to 16 in 2009 and 14 in 2010, civil society has informed ECRI that violent acts against mosques are often not reported out of fear that it will encourage similar acts. According to a study on Islamophobia published in 2012 by the University of Amsterdam, between 2005 and 2010, a total of 117 violent attacks were perpetrated against mosques in the Netherlands[99]. The incidents include vandalism, spray painting on the premises, arson, telephone threats and the hanging of a dead sheep on the building.

130. ECRI strongly recommends that the authorities provide a strong response to violent racist incidents, in particular as concerns the widespread attacks to mosques, with a wide array of measures, from political statements to increased provision of funds earmarked for the security of mosques to the vigorous enforcement of criminal law provisions against racism and racial discrimination.

131. ECRI has been informed that racially motivated riots broke out in the city of Culemburg at the end of 2009, after a group of young men of Morrocan origin drove a car into a group of youths of Mollucan origin. On that occasion, Radio Netherlands had reported that tension between Dutch-Morrocan and Dutch-Mollucan youths in Culenburg had increased in the previous months, involving brawls and cars set on fire. In October 2011, the young man who drove the car into a group of Dutch-Mollucan youths was sentenced to one year of prison, of which half was on probation; the sentence was confirmed by a court of appeal. ECRI has also been informed of a few violent racist incidents experienced by Jews, by persons of Polish citizenship and by the Roma. Notably, there have been reports of Polish cars (with Polish number plates) being damaged, burned or vandalised. Notably in one case swastikas were painted on the car with a caption "leave the country or die". Furthermore, in 2009, in the municipality of

[99] The information available indicates that, between 2011 and 2012, at least 8 violent attacks against mosques were carried out.

Nieuwegein, the car of a female Roma community leader was severely damaged by blows and was spray-painted with a swastika, in front of her home.

V. Extremism

132. In its third report, ECRI recommended that the Dutch authorities adopt measures aimed at countering non-political and informally organised right-wing extremist groups. It encouraged the Dutch authorities to ensure that these efforts are not diminished as a result of the attention devoted to countering Islamic radicalisation among youth. ECRI recommended that the Dutch authorities investigate more deeply the mutually reinforcing dimensions of extreme-right and Islamic radicalism.

133. ECRI has been informed by the authorities that there has not been an increase in right-wing extremism since ECRI's third report on the Netherlands. Whereas in the past right-wing extremism was addressed by the action Plan on Polarisation and Radicalisation, now the National Coordinator for Counterterrorism and Security (NCTV) closely monitors developments in this area in cooperation with its partners (including the police, the military and intelligence services) and compiles a Terrorist Threat Assessment for the Netherlands. Furthermore, the authorities have underscored that in every region there is an intelligence unit which monitors extreme-right groups and there are anti-fascist organisations which provide information to the police in this connection.

134. As concerns right-wing extremism linked to the Lonsdale youth[100], the number of incidents in which they were involved has declined: In 2009 the number fell to two incidents, compared to 21 in 2008 and 44 in 2007. This has been attributed to the decrease in popularity of the Lonsdale youth culture. However, right-wing extremism involving, in particular, young men, seems to remain an issue. The Ninth Racism & Extremism Monitor (of 2010)[101] drew attention to the fact that the extreme-right movement relies on means of digital communications, in particular social networking sites, which are popular both with individual extremists and as platforms for extremist groups. There is also a right-wing extremist radio station broadcasting continuously via the Internet. Furthermore, street activism of extremist groups continues to be high, ever since the Netherlands People's Union (NVU)[102] have managed to make a wider range of demonstrations permissible under the law. As concerns Islamic radicals, ECRI has been informed by its NGO interlocutors that jihad activism which has been present in the Netherlands has been limited to street demonstrations of radical ideas, including Holocaust denial or manifestations of antisemitism.

[100] The Lonsdale youth culture was labelled as such due to the popularity of the Lonsdale clothing brand they wore. This style saw the light and spread quickly in the Netherlands between 2002 and2007. The Lonsdale scene involved groups of young people who listened to hardcore electronic music and whose uniform behaviour, clothing and partying practices set them apart from other youths. Within this youth culture there was a subgroup which professed racist, xenophobic or right-wing extremist ideas. The radical groups attracted a lot of attention after a number of incidents, often interethnic, that took place in the Netherlands. This problem gained more prominence through media coverage, particularly during the year following the murder of Theo van Gogh.

[101] See footnote 17.

[102] The Dutch Peoples-Union (NVU) is a Dutch political party. Because of its many calls for the rehabilitation of convicted World War II war criminals and SS costumes worn at demonstrations, it is considered among one of the most extreme right parties of Dutch politics. It is not represented in Parliament.

VI. Vulnerable/Target Groups

Muslim community

135. As of 2011 there was an estimate of 900 000 Muslims living in the Netherlands, representing 5.5% of the population, and 450 mosques in the country.

136. In its third report on the Netherlands, ECRI urged the Dutch authorities to respond firmly to all instances of racially motivated crime, including violence, targeting Muslims. It reiterated in this context the recommendations it had made concerning the need to improve the response of the criminal justice system to racially motivated offences.

137. The POLDIS data published by the authorities for the period 2008-2010 suggests that the number of racist offences and offences with racist motivation against Muslims has decreased. Nonetheless, it should be noted that it is often difficult to establish whether the motive of an offence is the religious affiliation or the ethnicity of the victim. At the same time the data provided shows that the number of reported incidents and offences against Moroccans has increased. Furthermore, according to data provided by the MDI, the majority of discriminatory statements reported on the Internet and the social media concerned Muslims (and Jews)[103].

138. ECRI in its third report also called on the Dutch authorities to: oppose publicly and vigorously all manifestations of anti-Muslim sentiment in politics; refrain from promoting debate on policies that have as their main objective the polarisation of Dutch society around issues of relevance to the Muslim communities and from adopting any such policies; refrain from adopting policies that discriminate against Muslims directly or indirectly; challenge generalisations and associations made in public debate and the media between the Muslim communities and terrorism (as per its GPR No. 8 on combating racism while fighting terrorism).

139. The above-mentioned recommendations have been widely discussed in the section of this report on climate of opinion and political discourse. In addition to what has already been said, ECRI is concerned about another bill targeting specifically the Muslim community and proposing once again the banning of all face-covering garments in public, including in public buildings, educational institutions, hospitals and public transport[104]. The Council of State[105] has issued an opinion in this respect, recommending that the draft law not be sent to Parliament; despite this, the bill is pending before the Parliament. ECRI stresses once again its view that such measures increase the feelings of victimisation and stigmatisation among Muslims and reinforce the problem of discrimination or exclusion of Muslim women generally in everyday life.

[103] See also the section on racist violence as concerns the authorities' response to the attacks to a number of mosques.

[104] See § 139 of ECRI's third report on the Netherlands.

[105] The Dutch Council of State is an advisory body on legislation and an administrative court. It has two primary tasks, carried out by two separate divisions. The Advisory Division, as its name implies, advises the government and Parliament on legislation and governance, while the Administrative Jurisdiction Division is the country's highest general administrative court. The basis for these responsibilities can be found in Articles 73 and 75 of the Constitution. Like the House of Representatives and the Senate, the Netherlands Court of Audit and the National Ombudsman, the Council is one of the High Councils of State. These are bodies regulated by the Constitution, which carry out their tasks independently of the government.

140. ECRI strongly recommends that the authorities abandon once and for all the proposal to ban all face-covering garments in public. It further recommends that the authorities refrain from adopting laws that discriminate against Muslims directly or indirectly.

141. The discrimination experienced by persons of Muslim faith or believed to be of Muslim faith in various fields of life has been widely discussed in the section on discrimination in various fields of this report.

Jewish community

142. In its previous report, ECRI recommended that the Dutch authorities monitor manifestations of antisemitism and take the necessary action to counter any such manifestations. In particular, ECRI encouraged the Dutch authorities to strengthen their efforts to educate students about the Holocaust and against antisemitism and to counter racism and antisemitism in football. ECRI also recommended that the Dutch authorities ensure a more vigorous response against extreme right-wing demonstrations.

143. ECRI has already addressed the issue of antisemitism in football in the sub-section on racism in sport. As concerns other offences related to antisemitism, the statistics provided by the LECD-Prosecutor, the Racism & Extremism Monitor and the MDI show that between 2007 and 2010 there has been an increase in racist crime against Jewish people. The representatives of the Jewish community have informed ECRI that there has been an increase in antisemitic offences at school, at work and in the streets. The number of reported cases of racist violence however remains stable and, according to the representatives of the Jewish community, is low. Nonetheless, in January 2009, four synagogues were subject to arson or stoning.

144. According to an OSCE report[106], the tone of antisemitic hate speech online has become harsher in recent years. Furthermore, the MDI has confirmed that the majority of discriminatory statements reported on the Internet are of an antisemitic nature.

145. ECRI has been informed that the Holocaust is a mandatory subject in primary and secondary school. The authorities have partly financed seminars (organised by CIDI[107] together with the Anne Frank Foundation) to train teachers to teach about the Holocaust and WWII. The above-mentioned report of the personal representative of the OSCE Chair-in-Office on combating antisemitism noted that teaching the history of the Holocaust to Muslim students has been very challenging. It further explained that there have been several initiatives (led by the authorities) aimed at improving relations between the Jewish and the Muslim community, including the provision of special sessions of history classes on the Holocaust and the Middle East conflict taught together by a Jewish and a Muslim teacher. This initiative, however, has not been met with favour by representatives of the Jewish community who underscore that these two subjects are not related and that the specificity of the Holocaust is diminished by this approach. ECRI considers that the teaching of the Holocaust should be dealt with separately and should not be equated with any other subject (as per GPR No. 9).

[106] Country Visit: The Netherlands Report of the Personal Representative of the OSCE Chair-in-Office on Combating Anti-Semitism, Rabbi Andrew Baker, March 13-17, 2011. OSCE-ODIHR, 24 May 2011, CIO.GAL/99/11.

[107] Centre on Information and Documentation Israel.

Polish community

146. Since 2007, the Dutch Government has granted access to workers from new EU member states to the Netherlands. Since then the number of Poles who have come to the country for work purposes has steadily grown and it is estimated at around 150 000 persons. Whereas initially most Poles came for seasonal employment, many now opt for permanent employment.

147. ECRI notes that the Polish community has become a new target group of discrimination. RADAR, the local anti-discrimination Bureau for the Rotterdam area, indicated that in 2011 it received 10 complaints lodged by persons of Polish nationality and that this number is increasing. Furthermore, according to the Polish community, Poles come third as concerns racist speech on the Internet[108].

148. ECRI has already described at length the discrimination faced by this part of the population in the sections of this report on discrimination in various fields and climate of opinion and racism in public discourse.

Dutch citizens from Aruba, Curacao and St. Maarten and other Dutch Antilleans

149. In October 2010 the Netherlands Antilles ceased to exist as a constituent country of the Kingdom of the Netherlands. The Kingdom now includes four countries - Aruba[109], Curacao, St. Maarten (all three on Antilles islands in the Caribbean) and the Netherlands. The Antilles islands of Bonaire, Saba and St Eustatius, located in the Caribbean, are now special municipalities within the Netherlands and are considered overseas territories of the European Union until 2015.

150. In its third report, ECRI recommended that the Dutch authorities carefully review their policies on the Dutch Caribbean citizens to ensure that such policies are in conformity with the prohibition of racial discrimination. In particular, it recommended that the Dutch authorities review the introduction of the Reference Index Antilleans[110]. It also urged the Dutch authorities to discontinue any plans that impinge in a racially discriminatory manner on Dutch citizens' freedom of movement. ECRI further recommended that the authorities investigate racial profiling practices in the Netherlands with respect to Antilleans.

151. As concerns the Reference Index Antilleans, its legality was reviewed by a court, which declared in July 2007 that it was not in conformity with national law. Following an appeal by the government, the Administrative Jurisdiction Division of the Council of State reversed the above-mentioned decision on account of the problems which young Dutch Caribbean citizens pose. However, in 2008 the government decided to replace the Reference Index Antilleans with a general Reference Index for Problematic Youth. ECRI welcomes this development. Notwithstanding the above, ECRI notes that a similar practice was in place in the municipality of Rotterdam and was condemned by the first instance Administrative Court of Rotterdam in 2012. More specifically, in order to assist youths of Antillean and Moroccan origin with their education and reduce their drop-out rates from school, the city of Rotterdam registered their origin and ethnicity so that they could match them with a suitable guidance counsellor. The Data Protection Authority however intervened highlighting that processing

[108] In 2011, 210 cases were filed with the MDI.

[109] Aruba had become a separate country within the Kingdom of the Netherlands in 1986.

[110] The Reference Index Antilleans was a database on young Antilleans created in 2006 by decision of the Minister of Housing, Communities and Integration as a temporary reference system. It included data on "problematic" young Antilleans and Arubans who were not registered in the Municipal Database, and consisted, inter alia, in a registration system with links to the criminal justice system based on "race" and ethnic origin. The authorities had claimed that its aim was to enable education, care and support services, the police and the courts to reach young Antilleans at risk.

information about "race" was prohibited under the Data Protection Act and that 18 other municipalities had carried out similar projects without registering the ethnic origin of the youths and their family. The court found against the Rotterdam municipality and ordered it to stop the collection of such data and to remove the data collected, under penalty of a fine.

152. Already in its third report, ECRI had noted with concern that the authorities had proposed legislation aimed at returning young Dutch Caribbean citizens from the Netherlands to the Caribbean part of the Kingdom in certain circumstances. While these plans have been abandoned, ECRI has been informed of two bills which have been announced to regulate the settlement of Dutch citizens from Aruba, Curacao and St. Maarten in the Netherlands. The first one, announced in the "government agreement" of October 2012 of the parties forming the current coalition, is a Kingdom Act[111] and as such entitles the Ministers Plenipotentiary of these islands to express their vote on the bill[112]. VVD, one of the coalition parties, had also announced before the September 2012 elections (but not tabled yet, according to the authorities) a Dutch bill (therefore not entailing the participation/expression of the views of the representatives of the three other countries of the Kingdom), on the same issue. The Bill is applicable to (a) Dutch citizens and their children who have obtained Dutch citizenship on the islands of Aruba, St. Maarten or Curacao through choice, naturalisation or descent [art. 2(1)]; and (b) Dutch citizens who were born outside the territory of the Kingdom and whose mother is a resident of Aruba, St. Maarten or Curacao and who travelled to another place for the purpose of giving birth [art. 2(2)][113]. The Bill provides that the Dutch citizens mentioned in (a) and (b) cannot stay in the Netherlands for more than six months without applying for a permission to settle in the Netherlands. Permission to settle is granted for one year and must be renewed yearly. In order to obtain such permission the person concerned must: prove command of the Dutch language; provide proof of de-registration from the municipalities of Aruba, Curacao or St. Maarten; have sufficient means to support him/herself; hold a qualification that is likely to allow access to the job market of the Netherlands; produce a certificate of good conduct for the past five years; have no prior conviction for a felony resulting in incarceration; and should not pose a threat to public safety or public order. These requirements are cumulative. Article 6 of this Bill provides that the permission to settle may be revoked if: the applicant submitted false or incorrect information, poses a threat to public safety/order or no longer has sufficient means to support him/herself. Article 17 also provides that a person falling under (a) or (b) residing in the Netherlands without permission to settle may be punished by incarceration for up to six months or a fine. ECRI has been informed that this Bill has been submitted to the Council of State. ECRI understands that the Netherlands has made a Declaration under Article 5 of Protocol No. 4 to the ECHR stating that the Antilles are to be considered as a separate territory for the purposes of Articles 2 and 3, which provide for the freedom of movement of nationals within the territory of their own State and the prohibition to expel a national from the territory of their State. ECRI has also been informed by the authorities that they are interested in resolving problems related to the settling of Dutch citizens from Aruba, Curacao and St. Maarten in the Netherlands who have little prospects of succeeding in the country. More generally, the authorities have highlighted that Dutch citizens from Aruba, Curacao and St. Maarten are overrepresented as concerns the

[111] Under Article 3 the Charter for the Kingdom of the Netherlands, the supervision of the general rules governing the admission and expulsion of Netherlands nationals is considered a Kingdom affair and must therefore be dealt with by a Kingdom Act.

[112] However, these Ministers cannot impede the adoption of Kingdom Act if it is accepted by a three-fifth majority in the Lower House of the Parliament.

[113] The law does not apply to Dutch citizens and their children of the islands of Bonaire, Saba and St Eustatius (the Netherlands' special municipalities).

commission of felonies and ECRI has been informed by civil society that the authorities deem that they rely too heavily on social welfare. Nonetheless, ECRI stresses that the above-mentioned differential conditions imposed on Dutch citizens from Aruba, St. Maarten or Curacao amount to differential treatment on grounds of ethnicity. ECRI deems that the problems of this segment of the population related to poor social conditions, high criminality rates and reliance on the welfare system, should not be resolved by banishing Dutch citizens from part of the Kingdom's territory but by adopting positive measures targeting this segment of the population in the Netherlands and in Aruba, St. Maarten or Curacao.

153. ECRI strongly recommends that the Dutch authorities ensure that all legislative proposals, which provide for differential treatment to Dutch citizens from Aruba, St. Maarten or Curacao as concerns their freedom of movement within the Kingdom and their freedom not to be expelled from territories of the Kingdom, are abandoned. ECRI strongly recommends that the Dutch authorities withdraw the declaration made under Article 5 of Protocol No. 4 to the ECHR.

154. ECRI recommends that the Dutch authorities adopt positive measures targeting persons from Aruba, St. Maarten or Curacao who experience problems related to poor social conditions, high criminality rates and reliance on the welfare system and ensure that these persons draw benefit from these measures whether they are in the Netherlands or in the three above-mentioned islands.

155. ECRI's attention has been drawn to a number of other specific measures targeting Dutch Antilleans, notably, the presence of a form of city watch in Rotterdam targeting them[114]. Furthermore, according to representatives of the Antillean community, in the city of Rotterdam there is a unit in the police[115] which focuses exclusively on crime committed by Antilleans.

156. Furthermore, even though national law does not require that any Dutch citizen from Aruba, St. Maarten or Curacao residing in the Netherlands take a language examination or pass the civic integration act[116], there have been reports of Dutch citizens from Aruba, St. Maarten or Curacao being requested to take an examination on the Dutch language.

157. ECRI recommends that the authorities ensure that Dutch citizens from the Antilles are not subject to any differential treatment which has no objective and reasonable justification, including in the fields of security.

158. As concerns racial profiling practices in the Netherlands with respect to Antilleans, please see the section on police conduct.

[114] According to representatives of the Antillean community, prior to 1 June 2012, the city of Rotterdam had a "city marine for Antilleans". The title of this officer has changed to "city marine precaution and aftercare" for a number of neighbourhoods (populated for the most part by Antilleans). The marine is a civil servant who works closely with the mayor; in theory s/he is mandated with helping Antilleans with bureaucracy or other problems they may face. The Antillean community, however, has informed ECRI that his/her real role is to resolve problems related to nuisance; to verify whether Antillean families have weapons; and to carry out a number of other similar tasks. To achieve this, the marine visits regularly Antillean families.

[115] Called the Pagang team.

[116] See the sub-section on other migrants and their integration.

Roma, Sinti and Traveller communities[117]

159. There are no official figures as concerns the size of the Roma and Sinti population in the Netherlands. Recent estimations vary from 8 000 to 22 500[118]. According to the authorities, the majority of Roma and Sinti live in conventional houses. A report issued in 2009 by the Dutch Government estimated that around 3 000 to 4 000 persons live in caravan parks[119].

160. ECRI notes that in 2009 a government-funded Platform for Roma municipalities was set up (these municipalities host Roma families that were invited by the Dutch authorities in 1978 to settle in the Netherlands through an amnesty scheme; however, the municipalities are not primarily inhabited by Roma)[120]. ECRI is pleased to note that the role of the above-mentioned Platform is to share experience, good practices and communicate with the government.

161. In its third report, ECRI recommended that the Dutch authorities take responsibility also at the central government level for issues relating to the situation of the Roma, Sinti and Traveller communities. To this end, ECRI recommended that they draw up, at the central government level and in close co-operation with the Roma, Sinti and Traveller communities, a comprehensive strategy aimed at reducing the disadvantage and discrimination they face and make available adequate resources to implement it. ECRI recommended that the strategy should also set clear targets and provide methods for evaluating the progress achieved.

162. ECRI observes that in 2010 the Netherlands Institute for Sinti and Roma (NISR) was founded with central government funds in order to support local projects, including on education and employment. ECRI notes that the NISR was liquidated very rapidly in October 2012 due to its poor performance[121]. The sole event it organised was devoted to advising the authorities on a national strategy on Roma and Sinti; however the strategy which was drawn up in this context was heavily criticised for lacking monitoring indicators, focusing on criminality and not addressing important issues such as Roma and Sinti statelessness.

163. In this respect, ECRI is disappointed to note that the Netherlands has not adopted a national inclusion strategy on the Roma, Sinti and Traveller communities as recommended by ECRI[122]. According to the authorities, the grave problems faced by the Roma and Sinti communities in the fields of education,

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[117] The term Sinti refers to members of this community who have been living in Western and Central Europe for over 600 years. Roma are understood as originating from Eastern and Southeastern Europe and as having migrated towards Central Europe later, in various waves. In the Netherlands in particular, the Roma have arrived in various periods, including in the 1970s, after the break-up of Yugoslavia and further to the entry of a number of Eastern European States in the European Union. The Traveller community, as understood by ECRI for the purposes of this report, includes persons of different ethnicities, including the Roma and Sinti, who live in caravans.

[118] According to the authorities, there are no exact figures concerning the size of the Roma and Sinti community in the Netherlands; these vary between a few thousand to 40 000.

[119] 4th National Report on the implementation of the European Social Charter (revised) submitted by the Government of the Netherlands (for the period 1 January 2003 - 31 December 2009 on Articles 7, 8 and 17, for the period 1 January 2005 – 31 December 2009 on Articles 16 and 19, and a first report on Articles 27 and 31), 7 February 2011, p. 21, RAP/RCha/NE/IV(2011).

[120] 12 Dutch municipalities are members of this platform: Nieuwegein, Enschede, Oldenzaal, Veldhoven, Utrecht, Capelle aan den lJssel, Sittard-Geleen, Stein, Hertongenbosch and Amsterdam South East.

[121] The Netherlands Institute for Roma and Sinti promoted cooperation between public authorities, the Roma and Sinti communities and various Roma organisations. The institute was established with central government funds to compensate for the lack of postwar reparations for Sinti and Roma.

[122] See also Recommendation CM/Rec(2008)5 of the Committee of Ministers to member states on policies for Roma and/or Travellers in Europe, adopted on 20 February 2008 at the 1018th meeting of the Ministers' Deputies.

employment, health and housing must be dealt with by means of general policies which target all members of society and not specific groups, as special policies strengthen the isolation and the dependency on social welfare of these groups. The authorities have further stated that the principle expressed in the general integration policy[123] is also applicable in this case, notably that integration is not the responsibility of the government but rather of those who decide to settle in the Netherlands. In this respect, ECRI notes that many Roma and Sinti are Dutch citizens. Municipalities have clearly been identified by the government as having primary responsibility for dealing with the problems faced by their Roma and Sinti population. At the same time, in 2010 the authorities provided 600 000 Euros to the Platform for Roma Municipalities in order to combat school drop-out of Roma girls and other funds for preschool education, bridging classes and summer schools[124]. There have also been policy initiatives at the national level which have focused on fighting the exploitation of Roma children by members of the Roma community, in order to protect the Roma children's right to education.

164. Before providing information on the useful work that has been carried out by certain municipalities, ECRI would like to highlight that the municipalities represented on the Platform have stated that they deem the commitment and the support expressed by the national government vis-à-vis problems faced by the Roma population as insufficient and that greater cooperation with the government is required in this field. Furthermore, ECRI has been informed that the representatives of the Platform complain that the only way they can receive some support from the central authorities is to focus on security issues. ECRI underscores once again the importance of devising a national strategy on Roma, Sinti and Travellers, providing for specific targets and methods of evaluation. Targeted programmes for this segment of the population are needed in order to break the spiral of segregation and exclusion from which they are affected. ECRI agrees that the municipalities have an important role to play as concerns such programmes, particularly with respect to tailoring them to the specific needs and circumstances of their Roma, Sinti and Traveller communities. Their role, however, must be a complement, not a substitute, to a coherent and coordinated national strategy which establishes national common targets, standards and provides for a monitoring mechanism which verifies whether the targets have been met.

165. ECRI reiterates its recommendation that the Dutch authorities take responsibility at the central government level for issues relating to the situation of the Roma, Sinti and Traveller communities. To this end, ECRI recommends that they draw up in close co-operation with the Roma, Sinti and Traveller communities, as well as the municipalities, a comprehensive strategy aimed at reducing the disadvantage and discrimination these communities face and make available adequate resources to implement it. The strategy should set clear targets and provide methods for evaluating the progress achieved

166. As concerns programmes carried out at the local level, the municipality of Nieuwegein has focused on 27 "multi-problem families", many of whom are highly indebted and have children who do not regularly attend school. A plan is drawn up for each family setting specific goals as concerns debt relief, education and any other pertinent issue; a mediator is designated in order to assist the family to achieve these goals and cooperates with the child protection service and the police. The mediator explains to the pupil's parents why it is important for the child to go to school; if the parents refuse to send their child to school, they are reported to the police. The municipality has been active in sensitising schools on

[123] See the sub-section on other migrants and their integration.

[124] See the section on discrimination in various fields, sub-section on discrimination in education.

Roma culture and on the importance of reporting the absence from school of Roma children. As a consequence, the attendance of Roma children in primary school has greatly improved. ECRI welcomes these initiatives. Nonetheless, the municipality of Nieuwegein is still struggling to ensure that girls and boys who are over 13 years old stay in school. While this is to be attributed to the tradition of girls' marrying at 13 and to the absence of role models for boys, the municipality deems that it is related only to this last aspect. The municipality has informed ECRI that all programmes for Roma in the field of employment have failed. One such project consisted in assisting Roma men in setting up businesses (garages, car repair etc.); however, in the end, no one succeeded.

167. ECRI recommends that the authorities ensure that educated and successful individuals of Roma or Sinti origin are involved in all programmes specifically targeting Roma and Sinti, whether in the field of education or employment, in order to share their experience and act as a role model.

168. A study of the RAXEN national focal point commissioned by the EU Fundamental Right's Agency (FRA) has pointed out and representatives of Roma, Sinti and Travellers have confirmed that the problems in the field of housing generally concern persons who live in caravans (see figures mentioned at the beginning of this sub-section) because there is a shortage of authorised sites and the authorities have progressively removed larger halting sites. Recent articles in the press reported that the Mayor of Waalre stated publicly that trailer camps (and sites) must disappear and that persons who live in such dwellings must live in houses. Municipal authorities also have been faced with an increasingly hostile attitude from the local population against new sites and this has led them, in some instances, to place them in remote areas with substandard environmental conditions. Representatives of the Roma, Sinti and Traveller communities have stressed that they feel that the authorities' policy of decreasing and ultimately removing caravan sites undermines their way of living and their culture. The authorities have informed ECRI that their policies focus on the Roma who arrived in 1978 and who were accommodated in housing, not on caravan dwellers, whose conditions of living they are not aware of. ECRI has also been informed that Roma, Sinti and Travellers face difficulties in obtaining loans for caravans because the land on which they are stationed usually does not belong to them and/or because this type of accommodation is not considered regular housing.

169. ECRI recommends that the authorities make an assessment of the needs of Roma, Sinti and Travellers who live in caravans and ensure that sufficient caravan sites are made available so that they can live according to their traditions and culture.

170. ECRI is troubled by reports claiming that certain municipalities have put in place ethnic registers for Roma and Sinti. The authorities have reassured ECRI that it is not the case. The mayor of Nieuwegein has, however, publicly stated that the municipalities with the largest Roma populations should keep registers on them[125]. The press has also reported that the city council of Ede has been holding police, child welfare and justice department files on the Roma since 1978. Furthermore, the Minister for Housing, Communities and Integration in his letter to the President of the House of Representatives of 26 June 2009, stated that municipalities had asked the government to look into ways of registering the movements of Roma and that this request was being considered by the government as it formulated its position on registration (ethnic or otherwise). The

[125] According to reports, the mayor stated that "We are dealing with a group of people which is not integrated in Dutch society. They need to be helped, for their own sake and that of their neighbourhood. But we can't do that without knowing their situation". Caring Mayor Wants Roma Register. De Volkskrant Amsterdam, 23 September 2010; Presseurop, http://www.presseurop.eu/en/content/source-information/9451-de-volkskrant.

Minister specified that sound reasons must be given to justify the utility and necessity of registration. In this respect, ECRI recalls that the collection of data in different areas of life broken down according to categories such as national or ethnic origin is legitimate if it is done to monitor patterns of discrimination or situations of disadvantage facing vulnerable groups, provided that it is carried out with due respect to the principles of confidentiality, informed consent and the voluntary self-identification of persons as belonging to a particular group. Any other type of ethnic registration would be dangerous, contrary to human rights and prone to misuse.

171. ECRI strongly recommends that the Dutch authorities state unequivocally that municipalities should in no circumstance maintain separate ethnic registers for Roma and Sinti.

172. Lastly, according to the Ninth Racism & Extremism Monitor and representatives of the Roma and Sinti community, about 1 000 Roma and Sinti persons are stateless. While some are de jure stateless because they are not considered a national by any State, many are de facto stateless as their nationality is unknown. According to representatives of the Roma community this situation is partly due to the fact that further to the break-up of Yugoslavia, the Roma present in the Netherlands were asked by the municipalities to provide proof of their nationality (Serbian, Croat etc). Because many could not provide proof due to a number of reasons[126], they were considered of unknown nationality and their status has remained unchanged ever since. This status impedes access to a number of social rights, including access to employment. ECRI has also been informed that there have been cases where Roma with unknown nationality have been sent to detention centres even though they obviously could not be repatriated to any country. ECRI further notes that there is no procedure in place in the Netherlands to determine statelessness. Moreover, parents' statelessness is transferred to children born in the Netherlands and only the third generation of children born stateless[127] may obtain Dutch nationality. The authorities have informed ECRI that they are currently looking into ways of resolving this problem. ECRI reminds the authorities that under Article 32 of the Convention relating to the Status of Stateless Persons, the Contracting States should as far as possible facilitate the naturalisation of stateless persons. They shall in particular make every effort to expedite naturalisation proceedings and to reduce as far as possible the charges and costs of such proceedings.

173. ECRI recommends that the Dutch authorities take all necessary steps to ensure that a formal mechanism exists for establishing statelessness and, more importantly, that statelessness is no longer transferred to children born in the Netherlands.

Refugees and asylum seekers

174. According to statistics provided by the authorities, since 2008 there has been a decrease in the number of new applications for asylum[128]; however, there has been an increase in the number of persons who have been granted refugee[129] as well as subsidiary protection status[130] and a decrease in the number of persons

[126] Inter alia, because of the state of public administration at the time of the dissolution of Yugoslavia and the formation of its successor States.

[127] That is, if those belonging to the first generation have been recognised by the Dutch authorities as being stateless and have obtained an ID.

[128] 11 565 in 2011, against 13 290 in 2010, 14 880 in 2009 and 13 380 in 2008.

[129] 515, 595, 810 and 710, respectively in 2008, 2209, 2010 and 2011.

[130] 1 610, 3 270, 4 010, 4 065, respectively in 2008, 2009, 2010 and 2011.

who have been granted humanitarian status[131]. While the recognition rate for refugees in the Netherlands represents, on average, 2% of the applications lodged yearly, the overall recognition rate, according to the UNHCR, is of 44.5%[132].

175. In its third report, ECRI urged the Dutch authorities to ensure that the procedures in place for seeking asylum in the Netherlands enable those in need of protection to have the merits of their individual claims thoroughly examined and do not put people at risk of being returned to countries where they may be subject to serious human rights violations. To this end, it recommended in particular that they review the accelerated procedure and its use. ECRI stressed that channelling claims to any accelerated procedure should not be driven by statistics but determined by the merits of the claims. ECRI also recommended that the Dutch authorities strengthen their efforts to shorten the waiting period for asylum decisions under the normal procedure.

176. The Aliens Act was amended in 2010 and as a result the asylum procedure has been significantly reformed. What was referred to by ECRI in its third report as the "accelerated procedure" (which provided for the processing of an asylum claim within 48 hours) has become the standard procedure for handling asylum applications (the general procedure), whereas the extended procedure is now applied only under exceptional circumstances. According to the new general procedure, most asylum claims are no longer processed within 48 hours but within eight days, with a possible extension up to 14 days. The procedure is preceded by a preparation/rest period of around six days[133] (or two days if the application is processed at Schiphol airport), during which the asylum seeker has access to legal aid and undergoes a medical examination. On the first day of the general procedure, the Immigration and Naturalisation Department (IND) carries out a first interview, in the course of which information on the person's family and travel route is sought; at this stage no questions on the motives for seeking asylum can be asked. On the second day the asylum seeker is provided with legal aid and can discuss any corrections which s/he wishes to make to the statements made in the first interview. On the third day, the IND carries out an interview on the merits of the application. On the fourth day the asylum seeker with the assistance of legal aid can make additional corrections to the statements made. On the fifth day the IND delivers its preliminary decision concerning the asylum application and, in case of a negative decision, the asylum seeker may make comments and express his/her views on the sixth day. On the seventh or eighth day the IND delivers its final decision. As mentioned above, if a decision is not reached within this time-frame, the procedure may be extended to six months, with the possible extension of six more months[134]. ECRI notes that 90% of applicants are currently being interviewed within the general procedure and that the decisions taken further to this modus operandi reached 54% in the second half of 2011, against 30% under the accelerated procedure which was in place at the time of ECRI's third report. ECRI welcomes the speediness of the procedure, as well as the fact that a number of safeguards, such as legal aid, interpretation and a medical examination have been put in place in order to ensure a fair procedure. However, ECRI's attention has been drawn to the fact that the above-mentioned time-frame may be insufficient for asylum seekers who need to obtain documents in support of their application, from another country.

[131] 3 550, 4 280, 3 180 and 2 050, respectively in 2008, 2009, 2010 and 2011.

[132] The overall recognition rate includes refugee status, as well as subsidiary protection and humanitarian status.

[133] However, ECRI has been informed that, in practice, the rest period may last up to 21 days.

[134] In exceptional cases, such as persons applying for asylum from Libya and Syria, the authorities have issued moratoriums, providing that no decision would be taken. In these situations, in addition to the periods of six plus six months, the procedure may be extended by an additional period of one year.

While persons may ask for an extension of time to obtain these documents, it is in the authorities' discretion whether to accord it. Furthermore, ECRI has received information indicating that persons with special needs are also subject to this procedure, which is not adapted to them. ECRI invites the authorities – who have in any event signalled that exceptions are possible - to look into this claim.

177. If the asylum seeker receives a negative decision, s/he has four weeks to leave the country; during this time, the rejected asylum seeker may submit an appeal to the District Court. The appeal does not have automatic suspensive effect with respect to deportation proceedings; however, the person concerned can submit a request to be able to stay in the country pending the examination of his/her appeal. If the request is granted, accommodation is provided by the authorities. Subsequent requests will only be considered if new relevant facts have come to light or the circumstances have changed[135]. Should the court not be in a position to decide within 28 days, the applicant may request an interim measure in order to stay in the Netherlands and be provided with shelter. In case of a negative decision of the District Court, the failed asylum seeker may lodge an appeal with the Council of State – this does not automatically suspend the deportation proceedings, nor does it entitle the applicant to free accommodation. In ECRI's view, the lack of suspensive effect of the asylum seeker's appeal raises questions concerning the respect of the principle of non-refoulement, as there is a risk that a person is deported before the examination of his/her asylum case is fully completed[136]. ECRI further notes that, whereas in the past, decisions of the IND were subject to a limited scrutiny by the courts, following the 2010 amendments of the Aliens Act, domestic courts must take into consideration new circumstances and policy changes at the appeal stage. ECRI however, has been informed by its interlocutors that this is rarely the case, as the relevant case law of the Council of State is restrictive.

178. ECRI recommends that the authorities ensure that the appeal before a District Court and the Council of State against a negative decision on an asylum application has automatic suspensive effect with respect to deportation proceedings.

179. ECRI notes that a number of concerns have been raised by the UNHCR regarding the policy and laws currently in place as concerns the family reunification of persons who have been granted refugee status. DNA testing has replaced long interviews for purposes of determining family ties. This procedure apparently takes a long time and is not readily available in all cases, as it is carried out in the Dutch Embassy of the country of the family member and some countries do not have Dutch diplomatic representation. Furthermore, under the law, a refugee may apply for family reunification under two regimes, either under the special regime for refugees[137] or under the general regime which is applicable to all migrants. In the first case, family reunification must be requested within three months from the recognition of refugee status and is subject to the following requirements: the family must have already been formed at the time the refugee left his/her country; and the spouse of the refugee must have the same nationality

[135] See European Union Agency for Fundamental Rights (FRA), Country Factsheet Netherlands, related to FRA's report on Access to Effective Remedies: The asylum-seeker perspective, September 2010.

http://fra.europa.eu/sites/default/files/fra_uploads/1039-asylum_factsheet_Netherlands_en.pdf

[136] Under the case law of the ECtHR, the Court requires automatic suspensive effect when applicants facing removal from the territory (deportation, expulsion and refoulement) have an "arguable claim" under Articles 3 and 2 of the ECHR, see, for example, M.S.S. v. Belgium and Greece [GC], no. 30696/09, 21 January 2011.

[137] Family reunification must be requested within three months from the recognition of refugee status and is subject to the following requirements: the family must have already been formed at the time the refugee left his/her country; and the spouse of the refugee must have the same nationality as the refugee.

as the refugee. As mentioned above, refugees may also request family reunification in accordance with the procedure which applies to all migrants. In this case, however, they are subject to income requirements. Consequently, the special family reunification procedure for refugees may be the only viable option for most of them. ECRI considers, however, that the above-mentioned conditions required under this procedure, notably that the family be formed in the country from which the refugee has fled (implicitly excluding cases of family formation during the flight from the country or upon arrival in the Netherlands) and the requirement that the spouse have the same nationality as the refugee are at odds with the right to respect for private and family life (Article 8) and with the prohibition of discrimination (Article 14) of the ECHR, as these requirements are not imposed on regular migrants.

180. ECRI recommends that the authorities abrogate the provision under the Aliens Act providing that, in order for a refugee to obtain family reunification, the family must already have been formed at the time the refugee fled his/her country and the spouse of the refugee must have the same nationality as the refugee.

181. In its third report ECRI strongly encouraged the Dutch authorities in their plans to review their policies on unaccompanied children and stressed that detention of children should be strictly limited to cases where it is absolutely necessary and in the best interest of the child.

182. In March 2010 the Dutch authorities introduced a new policy regarding the administrative detention of children and their families. It provides for a maximum period of two weeks of detention for minors prior to their expulsion, the creation of alternative accommodation for children and their families, and the improvement of conditions of detention. According to this policy, unaccompanied minor asylum seekers are placed in detention only as a measure of last resort and for the shortest appropriate period of time only in certain cases[138][139]. According to the 2010 FRA comparative report on Separated, Asylum-Seeking Children in European Union Member States, correctional institutions for youth offenders serve as detention facilities for unaccompanied minor asylum seekers. In 2009, 300 unaccompanied children were detained in such institutions. The above-mentioned report showed that the minors complained about lack of support by their guardians and inadequate medical treatment. The authorities, however, have informed ECRI that the number of unaccompanied minor asylum seekers placed in detention has decreased, with 220 and 90 minors placed in detention, respectively, in 2010 and 2011. ECRI welcomes this development.

183. ECRI is concerned about the situation of 50 persons whose asylum requests have been rejected and who, after being detained in a detention centre for aliens, were released because they could not be deported successfully. This group of persons has been living for months (including during the winter season) in tents in insalubrious conditions, without any type of social support from the authorities.

184. ECRI recommends that the authorities ensure that rejected asylum seekers who cannot be deported receive adequate social support so that their physical and mental health is safeguarded.

[138] If the minor: is suspected of or has been convicted of a serious offence ; his/her departure can be achieved within 14 days ; has previously left the reception centre, unsupervised; or has failed to comply with a reporting obligation or a measure restricting his/her liberty. Or if the person was denied entry into the Netherlands at the border and it has not yet been established that s/he is a minor.

[139] European Union Agency for Fundamental Rights (FRA). Separated, Asylum-Seeking Children in European Union Member States: Comparative Report, 7 December 2010, p. 69.

Other migrants and their integration[140]

185. In its third report ECRI recommended that the Dutch authorities genuinely reflect in their policies the idea of integration as a two-way process. To this end, it strongly recommended that the Dutch authorities develop a credible policy at central government level to address the integration deficit among the majority population, by promoting genuine respect for diversity and knowledge of different cultures or traditions and eradicating deep-rooted stereotypes on cultures and values. To the same end, it recommended that the Dutch authorities make their work against racial discrimination an integral part of their integration policy.

186. In its last report on the Netherlands, ECRI had noted the authorities' acknowledgement that integration was a two-way process involving the majority and the minority of the population. ECRI is deeply concerned by the fact that this view has changed radically since the last report. The bill on integration presented in 2011 and the new bill to be adopted in 2013 have clearly indicated that integration is the responsibility of those who seek to settle in the Netherlands. In the memorandum on integration of 16 June 2011 they presented to the Parliament, the authorities state that the new approach on integration is not compatible with affirmative action targeting specific groups. More specifically, integration is now construed as meaning that persons should contribute equally to Dutch society regardless, inter alia, of their sex and religious affiliation. Consequently, the authorities have announced that all funds earmarked for integration purposes will be cut, including those targeting specific groups of concern to ECRI (vulnerable groups) and their associations[141]. They have stressed that integration of vulnerable groups will be pursued through general policies targeting the entire population. The government in place prior to the 2012 elections had also endorsed the view expressed by several politicians that multiculturalism has failed and that cultural diversity has often led to divisions. For this reason, the authorities introduced stricter requirements for newcomers to the country[142] and made efforts to stem the immigration of persons who have little prospect of being self-reliant.

187. ECRI is aware that the Netherlands, with a population of 16 574 989 has welcomed migrants of different cultures, religions and ethnicities for many years. The annual integration report funded by the authorities (evaluation report on integration in the Netherlands) shows that 9% and 11% of the population in the Netherlands are Western foreigners and foreigners of non-Western origin (the largest groups being the Turkish, followed by the Moroccan and the Surinamese). This same study also highlights that foreigners of non-Western origin benefit from social assistance six times more than ethnic Dutch and that they are overrepresented in the commission of crimes. While the authorities' declared policy may be very effective in limiting immigration (as will be clearer in the paragraphs below), it does not truly address the integration of groups of concern to ECRI who experience difficulties in achieving the same socio-economic results as native Dutch persons. Cutting funds to associations that represent these communities' interests and to projects which aim to improve the integration of these communities does little to attenuate the mutual sense of mistrust between the ethnic Dutch population and vulnerable groups which has emerged in recent

[140] ECRI once again stresses that its delegation's visit to the Netherlands took place at a time of transition, immediately after parliamentary elections and before the formation of a new government. The developments that have taken place since ECRI's third report might therefore not necessarily reflect the approach of the new Government.

[141] See the sub-section on anti-discrimination bodies and policy as concerns the abolition of LOM.

[142] See below the new developments concerning the Integration Abroad Act, the Integration Act and the Nationality Act.

years[143]. ECRI welcomes the fact that a report on integration is published every year with state funds to analyse the situation of migrants; specific targeted action to address the problems which are mentioned in these reports is however needed, as a one-size-fits-all approach, in ECRI's view, will do little to eliminate obstacles which are specific to certain communities. In addition to affirmative action, ECRI deems that an integration policy should also have a strong awareness-raising and anti-discrimination element addressed to the majority population. In this last respect ECRI refers to the sub-section on anti-discrimination bodies and policy of this report.

188. ECRI reiterates its recommendation to the Dutch authorities to introduce an integration policy providing for integration as a two-way process, whereby affirmative action towards groups of concern to ECRI is resumed and respect for diversity and knowledge of different cultures is promoted. To the same end, it recommends that the Dutch authorities make their work against racial discrimination an integral part of their integration policy.

189. In 2010 the Nationality Act was amended, restricting the cases of dual citizenship. New amendments will be tabled in 2013.

190. In its third report ECRI recommended that the Dutch authorities monitor the implementation of the civic integration abroad examination (as provided under the Civic Integration Abroad Act), the Civic Integration Act and the increase in fees for residence permits, as well as their impact on the number of applications received for these permits. ECRI also recommended that the Dutch authorities review the Civic Integration Abroad Act from the point of view of its conformity with the prohibition of discrimination on grounds of nationality, notably as concerns the system of exemptions. ECRI also strongly recommended that the Dutch authorities ensure that a wide range of preparatory integration courses, which reflect to the greatest extent possible the individual needs of the persons concerned, is available in practice.

191. The civic integration abroad examination (integration abroad test) and the civic integration examination for new migrants (and for persons who were residing in the Netherlands before the entry into force of the Civic Integration Act in 2007) described in ECRI's third report are still mandatory; they test knowledge of the Dutch language and culture.

192. As concerns in particular the integration abroad test, it is mandatory for persons aged between 18 and 65 who wish to obtain a residence permit for the Netherlands and settle there. In practice, persons who sit this examination do so for purposes of family reunification. The examination may be taken more than once and costs 350 Euros each time. If successful, the migrant must apply within one year for a residence permit; otherwise h/se will have to retake the test. The exemptions described in ECRI's third report and criticised for being discriminatory on grounds of citizenship are still applicable[144]. Under the Civic Integration Abroad Act persons may also be exempted from taking the examination on medical grounds.

193. ECRI notes with concern that, further to the amendment of the Civic Integration Abroad Act, as of April 2011 the pass score of the integration abroad test has been raised; furthermore, whereas in the past the examination was oral, a

[143] See the section on climate of opinion and racism in public discourse and, especially, its sub-section on racism in sport.

[144] In addition to citizens of EU/EAA countries and Switzerland, citizens of the USA, Canada, Australia, New Zealand, South Korea and Japan are exempted from taking this examination. The authorities have sought to justify such exemptions on the ground that the level of cultural, economic and social development of these countries is comparable to that of the Netherlands.

reading examination also has been introduced. According to the authorities the pass rate of this type of examination is very high (90%); and persons who have passed the examination are either highly educated or have an average education (the higher the level of education, the higher the pass rate). At the same time, various reports show that these new requirements affect disproportionally spouses with low education, elderly persons and persons who are illiterate. ECRI therefore notes that these new requirements are likely to hamper family reunification for these categories of persons and could raise an issue of compliance with Article 8 of the ECHR[145] [146].

194. ECRI further notes that no courses are offered in order to prepare applicants for the integration abroad test. ECRI has been informed that a practice package is being developed by the authorities, which would cost 70.40 Euros. ECRI notes that the cost of the examination and the lack of preparatory courses are again elements which may ultimately hinder the enjoyment of the right to respect for family life.

195. ECRI is aware that the government has carried out yearly evaluations of the Civic Integration Abroad Act, which have highlighted that there has been a drop in requests for visas for family reunification purposes and that in 2009 six out of 38 exemption requests had been granted. ECRI notes that while this act has certainly had an impact on the volume of migration into the Netherlands, its contribution towards the goal of integration has not yet been assessed[147].

196. ECRI strongly recommends that the authorities repeal the provisions of the Civic Examination Abroad Act introducing a reading examination and increasing the pass rate from A1 minus to A1. It further recommends that the authorities ensure that both the fees and the material available to prepare for the examination are appropriate and do not hamper persons who are economically or socially disadvantaged.

197. ECRI further recommends that the Dutch authorities review the Civic Integration Abroad Act from the point of view of its conformity with the prohibition of discrimination on grounds of nationality, notably as concerns the system of exemptions.

198. ECRI notes that some important amendments have been made to the Civic Integration Act (see also § 51 of ECRI's third report). As of January 2013, persons who wish to stay in the Netherlands must pass the civic integration examination within three years from their arrival to the country, otherwise they will be subject to: a fine; non-extension of their temporary residence permit; or the withdrawal of their temporary residence permit[148]. In this last case the migrant would have to return to his/her country, pass the integration abroad test once again and apply for a temporary permit. Refugees must also pass the civic integration examination and are subject to a fine, should they fail this examination

[145] Right to respect for private and family life: 1. Everyone has the right to respect for his private and family life, his home and his correspondence. 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

[146] In July 2008 the Amsterdam District Court ruled that it was unlawful to require an illiterate Moroccan woman wishing to join relatives in the Netherlands to pass the integration test before being allowed into the country. It does not seem that this verdict has had impact on the policy currently in place.

[147] See also paragraph 199 of this report.

[148] According to the authorities, a temporary residence permit cannot be withdrawn where this would violate Directive 2003/86/EC of the Council of the European Union on the right to family reunification or Article 8 of the ECHR; permits granted on asylum grounds cannot be withdrawn either.

within the three-year time-frame. The persons concerned may take the examination as many times as they want within the three-year time-frame and the costs have been estimated to range between 250 and 1 200 Euros (and have increased in the past years)[149]. Whereas in the past the costs for the integration courses could in certain cases be partly reimbursed, as of 2013 the authorities will set up a loan system in order to fund the civic integration examination (and the courses). This system will require repayment after 10 years, unless the applicants' income is not sufficient. According to the Act as amended, the courses on integration will no longer be provided by municipalities or by another authority; their organisation will be left to the free market. According to the evaluation report on integration in the Netherlands, the pass rate has been reasonably high, notably 85%, 82% and 74%, respectively for the years 2007, 2008 and 2009, although with respect to 2009, the number of applications to pass the civic integration examination dropped by 29% in the second half of the year, due to the above-mentioned rise in the fees.

199. ECRI notes that, while knowledge of the host country's language and civilisation certainly facilitates non-citizens' participation in society and thus is an important factor in integration, integration measures should first and foremost be in the form of incentives, not sanctions. Furthermore, according to evaluation reports carried out by the authorities in 2010, it is yet unclear to the authorities to what extent the integration tests have contributed to the integration of migrants. In ECRI's view, the new amendments which will be in force as of 2013 put excessive pressure on persons who are legally staying in the Netherlands and who aspire to have a more stable situation, particularly on persons who have managed to pass the integration abroad test and join their spouses in the Netherlands. In these cases, there is the risk that, once again, the family will be separated. ECRI considers in this respect that while learning the language and integration must by all means be promoted, this should not happen at the price of separating families. As concerns the authorities' decision to leave integration courses to free enterprise, in ECRI's view, the authorities have a duty to ensure that integration courses cater for the needs of all persons who are required to sit the examination, including, for instance, persons who have long working hours or who can only attend courses during very specific times.

200. ECRI recommends that the Dutch authorities abrogate the provisions in the Civic Integration Act according to which failure to pass the civic integration examination shall be a ground to impose a fine, or withdraw a temporary permit to stay.

201. ECRI further recommends that the authorities ensure that family reunification is not jeopardised by the provision of the Civic Integration Act to the effect that failure to pass the civic integration examination shall be a ground to refuse the extension of a temporary residence permit.

202. ECRI recommends that the Dutch authorities supervise the organisation of integration courses in order to ensure that they cater for the needs of all persons who are required to pass the examination. It also recommends that the authorities ensure that the prices of the civic integration examination be maintained at reasonable levels.

203. As concerns the fees applicable for residence permits, the judgment of 26 April 2012 of the European Court of Justice (ECJ)[150]indicates that these varied between 188 and 830 Euros. The ECJ found them disproportionate; in the

[149] See the report Doorstroom praktijkexamen inburgering, J Stouten; M Brink, Amsterdam: Regioplan Beleidsonderzoek, 2010.

[150] Action brought on 25 October 2010.

meantime they have been raised to 1 250 Euros[151] [152]. ECRI is concerned that such high fees, coupled with the costs related to the civic integration courses and examination, may impede migrants from applying and obtaining residence permits.

204. As regards the fees applicable for the family reunification of migrants, ECRI notes that they have been brought down to 225 Euros.

205. ECRI recommends that the Dutch authorities reduce the costs associated with residence permits.

206. As concerns irregular migrants and their detention, ECRI notes that under Dutch law, the duration of administrative detention is not provided for by statute, although, further to the entering into force of the Directive 2008/115/EC of the European Parliament and of the Council on common standards and procedures for returning illegally staying third-country nationals in 2010, a time limit of six months with a maximum extension up to 18 months is provided for in principle by Dutch policy. The European Commission against Torture and Inhuman and Degrading Treatment (the CPT), however, has noted in its report of 9 August 2012 that it was not uncommon for the police to re-arrest aliens shortly after they had been released from detention (on the expiry of the 18-month time limit), if they had not left the country in the meantime. Various sources, including the Ombudsman's report entitled Immigration Detention: penal regime or step towards deportation, have also highlighted the poor conditions of the detention centres, the long duration of the detention and the austere regime to which migrants are subjected. ECRI refers to the CPT's reports with respect to the assessment of the material conditions of the detention centres for migrants in the Netherlands.

207. ECRI recommends that the Dutch authorities set the maximum duration of the administrative detention of migrants in statute.

VII. Monitoring Racism and Racial Discrimination

208. In its third report, ECRI encouraged the Dutch authorities to monitor racism and racial discrimination through methods that integrate victims' perception and experience of these phenomena. It recommended that such research be carried out at regular intervals and that such research is adequately used to inform policies against racism and racial discrimination.

209. ECRI is very pleased that, since its third report, the Dutch authorities have continued to commission annually independent research on racism and extremism that combines perception-based and social scientific research with legal research. Notably, the Racism & Extremism Monitor is regularly published (see in this respect this report's sections on racist violence and extremism, as well as its section on vulnerable/target groups, sub-sections on the Jewish and the Roma, Sinti and Travellers communities). The Netherlands Institute for Social Rresearch (SCP) in cooperation with the Dutch Statistics Agency (CBS) also publishes annually a report on integration, including information on the situation of migrants in various fields of life and their perception with respect to their integration[153]. Furthermore, the SCP has produced other relevant publications, at

[151] The above mentioned judgement found that the Netherlands had violated Council Directive 2003/109/EC concerning the status of third-country nationals who are long-term resident, by requiring the payment of excessive and disproportionate fees by third-country nationals who apply for long-term residence status in the Netherlands and by members of their family seeking authorisation to accompany or join them.

[152] See the section on vulnerable/target groups, sub-section on refugees and asylum seekers.

[153] At home in the Netherlands, Trends in integration of non-Western migrants, see paragraph 84.

the authorities' request, such as the Discrimination Monitor 2010: Non-Western Migrants in the Dutch Labour Market; and Refugee Groups in the Netherlands - The Integration of Afghan, Iraqi, Iranian and Somali Migrants (2011). ECRI further notes that the Ombudsman has recently issued a report expressing criticism on the conditions of detention of foreigners without a permit to stay[154]. ECRI welcomes the efforts made by the authorities in monitoring racism and racial discrimination it stresses, however, that these publications should serve as a platform to develop comprehensive integration and anti-discrimination strategies[155].

210. ECRI reiterates its recommendation to the Dutch authorities to ensure that the studies commissioned on integration, racial discrimination and extremism are used to inform policies against racism and racial discrimination.

211. In its third report, ECRI recommended that the Dutch authorities improve their systems for monitoring the situation of vulnerable groups (groups of concern to ECRI) in different areas of life by collecting relevant information broken down according to categories such as national or ethnic origin, religion, language and nationality. It recommended that they ensure that this is done in all cases with due respect to the principles of confidentiality, informed consent and the voluntary self-identification of persons as belonging to a particular group. These systems should be elaborated in close co-operation with all the relevant actors, including civil society organisations and take into consideration the gender dimension, particularly from the point of view of possible double or multiple discrimination. ECRI stressed the need for such data to be used to monitor patterns of discrimination or situations of disadvantage facing vulnerable groups.

212. ECRI notes that the observations made in ECRI's third report (see its paragraph 114) are still valid. The Dutch Statistics Agency (CBS) collects data on the population living in the Netherlands broken down by country of birth. Accordingly, persons are classified as either being allochtone (a person with a foreign background) or autochtone (a native). Allochtones are persons who were either born outside the Netherlands or who have at least one parent who was born abroad – this category may also include persons who are Dutch citizens[156]. Within this group, a further distinction is made on the basis of whether the country of birth is a Western or a non-Western country. In addition, in its 2009 Opinion on the Netherlands, the Advisory Committee on the Framework Convention for the Protection of National Minorities (ACFC) noted that the Netherlands did not collect data on the ethnic affiliation of persons through population censuses; instead, the available data on the ethnic composition of the Dutch population is obtained through the matching of information from already existing data contained in administrative registers at municipal level and other surveys (for example the household sample survey)[157].

213. The authorities have informed ECRI that the CBS regularly publishes statistical tables on the living conditions of allochtones in various fields of life. They have further stressed that this system of data collection is not based on the principle of self-identification of persons because only a small part of "ethnic minorities" identify themselves as belonging to a certain ethnicity. Furthermore, they wish to track information for extended periods of time, whereas tracking a person's cultural orientation over long periods of time would prove to be very difficult.

[154] See the section on vulnerable/target groups, sub-section other migrants and their integration.

[155] See the section on vulnerable/target groups, sub-section other migrants and their integration; and the section on the existence and application of legal provisions, sub-section on anti-discrimination bodies and policy.

[156] However, those who gained Dutch citizenship at birth are excluded.

[157] The authorities have informed ECRI that this is done with due respect to the principle of confidentiality.

214. ECRI notes that this system of collection of data, does not respect the principle of informed consent and the voluntary self-identification of persons as belonging to a particular group. In addition, as the number of citizens who are second generation descendants of persons born outside the Netherlands increases, the classification on the basis of "allochthony" will be less and less apt to monitor patterns of racial discrimination. Lastly, this system of collection of data does not permit the monitoring of the situation of other vulnerable groups of concern to ECRI such as historical minorities, notably, Jews, Roma and Antillleans.

215. ECRI reiterates its recommendation to the Dutch authorities to improve their systems for monitoring the situation of groups of concern to ECRI in different areas of life by: collecting relevant information broken down according to categories such as national or ethnic origin, religion, language and nationality, with due respect to the principles of confidentiality, informed consent and the voluntary self-identification of persons as belonging to a particular group. This system should be elaborated in close co-operation with all the relevant actors, including civil society organisations, and take into consideration the gender dimension, particularly from the point of view of possible double or multiple discrimination. ECRI stresses the need for such data to be used to monitor patterns of discrimination or situations of disadvantage facing members of groups of concern to ECRI.

VIII. Conduct of Law Enforcement Officers

216. In its third report ECRI recommended that the Dutch authorities investigate racial profiling[158] practices in the Netherlands in the context of countering all crime, including terrorist crime, and with respect to activities carried out both by law enforcement personnel and intelligence and security services. ECRI stressed in particular the need for in-depth research and for ethnic monitoring of relevant police and security activities to be carried out as per GPR No. 11 on combating racism and racial discrimination in policing.

217. A survey conducted in 2008 by the European Union Agency for Fundamental Rights (FRA) revealed that in the Netherlands 34% of respondents with Surinamese background, 28% of respondents with Turkish background and 26% of those with North African background had been stopped by the police in the twelve months preceding the interview. Ten per cent of all respondents with North African background in the Netherlands stated they had been stopped in the previous 12 months because – as they had perceived it - of their ethnicity/religion/immigration background; this was also the case with 9% of all respondents with Surinamese background and 7% of all respondents with Turkish background[159]. More generally, according to the 2009 Monitor of Racial Discrimination[160] the authorities have not effectively addressed the practice of ethnic profiling by the police, which remains a problem. According to various reports, including one by the National Ombudsman and the Amsterdam and Rotterdam Ombudsmen[161], the police have a lot of discretion in stopping persons for identity checks and in carrying out preventive body searches and, in this

[158] In its GPR No. 11 on combating racism and racial discrimination in policing, racial profiling means the use by the police, with no objective and reasonable justification, of grounds such as race, colour, language, religion, nationality or national or ethnic origin in control, surveillance or investigation activities.

[159] The National Ombudsman together with the municipal ombudspersons of Amsterdam and Rotterdam has stated that every year over 50 000 people are subject to preventive body searches in the Netherlands. The Netherlands UN Human Rights Council Universal Periodic Review, second cycle – 2012.

[160] Monitor Racial Discrimination 2009, Expertise Centre Art. 1, Rotterdam, 2010, pp. 132 and 136 (research commissioned by the government).

[161] Safeguards in preventive searches - About the tension between security, privacy and selection, 15 September 2011.

respect, officers often do not receive clear instructions on the criteria which are applicable. Furthermore, the police are not required to register stops and preventive searches. The authorities have informed ECRI that the mayor of a municipality may designate a specific area where stops and preventive body searches should be carried out in response to disturbance of or grave threats to public order due to the presence of weapons.

218. In this context ECRI welcomes the research commissioned in 2011 by the Police Science and Research Programme on stop and searches; it recommended that the selection criteria be further developed and offered several examples; another study commissioned in 2011 by the above-mentioned programme examined the degree of discretion in and the boundaries of identity checks and concluded that there was no indication of unjustified and discriminatory identity checks. The above-mentioned report of the national and municipal ombudsmen has stressed in line with ECRI's GPR No. 11 § 1 that "race" or religion should never serve as criteria for carrying out stop and searches. This report also highlights that clear search criteria should be established; the role of the public prosecutor should be strengthened with respect to the authorisation of the police in carrying out body searches; and that during these searches human rights and privacy must be respected. ECRI has been informed by the Dutch Government that the findings of some of these reports have been used and included in a bill currently pending before the House of Representatives[162]. This bill aims to give more powers to the police in carrying out searches. The random character of stop-and-search activities is maintained; while the police remain free to choose whom to stop, objective criteria must be complied with (e.g. as concerns the time and location of the operation, the presence of suspicious behaviour etc.).

219. ECRI recommends that the authorities ensure that any new law concerning police searches provide clear guidelines as concerns the modalities, the place, the duration and the need to avoid racial profiling.

220. ECRI recommends that the police register every stop and preventive body search, as well as its legal basis. ECRI further recommends that the police receive training on the issue of racial profiling.

221. In its third report ECRI recommended that the Dutch authorities ensure a sustainable representation of ethnic minorities within the police forces. It encouraged them to identify and address the causes of ethnic minority officers leaving the police service and investigate possible patterns of discrimination in these officers' career paths. ECRI further recommended that the Dutch authorities ensure that police officers receive specialised training to help them become aware of prejudice and stereotypes. Finally, it encouraged the Dutch authorities to monitor the effectiveness of the work of the National Bureau for Discrimination Issues as for instance with respect to the development of a multicultural and diversity competences self-assessment tool for police officers.

222. A Multi-Year Framework for Police Diversity for the years 2006-2010 has been developed to use the diversity of staff members as a strength and thereby increase police effectiveness. Under this programme an increase in the number of employees belonging to "ethnic minorities" was foreseen (the objective was 8%). The authorities have informed ECRI that they were close to reaching this target[163] but that this programme has been discontinued. The authorities have informed ECRI that a career mobility study commissioned by the police concluded that there was no difference in terms of opportunities for ethnic Dutch officers and those belonging to "ethnic minorities". According to this study the

[162] http://www.eerstekamer.nl/wetsvoorstel/33112_verruiming.

[163] The figure rose from 6.9 % to 7.3 %.

police officers belonging to “ethnic minorities” attributed the increase of their representation in the police to their own efforts, rather than to the above-mentioned programme. Nonetheless, according to the 2010 report of the ACFC on the Netherlands, “ethnic minority” recruits were still leaving the police. ECRI has been informed that the police are now pursuing a new policy which aims to increase the number of women and vulnerable groups of concern to ECRI in higher positions. The authorities have not provided any figures on the attainment of this objective. ECRI has also been informed about a best practice in the Amsterdam region, consisting in the creation of a special unit of homosexual police officers, known as "pink in blue". They are responsible for a special help line and they patrol events like the Gay Parade.

223. As concerns the training of the police, the LECD-Police is responsible for providing training courses and workshops on diversity-related issues. The authorities have pointed out that training on the fight against racism and racial discrimination is provided at the beginning for all police recruits and that ad hoc training on this issue has been organised. The authorities have also informed ECRI that the multicultural and diversity competences self-assessment tool for police officers (see ECRI’s third report, paragraph 103) will continue. In the light of a number of cases signalled in this report, in which the police were allegedly reluctant to open investigations following the receipt of complaints concerning racism or racial discrimination, ECRI encourages the authorities to strengthen the training provided to police officers as concerns the fight against racism and racial discrimination, as well as the elimination of prejudices.

224. ECRI recommends that the Dutch authorities, while pursuing the objective of increasing the representation of “ethnic minorities” (and women) in the higher positions of the hierarchy of the police, resume the policy of promoting the recruitment of groups of concern to ECRI within the police force. ECRI recommends that the authorities draw inspiration from the Amsterdam project “pink in blue” to provide specialised help to victims belonging to all groups of concern to ECRI.

225. ECRI recommends that the authorities strengthen the training provided to police officers as concerns the fight against racism and racial discrimination, as well as the elimination of prejudices.

226. ECRI’s attention has also been drawn to a number of specific cases of alleged police misconduct. In 2007 during a police raid in a Sinti camp, a police agent marked numbers on the arms of some of persons who were present. A complaint was lodged in this respect and the police condemned the conduct, stating that it had been a mistake made by a trainee. In July 2011 a 22 year-old man of Turkish origin died after having been apprehended. Whereas Dutch officials claimed the young man had died of heart attack, his family and friends alleged that his death had been caused by police brutality. ECRI was informed by the authorities that according to the autopsy report, the most probable cause of death was the use of cocaine followed by heart failure. The public prosecutor decided that there was no misconduct by the police on the basis of the investigation carried out by the police internal affairs department.

IX. Education and Awareness Raising

227. In its third report, ECRI reiterated its recommendation that the Dutch authorities equip all teachers with the skills to teach in a multicultural society and to react to any manifestations of racism and discriminatory attitudes in schools, in accordance with its GPR No. 10 on combating racism and racial discrimination in and through school education.

228. In the 2008 periodic report submitted to CERD, the Dutch authorities stated that there is no specific training for teachers to deal with discrimination, although they are required to create a safe setting in which everyone is treated with dignity. ECRI has been informed that the education inspectorate assesses whether teachers possess these qualities. Furthermore, the authorities have allocated 100 million Euros in 2012 and will allocate 150 million Euros in 2013 for the purpose of continuing education for teachers. ECRI is not certain whether teaching in a multicultural society and reacting to any manifestations of racism and racial discriminatory attitudes in schools is a part of the teachers' continuing education curriculum. The authorities have also informed ECRI that they commissioned a handbook on teaching the Holocaust and other genocides, which was published in 2012. The handbook's purpose is, inter alia, to equip teachers with the necessary skills to discuss the Holocaust when other non-related subjects are raised by students in that context (for example, the conflict in the Middle East).

229. ECRI recommends that the authorities ensure that teaching in a multicultural society and reacting to any manifestations of racism and racial discriminatory attitudes in schools form a specific part of the teachers' continuing education curriculum.

230. In its third report, ECRI recommended that the Dutch authorities monitor the extent to which the statutory provision[164], introduced into the Primary Education Act in February 2006 was applied in practice. It strongly recommended that, in so doing, the Dutch authorities ensure that the obligation for schools to provide students with knowledge of the background and culture of their peers is respected. It also encouraged the Dutch authorities to strengthen the human rights dimension of the curricula in all subjects and recommended that, in the long term, the Dutch authorities consider making human rights, including non-discrimination, a compulsory subject at both primary and secondary levels.

231. As concerns the monitoring of the extent to which the statutory provision introduced into the Primary Education Act in February 2006 is applied in practice, the ETC (now NIHR), the National Ombudsman and the Data Protection Authority had noted that the topic of racial discrimination was not explicitly mentioned in this provision, hence in the school curriculum.

232. The Council of Europe Commissioner for Human Rights reported in 2009 that knowledge of the Constitution and human rights was not well developed in the Netherlands. In this respect, the authorities have informed ECRI that, under the law, a course on citizenship and social integration is mandatory in secondary school and that the education inspectorate verifies that it is indeed taught. Nonetheless, the Ministry of Education has asked the Education Council[165] to provide an opinion on whether additional instruments are needed for the teaching of citizenship and social integration. The Education Council has submitted its conclusions to the authorities; the teaching of human rights has been included in

[164] The Primary Education Act requires schools to promote "active citizenship and social integration" among pupils, which also includes pupils becoming familiar with the background and culture of their peers.

[165] Under the Education Council Act of 1997 the Council: provides advice - whether solicited or unsolicited - to the Ministers and to both chambers of parliament on education, policy and legislation. The Ministers may request advice and recommendations on policy issues or important legislation. The Council does not, however, play a reactive role only. It also operates as a think tank that provides analyses of current issues and formulates solutions to help develop new policy; formulates recommendations on the application of laws, general administrative orders and ministerial regulations. The Minister requests assistance and advice when (s)he has to make a decision on an individual case, for example if a school for either practical or principled reasons wishes to deviate from a law or regulation; may also be asked by local authorities to develop recommendations on certain aspects of local education policy, such as accommodation, policies regarding educationally disadvantaged pupils, foreign language education and school advisory services. Local authorities can call on the Education Council if they have a dispute with a school board that is directly or indirectly related to the constitutionally guaranteed freedom of education.

its analysis. ECRI has been informed that the new government will be responsible for reacting to these conclusions.

233. As concerns the teaching of human rights as a separate subject, the Dutch authorities have informed ECRI that they prefer that it be taught in a wider context, not as a separate subject.

234. ECRI recommends that the course of citizenship and social integration include human rights. This should be the first step towards making the human rights, including non-discrimination, a separate compulsory subject at both primary and secondary level.

235. As concerns awareness-raising measures taken by the authorities with respect to racial discrimination and the importance of reporting any such instance, some of these have been discussed in the sub-section of this report on civil and administrative law provisions. ECRI further notes that some campaigns have been carried out at the local level and have targeted racial and other forms of discrimination in the entertainment industry. In ECRI's view, these campaigns should be replicated and carried out both at the local and national level. They should have a broad scope such as the campaigns mentioned in the sub-section on civil and administrative law provisions, but should also target specific fields of life such as employment, sports and entertainment which present appreciable problems with respect to racism and racial discrimination[166]. They should be carried out both at the national and local level in order to ensure that the entire population living in the Netherlands benefits from these campaigns.

236. ECRI recommends that the national authorities carry out both at the local and national level awareness-raising campaigns on racism and racial discrimination targeting specific fields of life such as employment, sports and entertainment.

[166] See the respective sub-sections of this report.

INTERIM FOLLOW-UP RECOMMENDATIONS

The three specific recommendations for which ECRI requests priority implementation from the authorities of the Netherlands, are the following:

- ECRI reiterates its recommendation that the Dutch authorities introduce a provision to the effect that racist motivation constitutes a specific aggravating circumstance in sentencing.

- ECRI reiterates its recommendation to the authorities to develop a national strategy and policy against racism and racial discrimination which tackles at the national level certain issues and, more generally, sets out objectives, mechanisms for implementation, monitoring and evaluation.

- ECRI strongly recommends that the Dutch authorities address any exploitation of temporary agent workers who are not permanently resident in the Netherlands by: setting up, if need be, a system of licences for temporary employment agencies; regularly inspecting the same; and ensuring that the above-mentioned category of workers benefit from the safeguards and work conditions provided for under the law.

A process of interim follow-up for these three recommendations will be conducted by ECRI no later than two years following the publication of this report.

BIBLIOGRAPHY

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

European Commission against Racism and Intolerance (ECRI)

1. Third Report on the Netherlands, 29 April 2008, CRI(2008)22
2. Second Report on the Netherlands, 13 November 2001, CRI (2001) 40
3. Report on the Netherlands, 15 June 1998, CRI (98) 49
4. General Policy Recommendation No. 1: Combating racism, xenophobia, antisemitism and intolerance, October 1996, CRI(96)43
5. General Policy Recommendation No. 2: Specialised bodies to combat racism, xenophobia, antisemitism and intolerance at national level, June 1997, CRI(97)36
6. General Policy Recommendation No. 3: Combating racism and intolerance against Roma/Gypsies, March 1998, CRI(98)29
7. General Policy Recommendation No. 4: National surveys on the experience and perception of discrimination and racism from the point of view of potential victims, March 1998, CRI(98)30
8. General Policy Recommendation No. 5: Combating intolerance and discrimination against Muslims, April 2000, CRI(2000)21
9. General Policy Recommendation No. 6: Combating the dissemination of racist, xenophobic and antisemitic material via the Internet, December 2000, CRI(2001)1
10. General Policy Recommendation No. 7: National legislation to combat racism and racial discrimination, February 2003, CRI(2003)8
11. General Policy Recommendation No. 8: Combating racism while fighting terrorism, June 2004, CRI(2004)26
12. General Policy Recommendation No. 9: The fight against antisemitism, September 2004, CRI(2004)37
13. General Policy Recommendation No. 10: Combating racism and racial discrimination in and through school education, March 2007, CRI(2007)6
14. General Policy Recommendation No. 11: Combating racism and racial discrimination in policing, October 2007, CRI(2007)39
15. General Policy Recommendation No. 12: Combating racism and racial discrimination in the field of sport, March 2009, CRI(2009)5
16. General Policy Recommendation No. 13: Combating anti-Gypsyism and discrimination against Roma, September 2011, CRI(2011)37
17. General Policy Recommendation No. 14: Combating racism and racial discrimination in employment, September 2012, CRI(2012)48

Other sources

18. Ministry of the Interior and Kingdom Relations, Policy measures in the Netherlands for the social inclusion of Roma, 16 December 2011
19. Ministry of Interior and Kingdom Relations press release, Requirements for Dutch nationality tightened up, 29 March 2011
20. Commissie Gelijke Behandeling. Annual Report 2010: Figures and Justification,
21. Commissie Gelijke Behandeling, Annual Report 2009, Figures and Justification
22. Council of Europe Newsroom, Secretary General calls on Dutch government to respond to concerns about problematic website, 22 February 2012
23. Council of Europe, Recommendation No. R (97) 20 of the Committee of Ministers to member states on “hate speech”, 30 October 1997
24. Council of Europe, Recommendation CM/Rec(2008)5 of the Committee of Ministers to member states on policies for Roma and/or Travellers in Europe, 20 February 2008

25. Recommendation 1805 (2007) of the Parliamentary Assembly of the Council of Europe on blasphemy, religious insults and hate speech against persons on the grounds of their religion, 29 June 2007

26. European Court of Human Rights, Factsheet on hate speech, June 2012

27. Report by the Commissioner for Human Rights of the Council of Europe, Mr Thomas Hammarberg, on his visit to the Netherlands, 21-25 September 2008, 11 March 2009, CommDH(2009)2

28. Address by Thomas Hammarberg, Council of Europe Commissioner for Human Rights before the Committee on Justice of the Dutch Senate, The Hague, 28 September 2010, CommDH/Speech(2010)3

29. Examples of Good Practice in the Field of Protection and Promotion of the Human Rights: Example from the Netherlands. In response to the invitation by the Commissioner for Human Rights, Municipal Anti-discrimination Services

30. Report to the Government of the Netherlands on the visit to the Netherlands carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 10 to 21 October 2011, CPT/Inf (2012) 21, 9 August 2012

31. European Social Charter (revised), Council of Europe, Conclusions 2009, January 2010

32. Revised European Social Charter, 4th National Report on the implementation of the European Social Charter (revised) submitted by the Govrnment of the Netherlands, Council of Europe, 7 February 2011, RAP/Rcha/NE/IV(2011)

33. European Committee of Social Rights, Compalint No. 47/2008, Defence for Children International v. the Netherlands, 12 February 2008

34. European Committee of Social Rights, Decision on the merits: Defence for Children v. the Netherlands (complaint No. 47/2008), 20 October 2009

35. Advisory Committee on the Framework Convention for the Protection of National Minorities, Opinion on the Netherlands, 17 February 2010, ACFC/OP/I(2009)002

36. Advisory Committee on the Framework Convention for the Protection of National Minorities, Comments of the Government of the Netherlands on the first opinion of the Advisory Committee on the implementation of the Framework Convention for the Protection of National Minorities by the Netherlands, 17 February 2010, GVT/COMI(2010)001

37. Council of Europe Education and Languages, Education for Democratic Citizenship and Human Rights, Country Profile Netherlands

38. United Nations Committee on the Elimination of Racial Discrimination (CERD), Consideration of reports submitted by States parties under article 9 of the Convention, Concluding observations of the Committee on the Elimination of Racial Discrimination, Netherlands, 25 March 2010, CERD/C/NLD/CO/17-18

39. CERD, Reports submitted by States parties under article 9 of the Convention, Eighteenth periodic reports due in 2007, Netherlands, 3 March 2008, CERD/C/NLD/18

40. United Nations, General Assembly, Human Rights Council, Working Group on the Universal Periodic Review, National report submitted in accordance with paragraph 15 (A) of the Annex to Human Rights Council Resolution 5/1, Netherlands, 8 March 2012, A/HRC/WG.6/13/NLD/1

41. United Nations, General Assembly, Human Rights Council, Working Group on the Universal Periodic Review, Summary prepared by the Office of the High Commissioner for Human Rights in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21, 12 March 2012, A/HRC/WG.6/13/NLD/3

42. United Nations, General Assembly, Human Rights Council, Universal Periodic Review, Report of the Working Group on the Universal Periodic Review, Netherlands, 9 July 2012, A/HRC/21/15

43. European Council Framework Decision 2008/913/JHA of 28 November 2008 on combating certain forms and expressions of racism and xenophobia by means of criminal law

44. European Commission, Special Eurobarometer 317, Discrimination in the EU in 2009, Report, November 2009

45. European Commission, Special Eurobarometer 317, Discrimination in the EU 2009, Factsheet Netherlands, November 2009
46. European Union Agency for Fundamental Rights (FRA), Annual Report 2010, Fundamental rights: challenges and achievements in 2010, 15 June 2011
47. FRA. Anti-semitism: Summary Overview of the Situation in the European Union 2001-2010. Working paper, April 2011
48. FRA, Country factsheet Netherlands, study "access to justice for asylum seekers", September 2010
49. FRA, EU-MIDIS, European Union Minorities and Discrimination Survey, Main Results Report, 2009
50. FRA, EU-MIDIS, EU-MIDIS at a glance, 22 April 2009
51. FRA, EU-MIDIS, Data in Focus 2 – Muslims, 2009
52. FRA, EU-MIDIS, Data in Focus 4 – Police Stops and Minorities, 2010
53. FRA, Separated, asylum-seeking children in European Union Member States, Comparative report, 2010
54. Organisation for Security and Co-operation in Europe (OSCE) Office for Democratic Institutions and Human Rights (ODIHR), Country Visit: The Netherlands Report of the Personal Representative of the OSCE Chair-in-Office on Combating Anti-Semitism, Rabbi Andrew Baker, March 13-17, 2011, 24 May 2011, CIO.GAL/99/11
55. ODIHR, Hate Crimes in the OSCE Region – Incidents and Responses, Annual Report for 2010, Warsaw, November 2011
56. ODIHR, Hate Crimes in the OSCE Region – Incidents and Responses, Annual Report for 2009, Warsaw, November 2010
57. ODIHR Holocaust Memorial days in the OSCE region, An overview of Governmental practices, January 2010
58. Amnesty International Report 2010
59. Amnesty International, Benelux Agreement Leaves Roma at Risk of Persecution in Kosovo, 13 May 2011
60. Amnesty International, Choice and prejudice – discrimination against Muslims in Europe, 2012
61. Amnesty International report. The Netherlands: The Detention of Irregular Migrants and Asylum-Seekers, 27 June 2008
62. Dutch Equal Treatment Commission (CGB), Dutch National Ombudsman and Dutch Data Protection Authority, Comments on the Seventeenth and Eigtheenth Dutch Report on the Implementation of the Convention on the Elimination of All Forms of Racial Discrimination, March 2009
63. Dutch National Contact Point for the European Migration Network (EMN), Annual Policy Report 2010, Developments in Dutch Migration and Asylum Policy, May 2011
64. Dutch Council of Refugees. Summary Annual Report 2010
65. Dutch section of the International Comission of Jurists (NJCM) et al. Commentary on the Seventeenth and Eighteenth Peroidic Reports of the Netherlands on the International Convention on the Elimination of all Froms of Racisl Discrimination (CERD), The Netherlands, 5 October 2009
66. Eline Nievers and Iris Andriessen (eds). Discrimination Monitor 2010: Non-Western Migrants on the Dutch Labour Market. The Netherlands Institute for Social Research. The Hague, 15 September 2010
67. European network against racism (ENAR), Shadow Report 2008, Racism in the Netherlands, Wies Dinsbach, Gregor Walz and Igor Boog, October 2009
68. ENAR, Rapport alternatif d'ENAR 2010/2011, Le racisme et la discrimination aux Pays-Bas, Dr Laurent Chambon (Fondation Minorités), mars 2012
69. European network of legal experts in the non-discrimination field, Report on measures to combat discrimination, Country report 2010, The Netherlands, Rikki Holtmatt, State of affairs up to 1 January 2011

70. Evelien Gans, On Gas Chambers, Jewish Nazis and Noses. In: Peter R. Rodrigues and Jaap van Donselaar (eds.) Racism & Extremism Monitor, Ninth Report, Anne Frank Stichting/Leiden University, 2010
71. Human Rights First, Hate Crime Report Card, The Netherlands
72. Human Rights Watch, The Netherland: Do not Deport Somalis, Forced Return Contravenes UN Refugee Guidelines, 21 July 2010
73. Ineke van der Valk, Islamophobia in the Netherlands, 2012
74. Ineke van der Valk, Willem Wagenaar, Racism & Extremism Monitor, The extreme right: entry and exit, Anne Frank House and Leiden University, Anne Frank House 2010
75. International British Council and Migration Policy Group, Migration Integration Index (MIPEX), 2010
76. Iris Andriessen, Eline Nievers, Laila Faulk and Jaco Dagevos. Do employers prefer Mark over Mohammed?: A Study of Labour Market Discrimination against non-Western Migrants Using Situation Testing, Netherlands Institute for Social Research, The Hague, 21 January 2010
77. Janny R. Dierx and Peter R. Rodrigues, Challenging discrimination, promoting equality, European Roma Rights Centre
78. Jenny Goldschmidt, Protecting Equality as a Human Right in the Netherlands – From Specialised Equality Body to Human Rights Institute, The Equal Rights Review, Vol. Eight (2012)
79. Josep Bakker, Eddie Denessen, Dorothee Peters and Guido Walraven, International perspective on countering school segregation, Mixed Knowledge Centre, 2011
80. Landelijk ExpertiseCentrum Diversiteit van de politie, POLDIS 2010, Criminaliteitsbeeld discriminatie, Wouter de Wit, Evelien Sombekke, ITS, Radboud Universiteit Nijmegen, 2011
81. Landelijk ExpertiseCentrum Diversiteit van de politie, POLDIS 2009, Criminaliteitsbeeld discriminatie, Wouter de Wit, Evelien Sombekke, ITS, Radboud Universiteit Nijmegen, 2010
82. National Ethnic Minorities Consultative Committee, Landelijk Overleg Minderheden (LOM), Contribution to the second Universal Periodic Review of the Netherlands by the UN Human Rights Council, 28 November 2011
83. Marija Davidović, Anti-discrimination restrictions and criminal prosecution in 2009. In Peter R. Rodrigues and Jaap van Donselaar (eds.). Basic Rights Clashing. Racism & Extremism Monitor: Ninth Report. Anne Frank Stichting/Leiden University 2010
84. Meldpunt Discriminatae Internet, Jaarverslag 2011
85. Netherlands Institute for Social Research, Annual Integration Report 2011 (Summary and conclusions in English), Mérove Gijsberts, Willem Huijnk, Jaco Dagevos, The Hague, January 2012
86. Netherlands' Institute for Social Research, Discrimination Monitor 2010: Non-Western Migrants in the Dutch Labour Market
87. Netherlands Institute for Social Research, Refugee Groups in the Netherlands – The integration of Afghan, Iraqi, Iranian and Somali Migrants, 2011
88. Open Society Foundations, At Home in Europe Project, Muslims in Amsterdam, November 2010
89. Rob Witte, Racist Violence in the Netherlands. European Network against Racism thematic report. Brussels, March 2011
90. Tanja van den Berge, The Impact of Racial Equality Directive: A Survey of trade Unions and Employers in the Member States of the European Union: Netherlands. European Union Agency for Fundamental Rights (FRA) background information, May 2010
91. The Netherlands RAXEN National Focal Point, Thematic Study, Housing Conditions of Roma and Travellers, Rita Schriemer, March 2009
92. US Department of State, Bureau of Democracy, Human Rights and Labour, 2010 Human Rights Report - Netherlands, 11 March 2010

93. US Department of State, Bureau of Democracy, Human Rights and Labour, 2009 Human Rights Report –Netherlands , 8 April 2011

94. US Department of State, Bureau of Democracy, Human Rights and Labour, 2008 Human Rights Report –Netherlands, 25 February 2009

95. US Department of State, Bureau of Democracy, Human Rights and Labour, International Religious Freedom Report 2010 -Netherlands, 17 November 2010

96. US Department of State, Bureau of Democracy, Human Rights and Labour, International Religious Freedom Report 2009 -Netherlands, 26 October 2009