

European Commission against Racism and Intolerance
(ECRI)

Per E-mail: Paula.ECK-WALTERS@coe.int and
wolfram.BECHTEL@coe.int

Subject	Your letter dated	Date
Information regarding the Netherlands	15 December 2017	May 17th, 2018
		Our reference
		2018/0088/AvD/AvE/LR

Dear members of ECRI,

In the framework of the upcoming visit of ECRI to the Netherlands in July 2018, you requested written information on legislative issues, hate speech, violence, integration policies and policies to combat discrimination and intolerance. In this letter we send you our observations on several relevant issues, without pretending to be exhaustive.

About the Netherlands Institute for Human Rights

The Netherlands Institute for Human Rights is the A-status national human rights institute (NHRI) and equality body of the Netherlands. The Institute was established by the Netherlands Institute for Human Rights Act, which sets out the mandate and tasks of the Institute. The Institute can, amongst other things, investigate human rights issues, provide solicited and unsolicited advice concerning draft legislation and policies, encourage human rights education and cooperate with civil society and international human rights bodies.

As equality body, the Institute can hear individual complaints concerning discrimination in a quasi-judicial procedure. Its opinions are not binding, but recent figures show that in practice in 87% of all cases in which the Institute found a violation, either individual or general measures were taken¹.

¹ College voor de Rechten van de Mens, *Monitor Discriminatiezaken 2017*, April 2018, p. 31. Please note that the number of cases on which this percentage are based, is low, and therefore caution must be taken when interpreting these numbers.

Discrimination in employment

Racial discrimination in employment

Racial discrimination in recruitment processes is, unfortunately, still a major point of concern. During the previous monitoring cycle of ECRI we already mentioned research showing discrimination by employment agencies.² Since then, similar research gave similar results.³ Very recently, a television programme conducted its own research into the same issue. Journalists posing as employers contacted employment agencies to ask for employees for a temporary job. They explained that they had had negative experiences with employees of Moroccan, Surinam or Turkish descent and asked the employment agency to take that into account. 47% of the employment agencies answered that they would.⁴

This broadcast, confirming what earlier research already showed, caused several politicians to respond with outrage. The sector organizations ABU and NBBU immediately acknowledged that these results were unacceptable. Measures taken by ABU four years ago, after the research mentioned during the previous monitoring cycle, apparently had not been effective. ABU and NBBU have now formulated action plans to prevent further discrimination.⁵ The measures proposed by the ABU and NBBU are a step in the right direction. The use of an active anti-discrimination policy by employment agencies is certainly necessary, as is the execution of periodic 'mystery calls'. The Netherlands Institute for Human Rights emphasises that not only the absence of an anti-discrimination policy should lead to serious consequences (such as cancellation of their membership), but also a repeated failure in mystery call research. Policy should not only exist on paper, but must also be implemented. Especially in a sector with such a large turnover of intermediaries. The Institute is considering a formal reaction on the proposed measures of the ABU and NBBU.

Discrimination in access to internships

The Institute has also received many reports of discrimination of students in vocational education who apply for internships, both by students and teachers.⁶ This is particularly the case for students of non-Dutch ethnic origin or Muslim background. Internships often are a prerequisite to obtain a degree and are usually an important stepping stone to a first job.

This is a particular problem for women who wear a headscarf. Since the judgments of the Court of Justice of the European Union in the cases of Achbita (C-157/15) and Bougnaoui (C-188/15), it seems that 'neutrality' in appearance is increasingly used as a job requirement. While this used to be mostly limited to positions in public office, such as police officers or court officials that represent the 'neutral state', this is now claimed by more and more private companies. As a headscarf is a visible sign of religion, especially Muslim women are negatively impacted by this job requirement. The Institute has started research on discrimination of students wearing a headscarf.

² See, amongst others, SCP, *Liever Mark dan Mohammed*, January 2010.

³ SCP, *Op afkomst afgewezen*, June 2015.

⁴ <https://radar.avrotros.nl/uitzendingen/gemist/29-01-2018/discriminatie-door-uitzendbureaus/>

⁵ Kamerstukken II 2017-18, 29 544, nr. 822.

⁶ <https://www.verwey-jonker.nl/publicaties/2016/mbo-en-de-stagemarkt-wat-is-de-rol-van-discriminatie>

Discrimination of transgender persons

Research shows that transgender persons have, on average, an unfavourable socioeconomic position.⁷ Five out of ten transgender persons have a low income, as opposed to three out of ten under the general Dutch population. Transgender persons are less often employees (35% vs. 55%) or self-employed (5% vs. 7%). They are much more likely to receive invalidity benefits (12% vs. 4%), social assistance benefits (11% vs. 4%) or other benefits (10% vs. 2%). Differences in income and position on the labour market cannot be traced back to differences in education, as the level of education of transgender persons and the general population are comparable. The SCP indicates that possible explanations for the unfavourable position in the labour market can be prejudice about transgender persons amongst employers and colleagues and the larger psychological and physical health problems amongst transgender persons, that hinder them in finding or keeping a job.

Racial discrimination in other areas: housing and housing market

Unfortunately, racial discrimination is not limited to employment situations. Recent research by monthly magazine *De Groene Amsterdammer* showed such discrimination is also endorsed in the housing market.⁸ Writing estate agents and landlords as someone searching for a house to rent under two different names - one typical Dutch (Jaap), one Moroccan sounding (Rachid) - it became clear that Rachid received significantly fewer positive responses than Jaap. In fact, when Jaap would receive a reply that a house was still available, Rachid would hear that it wasn't, or would receive no reply at all.

The journalists also posed as someone who wanted to rent out their home for two years, and called estate agents to ask if they could exclude ethnic minorities as prospective tenants. Over 90% of the real estate agents they called, were willing to accommodate the land lord. 30% realised that they were not allowed to do so, but were still willing to cooperate.

This article shows that racial and/or religious discrimination exists and is systemic in the Netherlands. It is not limited to the labour market, but can be felt in different parts of society. In some fields more research into discrimination needs to be done to show the size and scope of the problem. But more importantly, effective measures must be taken, both by the relevant sector and the government, to prevent and counter such discrimination.

Discrimination and freedom of speech

In Dutch society, the debate about *Zwarte Piet* ("Black Pete") is still ongoing. *Zwarte Piet* is a character in the traditional annual celebration of *Sinterklaas* in early December. He is traditionally black, with curly hair, red lips and curls, wearing colourful clothing. These are discriminatory characteristics, according to the Institute.⁹

The Institute further observes that people who want to voice their concerns about *Zwarte Piet* in demonstrations are often confronted with limitations of

⁷ SCP, *Transgender personen in Nederland*, mei 2017.

⁸ <https://www.groene.nl/artikel/rachid-is-ook-gewoon-een-nette-jongen>

⁹ The Institute's point of view on the matter can be found on <https://mensenrechten.nl/toegelicht/zwarte-piet>.

their right to freedom of speech and assembly, due to reasons of public order. The Institute does not always consider those reasons justified.

Roma and travellers

Over the last few years, the Institute has heard and decided on several complaints of travellers who wanted to inhabit a pitch that became vacant.¹⁰ However, municipalities sometimes have a policy that such vacant pitches may no longer be inhabited, because they want to get rid of travellers. Until recently this was a legitimate policy option for local authorities.

However, living in a caravan is an essential aspect of Roma, Sinti and traveller culture. This culture is protected by human rights. The central government, local government and housing corporations have to protect and facilitate the culture of travellers. For that reason, the Institute considers policies that lead to fewer pitches for travellers to live on, to constitute racial discrimination.

In April 2018, the Institute provided the Ministry of the Interior, at their request, with advice concerning policies on pitches for travellers.¹¹ The Institute reiterated the importance of protecting fundamental aspects of traveller culture. This means enough pitches have to be available to ensure living in a caravan next to those of their relatives, to have accessible and transparent waiting lists, and to have open communication, consultation and participation of travellers in housing policy formation and implementation.

The ministry announced new policy guidelines for municipalities, that no longer provide for policies aimed at reducing pitches. This is an important step in the right direction. Much will depend on implementation of these policy guidelines by local authorities and housing associations in practice. Therefore, the central government remains ultimately responsible for monitoring of the implementation in practice. This is not evident however, as the Netherlands have a decentralised governmental system, where the central government delegated important tasks to provinces or municipalities, including oversight on these tasks.

Discrimination cases at the Institute

The Institute is also the national equality body and as such, can hear and decide on cases concerning discrimination. Between 2012 and the end of 2017, 'race' has been in the 'top 5' of discrimination grounds on which complaints were based. In 2017, in 20% of all opinions given by the Institute, the ground 'race' played a role.¹²

¹⁰ See, amongst others, opinions 2014-165, 2014-166, 2014-167, 2015-61, 2016-19, 2016-63, 2016-64, 2016-67, 2016-68, 2016-71, 2016-72, 2016-109, 2016-139, 2017-103 of the Netherlands Institute for Human Rights.

¹¹ <https://mensenrechten.nl/berichten/advies-college-versterkt-mensenrechten-van-woonwagenbewoners>

¹² College voor de Rechten van de Mens, *Monitor discriminatiezaken 2017. Tabellen*, April 2018. Note in particular table 3 (number of requests for an opinion, per ground) and table 14 (opinions, per ground).

We hope that you will take these observations into account when preparing for your visit to the Netherlands. For further information, please do not hesitate to contact Ms Anne van Eindhoven (Tel.: + 31 30 888 38 90, E-mail: a.van.eindhoven@mensenrechten.nl).

We are looking forward to meeting with you during your visit in order to discuss the human rights situation in the Netherlands, and more particularly the situation in relation to racism and intolerance.

Yours faithfully,

Adriana C.J. van Dooijeweert LL.M.
President