

Netherlands

Netherlands Institute for Human Rights

Independence and effectiveness of the NHRI

International accreditation status and SCA recommendations

The Dutch NHRI was accredited with A status in March 2014. Among other recommendations, the SCA encouraged the NHRI to advocate for the formalisation of a clear, transparent and participatory selection and appointment process.

The NHRI was up for reaccreditation in March 2020, but the session was postponed due to the outbreak of COVID-19.

Human rights defenders and civil society space

As regards **freedom of assembly**, under the Dutch Public Assemblies Act (*wet openbare manifestaties*) planned assemblies need to be pre-notified to the public authorities. The intention for this is to be a procedural requirement, i.e. merely to allow public authorities to assess security risks, and make arrangements in time. Such assessment however has, on occasion, also involved mayors checking the actual substantive contents of the planned assembly with a view to fulfilling the procedural requirement and led to a practice where the content has played a role in decision-making. In a recent report the NHRI drew attention to the crucial importance of assemblies that are critical and non-majority in contents and called upon the government to make sure that the Public Assemblies Act ensures the full fulfilment of the right to assembly. This is an issue that is often brought up by international monitoring bodies too regarding the Netherlands, e.g. the Human Rights Committee in its recommendations of July 2019. Even if this risk from slippage of procedural requirements into substantive assessment was acknowledged by the Dutch government in recent evaluations of the relevant law, and ongoing discussions of the government with mayors stress this point, this remains a matter of attention for the Dutch NHRI as long as the system of pre-notification remains in place.

Another issue which may be reported which affects civic space and human rights defenders is the high level of discriminatory remarks online (and offline), which seems to target religious and ethnic minorities, and women – as well as intersectional groups. Persons who

express themselves publicly on the rights of these groups (including human rights activists, like activists against Black Pete) are also targeted. This affects people's behaviour, including by having a chilling effect on freedom of expression and participation in public debate (including in the media).

The annual report 2019 by the Dutch NHRI focuses on discriminatory behaviour in the public sphere (on the street, restaurants, online, in one's area of living, in public transport, etc.) and how this affects the enjoyment of fundamental rights of others (including freedom of expression, respect for private and family life, religious freedom, freedom of movement and of course the right to be free from discrimination). This research shows that this is a severe and persistent problem in the Netherlands, and has an important impact on the enjoyment of fundamental rights. Experiences with discriminatory behaviour sometimes result in people not feeling free to express themselves, or to avoid certain places at certain times, to dress differently (incl. religious dress). While the local and national authorities put in place a number of measures to address the issue, including the recent increase of the maximum penalty for hate speech and inciting discrimination and violence (increased from one to two years), more needs to be done. In the report the Dutch NHRI makes several recommendations on how to better protect the proper enjoyment of fundamental rights of everyone in the Netherlands.

References

- <https://mensenrechten.nl/nl/publicatie/38662> ("Zolang we het maar eens zijn: Nederlanders over de vrijheid van meningsuiting en demonstratievrijheid" - "As long as we all agree: the Dutch about freedom of expression and the freedom to demonstrate")
- <https://mensenrechten.nl/nl/publicatie/5ee058401e0fec037359c28b> ("Jaarlijkse rapportage Mensenrechten in Nederland: Veilig jezelf zijn in het openbaar" – "2019 Annual report: Being yourself in public without fear for your safety" [English summary available])

Functioning of justice systems

In 2018 in our annual report the focus was on access to justice.

We commented on the government's measures already taken, and plans to do so even more in the future, to economize on the **right to have free (or at subsidized rates) legal assistance**, for instance for asylum seekers. Other organisations have also criticized the government's intended revision of the system on subsidized legal assistance. This resulted

amongst others in demonstrations by attorneys (especially in the social domain, such as asylum law) and the call on lawyers from the Dutch Society of Lawyers (Nederlandse Orde van Advocaten) to strike in January 2020. This pressured the government into temporarily providing additional means for subsidized legal assistance. Nevertheless, it will continue with the implementation of the revision of the legal aid system.

We also warned in this report that the continuation of increase of **fees to start a procedure** will have negative consequences for several vulnerable persons and groups and might even result in an actual impossibility for them to have access to justice.

The government has a legal obligation to respond to our Institute's annual report within 60 days. It has thus far failed to do so.

References

- <https://mensenrechten.nl/nl/publicatie/5d14b882b55daa48dd78b888>(Jaarlijkse rapportage 2018: Toegang tot het Recht – “Annual Report 2018: Access to Justice”)
- <https://mensenrechten.nl/nl/publicatie/5dbaef86b55daa48dd78bd3a>(vervolg brief aan de Vaste Commissie voor Justitie en Veiligheid over gesubsidieerde rechtsbijstand – follow-up letter to “the Permanent Committee on Justice and Security about subsidized legal assistance”).
- <https://zoek.officielebekendmakingen.nl/kst-31753-190.pdf>(brief van de Minister van Rechtsbescherming aan de voorzitter van de Tweede Kamer over Rechtsbijstand – “letter of the Minister on Legal Protection to the chair of the Lower House of Parliament on Legal assistance”)

In-focus section on COVID-19 measures

Most significant impacts of measures taken in response to the COVID-19 outbreak on the rule of law in the country

As a result of COVID-19 restrictive measures have been put in place to limit the spread of the virus. These have taken the form of both government level measures (such as closure of schools, bars, restaurants) and guidance (such as restricting the number of persons in any gathering, and directives to keep 1.5 meter distance) and a generic model regulation to be adopted simultaneously at the local levels, where most of the relevant competences are laid down (both at the municipalities and the so-called Veiligheidsregio's – Security regions). In combined form these measures limit a wide array of human rights, such as the

right to education, the right to housing, the right to property, free movement of persons and freedom of religion.

The NHRI has acted particularly with regard to two aspects of the COVID-19 measures. First, it was involved in pressuring the government to ensure that **critical crisis communication** would also involve a real-time sign language professional to ensure also those Dutch citizens who are deaf could follow instantly. The Dutch NHRI has furthermore emphasized the need for protection against domestic violence as part of the governments' approach on tackling COVID-19.

Secondly, at the request of the Minister of Health, the NHRI advised about proposals to use a **tracking app** to be installed on smartphones. Such an app would be intended to facilitate assisting health authorities in their law mandated research into the spread of infectious diseases and help them inform citizens who may have come into contact with others who turned out to be infected. In its advice the NHRI asked for attention for the user-friendliness of the app, its possible **discriminatory or stigmatizing effects** if its use by others than public authorities themselves would not be properly regulated and its **accessibility for persons with a disability or a chronic disease** (e.g. readability of the app for deaf people).

Currently, the Dutch government may be developing a new Act on Emergency measures, meant to assure (more) democratic legitimation for the measures mentioned above and the continuation of these measures for a (much) longer time than was expected at the beginning of the COVID-19 crisis. If this will result in a concrete proposition the NHRI intends to publish advice/comments. The NHRI also informs on the human rights aspects of the crisis by other means, like opinions and blogs on its website, academic channels, as well as social media.

Most important challenges due to COVID-19 for the NHRI's functioning

COVID-19 has made **hearings in person** in equality cases temporarily impossible. There is currently an evaluation ongoing on how and under which conditions (some) hearings could be conducted through digital means.

Another important consequence of COVID-19 has been a **significant decrease in the number of citizens' notifications and complaints** that the NHRI receives.

