

NATIONAL LEGAL MEASURES TO COMBAT RACISM AND INTOLERANCE IN THE MEMBER STATES OF THE COUNCIL OF EUROPE

THE NETHERLANDS, Situation as of 1 December 2006

General Overview

Preliminary Note: this table is accompanied by an explanatory note

COUNTRY: THE NETHERLANDS	Constitutional provisions	Specific Legislation	Criminal Law	Civil and Administrative Law
Norms concerning discrimination in general	Article 1 Constitution.	Yes. Equal Treatment Act 1994.	Yes. Art. 90quater, 137c, 137d, 137e, 137f, 429quater Criminal Code. Art. 3 of the International Crimes Act of 19 June 2003.	Yes. Equal Treatment Act 1994.
Norms concerning racism	Yes. Article 1 Const.	Yes. Equal Treatment Act 1994.	Yes. Article 137g Criminal Code. Art. 3 of the International Crimes Act of 19 June 2003.	Yes. Equal Treatment Act 1994.
Relevant jurisprudence	Yes.	Yes.	Yes.	No.

EXPLANATORY NOTE

THE NETHERLANDS / GENERAL OVERVIEW

The Netherlands ratified the International Convention on the Elimination of All Forms of Racial Discrimination in 1972. In fulfilment of their obligations the Netherlands have introduced several anti-discrimination provisions in the Criminal Code: the Articles 90*quater*, 137c, 137d, 137e and 429*quater* WvS have been amended, the Articles 137f, 137g WvS have been introduced by a government Bill which took effect on 1 February 1992¹. As of 1 January 2006, the Articles 137c-137g and Article 429*quater* of the Netherlands Criminal Code have been amended in order to penalize the discrimination of persons with a physical, visual or mental handicap. Moreover, Art. 3 of the International Crimes Act of 19 June 2003 provides that anyone who, with intent to wholly destroy or partly destroy, any national, ethnic or religious group or grouping belonging to a particular race, shall be guilty of genocide and liable to a life imprisonment or to a term imprisonment not exceeding 30 years or a sixth category fine². The International Crimes Act of 19 June 2003 entered into force on 1 October 2003.

In March 1994, the Netherlands adopted the Equal Treatment Act which took effect on 1 September 1994. The Act amplifies the non-discrimination principle as laid down in Article 1 of the Constitution in civil law. It provides protection against discrimination on grounds of religion, belief, political opinion, race, sex, nationality, sexual preference or civil status in the areas of employment, housing, education, health care, care for the elderly and other public provisions of goods and services. An Equal Treatment Commission, which was established on 1 January 1995, is vested with powers to investigate and mediate in discrimination cases. The 1994 Equal Treatment Act has been amended to reflect European Community Law requirements. The amended text of the act took effect on 1 April 2004³. The Netherlands have equally adopted the Equal Treatment Act of Persons with a Handicap or a Chronicle Disease of 3 April 2003⁴, thereby implementing the requirements set out in EU Directive No 2000/78/EC of 27 November 2000⁵ and Article 1 of the Netherlands Constitution.

The Netherlands furthermore ratified the additional Protocol to the Convention on Cybercrime concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems (in Dutch: “Aanvullend Protocol bij het Verdrag inzake de bestrijding van strafbare feiten verbonden met elektronische netwerken, betreffende de strafbaarstelling van handelingen van racistische en xenofobische aard verricht via computersystemen”)⁶.

A National Action Plan against Racism (in Dutch: “Nationaal Actieplan Tegen Racisme”, hereinafter NAP; cf. TK 29 200, IV, nr. 62, available on www.overheid.nl) of December 2003, elaborates concrete action measures against racism and provides for the implementation of such measures⁷.

Constitutional Law: The Netherlands

Preliminary Note: this table is accompanied by an explanatory note

Constitutional Provision	Scope	Relevant jurisprudence	Remarks
Article 1	Principles of equal	HR 22.1.1988	

Constitution.	treatment and non-discrimination.	(Maimonides case).
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EXPLANATORY NOTE

THE NETHERLANDS⁸ / CONSTITUTIONAL LAW

Article 1 of the Dutch Constitution (*Grondwet*, hereinafter GW) contains the principle of equal treatment and non-discrimination. The principle of equal treatment is expressed in the first sentence of Article 1 GW: "persons shall be treated equally in equal circumstances". The preparatory work and explanatory memorandum indicate that a difference of treatment is permitted but only on reasonable and objective grounds. In the second sentence of Article 1 GW, the non-discrimination principle gives more concrete form to the principle of equal treatment and prohibits distinctions made on grounds of irrelevant qualities or characteristics of persons, like religion, belief, political opinion, race, sex or any other ground. Discrimination on these grounds is not justified under any circumstances.

Human rights can have, apart from the vertical effect (between government and individuals), a horizontal effect (between individuals). The constitutional legislator acknowledged the effect of Article 1 on horizontal relations but left it to the courts to decide how and to what extent these were affected.

Most of the provisions in the Constitution guaranteeing a certain human right, also allow for the possibility of limitation by law ("*...behoudens ieders verantwoordelijkheid volgens de wet*"). Art. 1 of the Constitution, however, allows no such possibility of limitation.

According to the Dutch government, human rights, guaranteed by the Constitution, are of the same importance. The courts have to decide in cases of conflicting human rights which of the protected interests prevail. Cases of conflict between the principle of non-discrimination and equal treatment on the one hand and the right of free speech, freedom of association, freedom of assembly and demonstration on the other, are in general settled in favour of the principle of non-discrimination and equal treatment. But in case of conflict between the principle of non-discrimination and equal treatment and the right of individuals and private institutions to live according to their own beliefs and ideology, the government and the courts are inclined to give more weight to the last right (HR 22.1.1988, Maimonides case).

Art. 1 of the Constitution ensures that the government and its administrations act in accordance with the principle of equal treatment and the prohibition on discrimination. In an administrative review, concerning discriminatory acts of the administration, the particular activity of the administration is examined against "general principles of proper administration" (*Algemene Beginselen van Behoorlijk Bestuur*). One of these ABBB is the principle of equal treatment. It is, however, not clear if this principle is the same as laid down in Article 1 GW.

Criminal Law: The Netherlands

Preliminary Note: this table is accompanied by an explanatory note

Offence	Source	Scope	Sanction	Relevant jurisprudence	Remarks
Discrimination.	Article 90quater Criminal Code.	Definition of discrimination.			
Discriminatory expressions.	Article 137c Criminal Code.	Penalises, if made publicly, intentional insults expressed verbally or by means of written or pictorial material.	Imprisonment or fine.	HR 11.2.1986, NJ 1986, 689 (Insult). HR 22.3.1988, NJ 1988, 876 (Verbally, written or pictorial material). HR 22.5.1939, NJ 1939, 86 and Hof Arnhem 4.6.1982, NJ 1983, 422 (Statements made in public). HR 9.1.2001 (case-number 00945/99), < http://www.rechtspraak.nl > Rechtbank Zwolle, 03.01.2006 (case-number 07/400643-05), < http://www.rechtspraak.nl > Rechtbank Amsterdam, 27.01.2005 (case-number 13/037899-04), < http://www.rechtspraak.nl >. Amsterdam District Court, 25.1.2006(case-number 13/463305-05), < http://www.rechtspraak.nl >	Offence directed against persons on account of their race, religion, convictions, on their heterosexual or homosexual preference or a physical, visual or mental handicap.
Discriminatory expressions.	Article 137d Criminal Code.	Penalises verbal, written or illustrated incitement to hatred, discrimination and violence, if made publicly.	Imprisonment or fine.	HR 6.5.2003 (case-number 02722/02 H), < http://www.rechtspraak.nl >	Offence directed against persons on account of their race, religion, convictions, on their heterosexual or homosexual preference or a physical, visual or mental handicap.

Distributing offences on discriminatory expressions and writings.	Article 137e Criminal Code.	Penalises publicising or disseminating the kind of expressions mentioned under Art. 137c and 137d, other than for objective publication, if made publicly.	Imprisonment or fine. If the offence is committed in the exercise of one's profession and the guilty person has already been convicted twice for the violation of Art. 137e within five years, he may be deprived from practising his profession.	HR 15.6.1976, NJ 1976, 551 (Term race). HR 12.4.1983, NJ 1983, 571 and HR 12.5.1987, NJ 1989, 299 and RB Zwolle, 9.10.1986, Case C (Other than for factual material). HR 26.6.1984, NJ 1985, 40 and HR 2.5.1995, NJ 1995, 621 and Hof Amsterdam, 24.5.1996, NJ 1996, 562 (Knowingly or reasonably expected to know).	Offence directed against persons on account of their race, religion, convictions, on their heterosexual or homosexual preference or a physical, visual or mental handicap.
Supporting of activities aimed at discrimination.	Article 137f Criminal Code.	Penalises the participation in or support of activities, financially or in any other material way, with the purpose of discriminating.	Imprisonment or fine.		Offence directed against persons on account of their race, religion, convictions, on their heterosexual or homosexual preference or a physical, visual or mental handicap.
Discrimination in the exercise of an office, a profession or trade.	Article 137g Criminal Code.	Penalises discrimination out of malice on grounds of race in the exercise of a public service, profession or trade.	Imprisonment or fine.		Offence directed against persons on account of their race. Felony.

Discrimination in the exercise of an office, a profession or trade.	Article 429quater Criminal Code.	Penalises discrimination in the exercising of one's official duties.	Imprisonment or fine.	RB 8.2.1994, NJ 1994, 357 (Proof of intention).	Offence directed against persons on account of their race, religion, convictions, on their heterosexual or homosexual preference or a physical, visual or mental handicap.
Serious violations of international humanitarian law (genocide)	Articles 2 and 3 of the International Crimes Act of 19 June 2003 (the Act entered into force on 1 October 2003).	Article 3 of the Act penalises anyone who, with intent to wholly destroy or partly destroy, any national, ethnic or religious group or grouping belonging to a particular race, (a) kills members of the group, (b) causes serious bodily or mental harm to members of the group, (c) deliberately inflicts upon the group conditions of life calculated to bring about the physical destruction of	Offence of genocide. Life imprisonment or a term imprisonment not exceeding 30 years of a sixth category fine.	No	Offences directed against persons on account of their race, religion, convictions or nationality, with intent to wholly or partly destroy them.

the group, in whole or in part, (d) imposes measures indented to prevent births within the group, or (e) forcibly transfers children of the group to another group.

EXPLANATORY NOTE

THE NETHERLANDS⁹ / CRIMINAL LAW

In fulfilment of their obligations under the "International Convention on the Elimination of all Forms of Racial Discrimination" (hereinafter referred to as the CERD) the Netherlands have introduced anti-discrimination provisions in the Criminal Code (*Wetboek van Strafrecht*, hereinafter referred to as the WvS). The Articles 90^{quater}, 137c, 137d, 137e and 429^{quater} WvS have been amended, the Articles 137f, 137g WvS have been introduced by a government Bill (*Wet van 14.11.1991, Stb. 623*) which took effect on 1 February 1992. The scope of these criminal law provisions has recently been widened by the Netherlands legislator by expanding the non-discrimination obligation vis-à-vis persons with a visual, physical or mental handicap. This legislative change took effect as of 1 January 2006.

1. Article 90^{quater} WvS - Definition of discrimination

Discrimination or discriminating shall be defined as any form of distinction, any exclusion, restriction or preference, the purpose or effect of which is to nullify or infringe 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 social life.

This definition is in accordance with Article 1 CERD. Discrimination as defined in Art. 90^{quater} WvS constitutes both direct (the intended objective) and indirect (the effect) discrimination. Direct discrimination arises where there is no justifiable use of that criterion. Indirect discrimination arises where a criterion other than the prohibited ground is used to apply differential treatment and the use of this other criterion leads to the same result.

Discrimination in the field of social life is prohibited. Discrimination in private life does not fall within the definition. According to the government an unlimited governmental interference in private life of individuals could conflict with the individual's constitutional right of privacy.

2. Articles 137c and 137d WvS - Discriminatory expressions

2.1. Wording of Articles 137c and 137d WvS

Article 137c, para. 1 WvS: any person who verbally or by means of written or pictorial material gives intentional public expression to views insulting to a group of persons on account of their race, religion or convictions, their heterosexual or homosexual preferences or a physical, visual or mental handicap, shall be liable to a term of imprisonment not exceeding one year or to a fine of the third category. In accordance with article 23, 4° of the Netherlands Penal Code (WvS), a third-category fine amounts to 4.500 euro. A person who makes a habit out of discriminatory behaviour listed in Article 137c, para. 1 WvS, or who behaves discriminatory in the sense of Article 137c, para. 1 WvS in the course of his profession, or if two or more persons infringe upon Article 137c, para. 1 WvS, can be imposed a term of imprisonment not exceeding two year or to a fine of the fourth category (Article 137c, para. 2 WvS). In accordance with article 23, 4° of the Netherlands Penal Code (WvS), a fourth-category fine amounts to 11.250 euro.

Article 137d, para. 1 WvS: any person who verbally or by means of written or pictorial material publicly incites hatred against or discriminating of other persons or violence against the person or the property of others on account of their race, religion, convictions, sex, heterosexual or homosexual preference or a physical, visual or mental handicap, shall be liable to a term of imprisonment not exceeding one year or to a fine of the third category. In accordance with article 23, 4° of the Netherlands Penal Code (WvS), a third-category fine amounts to 4.500 euro. A person who makes a habit out of discriminatory behaviour listed in Article 137d, para. 1 WvS, or who behaves discriminatory in the sense of Article 137d, para. 1 WvS in the course of his profession, or if two or more persons infringe upon Article 137d, para. 1 WvS, can be imposed a term of imprisonment not exceeding two year or to a fine of the fourth category (Article 137d, para. 2 WvS). In accordance with article 23, 4° of the Netherlands Penal Code (WvS), a fourth-category fine amounts to 11.250 euro.

2.2. Meaning of race

The term "race" is not defined in any legal provision. According to the Dutch Supreme Court (*Hoge Raad*, hereinafter referred to as HR), the term "race" has to be explained in accordance with the meaning of Article 1 of the CERD (HR 15.6.1976, NJ 1976, 551) where "race" stands for race, colour, descent or national or ethnic origin. By the Convention the term "race" does not extend to discrimination on grounds of nationality in the sense of citizenship. Racist expressions are often reduced to comments and/or attitudes related to nationality. The history of the legislation does indicate that when it becomes clear that a distinction according to nationality serves as a cloak for discrimination on grounds of race, there certainly is a case of - indirect - discrimination.

The Convention and the Constitution accord the State the right to distinguish between its own citizens and citizens of other nationalities. The Netherlands have a nationality legislation, the Aliens Act (*Vreemdelingenwet*) and the Alien Employees Act (*Wet Arbeid Buitenlandse Werknemers*). Until 1994 there was no specific provision in Dutch legislation to prohibit private and legal persons from distinguishing according

to nationality. Private and legal persons therefore claimed, with a reference to the right of the state to make distinctions, that discrimination on grounds of nationality is allowed (Rb Rotterdam 27.7.1990; Rb Haarlem 28.6.1988). The new Equal Treatment Act (*Wet Gelijke Behandeling*), which took effect on 1 September 1994, prohibits private and legal persons from making unlawful distinctions on grounds of nationality (see this report Civil Law, Section 1).

The Supreme Court has decided that an appellation according to nationality, such as "Surinamese" and "West Indians," made in the ethnic sense falls under the confines of racial discrimination. The courts have to decide case by case the context in which the terms "foreigners" or "strangers," etc., are spoken. The context and the tenor of the expressions being made will be decisive.

Case-law shows a varied picture in this respect.

HR 26.6.1984, NJ 1985, 40

Passages containing "a German Jew - who apparently has not been gassed..." and "the aggressive and cursing German Jew" are, according to the HR, expressions which cannot be otherwise explained than being offensive to Jews on account of their race.

HR 1.7.1987, NJ 1987, 217

"I do not want any Turks in my store, get out" was interpreted by the HR as a distinction made because of an ethnic origin and therefore a discrimination on account of race.

HR 8.7.1987, NJ 1988, 144

"Foreigners out" can be interpreted according to the HR as being aimed at foreigners with certain racial characteristics.

HR 2.5.1995, NJ 1995, 621

The content of certain booklets "a hodge-podge mixture, superfluous and illegal strangers, an uncontrolled criminal element and more of these unbridled types," which related drug crimes, criminality and asylum fraud directly to the ethnic minorities living in Holland, was found by the court to be offensive and hurtful. Although the wording of the accusations were broad and referred to foreigners in general (i.e. non-citizens), it was clear from the context that the remarks were aimed against racial minorities.

HR 09.01.2001 (case-number 00945/99), <<http://www.rechtspraak.nl>>

The statement "Why should a practising homosexual be better than a thief?" was interpreted by the Hoge Raad as discrimination on account of sexual preferences, infringing upon the provisions of the Netherlands penal law.

Rechtbank Amsterdam, 27.01.2005 (case-number 13/037899-04), <<http://www.rechtspraak.nl>>

The District Court of Amsterdam condemned a Netherlands citizen because of repeated offences expressed in public. Sentences like “All Jews are slavetribers“ or “ Hamas, Hamas, all Jews are to gas“ are appropriated to discriminate somebody on account of his race or religion and infringe upon Dutch penal law.

Rechtbank Zwolle, 03.01.2006 (case-number 07/400643-05),
<<http://www.rechtspraak.nl>>

The Zwolle District Court held expressions like “Go Home in your own country, dirty Portuguese” and “Dirty black bastard” as discrimination on account of race in the sense of Art 137c WvS of the Criminal Code.

Amsterdam District Court, 25.01.2006 (case-number 13/463305-05),
<<http://www.rechtspraak.nl>>

The Amsterdam District Court held that passages published on an Internet website containing “Yes, even today the Jews act as animals” cannot but to be interpreted as expressions being offensive to Jews on account of their race. Such expressions infringe upon Article 137c WvS.¹⁰

Rb. Dordrecht 11.06.2002 (11/010053.02 et 11/010051.02),
<<http://www.rechtspraak.nl>>

Dans une affaire rendue le 11 juin 2002, le Rechtbank de Dordrecht a conclu à la responsabilité pénale du président de la Nieuwe Nationale Partij (NPP) sur la base de l'article 137d du Code pénal néerlandais, qui interdit, sous peine d'une responsabilité pénale, à inciter d'autres personnes à la haine, la discrimination ou à la violence, pour avoir publié, sur le site-web de la NPP, des textes de nature raciste et discriminatoire. Dans une affaire rendue le même jour, le tribunal a acquitté le trésorier de la NPP et n'a pas retenu une responsabilité pénale dans le chef de ladite personne.

2.3. Insult

HR 11.2.1986, NJ 1986, 689

To judge the question as to whether passages in a magazine article are insulting according to Article 137c WvS, the passages should not be read separately but in connection with the whole content and tenor of the magazine article. The explicit nature of the expressions and not the intentions of the author who published the expressions is decisive. Materials such as symbols and drawings can be used to make a judgment (HR 18.10.1988, NJ 1989, 476).

HR 06.05.2003 (case-number 02722/02 H), <<http://www.rechtspraak.nl>>

The statement “We will ... abolish multicultural society” can be related to expressions like “Netherlands for the Dutch”, “Full is full” or “Own people first”. Such statements are only advanced to discriminate ethnic minorities and to incite the public to hate against foreigners. In those cases, Article 137d WvS can trigger a penal responsibility.

2.4. Verbally or by means of written or pictorial material

HR 22.3.1988, NJ 1988, 876

The HR decided in 1986 that the expression of the Hitler salute alone is not an offence "verbally or by means of written or pictorial material". The expression of the Hitler salute in combination with racial slogans such as *Sieg Heil* and *Hitler* did lead to a sentence because of an expression verbally made to insult intentionally.

Rb 's Hertogenbosch 21.12.2004 (01/040521-04), <<http://www.rechtspraak.nl>>

The 's Hertogenbosch District Court held that an Internet website, containing links and text materials denying the existence of the Holocaust, infringed upon (i.a.) Article 137c of the Netherlands Penal Code. Such a website, which is publicly accessible, is considered as insulting towards a group of persons.

2.5. A group of persons

According to Articles 137c and 137d WvS, the insult must concern a group of persons. Case-law shows that an insult concerning individual persons can at the same time cause an insult to a group of persons (Opinion *Politierechter* [District Court] Utrecht, 9.10.1992 and Opinion *Politierechter* Utrecht 6.7.1988).

2.6. In public

HR 22.5.1939, NJ 1939, 861.

The HR decided in 1939 that in general the term *in public* applies not only to statements made in public places, but statements made in such a way that they *can* be heard by others. Statements by means of the writer press, radio or television can be termed as public statements (also see Hof Arnhem 4.6.1982, NJ 1983, 422).

Rechtbank 's Hertogenbosch 21.12.2004 (case number 01/040221-04), <<http://www.rechtspraak.nl>>

The District Court held that an Internet publication, in which the Holocaust was denied, constituted an infringement upon articles 137c et seq. of the Netherlands Penal Code. It was furthermore held that such a publication constituted a racist declaration, as that term is defined in the Netherlands legal order.

2.7. The intention

The prohibited conduct has to take place with the intention of giving insult. The term "intention" is explicitly mentioned in Article 137c WvS. In Article 137d WvS the intention is implied in "incite to" and "knowing or having reason to suspect." Article 137g WvS also mentions the term "intention". It has the same meaning here as in other articles of the criminal code. It suffices that the accused has knowingly accepted or should have been aware that an expression may be deemed to be insulting because of its content (Hof Amsterdam 8.12.1989). According to Article 137c WvS, there must be the intention to insult a group of persons. There does not have to be the intention necessarily to insult someone *in public*. In Article 137d WvS, in contrast

with Article 137c WvS, the requirement of a *group* of persons is not given, so that the incitement does not have to be aimed at a group of persons.

2.8. Penalties

Penalties for offences under Article 137c, para. 1 WvS and 137d, para. 1 WvS are a maximum prison sentence of one year or a fine of the third category. According to Article 23, 4^o WvS the third-category fine is up to a maximum of 4.500 EUR. A person who makes a habit out of discriminatory behaviour listed in Article 137c, para. 1 or Article 137d, para. 1 WvS, or who behaves discriminatory in the sense of Article 137c, para. 1 WvS or Article 137d, para. 1 WvS in the course of his profession, or if two or more persons infringe upon Article 137c, para. 1 or Article 137d, para. 1 WvS, can be imposed a term of imprisonment not exceeding two year or to a fine of the fourth category (Article 137c, para. 2 and Article 137d, para. 2 WvS). According to Article 23, 4^o WvS the fourth-category fine is up to a maximum of 11.250 EUR.

3. Article 137e WvS - Distribution offences concerning discriminatory expressions/ writings

3.1. Wording of Article 137e WvS

Article 137e WvS:

1. Any person who for reasons other than the provision of factual information:

a. 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, convictions, or physical, visual or mental handicap, or which incites hatred against or discrimination of other persons or violence against the person or property of others on account of their race, religion or convictions, or physical, visual or mental handicap.

b. distributes any object which he knows or can reasonably be expected to know contains an utterance, or has in his possession any such object with the intention of distributing it or making the said utterance public,

shall be liable to a term of imprisonment not exceeding six months or to a third-category fine.

2. If the offender commits any of the offences defined in this Article in the course of his profession or who makes a habit out of infringing Article 137e, 1^o, para. 1 WvS, or if two or more persons infringe upon Article 137e, 1^o, para. 1 WvS, can be imposed a term of imprisonment not exceeding one year or to a fine of the fourth category.

3. If the offender commits any of the offences defined in this Article in the course of his profession within five years of a previous conviction for such an offence having become final, he may be disqualified from pursuing that profession.

3.2. Other than for factual information

This consideration has been taken in order not to limit unnecessarily freedom of expression. For example, giving information on the occurrence of discrimination should not be made impossible.

HR 12.4.1983, NJ 1983, 571

According to the HR, in general - except in exceptional circumstances - it can be presumed that documents with an offensive *content* or which incite hatred and discrimination are not being kept in stock for dissemination for the purpose of "factual information".

HR 12.5.1987, NJ 1989, 299

The object which contains the utterance mentioned in Article 137e WvS does not have to be displayed in a provocative or offensive way. The offender does not have to have a political or discriminatory motive. The selling of the Dutch translation of *Mein Kampf* was therefore brought under Article 137e WvS.

Rechtbank Zwolle, 9.10.1986, available on-line on <<http://www.rechtspraak.nl>>

"Other than for factual information" is not the same as "other than for factual purposes." Libraries may have the book *Mein Kampf* for factual information or articles may be written on discrimination with racial quotations, but a purely inflammatory approach is *not* for factual information.

3.3. Knowing or reasonably be expected to know

HR 26.6.1984, NJ 1985, 40

According to the HR, "to know or to reasonably be expected to know" can be presumed if for every average reader it is clear or should be clear that the expressions are insulting, meaning the expressions cannot be otherwise explained than by being offensive for a certain group of persons (also see Hof Amsterdam 24.5.1996, NJ 1996, 562).

3.4. Penalties

The penalties for offences under Article 137e, 1° WvS are a maximum prison sentence of six months or a third-category fine. According to Article 23 WvS, the third-category fine is up to a maximum of 4.500 EUR.

Article 137e, 3° WvS provides that if the offence has been committed in the exercise of one's profession, and the defendant has already been convicted twice for the violation of Art. 137e within five years, he may be barred from practising his profession.

4. Article 137f, 137g and 429quater WvS - Discrimination in the exercise of an office, a profession or a trade

4.1. Wording of Article 137f WvS

Article 137f WvS: any person who participates in, or provides financial or other material support for, activities aimed at discrimination against persons on account of their race, religion, convictions, sex or their heterosexual or homosexual preference, shall be liable to a term of imprisonment not exceeding three months or to a second-category fine.

4.2. Participation

Participation means taking action which constitutes part of a collective action. The participation in activities aimed at discrimination has to be done consciously and concretely.

4.3. Wording of Article 137g WvS

Article 137g WvS: any person who in the exercise of his office, profession or business, intentionally discriminates against persons on account of their race shall be liable to a term of imprisonment not exceeding six months or a third-category fine. According to Article 23 WvS the third-category fine is up to a maximum of 4.500 euro.

4.4. Misfeasance

According to Article 137g WvS the intentional discriminatory behaviour of government officials is a misfeasance.

4.5. Wording of Article 429^{quater} WvS

Article 429^{quater} WvS: Any person who in the exercise of his office, profession or business discriminates against persons on account of their race, religion, convictions, sex or heterosexual or homosexual preference shall be liable to a term of detention not exceeding two months or a third-category fine.-According to Article 23 WvS the third-category fine is up to a maximum of 4.500 euro.

4.6. Proof of the intention

Proof of intention is not necessary for the offence to be punishable under Article 429^{quater} WvS in contrast with that under Article 137g WvS, the former offence being a misdemeanour and the latter, a felony. Recently an estate agent was sentenced because he discriminated in the exercise of his profession or business on grounds of race by "passing the message on" to a potential Turkish buyer that the seller did not want to sell the apartment to a person of Turkish origin. The seller was sentenced for intentional incitement of the estate agent (RB Utrecht, 8.2.1994, NJ 1994, 357, no further appeal made).

4.7. Penalties

The penalties for offences under Article 137f WvS are a maximum prison sentence of three months or a second-category fine. According to Article 23 WvS the second-category fine is up to a maximum of 2.250 euro.

The penalties for offences under Article 137g WvS are a maximum prison sentence of six months or a third-category fine. According to Article 23 WvS the third-category fine is up to a maximum of 4.500 euro.

The penalties for the misdemeanour under Article 429^{quater} WvS are a maximum prison sentence of two months or a third-category fine. According to Article 23 WvS the third-category fine is up to a maximum of 4.500 euro.

5. Enforcement

Criminal procedures start when a complaint is reported to the police. Only in exceptional circumstances are complaints reported directly to the Department of Public Prosecutions. The sole responsibility for instituting proceedings under the Criminal Code rests with the Department of Public Prosecutions. The Public Prosecutor decides, after having been notified of an alleged offence, whether to institute proceedings or not. The number of cases concerning racial discrimination that have been brought to the court is rather low. Research has shown that this is due to a reluctance to lodge complaints on the part of the victims, which is due to the way the police and the Public Prosecutor deal with complaints of racial discrimination. These complaints are often not dealt with seriously by the Public Prosecutions Department. Furthermore, the low number of court procedures could be explained by the difficulties faced by victims in trying to prove that racial discrimination took place. In criminal cases the onus of proof that the accused committed the crime rests with the Public Prosecutor. The heavy burden of proof of racial discrimination and the lack of experience of the Public Prosecutors also explains the low number of cases brought to the court.

If proceedings are instituted, the victim can join as a party in criminal proceedings and therefore has a right of access to the testimonials of the accused. He can give comments on these testimonials and make these known to the prosecutor. The victim does not need to bring an independent action to claim for damage suffered. The judge can ask the victim who has been joined as a party to the proceedings what damage he has suffered as a result of the crime and can fine the accused for the said damage.

In 1982, a trial process was initiated on behalf of victims of discrimination in the catering business, to test whether immaterial damage could be claimed. In this case a symbolic immaterial damage of one guilder was awarded to the victims. So the threshold for both material and immaterial compensation in criminal procedures is limited.

Article 12 of the Criminal Procedure Code (*Wetboek van Strafvordering*) provides that if proceedings are not initiated by the Public Prosecutor, the parties involved, i.e., the parties (including legal persons) whose interests are at stake, can take a complaint proceeding to the Court of Appeals. This provision therefore enables community organisations and other intermediary organisations engaged in combating discrimination to request the Court of Appeals to order the Public Prosecutor to start proceedings.

In criminal as well as in civil cases, both parties - the plaintiff and the defendant - are entitled to receive free legal aid from a solicitor provided their income falls below a certain range.

Guidelines for the prosecution of discriminatory and racial behaviour that is infringing upon the Netherlands penal legislation and the collaboration between the different judicial and police services are detailed in the “Aanwijzing Discriminatie” (Staatscourant 27 March 2003, nr. 61).

Civil and Administrative Law: The Netherlands

Preliminary Note: this table is accompanied by an explanatory note

Provision	Scope	Relevant jurisprudence	Remarks
Equal Treatment Act 1994.	Elaboration of Article 1 of the Constitution in the field of private law (housing and employment), civil procedure and administrative law.	Yes. Decisions of Equal Treatment Commission, such as: Decision 95-40 of 9 October 1995; Decision 95-69 of 5 December 1995; Decision 95-30 of 18 July 1995.	Took effect, 1 September 1994. Institutes the Equal Treatment Commission (since 1 January 1995).

EXPLANATORY NOTE

THE NETHERLANDS¹¹ / CIVIL AND ADMINISTRATIVE LAW

1. Civil law

Equal Treatment Act (Algemene wet gelijke behandeling/AWGB)

The Equal Treatment Act of 2 March 1994 (Wet van 2.9.1994, Stb. 1994, 230), which took effect on 1 September 1994, is the main regulation in civil law specifically to combat racial discrimination. The 1994 Equal Treatment Act has been amended to insert recent evolution on a European Community Law level. The amended text of the act took effect on 1 April 2004¹².

The Act amplifies the non-discrimination principle as laid down in Article 1 of the Constitution in civil law. It provides protection against discrimination on grounds of religion, belief, political opinion, race, sex, nationality, sexual preference or civil status in the areas of employment, housing, education, health care, elderly care and other public provisions of goods and services. Distinctions on these grounds are only admissible as far as provisions of the act itself or as far as provisions of the Decree based upon the Act permit exceptions to the prohibitions. During the parliamentary discussions the government added nationality as a possible ground for prohibited

distinction. In the case of nationality a distinction is allowed when it is based on generally binding regulations (the Act, the Decree and other laws) or on written or unwritten rules of international law. The Equal Treatment Act *extends* the individual victim's right to institute legal proceedings before a civil court, that is, to organisations who represent the interests of these individuals. The intention is that with the violation of the rights guaranteed by the legislation the injured party can initiate tort proceedings.

With the exception of a number of cases in which indirect discrimination is considered to be objectively justified, the Equal Treatment Act explicitly prohibits direct and indirect discrimination in the following fields:

- employment or in self-employed professions (offer, terms and conditions of employment, including salary, training during or prior to employment, promotion, dismissal);
- offering of goods and services and the determination, conclusion or implementation of agreements by business and professions, by the public service sector and institutions which are involved in the fields of housing, social service, health care, cultural affairs or education;
- offering of goods and services and the determination, conclusion or implementation of agreements concerning these matters by private persons, in so far as the offer is made publicly;
- school and vocational information.

Where the aim of the discrimination is to place women or persons belonging to a particular ethnic or cultural minority group in a privileged position in order to eliminate or reduce de facto inequalities and the discrimination is reasonably proportionate to that aim, this affirmative action continues to be permitted. In the case of employment by religious, ideological or political institutions, these institutions are allowed to impose special requirements which, having regard to the institution's purpose, are necessary for the fulfilment of the duties attached to a post.

The Equal Treatment Act does not distinguish between an intimidation or an actual discrimination or unequal treatment (Article 1a of the Act).

The Netherlands have furthermore adopted the Equal Treatment Act of Persons with a Handicap or a Chronicle Disease of 3 April 2003¹³, thereby implementing the requirements set out in EU Directive No 2000/78/EC of 27 November 2000¹⁴ and Article 1 of the Netherlands Constitution. This Act extends the non-discrimination obligation in employment relations (i.e. the entering into an employment, offer, terms and conditions of employment, including salary, training during or prior to employment, promotion, dismissal) etc., against persons with a handicap or a chronicle disease. Exceptions to this non-discriminatory obligation are detailed in particular provisions of the Act. Intimidation again amounts to an actual discrimination.

The Equal Treatment Commission (Commissie Gelijke Behandeling)

An Equal Treatment Commission, which was established on 1 January 1995, is vested with powers to investigate and mediate discrimination cases. In response to a written

application the Commission may conduct an investigation to determine whether discrimination has taken or is taking place. The Commission shall forward its findings, with explanation in writing, to the applicant and to the person said to be guilty of discrimination and, if relevant, to the victim of the discrimination. Should the Commission find unlawful discrimination, it can start a court procedure. The Commission may also conduct an investigation on its own initiative to determine whether such discrimination is systematically taking place in the public service sector in one or more other sectors of society, and publish its findings. Other requests in writing for an investigation by the Commission can be made by persons who believe themselves to have suffered discrimination; by natural or legal persons or competent authorities wishing to know whether they are themselves guilty of discrimination; by a person responsible for deciding on disputes concerning discrimination; or by a works council which believes that discrimination has taken or is taking place in the company.

Most of the complaints submitted to the Commission concern sex discrimination. However, the Commission has also handed down decisions related to racial discrimination and discrimination based on nationality¹⁵. For example, in a case where a Turkish man who wanted to rent a car had to prove that he was permanently resident in the Netherlands, the Commission regarded this as unjustified discrimination on the basis of nationality. People carrying a Dutch passport were not subjected to this condition. Since this discrimination was not justified by the exceptions foreseen in the Equal Treatment Act, the Commission determined that it constituted a violation of this Act¹⁶. Similarly a requirement according to which people who do not possess a permanent residence permit for the Netherlands could only obtain credit if a third party was willing to act as guarantee, was regarded as a violation of the Equal Treatment Act. The Commission found that this requirement placed non-nationals at a disadvantage which could not be justified objectively¹⁷.

In a case where proficiency of the Dutch language formed a condition for a job as cleaning lady in a hotel, the Commission was of the opinion that it constituted indirect racial discrimination. According to the Commission it is generally known the requirement of proficiency in the Dutch language places members of ethnic minorities at a disadvantage. The Commission continued by saying that although such a requirement could be justified in certain circumstances, this was not so in the present instance. In the case at hand it could not be said that the aim of the requirement was objectively justified, and that the means to achieve this aim was appropriate and necessary¹⁸.

Article 162 Book 6 Civil Code

Racial discrimination can be resisted by means of Article 162, Book 6 of the Civil Code (*Burgerlijk Wetboek*) on tort. Under this Article anyone who has committed wrongful acts may be obliged to remedy the resulting damage. In a number of summary proceedings on discrimination in the catering industry, it was decided that discrimination on grounds of race has to be considered as a tort. The norms of international conventions, the Dutch Constitution as well as criminal legislation have an impact on the tort article. There is no need to prove an infringement of the Criminal Code to be able to plead a tort. The relatively open norm of torts has proved to be effective before the courts in obtaining remedies in some discrimination cases.

The advantage of combating racial discrimination through a civil law procedure is that an investigation by the police and the Public Prosecutions Department is bypassed. However the procedural costs have to be paid by the victim in case the suit is lost. These potential costs often prevent a victim from initiating summary proceedings.

Summary proceedings

Summary proceedings (*kort geding*) are another instrument to eradicate racial discrimination. The President of the *Rechtbank* (court) has jurisdiction. Conditions for instituting this action are, among others, that civil law questions are involved and that there is some urgency in the provision requested. The summary proceedings can also be applied in cases of imminent damage. The judgment is a provisional judgment and the average duration is two weeks. This procedure is frequently used. In two cases the Presidents of the Courts decided that summary proceedings were not the proper forum for decisions on suspicion of discrimination and that summary proceedings do not lend themselves to a thorough investigation of the matter (Rb Den Bosch, 28.10.1983, Rb Rotterdam 9.11.1983).

Procedural issues

For the admission of a claim the action must be instituted by a natural or legal person with an interest in the claim. It is difficult for interest groups as groups of persons or legal persons which seek to help victims of discrimination, to fulfil the required condition. There appears to be a fixed line developing in case-law with regard to the admission of organisations involved in combating racial discrimination. The Supreme Court has formulated the requirements for representative actions.

Interest groups have made appearances in cases involving the catering industry, housing and in cases against racist organisations.

Proof of indirect racial discrimination is difficult in civil law. In accordance with Article 177 of the Civil Procedure Code (*Wetboek van Burgerlijke Rechtsvordering*) the onus of the proof lies with the claimant. The court can shift the onus of proof for reasons of equity and fairness. Some solutions have been found to simplify the burden of proof. In matters regarding sales and provision of services, proof can be established by so-called empirical tests. Another option is proof by means of statistical materials which were accepted by the Supreme Court in the *Binderen* case in 1982 (HR 10.12.1982, RV 1982, 106).

Where a victim pleads suspicion of discrimination, the courts can shift the burden of proof.

Remedies

When there is proof of tort the injured party can claim monetary compensation for material damage, but it is also possible to lay claim to immaterial damage. This claim can be partly based on Article 106, paragraph 1 under b, Book 6 of the Civil Code. It is important that the insult be manifestly expressed.

Redress or compensation financial as well as real, can be awarded to the injured party. For example in the *Binderen* case the injured party was awarded the house, which was denied to him.

The claim of rectification can be made in case of wrongful publication of factual data, sometimes even outside the liability, Article 167, paragraph 3, Book 6 of the Civil Code.

The following remedies can be sought if a tort has not actually taken place but the likelihood exists that it will: 1) a declaration that the behaviour is illegal; 2) prohibition from taking a certain action, with the eventual imposition of penalty for non-compliance; 3) an order to carry on a particular activity, with eventual imposition of penalty for non-compliance.

Prohibited legal persons

Article 6 of the Constitution provides for the right to form an organisation. Political parties are not excluded nor is a difference made between Dutch and non-Dutch founders or members. Restrictions of this right can only be made by law in the interest of public order. The civil law permits the right to establish a legal person, a structural freedom within certain binding rules and restrictions. In 1982 the government presented a bill to the parliament to amend the existing regulations on illegal organisation. This came after a verdict of the District Court of Amsterdam in 1978 that, although the extreme right political party *Nederlandse Volksunie* (NVU) would be considered a "prohibited organisation"- the activities of the NVU were based on seeking forcible repatriation of Surinams, Antilleans and foreign workers, including those who have legally obtained Dutch nationality- did not actually dissolve it. The Dutch legislation seemed to have no sufficient provisions for that purpose. Anyhow, it is now possible to order the prohibition and dissolution of organisations with a discriminatory objective as being in violation of public order and morality. An organisation which propounds discriminatory activities is therefore illegal, but a court proceeding is required for prohibition and dissolution, such proceeding has to be instituted by the Public Prosecutor. Memberships of such an organisation as well as the provision for external financial assistance are punishable acts under Article 137f of the Criminal Code (*Wetboek van Strafrecht*).

2. Employment

Positive action

The Act on Improvement of Equal Participation of Ethnic Minorities in Labour Organisations (in Dutch "Wet ter Bevordering Evenredige Arbeidsdeelname Allochtonen / WBEAA"), which has entered into force on the 1 July 1994 and has later been renamed to the Act on Improvement of Labour Participation of Ethnic Minorities (in Dutch: "Wet stimulerend arbeidsdeelname minderheden")¹⁹, is as of 01.01.2004 no longer in force in the Netherlands.

Similarly, the Act of 9 April 1998²⁰ amending the Act on Improvement of Equal Participation of Ethnic Minorities in Labour Organisations (WBEAA), is as of 10.05.2006 no longer in force in the Netherlands.

Combating discrimination in employment

According to the Articles 137g and 429^{quater} WvS racial discrimination in employment is prohibited. Since the enforcement of the "Act Altering the Requirement of Possession of Dutch Nationality for Certain Functions" (*Wet tot wijziging van eis van Nederlanderschap voor bepaalde functies*) of April 1988, the necessity of having Dutch nationality to serve in the public sector has been eliminated, with certain exceptions. Public employers are only allowed to distinguish on grounds of nationality in these limited cases. Distinction by private employers on grounds of nationality is explicitly prohibited by Article 5 of the "Act to Implement the European Convention on the Legal Status of Migrant Workers" (*Uitvoeringwet migrerende werknemers*). In the course of 1997 a bill addressing, inter alia, racially motivated dismissals has been laid before Parliament (*Flexibiliteit en zekerheid*)²¹.

The "Act on the Collective Agreement" (*Wet op de Arbeidsovereenkomst*) provides in Article 1 paragraph 3 that the stipulation obliging the employer not to employ or exclusively employ workers from a particular race, religion or belief or members of a particular association is void. This provision is not intended to oppose the discriminatory behaviour of the employer but only declares the provision in the collective agreement void.

In 1987 the Minister for Social Affairs and Employment disseminated the circular "Prevention of Discrimination on the Labour Market" to the directors of the district labour offices. The circular states that no support should be given for employers' discriminatory requirements. Further the directors are also expected to investigate actively whether there is a possible case of discrimination (direct or indirect) when employers apply for permission to dismiss someone. The staff of the labour offices are reminded to notify the Public Prosecutor whenever they are confronted with discriminatory practises of an employer.

The Confederation of Employment Agencies for Temporary Work (*Algemene Bond Uitzendondernemingen/ABU*)²² in consultation with the National Bureau against Racial Discrimination (*Landelijk Bureau Racismebestrijding*) has drawn up a code of conduct for temporary employment agencies. The code contains directives for the staff of these agencies on equal treatment of all job seekers. Racial characteristics are not to be registered and intermediary services are to be refused when discriminatory, that is, when non-function related requirements are put forward by an employer seeking a temporary worker. Complaints of discrimination against the temporary employment agencies can be filed with the complaint board of the ABU. A research study in 1991 on the effectiveness of the Code revealed that almost all the agencies were aware of the existence of the Code and claimed to be strictly complying with it. A practical test, however, revealed that 90 percent of the agencies granted the discriminatory wishes of the employers.

The Netherlands Trade Union Confederation (*Federatie Nederlandse Vakbeweging/FNV*) decided in April 1993 on a "Non-Discrimination Code" for its organisation²³. The Code consists of recommendations on behaviour and action to prevent discrimination within the association and the affiliated unions. The recommendations are on the staffing policy for the Confederation and their activities and that of the individual member unions.

3. Housing

Housing allocation

On 1 June 1994, the new "Housing Act" (*Huisvestingswet*) came into force²⁴. By this act housing corporations must report to the local council on the latter's request. Because of decentralisation the local councils have been given more power with regard to housing. Under the new act local councils can issue directives for reporting on housing of specific target groups. The local councils are authorised to oblige private leasing/housing companies to report on the extent to which they have leased to or housed migrants.

The "Equal Treatment Act" of 2 March 1994 (*Wet van 2.9.1994*, Stb. 1994, 230) which took effect on 1 September 1994, explicitly prohibits institutions dealing with housing from differentiating on the basis of race.

Private rentals

The definition of Article 90*quater* WvS does not include distinction or deprivation in the private sphere. A person who refuses to let a room in his own house does not discriminate in the sense of Article 90*quater* WvS (definition of discrimination) and Article 429*quater* WvS (discrimination in the exercise of an office, a profession or trade), because it involves his private life. When landlords who let rooms or houses other than their private home(s) refuse to let rooms to persons of a particular group, they render themselves liable to drawing distinction or deprivation of persons in the social-economic sphere.

4. Consumer cases

Insurance

In 1988 The Dutch Association of Automobile Insurance Companies (*Nederlandse Vereniging van Automobilassuradeuren/NVVA*) and the National Bureau against Racial Discrimination (*Landelijk Bureau Racismebestrijding*) agreed on a code of conduct to avoid discrimination against car owners of immigrant origin. The members of the Association will have to abide by the code.

The Association of Insurers in the Netherlands (*Verbond van Verzekeraars in Nederland*) issued in November 1992 a code of conduct to prevent discrimination in the whole insurance field. The code is not only on racial discrimination but on all kinds of discrimination.

Consumer credit

Article 29 of the Consumer Credit Act (*Wet op het Consumentenkrediet*), which took effect on 1 January 1992, provides that applicants for credit may request, that the reasons for a refusal to grant credit be submitted in writing.

The new "Equal Treatment Act" (*Algemene wet gelijke behandeling*) which took effect on 1 September 1994, may change discriminatory policies and practices

because the Act prohibits distinction on grounds of nationality when selling goods and services.

5. Publications and advertisements

Journalists

A complaint against publications in the media with a discriminatory character can be submitted to the Council for Journalism (*Raad voor Journalistiek*). However, the decision of the Council cannot be enforced by law. The "Migrants and Media Working Group" (*Werkgroep Migranten en Media*) of the Dutch Organisation of Journalists (*Nederlandse Vereniging van Journalisten/NVJ*) published a code of conducts for journalists. In brief the directives are: 1) never mention a person's race, only nationality, religion, name or land of birth, if this is relevant to the story, may be mentioned; 2) racist or prejudiced statements are only to be quoted if this is relevant: the impression that a quotation is a generally accepted view should be avoided; 3) migrants should not only be quoted on "migrant-issues," but also on general issues.

Advertisements

The "Netherlands Advertising Code" (*Nederlandes Code voor het Reclamewezen*) has the following provisions which may be significant in discrimination cases. Each advertisement is required to be in conformity with the law, the truth and the requirement of good judgment and decency. A breach of the criminal discrimination prohibition always leads to a contravention of the Advertisement Code. Again, the advertisement should not violate public order or moral principles, nor should it serve to damage public interest. The Advertisement Code Commission has repeatedly made pronouncements on advertisements and racial discrimination. According to the Commission advertising is an exercise of freedom of expression and as such is protected. A certain measure of exaggeration in advertising is normal; in examining advertisements the Commission looks at the text and the message in its totality.

6. Access to public places

Discrimination in public places/bars and discotheques

Discrimination in public places is a violation of Article 429^{quater} WvS. Usually the owner or operator of the place can be charged with deprivation of someone on grounds of race in the supply of goods and services. In a large number of cases where owners/operators were prosecuted for violation of Article 429^{quater} of the Criminal code they defended themselves by referring to the right to take measures to protect order in the bar or discotheques. Sometimes an admission criterium was set to limit visitors from an ethnic minority group to a certain percentage of the total number of visitors. Case-law has shown that quotas are on their own discriminatory; that means persons who at a particular moment are refused entry, are discriminated against on grounds of race in accordance with Article 429^{quater} WvS.

The Beverage and Catering Industry Act (*Drank- en Horecawet*) is another example. Owners of bars or similar public establishments only get a licence for their establishment if their moral behaviour meets certain standards. An admission policy

which is discriminatory on racial grounds is not in line with these standards. As this kind of discrimination is an infringement of Article 429^{quater} WvS, a licence can also be refused or withdrawn. This administrative measure by the local authorities is compulsory if the owner has twice been sentenced to a fine of 1,000 NGL or more for the same violation within five years. The municipal authorities, however, hardly ever enforced this measure.

The collaborative organisation of employers and trade unions for the hotel, recreation and catering industry (*Bedrijfschap Horeca*) published a code of practice to prevent and combat racial discrimination for the hotel, catering and recreation sector. The aim of the code is to prevent and combat racial discrimination. Both the staffing policy as well as the selling of goods and services are dealt with in the code. The code is supposed to give clarity and (legal) security to the entrepreneurs, the employees, the guests and the clients on the meaning of the legal obligations regarding racial discrimination, for the running of a hotel, recreation or catering business. The code was published and took effect in May 1993.

7. National Ombudsman

The institution of National Ombudsman was established by the National Ombudsman Act of 1981 (*Wet op de Nationale Ombudsman van 4.2.1981*, Stb. 35).

The lodging of a complaint with the National Ombudsman provides another possibility to act against a discriminatory administration. The Ombudsman is a general institution; not specifically directed towards the combating of racial discrimination. The authorities of the Ombudsman are restricted to the activities of the "state administration" including Ministers of State and ministerial administration, and the state and local police. However, application to the National Ombudsman against the *local* authorities is not possible.

The Ombudsman is authorised to investigate the activities of the "state administration" on his own initiative or on the complaints of a citizen or resident. His primary task is to determine whether faults and errors have been committed, and his verdict can be that the way things have been done was "proper or improper" (*behoorlijk of onbehoorlijk*). On the basis of his conclusions the Ombudsman formulates a judgment and if necessary a recommendation. Contrary to court verdicts the judgments of the Ombudsman are not enforceable by law. Nevertheless the impact of the Ombudsman's work has been considerable, due to wide public and political support. The findings of the Ombudsman are presented in a report which is made public. Only a few of the complaints received by the Ombudsman concern some form of (racial) discrimination. Most of these complaints are related to discriminatory treatments by police officers.

Note

¹ *The Netherlands Public Prosecution Department, in collaboration with local police forces and other interested stakeholders, has furthermore elaborated on the basis of Art. 130 RO a series of guidelines concerning the prosecution of discriminatory and racist behaviour, which infringes upon the Netherlands penal law; cf. Staatscourant 27 March 2003, nr. 61.*

Note

² *In accordance with article 23 of the Netherlands Penal Code, a sixth-category fine amounts to 450.000 euro.*

Note

³ *Staatsblad 2004, 119.*

Note

⁴ *Wet van 3 april 2003 tot vaststelling van de Wet gelijke behandeling op grond van handicap of chronische ziekte, Staatsblad 2003, 206. For a consolidated version of the Act refer to <<http://www.wetten.nl>>*

Note

⁵ *O.J. 2002, L 303.*

Note

⁶ *The text of the Protocol has been published in the Tractatenblad 2003, nr. 60. A Dutch translation has been published in the Tractatenblad 2005, nr. 46.*

Note

⁷ *See the website of the National Bureau against Racial Discrimination (in Dutch: “Landelijk Bureau ter Bestrijding van Rassendiscriminatie” (LBR)) via www.lbr.nl*

Note

⁸ *The Netherlands National Bureau against Racial Discrimination (“Landelijk Bureau ter Bestrijding van Rassendiscriminatie” (LBR), web-site www.lbr.nl) regularly publishes updates, studies and reports on legislation and case-law dealing with racism and xenophobia in the Netherlands.*

Note

⁹ *This report is based on the “Final report on legislation against racism and xenophobia in the Netherlands” of March 1992, compiled by the Landelijk Bureau Racismebestrijding (National Bureau against Racial Discrimination/LBR). For more details, please refer to this report.*

Note

¹⁰ *See n° 3.7 in the decision of the Amsterdam District Court of 25.01.2006: ““Ja, ook vandaag nog gedragen de Joden zich dus als beesten, vrienden”. Deze vergelijking, ook als zij in de bredere context van voornoemd maatschappelijk debat wordt gedaan gaat de grenzen van het aanvaardbare te buiten en vormt derhalve een strafbare belediging. De politierechter merkt op dat aan verdachte is tenlastegelegd dat hij zich opzettelijk beledigend heeft uitgelaten over een groep mensen, te weten joden, wegens hun ras en niet wegens hun godsdienst. Zonder te willen treden in de beantwoording van de vraag of het jodendom dient te worden opgevat als ras of als godsdienst, is de politierechter van oordeel dat aan de term ‘ras’ in artikel 137c van het Wetboek van Strafrecht in het licht van het Internationaal Verdrag inzake de uitbanning van alle vormen van rassendiscriminatie van 7 maart 1966 (Verdrag van New York), een zodanig ruime betekenis moet worden toegekend dat in het onderhavige geval veroordeling moet volgen.”*

Note

¹¹ *This report is based on the "Final report on legislation against racism and xenophobia in the Netherlands" of March 1992, compiled by the Landelijk Bureau Racismebestrijding (National Bureau against Racial Discrimination/LBR). For more details, please refer to this report.*

Note

¹² *Staatsblad 2004, 119.*

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¹³ *Wet van 3 april 2003 tot vaststelling van de Wet gelijke behandeling op grond van handicap of chronische ziekte, Staatsblad 2003, 206. For a consolidated version of the Act refer to <<http://www.wetten.nl>>*

Note

¹⁴ *O.J. 2002, L 303.*

Note

¹⁵ *See the 1996 Annual Report of the Commission (Commissie Gelijke Behandeling Jaarverslag 1996) . Also see an article by T. Loenen "Overzicht oordelen Commissie Gelijke Behandeling, April 1994 - April 1996" in NJCM-Bulletin 21-6 (1996).*

Note

¹⁶ *Decision 95-40 of 9 October 1995 in Loenen ibid.*

Note

¹⁷ *Decision 95-69 of 5 December 1995 in Loenen ibid.*

Note

¹⁸ *Decision 95-30 of 18 July 1995 in Loenen ibid.*

Note

¹⁹ *See the draft proposal in Kamerstuknummer 25369. Adde the letter of Mr. A van Hemert of the Dutch Ministry of Justice (Directoraat-Generaal Wetgeving, Rechtshandhaving en Rechtspleging) of 10 July 1997.*

Note

²⁰ *Cf. Wet van 9 april 1998 tot wijziging van de Wet bevordering evenredige arbeidsdeelname allochtonen in verband met het vergroten van de effectiviteit van de wet (Wet stimulering arbeidsdeelname minderheden), Staatsblad 1998, 341.*

Note

²² *The Code of conduct is available on the website of the Confederation of Employment Agencies for Temporary Work at www.abu.nl*

Note

²³ *See the website of the Netherlands Trade Union Confederation at www.fnv.nl*

Note

²⁴ *Wet van 1 oktober 1992, houdende regelen met betrekking tot woonruimte (Huisvestingswet), Staatsblad 1992, 546 (non consolidated version of the original Act)*