

**IHF FOCUS: freedom of expression, free media and information; judicial system and the right to a fair trial; anti-terrorism measures; torture, ill-treatment and police misconduct; conditions in prisons and detention facilities; rights of the child; equal rights of women and men; nationality and citizenship; extremism, hate speech and hate crimes; migrants and asylum seekers; trafficking in human beings.**

The Dutch coalition government in office in 2005 was made up of the Christian Democratic Party (CDA), the Liberal Party (VVD) and the Social Liberal Party (D66). Public safety and combating terrorism were important items on the political agenda. Public support to the government's policy was diverse. The fear of terrorism and terrorist attacks led to general support, but the government's position was also criticised. Some segments of society voiced disapproval and the government was occasionally accused of nourishing feelings of fear, distrust and insecurity. Many Muslims expressed feelings of alienation and alleged that they were being discriminated against.

Threats against public figures and rumours about imminent attacks by terrorist cells increased concerns in Dutch public life. On several occasions individuals warned the police about suspect packages, mostly in trains and train stations. These suspicions generally proved to be false.

### **Freedom of Expression, Free Media and Information**

A report by criminologist Frank Bovenkerk concluded that incidents of threats aimed at specific persons had increased in the past two years.<sup>1</sup> He put this increase down to the hardening atmosphere of Dutch society following the assassination of the politician Pim Fortuyn in 2002. Since then, death threats have occurred more frequently and are also being made public more often. After the assassination of filmmaker Theo van Gogh, several politicians, columnists and cabaret artists declared that they were afraid to speak out in public. According to the report, well-known fig-

ures often give in to this fear by applying self-censorship.

Death threats have resulted in several notable figures retiring from public life. The Moroccan columnist of the newspaper *NRC Handelsblad*, Hasna El Maroudi, resigned in September. She had received persistent threats after writing a column on the feud between Moroccans of Berber and Arabic origin. The politicians Geert Wilders and Ayaan Hirsi Ali went into hiding because of death threats. Other critics of radical Islam were under permanent protection, including Rita Verdonk (the minister for immigration and integration), Job Cohen (the mayor of Amsterdam), Jozias van Aartsen (parliamentary leader of the VVD) and Afshin Ellian (a professor at Leiden University law school).

The extent of this fear became apparent, *inter alia*, in connection with the suspected attack on the minister of immigration and integration in early November after a window at the minister's office was damaged. The Netherlands Forensic Institute (NFI) investigated the damage to establish whether it had been caused by a projectile. The television program RTL News subsequently reported that, according to various sources, a bullet had caused the damage. Numerous members of parliament expressed shock at this event. During a press conference, the prime minister also spoke of a "bullet trace," later of a "projectile."<sup>2</sup> However, following a day of commotion, the NFI concluded that the damage had not been caused by a firearm.<sup>3</sup>

### **Judicial System and Right to a Fair Trial**

In September a report issued by the Board of Procurators General was released

\* As reported by the Netherlands Helsinki Committee.

following the investigation of the murder of a ten-year-old girl in 2000.<sup>4</sup> The investigation was instigated after it became apparent that the person convicted of the murder was in fact innocent. He had been near the scene of the killing and accordingly became a prime suspect. Shortly after his arrest he confessed to the crime, although later withdrew his statement. The man had already served four years of his eighteen-year sentence when, in 2004, another person admitted to the crime. In September 2005 the current affairs program "Netwerk" suggested that the prosecution had withheld DNA evidence at the time of the first trial, which could have proven the suspect's innocence.

The evaluation report showed that the police and the Public Prosecutions Department (OM) had made considerable errors. For example, the investigators involved had lacked the necessary critical vision; failed to pay sufficient attention to possible alternative leads and explanations, thereby ignoring a possibility of the suspect making a false confession; lost important evidence during the investigation; and made mistakes with regard to the DNA material that was found at the crime scene. Furthermore, it was not taken into account that the suspect did not match the description given by the girl's eleven-year-old friend, who had been assaulted in the same incident. The allegations that the OM had deliberately withheld evidence were nevertheless rebutted in the report. The OM acknowledged that "indisputable" errors had been made.<sup>5</sup> The minister of justice considered the report "alarming"<sup>6</sup> and in November initiated several measures to improve future criminal investigations. One of the consequences will be improved cooperation between the NFI and the criminal investigation department.

The Rotterdam District Court and the Court of Appeal in The Hague also initiated investigations; however, the contents of

these investigations were not made public as a result of professional secrecy. The board of the Rotterdam District Court requested, in addition, several parties involved to contribute to a report that would reflect a critical self-assessment regarding this particular case.<sup>7</sup> The District Court deduced two lessons from this report. First of all, it stated, judges must be very careful in dealing with confessions, especially if suspects later withdraw them. Secondly, judges must decide themselves - rather than prosecutors and lawyers - what investigations they consider necessary to discover the truth.<sup>8</sup>

### *Unequal Punishment of Juveniles*

According to a report by a researcher at the Willem Pompe Institute for Criminal Law and Criminology, juveniles originating from ethnic minorities were given more severe punishments than autochthonous juveniles for the same crimes: it was reported that the former spent an average of 53 days longer in prison than the latter.<sup>9</sup> The researcher ascribed this phenomenon to the negative assessment by psychologists and psychiatrists of juveniles of ethnic minority origin, caused by an inaccurate interpretation of their behavior. Since judges frequently based their verdict on behavioral experts' reports, the juveniles received harsher punishments. In a reaction to the report the minister of justice emphasized that all juveniles should be treated equally before a court of law.<sup>10</sup>

### *Extension of the Right to Impose Penalties*

In June, the Second Chamber of Parliament agreed with the proposal put forward by the minister of justice to grant the OM the right to impose penalties and to enforce them without a court ruling when a suspect refuses to cooperate or to pay a fine. In such a case the accused does have a right to appeal to criminal courts.<sup>11</sup>

The regulation was given in order to reduce the judges' workload and to improve their capacity in sentencing.

The new regulation only relates to minor assaults, while the settlement of violent or sexual offences remains the sole responsibility of the courts. Furthermore, the OM is not entitled to impose custodial punishment, but can impose financial penalties or community service orders or disqualify persons from driving.

### Anti-Terrorism Measures

On 9 February a majority of the Second Chamber of Parliament voted in favour of the government's anti-terrorism regulation plans. The chamber unanimously approved the plans to expand the security services. In contrast, the Socialist Party (SP), the Green Party (*GroenLinks*) and the Social Liberal Party (D66) objected to certain plans, including the obligation for individuals who are suspected of having any kind of connection with terrorist activities or persons to report regularly at the police station, and preventing such persons from entering the vicinity of airports or the Dutch Parliament.<sup>12</sup>

After the regulations were made public, some judges expressed their disapproval of the plans, voicing concern that they would endanger acquired freedoms and the constitutional right of privacy. Furthermore, they feared that the new measures would interfere with the judges' obligations under the European Convention on Human Rights (ECHR).<sup>13</sup> The minister of justice countered this criticism by stating that radicalism and terrorism could not be fought within the existing legislative framework. Therefore, he felt that the new measures were indeed necessary.<sup>14</sup>

In July, the Dutch Council for the Judiciary presented its recommendations with regard to the anti-terrorism regulations to the minister of the interior and kingdom relations.<sup>15</sup> It criticized that the criteria for

imposing several restrictive measures were too vaguely formulated and open-ended and expressed concern that the right to legal protection would be affected. The council urged the government to clarify the criteria.

One of the most controversial proposals is the so-called ban on apologist arguments. This implies a prohibition on the glorification, justification, trivialization or denial of war crimes, genocide or terrorist attacks, when these statements are provocative, cause aggression or disturb public order. A violation of this regulation could result in a term of imprisonment of up to one year and the possible removal from office.

Amnesty International and the Dutch section of the International Commission of Jurists (NJCM) claimed that the adoption of the proposal would amount to a serious violation of the freedom of speech.<sup>16</sup>

The anti-terrorism regulation plans resulted in discord within the government and the Second Chamber of Parliament. The Liberal Party (VVD), previously an advocate of tougher measures, suddenly turned down the ban on apologist arguments. The D66 minister for government reform and kingdom relations openly proclaimed his concerns regarding the plans, claiming that they illegitimately interfered with constitutional rights. According to him, the prime minister's statements were causing unnecessary unrest among the public.<sup>17</sup>

### Trials and Removals

On 5 December the trial of the so-called Hofstad Network, consisting of fourteen young Muslim radicals, commenced. According to the Public Prosecutions Department, the Hofstad Network is a radical Islamic terrorist network, based in The Hague. Most of the suspects were accused of membership of a terrorist organization. Some stood on trial for the planning of ter-

rorist attacks. Among the accused was Mohammed B., who was already serving a life sentence for the murder of the filmmaker Theo van Gogh in 2004. The trial was the first to come to court under the new anti-terrorism legislation. The trial was pending at year's end.

As a result of official reports issued by the General Intelligence and Security Service (AIVD), the minister for immigration and integration decided that three *imams* from the Al-Fourkaan mosque in Eindhoven should be made to leave the Netherlands. The residence permits of two of them were withdrawn and that of the third was not extended. The minister considered the *imams* to be a threat to Dutch national security because they knowingly contributed to the radicalization of Muslims in the Netherlands. The *imams* objected to their eviction, but in December one of them was expelled, while another left the country on a voluntary basis. The third *imam* remained in the Netherlands, awaiting the final decision by the Immigration and Naturalization Service (IND).

### **Compulsory Identification**

On 1 January 2005, compulsory identification was introduced in the Netherlands, with the aim of increasing security, fighting criminality and reducing public disturbances. By law, anyone aged fourteen years or older is required to carry a valid ID document at all times, which must be produced to police officers and other law enforcement authorities at their request. A failure to show identification can lead to a fine of EUR 50 (EUR 25 for juveniles). In August the Central Fine Collection Agency (CJIB) reported that over 40,000 fines had been imposed, approximately 3,000 of them on persons under the age of eighteen.<sup>18</sup> The newly created registration center against compulsory identification filed complaints made by individuals and or-

ganized demonstrations. Many complaints came from parents who, due to safety reasons, did not want their children to carry their passports at all times. Another complaint was that many parents were worried about their children not returning home because they were being held at a police station and were not allowed to contact their parents.<sup>19</sup>

People who failed to present identification were charged with committing a punishable offence and had to appear before the courts. On 28 September, the Subdistrict Court of Utrecht held a marathon session in order to deal with the first 171 cases launched by the OM. Most offenders were fined because they could not present identification after minor offences, such as driving without wearing a seat-belt. Only 14 of the accused showed up. Everyone who did not appear before the court was sentenced *in absentia* to a fine of EUR 60.<sup>20</sup>

### **Extradition of Suspects**

On 12 December a court in Rotterdam ruled that an Iraqi-born Dutch citizen facing charges in the United States (US) could be extradited to the US for trial. The US accused the 32-year-old man of taking part in the insurgency in Iraq and charged him with helping to plan attacks on Americans near Falluja, Iraq, in October 2003, and conspiracy to kill US citizens abroad by teaching persons how to make explosives. The accused insisted that he was innocent "because he had been forced to commit these acts."<sup>21</sup> His lawyer wanted his client to be tried in the Netherlands. However, the Ministry of Justice ruled that the matter was of greater importance to the US.

In October, the US filed a request to extradite another person, an Egyptian citizen. He was suspected of phone card fraud allegedly to aid the Al-Qaeda terrorist organization. A Dutch court first blocked the extradition on grounds that the legal

rights of the suspect could not be guaranteed in US custody. In November, however, the man was extradited on the basis of a Supreme Court ruling that the extradition could be carried out because US officials had guaranteed that the man would be treated as a common suspect and not as a terrorist and that his fundamental rights would be respected.

### ***Deployment of Dutch Troops in Afghanistan***

On 22 December, the government proposed that in May 2006 it would deploy Dutch troops in southern Afghanistan. The Dutch troops would operate under the command of the International Security Force (ISAF), which in turn falls under NATO command. The final decision depended on the support of the Second Chamber of Parliament. Parliament discussed the matter for weeks, among other things because a majority of its members disagreed with the way in which the US treated Afghan prisoners of war: there had been reports regarding a US network of secret interrogation camps for terrorist suspects, including Afghan prisoners. This was of importance to the Second Chamber because the Netherlands also took part in operation "Enduring Freedom," under US command. The minister of foreign affairs stressed the need for "proper treatment of prisoners" and for US troops to abide "by the Geneva conventions."<sup>22</sup>

Parliament wanted reassurances from the US in this respect. Eventually the foreign minister reached an agreement with the US regarding the treatment of prisoners, which stated that the prisoners in US custody would in no case be sentenced to death and would be treated in conformity with the Geneva Conventions. In February 2006, a large majority of the Second Chamber of Parliament voted in favour of the government's proposal to send troops to Afghanistan.<sup>23</sup>

### **Torture, Ill-treatment and Police Misconduct**

#### ***Mathew vs. the Netherlands***

On 29 September, the European Court of Human Rights (ECtHR) held that the Netherlands had violated article 3 of the ECHR (prohibition of torture and inhuman and degrading treatment or punishment) when holding Mr. Mathew, a kick-boxing instructor, in custody in Aruba on a charge of inflicting grievous bodily harm: according to the ECtHR, the conditions he had to endure in the Aruban prison amounted to inhuman treatment.

Mathew was detained on remand in the Aruba Correctional Institution from October 2001 through April 2004, most of the time in solitary confinement as a result of conflicts with prison staff. In addition, Mathew was exposed to rain and the hot sun due to a large opening in the roof of his cell, and (after he had attacked guards with a chair) he was not allowed to have a chair in his cell despite suffering from back problems.

The ECtHR held that Mathew had been kept in solitary confinement for an excessive and unnecessarily protracted period, and that he lacked adequate protection against the weather and the climate. The court "could not find it established that there was a positive intention of humiliating or debasing the applicant". However, the court considered that his conditions of detention "must have caused him both mental and physical suffering, diminishing his human dignity and amounting to inhuman treatment."<sup>24</sup>

### **Conditions in Prisons and Detention Facilities**

On 27 October, a fire broke out at the detention center near Schiphol airport which resulted in eleven detainees losing their lives. The victims were illegal aliens or suspected drug smugglers from Surinam, Ukraine, Turkey, Georgia, Libya, the Domi-

nican Republic, Romania and Bulgaria. Incident inquiries were subsequently initiated, among others, by the Dutch Safety Board, the fire service, the military police, and the local authorities in the municipality of Haarlemmermeer.

The blaze prompted discussions regarding the emergency procedures in the detention center and the treatment of illegal immigrants in the Netherlands more generally. The FNV trade union described the fire as "illustrative" of the poor conditions experienced by workers in the justice system. The union was of the opinion that detention centers were understaffed and guards lacked sufficient training for emergencies.<sup>25</sup>

In November, the Hendriks Commission, established by the city of Haarlemmermeer, published a report on its findings, including a long list of errors, which had been made by the Ministry of Justice. The commission concluded that for many years the ministry had violated fire precautions such as the installation of fire doors. As a result of this report the local municipal council called for the closure of the detention center.

The European Group for the Rights of Prisoners (EORG) also held an inquiry and concluded that the greatest omission revealed by the fire was the lack of an organized evacuation plan. The report also found that authorities had seriously underestimated the situation immediately after the fire had broken out. The failure of the fire safety system, the lack of personnel and the poor construction of the building had contributed to the tragic outcome, it stated. The EORG stated that the center should be closed immediately.

In December, the Dutch Safety Board issued an intermediate report, concluding that the fire precautions had indeed been very poor, but that there was no reason for closing down the detention centre, as long as, in the future, there was sufficient personnel present.

## Rights of the Child

As of 1 January 2005, Dutch children legally have the right to juvenile care and protection. In April the commissioner for youth policy issued a report regarding child protection in the Netherlands.<sup>26</sup> The Dutch system of youth care had been discredited because of several family dramas in which children had fallen victim to abuse and where social workers had failed to intervene.

The report revealed that the waiting period for juvenile care - as a result of bureaucracy - was generally over a year, which was unnecessarily long. Furthermore, the report proposed that more transparent criteria and procedures be established concerning the decision to place a child under supervision (OTS) and to harmonize the quality standards of the various institutions responsible for juvenile care. According to the report, these changes were necessary to enhance working methods and to prevent the duplication of information gathering.

In August the Social Employers' Group (MO group<sup>27</sup>) stated that over 5,000 children in distress had to wait too long for help. The chairperson of the Dutch NGO Coalition on Children's Rights (*Kinderrechtcollectief*) concluded in November that the situation in the Netherlands had worsened over the last few years. He argued that serious mistakes were being made regarding the protection of children, more particularly as regards childcare and juvenile refugees.<sup>28</sup> The chairperson of the UN Committee on the Rights of the Child also criticized the Netherlands government for not paying adequate attention to the realization of the rights of the child.<sup>29</sup>

## Equal Rights of Women and Men

In June, the Clara Wichmann Institute<sup>30</sup> and seven other social organizations for women's rights commenced proceedings against the Reformed Political Party (SGP)

for discriminating against women. This political party does not allow women to become full party members and stand for parliamentary elections. The institute demanded that the party's statutes be amended.

In September a court in The Hague ruled that the institute had, unlike the women who desired membership of the SGP, no real interest in this case. The SGP's statutes would therefore not have to be changed. In a parallel case, the Clara Wichmann Institute commenced proceedings against the Dutch government for contributing to the discrimination of women by granting state funding to the SGP. In this case the court ruled that the SGP discriminated against women and violated the UN Convention on the Elimination of all Forms of Discrimination Against Women.<sup>31</sup> The court further decided that the party should be stripped of state funding.<sup>32</sup>

The minister of internal affairs subsequently appealed to a higher court, stating that he felt the government should not discriminate between various political parties. Pending the court's verdict, the state funding would be stopped as of January 2006, the minister announced in December 2005.<sup>33</sup>

### *Honor Killings and Female Genital Mutilation*

In June the minister for immigration and integration released the results of two studies regarding honor killing in the Netherlands.<sup>34</sup> One of these results was that honor-related incidents regularly ended in violence and even murder. The report further stated that, in the first six months of 2005, 79 cases of honor-related incidents had occurred in The Hague and its surroundings alone. Half of those incidents had ended in violence, eleven in murder. The police often failed to intervene in these cases: they regularly did not act in time, if at all.

According to the Institute for Safety, Security and Crisis Management (COT), the lack of adequate intervention was a result of a lack of knowledge regarding honor or revenge. The minister for immigration and integration characterized the results as "disturbing" and initiated measures designed to improve expertise at women's shelters, among the police and the OM concerning honor-related revenge. In order to address the problems related to honor-related revenge<sup>35</sup>, the minister further stated that there was a need for an increase in women's shelters.

In March, the Commission for the Prevention of Female Genital Mutilation (RVZ)<sup>36</sup> issued a report with recommendations regarding the combating of female genital mutilation. According to the report, each year at least 50 girls residing in the Netherlands are circumcised, usually in their country of origin during holiday periods. The commission put forward a package of measures aimed at "improving both the surveillance of female circumcision and the use of legal action against those involved."<sup>37</sup>

The commission rejected a proposal put forward by the Second Chamber of Parliament, consisting of mandatory annual check-ups for girls in high-risk groups. It felt that, from a legal point of view, this was not an option because the government lacks the authority to "force citizens to submit to a physical examination for the purpose of determining whether or not they have undergone female circumcision."<sup>38</sup>

The commission, however, recommended the expansion of juvenile health care for all children. This health care would involve a series of physical examinations that would help fight female genital mutilation. The parents of children who would not regularly appear for a check-up would risk being investigated by the Advice and Reporting Centre for Child Abuse and Neglect (AMK). According to the commission, fe-



male circumcision should be made a punishable offence and the period of limitation should only commence on the victim's eighteenth birthday. Further, the commission mentioned as another key strategy prevention by means of education on the adverse health effects of circumcision.

The government announced in August that it would spend three million euros to eradicate female genital mutilation. The money will be used for preventive actions aimed at high-risk groups, timely signalling and the more active distribution of information.<sup>39</sup>

### **Nationality and Citizenship**

#### ***Aruba and the Netherlands Antilles***

In order to control the influx of criminal and deprived juveniles from the Netherlands Antilles and Aruba, the minister for immigration and integration and the minister for government reform and kingdom relations announced plans to restrict the immigration policy for youths from the Netherlands Antilles and from Aruba.

According to the proposal of the ministers published in May, 18 to 24-year-olds can only settle in the Netherlands if they have a job or follow educational courses, if not upon arrival, then within three months.<sup>40</sup> Minors will only be admitted if accompanied or received by a guardian. In addition to this, criminal courts will be given the power to send young Antilleans and Arubans back if they have a record of causing problems.<sup>41</sup>

The Antillean prime minister protested heavily what he described as a form of discrimination against citizens of the same kingdom, since Antilleans and Arubans have Dutch nationality. Despite criticism, the Dutch government announced its intent to follow its plans. Pending final adoption of the restrictions by the Second Chamber of Parliament, two advocates argued that the envisaged admission policy would be contrary to international law

since citizens have a right to access the country of their nationality.<sup>42</sup>

### **Extremism, Hate Speech and Hate Crimes**

On 26 July, Mohammed B. was sentenced to life imprisonment for the murder of the filmmaker and columnist Theo van Gogh on 2 November 2004. B. was also convicted of threatening Ayaan Hirsi Ali, the attempted murder of several police officers and bystanders as well as the illegal possession of firearms. The court ruled that these acts were committed with terrorist intent and concluded that B. could not return to society as this would amount to an "unacceptable danger."<sup>43</sup> The 27-year-old Dutch-born Muslim of Moroccan descent had confessed to the murder. His act had caused considerable consternation in the Netherlands and prompted a series of attacks against mosques in several cities. In October the court ruled that Mohammed B. could also be tried as a member of the Hofstad group (see Anti-Terrorism Measures, above).

#### ***Media Coverage on Muslims***

In November, the political scientists, Maarten Hajer and Justus Uitermark, presented the findings of their investigation into alleged anti-Muslim news coverage after the murder of Van Gogh. Their research showed that the media did not resort to negative reports about Muslims. Hajer and Uitermark concluded that, although articles reported frequently on the radicalization of Muslims, there was no question of subjective media coverage of the "shortcomings of Muslims and immigrants in general."<sup>44</sup> On the contrary, the six largest newspapers paid extensive attention to underlying problems faced by Muslims such as the situation in urban areas and difficulties with respect to schooling. What is more, according to the research, attention paid to Muslims as victims of discrimination even increased in the wake of Van Gogh's murder.



### *Hate Speech*

In August, the AIVD security service issued its annual report, including an overview of the service's efforts to "prevent radicalization among Muslim communities and to identify and frustrate violent activities at an early stage."<sup>45</sup>

The AIVD report stated that radicalization was encouraged by the "preaching (*dawa*) of a strictly puritan interpretation of Islam, usually with a strongly anti-Western slant."<sup>46</sup> According to the report, this kind of preaching was typical of a number of often Saudi-based Islamic missionary organizations, but also occurred in informal networks of individual preachers, some of whom also played a role in the radical Islamic *dawa*.

The AIVD identified the Internet as an important tool of radical *mullahs*. It noted that, although it was difficult to establish a link between Salafi missionary activities and terrorism, "it is a fact that the preachers often emphasise the moral decadence of the Western society" and the undesirability of the integration of Muslims into such a society. In addition, statements that characterize Muslims as victims who need to defend themselves against threats by the West contributed to the growth of confrontational sentiments and violent tendencies among some Muslims.<sup>47</sup>

The AIVD report also dealt with left and right-wing activism. While left-wing activism had according to the AIVD reached a low, the far right was mainly dominated by unorganized individuals. The AIVD stated that, increasingly, autochthonous youths were "using extreme right-wing symbols to emphasize their identity and to seek confrontation with ethnic minorities, local authorities and public opinion."<sup>48</sup> While these groups have been met with great resistance in society, they may be an interesting breeding-ground for recruitment by extreme right-wing movements with more sinister political ambitions.<sup>49</sup>

The AIVD also reported further religious radicalization in the young Moroccan community that manifested itself especially on the Internet, in schools and Islamic institutions. While mosques, schools and web sites have made attempts to keep extremism at bay, extremists have moved their radical activities to other places. The AIVD concluded that also moderate Muslims were threatened as "renegades" and "collaborators with the West." According to the report, the Internet has become one of the principal channels for spreading extremist ideas and for extremist influencing.<sup>50</sup>

### **Migrants and Asylum Seekers**

On 15 September the Netherlands Court of Audit concluded that the Dutch Immigration and Naturalisation Service (IND) needed to carry out important reforms. The investigation was prompted by the national ombudsman who had received numerous complaints regarding the IND. The complaints concerned mostly the long waiting periods with regard to the conclusion of residence permit procedures.<sup>51</sup>

The Court of Audit further investigated the matter and found that aliens applying for a standard residence permit in the Netherlands did not receive a decision within a reasonable period of time.<sup>52</sup> The court pointed to problems caused by the poorly organized transfer of duties from the former Aliens Department and a lack of clear standards and adequate communication within the system. Moreover, the court recommended better cooperation between the IND and city councils, the police, embassies and the judiciary.

The minister for immigration and integration declared that she was appalled by the conclusions and pledged to improve the IND's operation.<sup>53</sup> In October, the Ministry of Justice announced measures to improve the effectiveness and customer friendliness of the IND.<sup>54</sup>

### *Congolese Refugees*

In February, the current affairs TV program "Network" reported that the IND had leaked confidential information to Congolese immigration officials regarding Congolese refugees who had been denied asylum in the Netherlands.<sup>55</sup> Several people had allegedly been sent back to Congo and been detained upon arrival, and ill-treated on the basis of information received from the IND. The Dutch regulation, however, only allows data regarding nationality and identity to be passed on to the authorities of the country of origin.<sup>56</sup> The program relied on information from the International Network of Local Initiatives for Asylum-Seekers (INLIA) and the Dutch Association of Asylum Advocates and Lawyers (VAJN).

Upon request by the Second Chamber of Parliament, the minister for immigration and integration assured that asylum records were strictly confidential and would cause no threat to the Congolese who were deported to their countries of origin.<sup>57</sup>

In June, however, "Network" broadcast a new report showing that the Congolese authorities had in their possession official, confidential Dutch documents relating to asylum applications in at least three cases. "Network" obtained this information from the archives of the Congolese immigration service (DGM). It concerned classified documents belonging to the military police that referred to asylum requests made by Congolese persons being deported from the Netherlands.<sup>58</sup>

The United Nations High Commissioner for Refugees (UNHCR) and several human rights organizations drew attention to the risks that failed Congolese asylum seekers face when classified information on their cases end in the hands of the Congolese authorities. Anonymous but official Congolese sources confirmed that returned asylum seekers risked assault, detention and fines.<sup>59</sup>

In December, the Havermans Commission, which had started investigating the matter in June, concluded that Congolese authorities had indeed received information about its citizens who had applied for asylum in the Netherlands. Despite the fact that the minister for immigration and integration admitted having repeatedly misled parliament, she was able to retain her post.<sup>60</sup>

### *Discrimination against Muslims*

In May, Ambassador Ömür Orhun, the OSCE chair's personal representative on combating intolerance and discrimination against Muslims, visited the Netherlands on the invitation of the Netherlands government. The ambassador expressed concern about the discrimination against Muslims in the Netherlands and the measures that were taken by the Dutch government to change this situation, as well as the stigmatization of Islam as linked with terrorism and violence. He stressed the important role of the media in conveying this.<sup>61</sup>

As far as tolerance is concerned, Ambassador Orhun felt that, in practice, this comes down to indifference. He was of the opinion that tolerance needed to be defined more clearly. Ambassador Orhun stressed that tolerance did not imply the adoption of different notions and views, but the willingness to live and work in harmony with each other.<sup>62</sup>

In November, the Dutch Equal Treatment Commission (CGB) decided that the Islamic College in Amsterdam was wrong to reject Samira Haddad's application for a job as an Arabic teacher. The Muslim woman was turned down because she did not wear a headscarf, which was obligatory for Muslims within the school. The Islamic College wanted all Muslim teachers to wear headscarves according to the school's own statutes, in order to set a good example to pupils.<sup>63</sup> The CGB stated that the rejection of the teacher was contrary to the General Law on Equal Treatment, because female

non-Muslim teachers at that school were not obliged to wear headscarves. Obliging part of their personnel to wear a headscarf amounted to, according to the CGB, a direct "distinction" on the basis of religion. Such a direct "distinction" is only legitimate in exceptional cases provided by the General Law on Equal Treatment, which was not the case here, according to the CGB, as shown by the fact that the college was less strict in enforcing the headscarf rule as regards non-Muslim personnel (including Arabic teachers). This implied that the school had made an illegitimate "distinction" on the basis of religion, which comes down to prohibited discrimination.

Another discussion evolved in Utrecht around garments when the city administration demanded that Muslim women who received social security benefits had to abandon their *burkas* during job interviews because otherwise they would have difficulties in finding a job. Women who refused risked sanctions. The city relied on the Work and Social Assistance Act (WWB), which demands that someone who receives social welfare may not complicate efforts to find employment.<sup>64</sup>

In the meantime, the Dutch government proposed a partial ban on the *burka*, including in state schools.

The minister for immigration and integration told parliament that she wanted to investigate whether there were situations in which traditional Muslim women's clothing could be banned. The minister stated that she wanted to prohibit the garment on grounds of public safety.<sup>65</sup> In December, the Second Chamber of Parliament passed a motion on the prohibition on wearing the *burka* in public in the Netherlands. The decision was pending at year's end.

### **Generalization and Stigmatization**

In May, the National Bureau against Racial Discrimination (LBR) issued a comment on a joint study entitled "Suspected

of Crime"<sup>66</sup> by the Research and Documentation Centre (WODC) of the Ministry of Justice and the Netherlands Statistics Office (CBS). The comment requested that, when formulating a policy on criminality, the government should not exclusively focus on ethnic origin but on individual backgrounds that form the basis of one's behavior.<sup>67</sup>

One of the researchers' conclusions was that members of immigrant groups were more likely to be suspects than persons of Dutch origin. The difference between groups of origin seemed to be of major importance: the results supported the general impression that immigrants of Antillean and Moroccan origin constituted a major problem - although it was clear that only a small minority of this migrant population came into contact with the police as suspects.

The researchers drew attention to the fact that ethnicity played a significant role in the police perception of suspects. The LBR questioned whether the ethnic origin should be considered to be a determining factor and opined that the origin must be seen as a group characteristic rather than an explanation for criminal behaviour. The LBR report also showed that generalized statements on the coherence between ethnic origin and criminality were unwise and often inaccurate.<sup>68</sup>

With regard to government policy, the LBR considered it wise to invest in education and improvements in parental upbringing. The bureau further advised against suggestions to punish criminals with non-Dutch ethnic origin more severely as it would violate the principle of equality and the prohibition of discrimination.

### **Trafficking in Human Beings**

On 6 September, the Dutch National Rapporteur on Trafficking in Human Beings (BNRM) delivered her fourth report to the minister of justice. The report contained

facts and figures on the investigation and prosecution of trafficking in human beings and on victims of exploitation in the sex industry and new developments in the fight against human trafficking. Among other things, the BNRM reported on the governmental action plan on trafficking, including issues such as how to recognize human trafficking and the expansion of reception centers, reaching agreements with foreign authorities regarding the return of victims of trafficking to their country of origin, and the tracking down of traffickers.<sup>69</sup>

Finally, the report also pointed to matters of ongoing concern, for instance the reduction in subsidies for public organizations in the areas of prostitution and combating trafficking in human beings. According to the BNRM, inspections of sex establishments appeared to be only sporadic, partly due to capacity problems. The BNRM expressed doubt as to whether the fight against exploitation in the sex industry was being given sufficient priority and capacity on a continuous basis.<sup>70</sup>

In September, the OSCE special envoy for the combat against people trafficking, Helga Konrad, visited the Netherlands. She commented on a report on child trafficking, *Insight into Exploitation*, issued by ECPAT Netherlands and UNICEF,<sup>71</sup> which claimed that between 2003 and 2005, some 230 children had been the victims of exploitation. According to Konrad, this number could be multiplied by ten.<sup>72</sup> The ECPAT/UNICEF report on child trafficking

specified several types of exploitation, including prostitution, housekeeping duties, the hotel and catering industry and the criminal circuit. Konrad added the practice of "loverboys,"<sup>73</sup> which she characterized as a considerable problem that needed to be dealt with.<sup>74</sup>

UNICEF agreed that the Dutch approach to eradicate child trafficking was inadequate. It pointed to children who were living illegally in the Netherlands and were often evicted before it was proven whether they were victims of child trafficking. UNICEF appealed for a better definition of different forms of exploitation and better registration of the important data by the police, social services and other "chain partners."<sup>75</sup> UNICEF further recommended a national registration point as well as an increase in training and the distribution of information.<sup>76</sup>

In November, Ruth Hopkins, a freelance investigative journalist and a co-researcher and author of a research report on trafficking in human beings in three member states of the EU, published a book on trafficking which criticized the fact that the legalization of brothels in 2000 resulted in having more foreign women being involved in prostitution. The report criticized the fact that trafficked sex employees were not treated as victims of trafficking, but as aliens, which made them further descend into illegality: as a result, they were more dependable on pimps and criminal networks.<sup>77</sup>

## Endnotes

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<sup>4</sup> F. Posthumus, "Evaluatieonderzoek in de Schiedammer Parkmoord. Rapportage in opdracht van het College van procureurs-generaal," August 2005.

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- <sup>30</sup> Expertise center for women and law in the Netherlands.
- <sup>31</sup> According to article 7 of the convention, "States Parties shall take all appropriate measures to eliminate discrimination against women in the political and public life of the country." The convention is posted at [www.unhcr.ch/html/menu3/b/e1cedaw.htm](http://www.unhcr.ch/html/menu3/b/e1cedaw.htm).
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- <sup>49</sup> *Ibid.*
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- <sup>71</sup> A. van den Borne en K. Kloosterboer, "Inzicht in uitbuiting: handel in minderjarigen in Nederland nader onderzocht," September 2005.
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- <sup>73</sup> An English term used in the Dutch language to convey the situation of men who deliberately seduce teenage girls and, after gaining their trust, force them to work as prostitutes.
- <sup>74</sup> Ibid.
- <sup>75</sup> In Dutch: *ketenpartners*. These are the organisations responsible for the implementation of criminal law, including e.g. the police, the prosecution office, the courts, the prison service, the probation service, social services etc.
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