



## Briefing of the European Commission against Racism and Intolerance (ECRI) of the Council of Europe, in view of its fifth report on the Netherlands

15 June 2018

This report is based on information provided by the Dutch Section of the International Commission of Jurists (NJCM), Control Alt Delete (anti-racism NGO) and Ocan (platform Caribbean Dutch)

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This briefing will limit itself to the discrimination grounds covered by ECRI: racism, xenophobia, intolerance and discrimination on grounds such as “race”, national/ethnic origin, colour, citizenship, religion and language (racial discrimination).

This briefing covers a selection of themes that were addressed by ECRI in its previous report (2013) and addresses the following issues:

- Labour Market Discrimination
- Housing Policies for Roma, Sinti and travellers
- Prosecution of hate speech
- Speech by authorities and public officials
- Ethnic profiling
- Attitudes towards integration
- Ethnic data gathering

## • LABOUR MARKET DISCRIMINATION

### **Not enough targeted and structural programs to counteract structural and persistent labour market discrimination.**

Dutch employers interview and employ more ethnically Dutch candidates than those from an ethnic minorities due to prejudices. This has been documented by the Netherlands Institute for Social Research (SCP).<sup>1</sup> For several years, various studies and reports document persistent discrimination in the recruitment sector.<sup>2</sup> According to an investigative tv program that called 80 temporary employment agencies, almost half of them were willing to accept discriminating requests, e.g. not selecting candidates with from Moroccan, Surinamese or Turkish origin or descent on behalf of a client.<sup>3</sup>

Labour market discrimination is being monitored by recording whether people feel they are being discriminated (a method which the governments qualifies as subjective) and by registering the amount of complaints lodged at (municipal) anti-discrimination facilities. But monitoring is not enough to combat discrimination, it needs a targeted approach.

In a letter of May 2018 the State Secretary for Social Affairs and Employment responded to the findings of the tv program and condemned labour market discrimination, specifically in the recruitment sector.<sup>4</sup> The

<sup>1</sup> I. Andriessen, E. Nievers, L. Faulk en J. Dagevos (2010). *Liever Mark dan Mohammed? Onderzoek naar arbeidsmarktdiscriminatie van niet-westerse migranten via praktijktests*. Den Haag: Sociaal en Cultureel Planbureau.

<sup>2</sup> E. Loeters (2011), *De klant is Koning. Een onderzoek naar het honoreren van discriminerende verzoeken van werkgevers door intercedenten van uitzendbureaus in Nederland*; A. Backer (2011), *Uitzendbureaus, gekleurde doorgeefluiken?*; L. Blommaert, (2013), *Are Joris and Renske more employable than Rashid and Samira? A study on the prevalence and sources of ethnic discrimination in recruitment in the Netherlands using experimental and survey data*. Utrecht: Utrecht University; I. Andriessen, E. Nievers en J. Dagevos (2012), *Op achterstand. Discriminatie van niet-westerse migranten op de arbeidsmarkt*. Den Haag: Sociaal en Cultureel Planbureau; I. Andriessen, H. Fernee en K. Wittebrood (2014). *Ervaren discriminatie in Nederland*. Den Haag: Sociaal en Cultureel Planbureau; I. Andriessen en B. van der Bent (2015), *Op afkomst afgewezen: onderzoek naar discriminatie op de Haagse arbeidsmarkt*. Den Haag: Sociaal en Cultureel Planbureau.

<sup>3</sup> <https://radar.avrotros.nl/uitzendingen/gemist/29-01-2018/discriminatie-door-uitzendbureaus/>

News article in English:

<https://www2.staffingindustry.com/eng/Editorial/Daily-News/Netherlands-Temporary-employment-agencies-found-to-be-participating-in-discriminatory-behaviour-44874?>

<sup>4</sup> Netherlands, House of Representatives (Tweede Kamer der Staten-Generaal) (2018), Letter State Secretary of Social Affairs and Employment on labour market policies and racial discrimination, Parliamentary Document (Kamerstuk), 29544 nr. 822, 1 May 2018, available at <https://zoek.officielebekendmakingen.nl/kst-29544-822.html>

State Secretary announced to look into possibilities to enhance the authority of the labour inspectors (*Inspectie SZW*) with regard to discrimination in recruitment and selection services, as the appropriate authority is currently lacking.

In addition the government is taking (new) measures to combat labour market discrimination, like studies, campaigns and platforms for exchanging knowledge and raising awareness.

## • HOUSING POLICIES AIMED AT ROMA, SINTI AND TRAVELLERS

**Courts do not address intended limiting of camps and halt sites for Roma, Sinti and travellers in terms of human rights in stark contrast to international bodies. Insufficient safeguards for the protection of the cultural identity of Roma, Sinti and travelers by government bodies.**

In the Netherlands, the housing policy, including the travellers' camps policy, is decentralised. This means that municipalities are carrying the primary responsibility for determining and implementing housing policies. Nevertheless, with regard to travellers' camps, the Dutch government had put forward a Guide to Municipalities in 2006, which lists several policy options. These options were aimed at 'normalising' the housing situation of Roma, Sinti and travellers and included the proposal of the 'zero-option' (infamously known as the 'extinction policy'), whereby municipalities would abolish travellers' camp sites in their municipality, and the 'reduction policy', whereby municipalities would significantly reduce the number of camp sites regardless of the demand for such sites. Consequently, since many municipalities opted for some form of these policy options,<sup>5</sup> the estimated shortage of camp sites (3.000 in 2012) increased over the years.<sup>6</sup>

Since the ECRI report of 2013 there have been many developments with regard to the housing situation of Roma, Sinti and travelers both legal and political. At the end of 2014 the Netherlands Institute for Human Rights (NIHR), the Dutch Equality Body, for the first time held a municipality accountable for violating the Dutch Equality Act (which forms an implementation of the EU Racial Equality and the Employment Equality Directives) for implementing an extinction policy.<sup>7</sup> Subsequently it decided on 35 other cases about this issue, of which 20 resulted in a violation (14 concerning municipalities, 6 concerning housing corporations and 1 concerning the central government).<sup>8</sup>

In addition, there have been legal proceedings at the national courts, yet little attention has been paid to travellers' fundamental rights.<sup>9</sup> The Council of State, however, did hold that municipalities cannot amend the

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<sup>5</sup> The exact number is unknown as there is no inventory of the traveler camps policies that the 380 municipalities in the Netherlands opted for. Such an inventory is, however, currently being made see Aedes, 'Inventarisatie Woonwagendplaatsen bij Corporaties en Gemeenten' [Inventory of Caravan Sites at Corporations and Municipalities] (1 June 2018) <<https://www.aedes.nl/artikelen/klanten-wonen/bijzondere-doelgroepen/woonwagens/inventarisatie-woonwagendplaatsen.html>> accessed 4 June 2018.

<sup>6</sup> Art. 1, Dutch Knowledge Centre on Discrimination, FRANET National Focal Point, Social Thematic Study, *The Situation of Roma: Netherlands* (2012), p. 9 with a reference to P. Jorna, *Roma and Sinti in the Netherlands: Update Spring 2009. On the Occasion of the 27<sup>th</sup> Meeting of the Committee of Experts on Roma and Travellers in Sevilla, Spain* (26-27 March 2009), Utrecht, Forum.

<sup>7</sup> NIHR 19 December 2014, no. 2014-165 and NIHR 19 December 2014, no. 2014-167 (*municipality of Oss*).

<sup>8</sup> This is based on an empirical analyses of the Decisions published online at the website of the NIHR on 26 April 2018. The Decisions in which a violation was found are: Decision 2014-165, 2014-166, 2014-167, 2015-61, 2016-19, 2016-63, 2016-64, 2016-67, 2016-68, 2016-69, 2016-72, 2016-109, 2016-110, 2016-139, 2017-55, 2017-103, 2017-136, 2017-137, 2018-9, 2018-18. The Decisions relating in which the Dutch authorities violated the Dutch Equal Treatment Act concern Decisions 2014-165, 2014-167, 2015-61, 2016-19, 2016-63, 2016-67, 2016-69, 2016-109, 2016-110, 2016-139, 2017-103, 2017-136, 2018-18, and concerning the central government, Decision 2017-55.

<sup>9</sup> See for example the District Court's and Court of Appeal's judgments in the case of Henk Kersten, in which extensive fundamental rights arguments were made and an amicus curiae letter was sent by a fundamental rights litigation group (Public Interest Litigation Project). For information see PILP, 'Court of Appeal: Traveller Allowed to Continue to Reside in Caravan' *PILP* (16 November 2017) <<https://pilpnjcm.nl/en/court-appeal-traveller-allowed-continue-reside-caravan/>> accessed 4 June 2018.

zoning plan (*bestemmingsplan*) of a traveller camp, without any motivation of the alleged lack of demand for camp sites.<sup>10</sup>

At the international level there has been more and more attention to the problems issues faced by Roma, Sinti and travellers. The European Commission reported on segregation of Roma, Sinti and travellers in the Netherlands,<sup>11</sup> the UN Committee on the Elimination of Racial Discrimination (CERD) recommended the Netherlands to provide sufficient campsites and combat discrimination these groups,<sup>12</sup> and the European Committee Social Rights held the Netherlands to violate Article 31, paragraph 1 European Social Charter (right to housing) as it did not provide sufficient number of halting sites.<sup>13</sup>

Political developments: In the period of 2013 and 2018 several municipalities still applied an extinction or reduction policy, as is demonstrated by the decisions of the NIHR. Some municipalities have changed their policies as result of the decisions of the NIHR directly aimed at them, others changed their approach because of these decisions. A good example of the latter, is the municipality of Arnhem that in close consultation with travellers, is developing a new policy that would allow for the establishment of new camp sites after an inventory of the needs and demand of travellers to such sites.<sup>14</sup> Also the traveller camp in Zeist with over 160 sites, has received positive media attention and even the King of the Netherlands visited the camp.<sup>15</sup> The central government for its part did not change its approach until mid-2017. This change came after the NIHR held the government to have encouraged municipalities to adopt a discriminatory extinction policy, but also to have legitimised it by outset.<sup>16</sup> This decision was quickly followed up by a report of the National Ombudsman, reported that the Dutch authorities, both the municipalities and the central government, had acted insufficiently reliable in securing the cultural identity of Roma, Sinti and travellers.<sup>17</sup>

The Dutch government is currently in the process of changing its approach as it also indicated in a letter in reply to the report of the National Ombudsman.<sup>18</sup> It is developing a new Guide which would include a fundamental rights framework and set out the standards that municipalities (and housing corporations) have to comply with when developing and implementing travellers' camps policies. In this process it has not only talked with civil servants of municipalities, but more importantly consulted several interest groups of the Roma, Sinti and travellers communities and opened up their channels for members of these communities to provide input. Besides involving these groups, concerning the human rights perspective, they consulted a

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<sup>10</sup> ABRvS 19 april 2017, ECLI:NL:RVS:2017:1103 (municipality of Mill).

<sup>11</sup> European Commission, *Roma and the Enforcement of Antidiscrimination Law* (October 2017), p. 20.

<sup>12</sup> CERD 28 August 2015, *Concluding Observations on the Nineteenth to Twenty-first Periodic Reports of the Netherlands*, CERD/C/NLD/CO/19-21, para. 19-20.

<sup>13</sup> See ECSR 4 December 2015, *Conclusions 2015 – Article 31-1*, 2015/def/NLD/31/1/EN. This conclusion followed the request of the ECSR for the Netherlands to provide information about the progress it made in providing for sufficient caravan plots. See ECSR 9 December 2011, *Conclusions 2011 – Article 31-1*, 2011/def/NLD/31/1/EN.

<sup>14</sup> De Gelderlander, 'Onderzoek naar Woonbehoefte Woonwagenbewoners Arnhem' [Research into Demands Travellers in Arnhem] *De Gelderlander* (6 December 2016) <<https://www.gelderlander.nl/arnhem/onderzoek-naar-woonbehoefte-woonwagenbewoners-arnhem~a8542da9/>> accessed 4 June 2018.

<sup>15</sup> See for example 'Koning Bezoekt Voorbeeldig Woonwagenkamp' [King Visits Traveller Camp], *NOS* (22 November 2017) <<https://nos.nl/artikel/2204106-koning-bezoekt-voorbeeldig-woonwagenkamp-we-hebben-het-mooi-voor-elkaar.html>> accessed 18 May 2018.

<sup>16</sup> NIHR 1 May 2017, no. 2017-55, para. 5.11.

<sup>17</sup> National Ombudsman, *Woonwagenbewoner Zoekt Standplaats: Een Onderzoek naar de Betrouwbaarheid van de Overheid voor Woonwagenbewoners* ['Travellers in Search of Caravan Plots: Research into the Reliability of the Government for Travellers'] (17 May 2017), rep.no. 2017/060.

<sup>18</sup> Letter of Minister Plasterk (BZK) to the NO Concerning the Report 'Travellers in Search of a Camp Site' (15 September 2017), <<https://www.rijksoverheid.nl/documenten/brieven/2017/09/15/brief-aan-de-nationale-ombudsman-over-het-rapport-woonwagenbewoner-zoek-standplaats>> accessed 16 May 2018.

fundamental rights researcher and asked for an Advice of the NIHR.<sup>19</sup> The government also requested Aedes, a national cooperation promoting the interests of almost every social housing organisation in the Netherlands, to make an inventory of the number of caravan sites in the Netherlands as well as the ownership distribution (municipality, housing corporations or others).<sup>20</sup> In addition, the government published a Guide on Anti-Discrimination in 2018, which includes a specific Section addressing travellers' camps policies.<sup>21</sup> Although these are some positive developments, the content of the final Guide is to be awaited and will be made public on 12 July 2018.

Even if a fundamental rights proof guide is adopted, there still are points to be addressed. As the responsibility for travellers' camps policy is likely to remain with the municipalities,<sup>22</sup> the effective protection of travellers' rights will be dependent on whether municipalities will and can implement new policies. A recent letter of the National Ombudsman seems to suggest that there are still municipalities refusing to facilitate the way of life of travellers.<sup>23</sup> Also there seems to be considerable push-back from housing corporations, that operate travellers' camps in many municipalities. In addition, there are still considerable concerns about municipalities and housing corporations seeking assistance of intermediaries to deal with these groups, which appears to be discriminatory. For example, one of these intermediaries advertises itself as intermediary for travellers' camps with the following: "Experience shows that enforcement at travellers' camps is perceived to be difficult for internal organisation. Difficult to go there, difficult to live in the area, difficult because of the targeted group".<sup>24</sup>

- **PROSECUTION OF HATE SPEECH**

### **Does the scope of criminal hate speech agree with international law?**

Hate speech is penalized in the Dutch Criminal Code:

Article 137c:

1) He who publicly, orally, in writing or graphically, intentionally expresses himself insultingly regarding a group of people because of their race,<sup>25</sup> their religion or their life philosophy, their heterosexual or homosexual orientation or their physical, psychological or mental disability, shall be punished by imprisonment of no more than a year or a monetary penalty of the third category.

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<sup>19</sup> NIHR, *Advies aan Minister van Binnenlandse Zaken en Koninkrijksrelaties inzake Woonwagen- en Standplaatsenbeleid* ['Advice to the Minister of Interior and Kingdom Relationships Concerning Traveller Camp- and Caravan Policy'] <<https://mensenrechten.nl/publicaties/detail/38448>> accessed 16 May 2018.

<sup>20</sup> Aedes, 'Inventarisatie Woonwagenstandplaatsen bij Corporaties en Gemeenten' [Inventory of Caravan Sites at Corporations and Municipalities] (1 June 2018) <<https://www.aedes.nl/artikelen/klant-en-wonen/bijzondere-doelgroepen/woonwagens/inventarisatie-woonwagenstandplaatsen.html>> accessed 4 June 2018.

<sup>21</sup> Ministry of the Interior and Kingdom Relations, 'Handreiking Antidiscriminatiebeleid voor Gemeenten' [Guide on Anti-discrimination Policy for Municipalities] (26 April 2018) <<https://www.rijksoverheid.nl/documenten/rapporten/2018/04/26/bijlage-7-handreiking-antidiscriminatiebeleid-gemeenten>> accessed on 4 June 2018.

<sup>22</sup> This has been indicated by civil servants of the Ministry at several occasions.

<sup>23</sup> See Reinier van Zutphen, the National Ombudsman, Letter to Minister Ollogren (22 April 2018) <<https://www.nationaleombudsman.nl/nieuws/2018/nationale-ombudsman-nog-steeds-zorgen-over-nieuw-standplaatsenbeleid>> accessed 16 May 2018.

<sup>24</sup> TWEГ Consulting & Advies voor al uw Woonwagenzaken, 'Handhaving. Lastige Momenten Gaan Wij Niet uit de Weg' [Enforcement. We Do Not Shy Away From Difficult Situations] <<http://www.tweg.nl/woonwagenzaken/handhaving/>> accessed 4 June 2018. (De ervaring leert dat handhaving op woonwagenlocaties door de interne organisatie als lastig wordt ervaren. Lastig om er naartoe te gaan, lastig omdat je in de buurt woont, lastig omwille van de doelgroep.)

<sup>25</sup> *Race* as mentioned in these articles includes the grounds covered by article 1 of the International Convention on the Elimination of All Forms of Racial Discrimination: colour, descent or national or ethnic origin.

2) In case the act is committed by a person who treats the act as a profession or habit - or committed by two or more associated persons - shall be punished by imprisonment of no more than two years or a monetary penalty of the fourth category.

Article 137d:

1) He who publicly, orally, in writing or graphically, incites hatred against, or discrimination of, people or incites violent action against person or belongings of people because of their race, their religion or their life philosophy, their gender, their heterosexual or homosexual orientation or their physical, psychological or mental disability, shall be punished by imprisonment of no more than a year or a monetary penalty of the third category.

2) In case the act is committed by a person who treats the act as a profession or habit - or committed by two or more associated persons - shall be punished by imprisonment of no more than two years or a monetary penalty of the fourth category.

A central motivation for making discriminating forms of speech punishable under criminal law was to combat negative portrayal/representation among the wider public, and therewith to combat the phenomenon that people are being put at a disadvantage on the basis of their characteristics.<sup>26</sup> Dutch courts can prohibit and dissolve organisations of which the activities violate the ‘public order’, which is the case when activities include inciting hatred.<sup>27</sup> During recent years, some legal scholars have called for additional legislation to tackle situations that are seen as relevant (for example as regards political parties expressing anti-democratic values).<sup>28</sup>

The courts have developed the scope of these articles. Noteworthy judgments include:

- Holocaust denial, provided that the expressions are evidently not intended for anything else than to insult or to incite hatred, discrimination or intolerance.<sup>29</sup>
- Intolerance (because of their race, their religion, etc.).<sup>30</sup>
- Insults/’insultingly’: an expression is insulting according to case law when it is defaming or disparaging someone among the public<sup>31</sup> (literal translation ‘putting someone in a bad daylight’). Additionally, the subject of the expressions should be a group of people or their common characteristic.

There is no case law addressing expressions about the *superiority* of one group of people over another. Notably: Speech that addresses a religion - as opposed to religious people - does not fall under the scope of

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<sup>26</sup> Parliamentary documents (‘Kamerstukken’) 1987/88, 20239, nr. 5, p. 6, (“*De artikelen 137 c, d en e moeten in samenhang worden gezien. Zij zijn bedoeld om discriminatie van bepaalde groepen tegen te gaan. Zoals ook in de Memorie van Toelichting is betoogd, kan door belediging en aanzetten tot haat en discriminatie een negatief beeld van een bepaalde groep ontstaan, wat kan leiden tot discriminatie en maatschappelijke achterstelling van degenen die tot deze groep behoren*”).

<sup>27</sup> Parliamentary documents (‘Kamerstukken’) 1984/85, 17476, nr. 5, p. 3 par. 8.

<sup>28</sup> For example: A.J. Nieuwenhuis, ‘Het verenigingsverbod. Op zoek naar de grondvesten van de rechtsorde’, Tijdschrift voor Constitutioneel Recht 2015, p. 119-120.

G. Molier & B. Rijpkema, ‘Naar een afzonderlijke wettelijke bepaling inzake een partijverbod’, in: NJB 2017/555, afl. 10, p. 662-663.

<sup>29</sup> Hoge Raad (Strafkamer) 25 November 1997, nr.105393 Mrs. Hermans, Koster, Schipper, Corstens, Aaftink; A-G Machielse) DD 98.083, Verbeke Holocaust denial.

<sup>30</sup> Hoge Raad (Strafkamer)16 December 2014, nr. 13/01327, a local politician’s remarks against homosexuals.

<sup>31</sup> For example: Hoge Raad (Strafkamer) 29 March 2016, nr. S 15/00600. AJ/LBS, demonstration Netherlands peoples union (Demonstratie Nederlandse Volksunie). “*De Hoge Raad heeft overwogen dat een uitlating beledigend is wanneer zij de strekking heeft een ander bij het publiek in een kwaad daglicht te stellen. De uitlating moet daarnaast over een groep mensen of haar kenmerk gaan*”.

criminal hate speech, unless it irrefutably refers to the followers of this religion.<sup>32</sup> This raises questions of effectiveness of the legal protection.<sup>33</sup>

- **SPEECH/EXPRESSIONS BY AUTHORITIES AND HOLDERS OF PUBLIC OFFICE**

**Persistent divisive ‘we-them’ narrative in public speech implying cultural superiority of white Dutch nationals.**

When it comes to public speech and freedom of expression, the Council of Europe takes the point of view that public authorities and elected politicians have a special responsibility.<sup>34</sup>

It is therefore worrisome that government communication and some legislative proposals<sup>35</sup>, has adopted the narrative of ‘we/them’.<sup>36</sup> This widespread and divisive narrative ranges from assigning collective responsibility to groups of people on the basis of their migrant origins (or religion) to the trivialising of prejudice (the ‘them’ side of the narrative) to the allegedly collectively shared superior values of ‘the Dutch’, meaning white nationals (‘we’-side of narrative). A selection of statements to exemplify the issue:

*“The Muslim community has to start a discussion about whether or not this is normal”*

(National Coordinator for Security and Counterterrorism Dick Schoof about Dutch citizens radicalising and travelling to Syria to fight with Isis).<sup>37</sup>

*“My first response would be: Go away. Go back to Turkey”*

(Prime Minister Mark Rutte in response to a video showing Dutch protesters from Turkish descent shouting ‘go away’ to a television news reporter).<sup>38</sup>

<sup>32</sup> HR 10 maart 2009, ECLI:NL:HR:2009:BF0655 about posters with the text *“stop the tumor called Islam”* (“Stop het gezwel dat Islam heet”).

<sup>33</sup> See e.g. ECHR Grand Chamber, 15 March 2012, no. 4149/04 and 41029/4 (Aksu/Turkey).

<sup>34</sup> *“the governments of the member states, public authorities and public institutions at the national, regional and local levels, as well as officials, have a special responsibility to refrain from statements, in particular to the media, which may reasonably be understood as hate speech, or as speech likely to produce the effect of legitimising, spreading or promoting racial hatred, xenophobia, anti-Semitism or other forms of discrimination or hatred based on intolerance”*.

Principle 1 of Appendix to Recommendation No. R (97) 20, adopted by the Council of Europe, Committee of Ministers on 30 October 1997 at the 607th meeting of the Ministers’ Deputies. Repeated in: Council of Europe, *“Human Rights in Culturally Diverse Societies”*, Strasbourg: Council of Europe Publishing (2016), consideration 197.

*“The Court reiterates that there is little scope under Article 10 § 2 of the Convention for restrictions on political speech or on debate on questions of public interest, in particular as regards politicians themselves. [ . . . ] However, the exercise of freedom of expression by elected politicians who at the same time are holders of public offices in the executive branch of government entails particular responsibility”*

ECHR, 3 May 2007, no. 1543/06 (*Bączkowski and others v. Poland*) p. 98-99.

<sup>35</sup> For example the proposed ban on face-covering clothing: Wetsvoorstel gedeeltelijk verbod gezichtsbedekkende kleding, *Kamerstukken II* 2015/16, 34349.

<sup>36</sup> For example, the communication about statistics on the national origin of crime suspects, data collected since the 1990s: Centraal Bureau voor de Statistiek (november 2016), *Jaarrapport Integratie 2016*, p. 75.

<sup>37</sup> Andreas Kouwenhoven, interview with National Coordinator for Security and Counterterrorism Dick Schoof, ‘...waar nu ook Nederlanders heen gaan’, NRC (newspaper), 1 juli 2014 (original in Dutch: *“Binnen de moslimgemeenschap moet een discussie komen over of dit normaal is”*).

<sup>38</sup> Television interview by Thomas Erdbrink, television program *Buitenhof*, 4 September 2016. Video available on:

<https://www.vpro.nl/programmas/zomergasten/kijk/afleveringen/2016/Mark-Rutte.html>

See also:

<https://www.politico.eu/article/mark-rutte-faces-heat-for-back-to-turkey-line-swearing/>

*The common Dutchman wants to work, if only there were jobs. He wants to give his children a good future and wants a society in which people look after each other. However, the common Dutchman hits a brick wall. The job has been given to an immigrant or an Eastern-european, [...]*"

(leader of political party CDA Sybrand van Haersma Buma in a speech held at a time when the negotiations for a new cabinet included CDA and were in their final stages).<sup>39</sup>

- **PROFILING BY LAW ENFORCEMENT OFFICERS**

**Effective and evidence-based instruments to combat (ethnic) profiling needed as well as systematic monitoring of police activities.**

There is substantial evidence of ethnic profiling by the Dutch police and the Royal Netherlands Marechaussee in the context of traffic control, identity checks, preventive searches and border-stops. Studies show that ethnic profiling is a structural problem caused by broad and vaguely articulated police powers, weak accountability mechanisms for police stop-and-search operations (in particular those not leading to a fine or arrest), and unconscious bias in security policies demonstrated by the behavior of law enforcement officers.<sup>40</sup>

Since ECRI's last visit, new studies provide additional evidence and better insights in the nature and scale of the problem. Comprehensive survey data published in January 2014 by the Netherlands Institute of Social Research indicate that significant numbers of people are directly affected by discriminatory stop-and-search operations.<sup>41</sup> A report by the European Union Agency for Fundamental Rights (FRA) in 2017 shows that Muslims and Dutch civilians of migrant origin face ethnic profiling on a regular basis and that they have low levels of trust in the police.<sup>42</sup> Moreover, a government-commissioned study on proactive police work, published in October 2016, concluded that ethnic minorities are disproportionately subject to proactive investigatory stops and that 40% of such stops could not be objectively justified.<sup>43</sup> The aforementioned study also showed that police overestimate their effectiveness: only 9% of all proactive police stops led to some sort of 'positive outcome' (acts of actual crimes discovered was even lower). The study among others

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<sup>39</sup> Sybrand van Haersma Buma, HJ Schoo-lezing, 4 September 2017. Video available on:

<https://www.cda.nl/actueel/nieuws/sybrand-buma-houdt-hj-schoo-lezing-2017/>

*"De hoop dat een soort Europese verlichte islam zou ontstaan, is ijdel gebleken"* and *"De gewone Nederlander wil werken, als er maar een baan is. Hij wil zijn kinderen een goede toekomst geven, en wil een samenleving waar mensen omzien naar elkaar. Maar steeds loopt de gewone Nederlander tegen een muur op. De baan is vergeven aan een immigrant of een Oost-Europeaan, [...]"*,

<sup>40</sup> Key academic studies on ethnic profiling: Svensson et al., *Proactieve handhaven en gelijk behandelen*, 2012; Cankaya, *De controle van marsmannetjes en ander schorriemorrie*, 2012; Van der Leun et al., *Etnisch profileren in Den Haag? Een verkennend onderzoek naar beslissingen en opvattingen op straat*, 2014; Mustaers, *A Public Anthropology of Policing: Law Enforcement and Migrants in the Netherlands*, 2015; Van der Woude et al., *Beslissen in grensgebieden, een onderzoek naar het Mobiel Toezicht Veiligheid zoals uitgevoerd door de Koninklijke Marechaussee*, 2016; Amnesty International Netherlands, *Proactief politiewerk een risico voor mensenrechten: etnisch profileren onderkennen en aanpakken*, Summary in English: Stop and Search Powers Pose a Risk to Human Rights: [http://www.amnesty.nl/sites/default/files/public/amnesty\\_stopandsearchpowersposearisktohumanrights.pdf](http://www.amnesty.nl/sites/default/files/public/amnesty_stopandsearchpowersposearisktohumanrights.pdf)

<sup>41</sup> Andriessen, et. all, *Ervaren discriminatie in Nederland*, 24 January 2014.

[https://www.scp.nl/Publicaties/Alle\\_publicaties/Publicaties\\_2014/Ervaren\\_discriminatie\\_in\\_Nederland](https://www.scp.nl/Publicaties/Alle_publicaties/Publicaties_2014/Ervaren_discriminatie_in_Nederland) (accessed 20 September 2016). 33% of Turkish and Moroccan Dutch, 25% of the Surinamese Dutch and 20% of people with roots in the Dutch Caribbean who had any contact with the police in the previous year reported feeling discriminated against.

<sup>42</sup> European Union minorities and discrimination survey, Second European Union Minorities and Discrimination Survey (EU-MIDIS II) Muslims – Selected findings, September 2017, p. 52 and p. 56.

32% of Dutch Moroccans were stopped in the past five years, 64% of them state the last police stop was the result of ethnic profiling. The level of trust that Muslims have in the police is the lowest in all of Europe.

<sup>43</sup> Landman, W. & Kleijer-Kool, L. (2016). *Boeven vangen. Een onderzoek naar proactief politieoptreden*. Apeldoorn/Amersfoort: Politie & Wetenschap/Twynstra Gudde, p. 139: <http://www.politieenwetenschap.nl/cache/files/57f3b1ab53d79PW91.pdf>



recommends to ‘reveal the effectiveness’ of proactive police stops and to start an internal debate on the effectiveness of these type of stops.

Following abovementioned studies the Dutch police and responsible Minister recognized the problem and have taken first steps to address ethnic profiling.<sup>44</sup> The police and the Minister of Security and Justice have developed measures to prevent ethnic profiling by increasing diversity within the police, conducting training and awareness-raising training for police officers, investing in police-community relations, and making it easier to file complaints about ethnic profiling. Also, at the end of 2017, the police published a new policy document on proactive police stops.<sup>45</sup> The new policy document sets the professional standard for proactive police stops. In the first months of 2018 the police started a pilot (called MEOS pilot) aimed at registering the frequency of traffic stops and ID-checks related to one person or car and at measuring various effectiveness criteria.<sup>46</sup>

While abovementioned steps are welcomed (by i.e. Amnesty, Controle Alt Delete, and other civil society organisations) more vigorous measures are required to address the root causes and stamp out ethnic profiling.

Recent research shows trust and confidence in the police amongst black and ethnic minorities is substantially lower compared to the dominant majority (white Dutch) of the population. Research shows these lower levels of trust are related to and caused by a range of factors including ethnic profiling, rather police treatment during encounters with the public.<sup>47</sup>

In 2016 an exploratory study of stop forms carried out by research institute Pro Facto it was concluded "that a package of measures of which the stop form is an important part, can reduce ethnic profiling and increase the effectiveness of police work".<sup>48</sup> Civil society organisations and some academics have and still advocate the need to introduce stop forms. Despite public and political pressure, the police and the Dutch government are reluctant to introduce (any kind of) stop forms. In the context of the above mentioned MEOS pilot the ethnic origin of subjects is not recorded. The MEOS pilot can be seen as a first step towards improving monitoring of police stop and searches. However, this pilot should not be understood as a comprehensive monitoring and accountability tool. Unfortunately, the police still has no data monitoring practice which is needed to improve the effectiveness and fairness of stop and search activities.

The lack of data also hampers the police to give proof of the positive impact of its current efforts (i.e. awareness raising of police officers, introduction of the professional code). Robust quantitative and qualitative evaluation of a set of measures to improve police performance and address ethnic profiling will help to (re)gain trust of the general public and racial and ethnic minorities in particular. In order to identify racial profiling practices, the monitoring of police activities should be systematic, data should be disaggregated by grounds such as national or ethnic origin, language, religion and nationality and data should be made publicly available, enabling civil society to take up its role in holding the police to account.

The police have been the main ‘target’ of public concern and advocacy of human rights and grass roots organisations. However, public concerns on discrimination by the Marechaussee is growing. Academic

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<sup>44</sup> The relevant letter from the Minister of Security and Justice can be found here: <https://www.rijksoverheid.nl/documenten/kamerstukken/2016/10/04/tk-aanbieding-drietal-rapporten-aangaande-etnisch-profileren-door-de-politie>

<sup>45</sup> The policy on proactive police stops can be read here <https://www.politie.nl/binaries/content/assets/politie/nieuws/2017/00-km/handelingskader-proactief-controleren-versie-1.9.1-dd-27-oktober2017.pdf>

<sup>46</sup> <https://controlealtdelete.nl/dossier/landelijke-pilot-meos>.

<sup>47</sup> Broekhuizen, et al (2018). Vertrouwen in een rechtvaardige behandeling door de politie; Schuilenburg, Vertrouwen in de politie; Duijndam en Prins (2017). Geboren en getuige in de Schilderswijk: verhalen van jongeren in een Haagse wijk over vertrouwen in de politie. Den Haag: De Haagse hogeschool; Broekhuizen, et al (2015) Burgers serieus nemen.

<sup>48</sup> Pro Facto / WODC, Het stopformulier, een verkenning van de werking van de registratie van staandhoudingen, 2016.

research on the policing at the borders, which is aimed at migration and crime control, gives evidence of ethnic profiling.<sup>49</sup> The Marechaussee has a very broad and vaguely described power to perform stops and ID-check at the borders, including the internal Schengen borders. Ethnic profiling in the context of border policing can partially be explained by the high discretion and little concrete guidance given to the officers. However, it has also become clear that ‘ethnicity’ (race) is an explicit criterium in the selection profiles developed for this type of border control. In response to questions by a member of Parliament, following an individual complaint about discriminatory stops, the Minister of Defense stated that: “The profiles are based on historical experiences and data, information and intelligence and risk-indicators. The physical experience (including ethnicity) can be relevant in this context, but only in combination with other objective indicators and information”.<sup>50</sup>

- **INTEGRATION PRESENTED AS A TWO-WAY PROCESS?**<sup>51</sup>

**Policies with regard to integration lack to address persistent discrimination.**

The government-commissioned annual integration reports show a fairly consistent picture as regards the question how the integration of minority groups with a migrant background is formally presented.

The Annual Integration Report 2014, executed by Statistics Netherlands (CBS), presents integration as a range of yardsticks against which categories of people are measured (on the basis of country of origin). The yardsticks covered are employment, education, state benefits, income and crime (measuring prevalence of suspects, not victimhood). Statistics Netherlands refers to these five themes as key indicators for integration.<sup>52</sup> As researcher Gregor Walz noted, this integration report does not contain any research questions, no explanation why abovementioned indicators are chosen and no definition of the term integration.<sup>53</sup> The Annual Integration Report 2016 covers the same topics, but adds a range of yardsticks related to health and social participation.<sup>54</sup>

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<sup>49</sup> Van der Woude et al., *Beslissen in grensgebieden, een onderzoek naar het Mobiel Toezicht Veiligheid zoals uitgevoerd door de Koninklijke Marechaussee*, 2016

<sup>50</sup> Kamervragen 4 mei 2018, nummer 2018Z08367. Zie: <https://www.tweedekamer.nl/kamerstukken/kamervragen/detail?id=2018Z08367&did=2018D27778>. A similar response was given in May 2017 by the then Ministry of Defense in response to questions in another case of discrimination by the Marechaussee at Rotterdam Airport.

<sup>51</sup> “*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*”, European Commission against Racism and Intolerance (ECRI), Fourth report on the Netherlands, adopted on 20 June 2013, p. 55.

<sup>52</sup> These five key indicators are clearly distinguished on the website of Statistics Netherlands (consulted 27 May 2018): <https://www.cbs.nl/nl-nl/dossier/dossier-migratie-en-integratie>

<sup>53</sup> Gregor Walz, *CBS heeft achterhaald idee van integratie* (CBS has an outdated view about integration), published on Sociale Vraagstukken (online publisher), 3 december 2014, <http://www.socialevraagstukken.nl/cbs-heeft-achterhaald-idee-van-integratie/>

<sup>54</sup> Centraal Bureau voor de Statistiek (2016), *Jaarrapport integratie 2016*, CBS: Den Haag/Heerlen/Bonaire.

The integration report from the Netherlands Institute for Social Research (SCP) takes a slightly different approach.<sup>55</sup> It addresses the following eight themes: language skills, education, employment and income, housing and neighborhoods, crime (suspect prevalence and victimhood), social participation in society, social-cultural integration and developments in mutual perceptions.<sup>56</sup> Discriminatory or prejudiced behavior is addressed incidentally throughout this report.

In summary, anti-discrimination policies - as laid out in the National Anti-discrimination action programme - are continuously treated as goals separate from integration goals.<sup>57</sup> However, on specific integration themes discrimination and prejudice are presented as key circumstances. This is especially visible as regards the theme of labour and employment. Over the past years, several government reports focused on discrimination of people with migrant backgrounds on the labour market (including internships).<sup>58</sup>

Of particular concern is the political discourse that 'integration' also includes cultural 'norms and values', the extend and scope of which are - at times - kept vague and which are targeted solely towards people with a migrant background as if these values are collectively met by people without migrant backgrounds. An illustration of this discourse can be found in Prime Minister Rutte's letter in January 2017, in which he speaks out against people 'who come to our country' and who 'reject our values', choosing the term values instead of laws.<sup>59</sup>

In the same month, Prime Minister Rutte reacted to a judgment of the Netherlands Institute for Human Rights in which the Institute ruled that a bus transport company was in violation of anti-discrimination laws for firing a bus chauffeur for the reason that he did not wish to shake hands with women. In an interview, Rutte called the judgement 'bizar' and stated "it is the standard here that one shakes hands with one another".<sup>60</sup>

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<sup>55</sup> Huijnk, W., Andriessen, I., *'Integratie in zicht? De integratie van migranten in Nederland op acht terreinen nader bekeken'* ('Integration in sight? - A review of eight areas of integration of migrants in the Netherlands'), Den Haag: Sociaal en Cultureel Planbureau, 2016  
The Netherlands Institute for Social Research (SCP) is a government agency which conducts research into the social aspects of all areas of government policy. The main fields studied are health, welfare, social security, the labour market and education, with a particular focus on the interfaces between these fields. The reports published by SCP are widely used by government, civil servants, local authorities and academics.

<sup>56</sup> *"taal en opleidingsniveau, onderwijs, arbeidsmarktpositie en inkomen, wonen en wijken, criminaliteit, maatschappelijke participatie, sociaal-culturele integratie en wederzijdse beeldvorming"*.

<sup>57</sup> Letter from the Ministry of the Interior and Kingdom Relations to the House of Representatives of the States General, concerning the National Antidiscrimination action programme, dated 22 January 2016, Reference 2016-0000005243.

<sup>58</sup> I. Andriessen, E. Nievers en J. Dagevos (2012). *Op achterstand. Discriminatie van niet-westerse migranten op de arbeidsmarkt*. Den Haag: Sociaal en Cultureel Planbureau; I. Andriessen, H. Fernee en K. Wittebrood (2014). *Ervaren discriminatie in Nederland*. Den Haag: Sociaal en Cultureel Planbureau; I. Andriessen, E. Nievers, L. Faulk en J. Dagevos (2010). *Liever Mark dan Mohammed? Onderzoek naar arbeidsmarktdiscriminatie van niet-westerse migranten via praktijktests*. Den Haag: Sociaal en Cultureel Planbureau; I. Andriessen, B. van der Bent (2015). *Op afkomst afgewezen: onderzoek naar discriminatie op de Haagse arbeidsmarkt*, Sociaal en Cultureel Planbureau.

<sup>59</sup> Letter of Mark Rutte to 'all Netherlands citizens' on the website of political party VVD, 22 January 2017 (consulted 26 May 2018): <https://www.vvd.nl/nieuws/lees-hier-de-brief-van-mark/>  
*"We feel a growing unease when people misuse our freedoms to spoil everything, when they have come to our country for freedom. People who do not want to adapt, frown on our customs and reject our values. People who attack gay people, who shout at women in short skirts or call ordinary Dutch people racist. I completely understand that people think: if you reject our country so fundamentally, I would rather you leave. Because I have that feeling too. Act normal or leave"*.  
*"We voelen een groeiend ongemak wanneer mensen onze vrijheid misbruiken om hier de boel te verstieren, terwijl ze juist naar ons land zijn gekomen voor die vrijheid. Mensen die zich niet willen aanpassen, afgeven op onze gewoontes en onze waarden afwijzen. Die homo's lastigvallen, vrouwen in korte rokjes uitjouwen of gewone Nederlanders uitmaken voor racisten. Ik begrijp heel goed dat mensen denken: als je ons land zo fundamenteel afwijst, heb ik liever dat je weggaat. Dat gevoel heb ik namelijk ook. Doe normaal of ga weg"*.  
See also: <https://www.theguardian.com/world/2017/jan/23/netherlands-pm-mark-rutte-dutch-citizens-open-letter-pvv>

<sup>60</sup> Jan Hoedeman and Hans van Soest, interview with Mark Rutte, 'Normaal doen is de norm die we moeten uitdragen' ('Acting normal is the standard that we have to spread'), 23 January 2017, web version of news agency AD (consulted 26 May 2018): <https://www.ad.nl/nieuws/normaal-doen-is-de-norm-die-we-moeten-uitdragen~a4fbbb0a/>

- **‘ETHNIC’ DATA GATHERING BY THE GOVERNMENT**

**Still no consent and reference to self-identification when gathering data based on ethnicity.**

In its previous two reports (2007 and 2013), the ECRI addressed the Dutch government’s long-established practice of collecting data and reporting on them.<sup>61</sup> This practice remains unchanged since the 1990s. As noted by ECRI in its previous reports, the government carries out its data collection (and reporting on these data) without the informed consent and the voluntary self-identification of persons as belonging to a particular group.

Inhabitants continue to be categorised on the basis of national origin in government publications, for example showing what percentage of country-wide crime suspects are from Moroccan or Surinamese origin (including Netherlands-born second and third generation inhabitants). In other words, the government’s data-collection and reporting practice goes beyond monitoring patterns of discrimination or situations of disadvantage facing minority groups.<sup>62</sup>

To this day, the government has not made efforts to measure consent among minority groups as regards the data collection and reporting. Looking at relevant Council of Europe principles and doctrines, such consent seems to be particularly relevant when data-collections takes place as regards topics *beyond* discrimination or situations of disadvantage.<sup>63</sup> Neither has the government conducted research into possible undesirable effects of - for example - ‘ethnic’ crime data on prejudiced sentiments among the population. However, an indication of sentiments closely related to the existence of the ‘ethnic’ crime yardstick came to the surface in 2015. When a survey was held among police officers in the Dutch region of Oost-Brabant it showed that 44% of them support stop/ID-check activities on the basis of statistics about overrepresentation of certain ethnic groups in crime.<sup>64</sup>

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<sup>61</sup> European Commission against Racism and Intolerance (ECRI), Fourth report on the Netherlands, adopted on 20 June 2013, p. 50-51 and 60-61; European Commission against Racism and Intolerance (ECRI), *Third report on the Netherlands*, adopted on 29 June 2007, p.31-32.

<sup>62</sup> The reluctance to study to what degree stop-and-search activities by law enforcers are disproportionately directed to groups with a migrant background is an indication that the collection of crime figures per origin-group is not meant as a means to detect underlying discriminatory patterns.

<sup>63</sup> “ECRI stresses the need for such data to be used to monitor patterns of discrimination or situations of disadvantage facing minority groups. It should not be used for purposes that contribute to further stigmatizing the members of such groups”, European Commission against Racism and Intolerance (ECRI), *Third report on the Netherlands*, adopted on 29 June 2007, p.31-32.

<sup>64</sup> “a clear majority of respondents finds the use of statistical data about ethnic origins accepted for considerations concerning decisions who to check or stop. 79 percent of respondents finds the use of statistical knowledge justified. A police stop/check on the basis of ethnicity is viewed as justified by 44 percent of respondents if the ethnic background is overrepresented in statistics about crime offenders”.

Lamers, Matthijs, ‘Ethnic Profiling, Nationale Politie Eenheid Oost Brabant’, 1 juli 2015 (n = 308 for this particular survey question). This was an internal survey within a local police unit - made public after a request on the basis of the ‘Access to Government Information Act’.