

# State of the Rule of Law in Europe in 2022

Reports from National  
Human Rights Institutions

The Netherlands



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## Netherlands

*The Netherlands Institute for Human Rights*

### Impact of 2021 rule of law reporting

#### Follow-up by State authorities

The governmental pact of the new Dutch government ranks effective action on the rule of law highly. More generally, the Dutch government consistently considers intervening in ECJ cases with a rule of law aspect and has insisted on swift implementation of the rule of law conditionality regulation.

#### Impact on the Institution's work

The 2021 ENNHRI Rule of Law Report did not substantially impact the Netherlands Institute of Human Rights' work. The Institute already had EU rule of law as a priority because protecting and promoting of human rights in any Member State effective requires effective EU, European and international structures. It gives shape to this by membership of one of its Commissioners in the Meijers Committee, a well-established group of Dutch lawyers, judges and academics advising independently on EU law matters. The main impact of the Dutch NHRI on the European institutions' rule of law work is bottom-up, in the sense that the Institute has consistently aimed at influencing the Dutch government, Dutch parliamentarians and European parliamentarians for them to remain active on this topic. In doing so the Netherlands Institute of Human Rights has drawn mainly from its own work and expertise.

#### Follow-up initiatives by the Institution

The Netherlands Institute of Human Rights gave many briefings to civil servants, national and European parliamentarians and national ministers about the topic of the rule of law situation in other member states, but this was not the result of the 2021 report. Given the assumption that a bottom-up approach is most effective, the Dutch NHRI works together with a national alliance of Dutch NGOs, that help amplify the message to the NL and other governments and parliaments that a critical mass is to be built to change the political dynamic at EU level.

Furthermore, it is also worth noting that the Dutch NHRI's Commissioner in January 2022 took part in consultations to feed the European Commission's rule of law monitoring cycle

in 2022. Being a member of the Meijers Committee, the Netherlands Institute for Human Rights' Commissioner provided its feedback on the rule of law situation in Netherlands and European Union within a joint contribution prepared by several Dutch NGOs (Netherlands Helsinki Committee (NHC), Nederlands Juristen Comité voor de Mensenrechten (NJCM), Free Press Unlimited (FPU) Transparency International Nederland (TI-NL), Commissie Meijers).

### **NHRI's Recommendations to National and European policy makers**

Focus on enabling national level change makers, like NGOs, and draw on the expertise of national level NHRIs directly as eyes and ears on the ground, and a source of reliable independent data. Focus less on reporting, and more on enforcement.

## **Independence and effectiveness of the NHRI**

### **International accreditation status and SCA recommendations**

The Netherlands Institute for Human Rights was [re-accredited](#) with A-status in December 2020.

The SCA understood that the NHRI's jurisdiction includes the Caribbean territories of the Netherlands; however, as the Dutch Equal Treatment Act is not applicable in these territories, the Netherlands Institute of Human Rights, which is also an equality body, cannot discharge the full breath of its mandate in these territories. The SCA encouraged the NHRI to advocate for the extension of the Equal Treatment Act to the Caribbean territories of the Netherlands, which the NHRI has consistently done.

On the issue of possible conflicts of interest, the SCA acknowledged that where part time members of the governing body or staff of the Dutch NHRI wish to engage in other paid or unpaid activities, an internal discussion occurs, and a decision is made by the governing body. The NHRI makes relevant details relating to other activities publicly available on its website. However, the SCA noted that there did not appear to be further guidance on what types of activities would constitute a conflict of interest, in legislation, regulations or other binding administrative guidelines. The SCA encouraged the NHRI to advocate for the development of further binding guidance with respect to what constitutes a conflict of interest and the process by which the existence of such a conflict can be determined.

The NHRI reported that its budget was the minimum necessary to carry out its mandate and that it can therefore prioritise a limited number of issues. The SCA encouraged the NHRI to continue to advocate for adequate funding necessary to allow it to address a broad range of priorities, including, for example, the rights of migrants and of the LGBTI community. In the meantime, the new governmental pact, in a push to strengthen various

different independent external supervisors, has systematically raised the NHRI's budget by about 10% as of 2022.

## **References**

- (1) [https://www.ohchr.org/sites/default/files/Documents/Countries/NHRI/GANHRI/SCA\\_Report\\_December\\_2020\\_-\\_24012021\\_-\\_En.pdf](https://www.ohchr.org/sites/default/files/Documents/Countries/NHRI/GANHRI/SCA_Report_December_2020_-_24012021_-_En.pdf)

## **Human rights defenders and civil society space**

### **Laws and practices negatively impacting on civil society space and/or on human rights defenders' activities**

The Netherlands Institute of Human Rights' monitoring and reporting have not found any evidence of laws, measures or practices that could negatively impact on civil society space and/or reduce human rights defenders' activities. However, concern raised in the ENNHRI 2021 Rule of Law Report regarding freedom of assembly remains unaddressed. The Institute reported that under the Dutch Public Assemblies Act (wet openbare manifestaties) planned assemblies needed to be pre-notified to the public authorities. Despite this being a procedural requirement allowing authorities to assess security risk and make arrangements on time, sometimes it led to also checking the actual substantive contents of the planned assembly which played a role in decision-making.

### **Access to and involvement of civil society actors in law and policy making**

The Netherlands Institute of Human Rights has not identified any serious shortcomings in national laws and practices regulating access to and involvement of civil society actors in law and policy making.

### **Threats and attacks, including strategic litigation against public participation (SLAPPs)**

The Netherlands Institute of Human Rights has not found any evidence of the abuse of laws or of procedural laws, including strategic lawsuits against public participation (SLAPPs), to intimidate civil society organisations, rights defenders and other actors, such as journalists, speaking out on matters of public interest.

## Checks and balances

The consequences of the so-called 'child benefit scandal' concerning parents who received a day-care child support, subjected to discriminatory, unjustified and unproportionate treatment by the public authorities, as reported by the Institute in the ENNHRI 2021 Rule of Law Report remain to be fully tackled. The issue of insufficient oversight regarding tax authorities and in general public authorities was raised. The government was in the process of improving the day-care allowance system and reviewing legislation and the practice of the tax authorities. The NHRI received significant incidental additional funding to deal with equality cases stemming from this problem, as well as to develop and provide specific trainings to personnel working in administrative agencies.

### NHRIs as part of the system of checks and balances

As already mentioned in ENNHRI 2021 Rule of Law Report, the Netherlands Institute of Human Rights continues to be engaged in awareness-raising and trainings for public authorities on f. ex. equality law, following the so-called 'child benefit scandal' where parents entitled to receive a day-care allowance were subjected to unjustified, unproportionate or discriminatory practices from public authorities. The Dutch NHRI is also handling individual complaints from parents who are victims of such discriminatory treatment, but the Institute has a competence to indicate whether an unequal treatment on the basis of only one ground (race/ethnicity) occurred.

Moreover, the Institute is continuously involved in legislative processes through reporting and advising the government, both as regards new law proposals and existing laws and policies.

### References

- <https://mensenrechten.nl/nl/nieuws/nooit-meer-een-toeslagenaffaire-pak-discriminatie-aan>

## Functioning of the justice system

Challenges reported in the ENNHRI 2021 Rule of Law Report, regarding respect for fair trial standards and the right to liberty in Netherlands, remain still unresolved. These concerns mostly the problem of lack of motivation of (continuation of) pre-trial detention decision-making by judges. The Netherlands Institute of Human Rights intervened in the case regarding this issue and shared results of its study indicating the systemic nature of this problem.

## **Media freedom, pluralism and safety of journalists**

Safety of journalists is a relevant theme in the Netherlands, particularly after the assassination of the well-known crime journalist Peter R de Vries. The Netherlands Institute of Human Rights will dedicate its next annual report to this theme for that reason.

## **Impact of measures taken in response to COVID-19 on the national rule of law environment**

### **Most significant impacts of measures taken in response to the COVID-19 outbreak on the rule of law and human rights protection**

The Netherlands Institute of Human Rights, in its Annual Report 2020, published in June 2021, discussed the long-term impact of the COVID-19 outbreak on human rights in the area of employment. The Institute identified challenges related to labour market, such as access to employment and internships, discrimination in the recruitment and selection process for a job. These may lead to long-term unemployment and, subsequently, to poverty and violation of fundamental rights. Moreover, the Institute reflected that employment conditions sometimes do not meet human rights standards, f. ex. working conditions of migrant workers, increasing flexibility of employment contracts leading to insufficient access to social security after termination of the contract.

### **Actions taken by the NHRI to promote and protect rule of law and human rights in the crisis context**

The Dutch NHRI has taken various actions by providing information and advising the government on Acts to be enforced.