Implementation of the International Covenant on Civil and Political Rights

Fourth periodic report

The Netherlands

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I. INTRODUCTION

1. In pursuance of article 40 of the International Covenant on Civil and Political Rights, which entered into force with respect to the Kingdom of the Netherlands on 11 March 1979, the present report is submitted in accordance with the decision and guidelines on periodic reports adopted by the Human Rights Committee during its 66th session (July 1999) and amended during its 70th session (October 2000).

2. This fourth periodic report takes into account the discussion of the previous reports in the Committee, the concluding observations (CCPR/CO/72/NET), and the progress made on national legislation and practice with regard to the implementation of the individual articles of the Covenant. The report covers the period from 2001 to the end of 2005. Occasionally, where relevant, reference is made to developments in 2006.[1]

3. The report does not comment upon subjects which are dealt with in the previous reports or the response of the Government of the Kingdom of the Netherlands to the concluding observations of the Human Rights Committee (CCPR/CO/72/NET/Add 1, 2 and 3) and which remain unchanged in the period covered by the present report.

4. The Kingdom of the Netherlands has three constituent parts: the European part, the Netherlands Antilles and Aruba. Each part is responsible for implementing the provisions of the Convention and reporting on implementation. This report covers the European part of the Kingdom only. Reports of the Netherlands Antilles and Aruba will be submitted at a later stage.

II. STRUCTURE OF THE KINGDOM OF THE NETHERLANDS

5. See core document pp. 8-45 nos. 19-175

III. THE NETHERLANDS (EUROPEAN PART OF THE KINGDOM)

A. Amendments to the Constitution since 2001

[1] Annexe V contains an update to the third periodic report covering the implementation of the ICCPR in the Netherlands (European part of the Kingdom) up to the end of 2000. For reasons that are unclear this update was not given an official reference number.

6. The Dutch constitution at the end of 2005 differed from the version in early 2001 in that members of parliament could be temporarily replaced in cases of illness or pregnancy. Several other changes are under consideration.

Temporary replacement of members of parliament in case of illness or pregnancy

7. The Constitution was amended in 2005 (articles 57a and 129, paragraph 3) to allow the temporary replacement of members of parliament (i.e. members of the Senate and House of Representatives) and provincial and municipal councillors in the case of pregnancy, childbirth and illness. A previous attempt to introduce such an arrangement foundered for want of support in parliament (see section 8 of the third periodic report of the Netherlands). More detailed rules on temporary replacement must be introduced by act of parliament. This legislation is currently before parliament. One of the aims of this amendment to the Constitution is to encourage women to participate in politics.

Fundamental rights in the digital society

8. On 29 October 2004 the government decided not to present to Parliament the bill to amend the Constitution in connection with 'Fundamental rights in the digital society' (articles 7, 10 and 13 of the Constitution), which had been announced in the update to the third periodic report of the Netherlands of 2000 (Annexe V). The government had intended to create a system of fundamental rights relating to privacy, freedom of expression and inviolability of correspondence that would provide appropriate protection in the digital society and also be proof against future technological developments. The decision not to present the bill was prompted by a highly critical opinion of the draft legislation by the Council of State. One of the Council of State's general criticisms was that the relationship between the proposals and international developments was unclear. The Council stated that caution was required when reformulating a fundamental right closely connected with a right protected by the European Convention on Human Rights (ECHR) and the International Covenant on Civil and Political Rights (ICCPR). In the event of a difference, no matter how small, from the treaty provisions, the advantages of the intended improvement would, in the opinion of the Council, be outweighed by the risk of unnecessary complications in interpretation and application. The Council also criticised the lack of any in-depth analysis of differences and similarities between treaty provisions and the proposed amendments.

9. The absence of such an analysis was due to the fact that at that time there were few, if any, developments in international law in relation to fundamental rights in the digital society. It was precisely for this reason that the government concentrated its efforts on contributing to this international legal development. For example, it was responsible for the

initiative to establish a separate ad hoc working group in the Council of Europe to consider this issue. This resulted in the adoption by the Committee of Ministers of the Council of Europe on 11 May 2005 of a Political Declaration recognising the need to protect human rights in the 'information society'.

10. The government also made a contribution to the World Summit on the Information Society, which was held in Tunis in November 2005. During this UN Summit it was recorded that human rights should afford the same protection in the information society as they did in the 'paper era'.

11. In the light of these international developments the government has decided to restart its preparations to amend the Constitution in connection with fundamental rights in the digital society. This involves adequate protection of the right of freedom of expression, the right to respect for privacy and the right to privacy of communication. The government hopes to be able to present a draft bill before mid-2007.

Corrective referendum

12. The Constitution would have to be revised to allow for the introduction of corrective referendums. A government proposal for the introduction was defeated at the very last stage in 1999. The government presented a new bill for corrective consultative referendums in 2000, which was rejected by the House of Representatives in 2004. A bill to amend the Constitution and introduce the principle of corrective, consultative referendums was introduced in 2005, on this occasion by several members of parliament. The bill broadly resembles its previously rejected predecessors. It is currently being considered by the House of Representatives.

Article 23 of the Constitution (education)

13. In late 2005 a bill to amend Article 23, paragraph 4, of the Constitution reached the last stage of its passage through Parliament (i.e. second reading by the Senate). The purpose of this constitutional change is to remove all doubt that a statutory regulation governing interdenominational schools (schools established as a result of organisational cooperation between publicly-run education and private education provided by private legal persons often having a religious background) is compatible with article 23, paragraph 4, of the Constitution. This amendment to the Constitution was passed in March 2006. Paragraph 4 of article 23 of the Constitution now reads as follows (the italicised words are new):
'4. The authorities shall ensure that primary education is provided in a sufficient number of *public-authority* schools in every municipality. Deviations from this provision may be

permitted under rules to be established by Act of Parliament on condition that there is opportunity to receive the said form of education, *whether in a public-authority school or otherwise.*'

Dualism and local democracy

14. The update to the third report from 2000 announced a revision to chapter 7 of the Constitution in connection with the dualist structure of local government. The government now considers that a general revision of chapter 7 of the Constitution no longer has priority. The introduction of the dualist principle was effected by means of a system of ordinary acts of parliament between 7 March 2002 and 8 March 2006. The Government also considers that the chairing of the municipal or provincial council is not a matter to be regulated in the Constitution. A bill has therefore been introduced to repeal article 125, paragraph 3 of the Constitution, which states that King's commissioners and mayors preside over the meetings of provincial councils and municipal councils respectively. A bill has also recently been introduced to repeal the provision in article 131 of the Constitution that mayors are appointed by the Crown.

B. Civil and political rights of public servants

15. The protection of the fundamental rights of public servants in relation to their employer has been regulated in sections 125a to 125f of the Central and Local Government Personnel Act since 1988. In keeping with the requirements of the Constitution, these sections constitute a specific statutory regulation governing the limitations that can be imposed on the exercise of fundamental rights by public servants in the light of their special position in relation to the authorities. These are limitations on the freedom of expression and on the freedom of association, assembly and demonstration that may reasonably be deemed necessary in order to ensure the proper performance of the job or the proper functioning of the public service (in so far as this is connected with the performance of public servants). Public servants are also obliged to submit to a search of their person in the workplace on the instructions of the competent authority. In addition, there are specific safeguards for the exercise by public servants of fundamental rights in relation to working on religious holidays (this can be required only if it is essential in the interests of the public service), holding political office and taking part in union activities. Finally, there are conditions governing the holding of confidential posts and limitations on foreign travel for those in possession of State secrets. This was already mentioned in the second and third periodic reports of the Netherlands.

16. Following the amendments referred to in the last report, some additional rules to ensure the integrity of public servants were included in the Central and Local Government Personnel Act and the Military Personnel Act 1931 in 2003 (Bulletin of Acts and Decrees 2003, 60) and 2006 (Bulletin of Acts and Decrees 2005, 695). In 2003 rules were included on the duty of public servants to disclose additional activities and report financial interests, the duty of government authorities to introduce a procedure for reporting suspected irregularities (the Whistleblowers' Order) and a provision affording legal protection to those who report an irregularity in good faith. Rules were included in 2006 that obliged public sector employers to pursue a policy on ethical standards (integrity) for staff. This policy should form an integral part of personnel policy. Public sector employers have also been instructed to ensure that a code of conduct is introduced for ethical behaviour in their area of competence. They are required to account annually to a democratic and representative body for the integrity policy applied by them and for observance of the code of conduct. Finally, all public servants are required to take an oath or make a solemn affirmation when taking up their post.

17. EU Directive 1999/70 provides that in respect of terms and conditions of employment, fixed-term workers must not be treated less favourably than comparable permanent workers solely because they have a fixed-term contract, unless different treatment is justified on objective grounds.

18. As public servants are unilaterally appointed, they are not covered by this directive. However, for the sake of legal equality and to ensure that the principle of equal treatment is applied consistently, an identical regulation was included in the Central and Local Government Personnel Act (section 125h) in 2004 (Bulletin of Acts and Decrees 2004, 88) under which a public sector employer may not treat public servants who have a temporary appointment less favourably than comparable permanent staff, unless such treatment is justified on objective grounds.

19. The scope of freedom of expression for public servants was a subject of some debate both in the Dutch press and in parliament in the spring of 2004. This was occasioned by steps to dismiss two prison governors for criticising the prisons policy of the Minister of Justice in various media. This prompted the government to analyse its views and policy on this subject, within the statutory framework. Basically, it argued that the fundamental right of a public servant to freedom of expression is not absolute. The limit for a public servant is reached where the exercise of this right would mean that the proper performance of his job or the proper functioning of the public service (in so far as connected with the performance of

his job) could no longer reasonably be said to be guaranteed (section 125a of the Central and Local Government Personnel Act and section 12a of the Military Personnel Act 1931).

20. Factors of importance in making this assessment are the behaviour of the public servant, the distance between the public servant and the body that makes the policy on which the public servant expresses a view, the nature of the subject matter and the manner and forum in which the public servant expresses his view. The more remote the public servant is from the relevant policy field the less reason there is to limit his freedom of expression on the grounds of his public service status. Where a public servant is directly involved in policymaking, he should observe greater restraint in expressing a view on matters directly related to the performance of his duties. Here the public servant's job is a relevant factor.

21. One aspect that may certainly be taken into account in applying the 'performance criterion' of section 125a of the Central and Local Government Personnel Act is whether the view was expressed publicly or in a more private, closed circle. As a view expressed publicly by an official can generally be said to have a more adverse effect on the proper functioning of government, the limits on the freedom of expression of an official are more restrictive in this case. The extent to which a subject is ripe for policy formulation is important here. In the policy development stage an official has relatively more scope to exercise his freedom of expression. After all, at this stage debate can actually help to produce well-conceived and carefully considered policy. In appropriate cases, an official may express a view that differs from that of the minister and still remain within the limits of section 125a of the Central and Local Government Personnel Act, provides he adopts a suitably detached tone and gives reasons. The situation changes, however, once the policy is decided through the interaction of the minister and parliament. From then on the priority should be to refrain from criticising the policy. Loyally implementing established policy generally involves not criticising it in the media. This certainly applies to officials in management positions.

C. Performance of the National Ombudsman

22. The office of National Ombudsman is established in the Constitution as an independent complaints body (article 78a). The National Ombudsman investigates the actions of central government administrative authorities and other administrative authorities either on his own initiative or on request. He is independent and appointed by the House of Representatives (see Core Document, nos. 194-203). He may hear complaints about the

actions not only of central government but also of provincial authorities, water boards and over a hundred municipalities.

23. The National Ombudsman assesses whether or not the government body concerned has acted properly. This assessment is made by reference to a list of criteria. In a way, these 'due care' criteria form a code of conduct for government. Due care criteria correspond to a large extent with the legal standards contained in treaties, statutory rules and the like. The principal criteria are those relating to respect for human rights and fundamental freedoms, such as freedom from discrimination, privacy of the home, respect for personal privacy, and protection against unlawful deprivation of liberty. The standards laid down in the ICCPR therefore form part of the assessment framework applied by the National Ombudsman.
A decision by the National Ombudsman is not binding in the same way as a judgment of a court. It is up to the administrative authority concerned to decide what action, if any, should be taken in the light of the decision. This does not detract from the effect of the work of the National Ombudsman. The National Ombudsman intervenes successfully in over half of the complaints he receives without the need for an investigation. Even where an investigation does have to be instituted, it frequently happens that the administrative authority concerned takes a measure that resolves the complaint during the investigation. The National Ombudsman's recommendations are almost always adopted.

24. The number of complaints received by the National Ombudsman has steadily increased in recent years. 7,681 complaints were received in 1999, compared with 11,156 in 2004: an increase of 45% in five years. According to the Ombudsman, the main explanation for this increase has been the publicity campaigns and other information activities designed to increase public awareness of the work of the Ombudsman. The Ombudsman has had a permanent budget for information purposes since 2004. The administrative authorities about which the most complaints are submitted annually tend to be those that have frequent contact with the public. The top five are the Immigration and Naturalisation Service (IND), the social security benefits agencies, the Tax & Customs Administration, the municipalities and the police.

25. The Ombudsman is also empowered to conduct an investigation on his own initiative, usually in order to examine problems of a more structural nature in the way administrative authorities implement policy. Subjects investigated by the Ombudsman on his own initiative in the past period included the living conditions of asylum seekers in the application centres, compliance with court judgments by the Immigration and Naturalisation Service (IND), the handling by government ministries of letters from members of the public, the handling by rent

committees of petitions, applications and notices of objection, and the provision of crisis shelter for non-criminal young people with serious behavioural problems in young offenders' institutions.

D. International Covenant on Civil and Political Rights

Article 1: Right to self-determination

26. Between 2000 and 2005 a referendum on the constitutional future of each of the five islands of the Netherlands Antilles was held on the islands concerned in the context of the right to self-determination. On four of the islands the population voted for the proposition that the Netherlands Antilles should cease to exist as a country and that the islands should acquire a new constitutional status within the Kingdom of the Netherlands. One island (St Eustatius) voted for continuation of the Netherlands Antilles.

27. On 22 October 2005 the five islands concluded an outline agreement with the governments of the Netherlands and the Netherlands Antilles. It was decided to start a process intended to result in a new constitutional status for the five islands within the Kingdom. At the same time the socioeconomic and financial problems of the Netherlands Antilles are to be tackled. The aim is to give the islands a good starting point. This process was officially instituted on 26 November 2005 by means of a Round Table Conference (RTC) of the five islands, the Netherlands, the Netherlands Antilles and Aruba. The RTC resolved to formulate joint criteria governing legal certainty, good governance and fundamental rights and freedoms. The proposals of the islands for a new political structure will be assessed by reference to these criteria at a forthcoming RTC.

Article 2: Non-discrimination and right to an effective remedy

28. The developments connected with non-discrimination are described under article 26, owing to their interrelated nature.

29. As regards the right to an effective remedy, various judgments were given by the European Court of Human Rights in cases against the Netherlands in the current reporting period. In so far as these cases related to the European territory of the Kingdom the

European Court held in each case that there had been no violation of the right to an effective remedy.

The cases were as follows:

- ECtHR 4 February 2003, Lorsé and others v. the Netherlands (appl. no. 52750/99).
- ECtHR 25 November 2004, Aalmoes and 112 others v. the Netherlands (appl. no. 16269/02);
- ECtHR 15 September 2005, Bonger v. the Netherlands (appl. no. 14492/03).

30. The right to an effective remedy was also dealt with in the national courts on a number of occasions in the present reporting period. Of particular importance is the judgment of the Central Appeals Court for Public Service and Social Security Matters of 8 December 2004 (AB 2005/73) in administrative law proceedings about unemployment benefit in a case in which the time limits for decisions laid down in national law had been greatly exceeded. In view of the importance placed on article 13 of the European Convention on Human Rights (ECHR) in the case law of the ECtHR (see ECtHR 26 October 2000, Kudla v. Poland), the Central Appeals Court for Public Service and Social Security Matters to some extent adopted a new approach in this judgment to the consequences of a failure to give a decision within a reasonable time. The Central Appeals Court for Public Service and Social Security Matters considered that if compensation is to be awarded for non-pecuniary damage it must be reasonable to assume on the basis of the interests involved in the proceedings and the other facts and circumstances of the case that the interested party actually suffered a degree of tension and frustration as a result of the duration of the proceedings. In the opinion of the Court, compensation for non-pecuniary damage should be awarded in such a situation to the interested party against a legal person to be designated by the administrative court even if there has not been a serious infringement of the privacy or other moral rights of the interested party, together with a declaration that the claim is well-founded and applying section 8:73, subsection 1 General Administrative Law Act (the section that regulates the power of the administrative court to grant compensation) in keeping with article 13 ECHR. Where an interested party has also suffered pecuniary damage as a consequence of a late decision, compensation should also be awarded for this. Such compensation should be awarded regardless of whether the decision by the administrative authority was discretionary or non-discretionary.

31. In a judgment of 4 July 2003 (AB 2003/450) the Central Appeals Court for Public Service and Social Security Matters held, contrary to its previous decisions, that where it is alleged that a case has not been decided within a reasonable time the administrative court

should decide whether this constitutes a violation of article 6 ECHR. In so holding it referred once again to how the interpretation of article 13 ECHR was evolving in the case law of the ECtHR and to the judgment of the ECtHR in the Kudla v Poland case. However, the Central Appeals Court for Public Service and Social Security Matters did hold, in keeping with its own established case law, that an interested party should apply to the civil courts in order to determine the consequences of such a violation. In this way it sought to remove any doubt that an effective remedy is available in Dutch administrative law for determining whether a case has been heard by the administrative courts within a reasonable time. In the absence of a statutory provision, however, under the Dutch system it is the civil courts that have jurisdiction to decide whether to direct the State to pay compensation for the alleged damage.

32. In a judgment of 28 April 2004 (AB 2004/276), the Administrative Jurisdiction Division of the Council of State held that a rule of precedent applicable in some areas of administrative law – namely that no grounds may be raised on appeal that were not raised at first instance – should be departed from in the light of the right to an effective remedy. The case concerned a local planning rule prohibiting the permanent occupation of summerhouses. The appellant submitted that this prohibition was contrary to the right to enjoyment of one's possessions and to the right of privacy as protected by the ECHR. Although the appellant had not raised this argument before the court of first instance the Division held that it could still take cognizance of the argument since it concerned treaty provisions that have direct effect and that the national courts are bound to enforce by virtue, inter alia, of article 13 ECHR.

Article 3: Equal right of men and women to enjoyment of civil and political rights

33. Due to their interrelated nature, articles 3 and 26 on discrimination will be dealt with under article 26.

Article 4: Restrictions on derogation from obligations under the Covenant

34. Since the third periodic report no new developments concerning the legislation applicable to states of emergency and article 4 of the Covenant have taken place. The Dutch government believes that the threat posed by international terrorism, which is very real in the Netherlands as elsewhere, does not at present require or justify the application of emergency legislation or the invocation of article 4.

Article 5: Prohibition of narrow interpretation of the Covenant

35. The first paragraph of article 5 has a direct bearing on the relationship between fundamental rights. In the reporting period under consideration, this issue and the issue of a human rights hierarchy was a matter of considerable public and political debate, following 9/11, the events in Afghanistan and Iraq and the publication of data on the integration of minorities. Prompted by a parliamentary motion, the government issued a policy document entitled 'Fundamental rights in a plural society' in May 2004. An English translation of the policy document is attached to this report (Annexe I).

36. The policy document dealt with the question of whether in Dutch society there is an adequate balance in the reciprocal relationship between fundamental rights, in particular in the case of discriminatory statements which are partly based on religious or ideological beliefs. It concluded that there is no need to amend the Dutch Constitution or to establish a constitutional hierarchy of fundamental rights in order to tackle the problem of balancing conflicting human rights in certain situations. The document pointed out that:

- the reciprocal relationship between fundamental rights offers scope for tackling problems that arise from the increasing pluralism of society, such as discrimination, honour crimes and female genital mutilation;
- existing case law offers guidelines and criteria for the direct or indirect weighing up of interests relating to fundamental rights, such as religious freedom, freedom of speech and the right not to be discriminated against;
- legislation and case law show that religious freedom and freedom of speech do not constitute a licence to discriminate on grounds such as homosexual orientation;
- the principle of the separation of church and state does not mean that no religious or ideological views of any kind may be expressed in the public domain;
- laying down regulations governing clothing which may express religious views is not desirable, unless this is urgently required for reasons of functionality, safety or the exercise of authority in an impersonal manner;
- clothing regulations may be laid down for teaching staff in state schools if this can be justified in objective terms.

It is necessary to support and actively disseminate the values of democracy and the rule of law in a variety of ways, one of which is a requirement that modern, shared citizenship be a focus both in schools and integration courses.

Article 6: Right to life

Termination of life on request and assisted suicide

37. The purpose of the legislation governing termination of life on request and assisted suicide is to safeguard and improve the standards of physicians' intervention in such cases. The main principle is to ensure that they act in all openness. The subjects which were dealt with in the previous reports and the comments made by the Government of the Kingdom of the Netherlands on the concluding observations of the Human Rights Committee (CCPR/CO/72/NET/Add 1 and 3), and which remain unchanged in the period dealt with in these reports, are not commented upon.

Reports by the review committees

38. The Act on the Termination of Life on Request and Assisted Suicide established regional euthanasia review committees, of which there are at present five. Each committee comprises three members: a lawyer, who is also the chair, a physician and an expert on ethical issues. They are responsible for assessing whether, in terminating a patient's life or assisting in their suicide, the physician has acted in accordance with the six due care criteria stipulated in the Act. The review committees jointly present an annual report of their activities to the Minister of Justice and the Minister of Health, Welfare and Sport. The report is sent to the House of Representatives of the States General.

39. The annual reports record the number of notifications of euthanasia and assisted suicide. In 2004, the committees received notification of 1,886 such cases. In the vast majority of cases the review committees concluded that the due care criteria had indeed been observed. In these cases, they communicated their findings to the notifying physicians, thereby rounding off the official procedure. In some cases, the committee invited the physician to submit further information in writing or in person before they finalised their decision. In four cases this resulted in the committees concluding that not all the due care criteria prescribed by law had been fulfilled. The committees then submitted their findings to the Board of Procurators General and the Health Care Inspectorate.

40. In the first of these cases, a patient became comatose after having requested euthanasia. This prompted the review committee to ask whether a comatose patient's suffering can be classified as 'unbearable'. The case was referred to the Board of Procurators General and the Health Care Inspectorate, and by the latter to the Medical Disciplinary Tribunal.

41. In the second case, the independent physician was acquainted with the patient and had given him medical treatment shortly before euthanasia took place. The committee considered this to be non-compliance with the due care criterion that an independent physician should be consulted. This case was also referred to the Board of Procurators General and the Health Care Inspectorate.

42. In the third case, an anaesthetist who had been involved at in a previous surgery on the patient, acted as the independent physician. The committee considered this to be non-compliance with the due care criterion that there should be an independent assessment. This case was also referred to the Board of Procurators General and the Health Care Inspectorate. The latter questioned the board of governors of the hospital where the euthanasia was performed. It was subsequently decided to draw up a detailed euthanasia guideline for that hospital. The Health Care Inspectorate was satisfied that sufficient measures had been taken to prevent a recurrence of these events. For this reason, the Board of Procurators General decided not to prosecute.

43. In the fourth case, termination of life was performed by administering progressively higher doses of morphine. The treatment itself was given by another doctor, not by the notifying physician. This prompted the review committee to interview the doctor concerned about the procedures that were followed and the drugs that were administered. It subsequently drew the Health Care Inspectorate's particular attention to the situation at the hospital: the procedures regarding the termination of life on request, and the use of morphine for carrying it out. The review committee emphasised their conviction that the physician acted with integrity and with great concern for the patient. These findings were submitted to the Board of Procurators General and the Health Care Inspectorate.

44. In 2005, the committee was notified of 1,933 cases of termination of life on request and assisted suicide. They concluded that in three cases, the physician had not satisfied the requirements of due care. The cases were referred to the Board of Procurators General and the Health Care Inspectorate.

45. In the first of these cases, the euthanasia consultant was also the patient's general practitioner. The committee concluded that this conflicted with the requirement for an assessment by an independent physician. For this reason, the case was referred to the Board of Procurators General and the Health Care Inspectorate. The Board ruled that, in view of the facts and the circumstances involved, it would not be appropriate to prosecute the physician. However, the Public Prosecutor interviewed the attending physician, and the

Health Care Inspectorate contacted the general practitioners at the request of the Board of Procurators General. The Inspectorate ruled that in view of the physician's response and good intentions and the minimal chance of the same thing happening again, there was no good reason to pursue the matter further.

46. In the second case, the attending physician felt morally obliged to proceed with euthanasia. No independent physician was consulted. The committee concluded that the physician did not comply with the due care criterion that there should be an independent assessment, and submitted its findings to the Board of Procurators General and the Health Care Inspectorate.

47. The third case also revolved around the lack of an independent physician. The committee concluded that the physician did not act in accordance with the due care criterion that there should be an independent assessment, and submitted its findings to the Board of Procurators General and the Health Care Inspectorate. The Board of Procurators General ruled that, in view of the facts and the circumstances involved, it would not be appropriate to bring charges. In addition, the Board asked the Health Care Inspectorate to look into whether there were proper procedures in place for euthanasia at the hospital in question. The Health Care Inspector wrote to the hospital, requesting a number of amendments to the existing procedures.

Review committees' website

48. Since spring 2006, the findings of the review committees have been published on their website (http://www.toetsingscommissieseuthanasie.nl/en/). The main aim is to facilitate greater insight into how the committees work and how they reach their conclusions. The committees' findings contain a summary of all the facts and circumstances of the case as communicated to them. The names are removed in order to preserve the anonymity of the individuals involved. Names and dates of birth and death are omitted in the published findings, as is other highly specific information which could identify individuals. The website does not indicate what the specialism is of the attending or independent physician involved in each case. The omission of personal information helps to safeguard the privacy of the patient and doctor-patient privilege. Before the website was launched, it was thoroughly tested by a SCEN physician, representatives of the Health Care Inspectorate, the municipal health services, the Ministry of Health, Welfare and Sport and the Ministry of Justice.

Appointment of experts' committee on neonatal termination of life and termination of late-term pregnancy

49. In 2006 the Minister of Justice and the State Secretary of Health, Welfare and Sport set up an experts committee to advise the Public Prosecution Service on cases in which the life of neonates experiencing great suffering has been terminated or in which late termination of pregnancy has been carried out. The government's objective by appointing the committee is to achieve more openness from doctors regarding decision-making in these cases.

50. The appointment of the committee of experts will in no way affect the application of the criminal law to such cases. Terminating the life of a newborn experiencing severe suffering is and will remain an offence under article 293 of the Dutch Criminal Code. Similarly, termination of late-term pregnancy is, and will remain, a criminal offence under Article 82a of the Criminal Code.
The experts' committee has five members: a lawyer (the chairman), three doctors (sharing one vote) and an ethicist. Based on the standard of due care criteria – as defined by case law – the committee will assess whether the doctor exercised due care in terminating the life of the newborn or the late-term pregnancy. The committee's recommendation will not supersede the Public Prosecutor's decision, but will serve as an expert opinion.
The letter to the House of Representatives is included as Annexe II to this report.

Palliative sedation

51. In December 2005 the Royal Dutch Medical Association published its Guidelines for Palliative Sedation. Palliative sedation is the deliberate lowering of a patient's level of consciousness in the last stages of life. The objective is to relieve suffering; lowering consciousness is a means to that end. Palliative sedation is considered to be a form of normal medical treatment. It is crucial that this treatment should be applied proportionately and adequately, in response to the appropriate medical indications. It is the degree of symptom control rather than the degree to which consciousness must be reduced that determines the dose, combinations, and duration of the drugs administered. Interim evaluations and other decision-making processes must be geared towards relieving the patient's suffering in order to create a tranquil and tolerable situation. Lowering consciousness to relieve suffering is appropriate in the last stages of life, in which death is expected to ensue in the near future.

52. Medical indications for palliative sedation are present when one or more untreatable or 'refractory' symptoms are causing the patient unbearable suffering. Besides the presence of one or more refractory symptoms, a second precondition for the use of continuous deep sedation is the expectation that death will ensue in the reasonably near future – that is, within one to two weeks. In these situations, a medical practitioner may decide to commence

palliative sedation and in principle to continue it until death. Keeping accurate records is essential when palliative sedation is being administered. The relevant information about the patient and his situation must be recorded in his medical file: why it was decided to administer palliative sedation, how this was done, how the effect is being evaluated, and what criteria are being used to adjust the dosage. The physician responsible for treating the patient should visit him at least once daily.

53. Palliative care includes comforting, supporting and lending a sympathetic ear to the patient's loved ones, who play an important role both when palliative sedation is being considered and while it is being carried out. The Guidelines address the need experienced by physicians for greater clarity and insight with regard to palliative sedation. They thus provide a basis on which doctors can make medical decisions at the end of life. The Guidelines were sent to the House of Representatives of the States General and were approved by the government.

Evaluation of the Termination of Life on Request and Assisted Suicide (Review Procedures) Act

54. The Termination of Life on Request and Assisted Suicide (Review Procedures) Act is subject to periodic evaluation. The first evaluation will be conducted in spring 2007. A number of large-scale studies on the practice of euthanasia were carried out before the Act entered into force. These studies paved the way for various policy measures such as setting up a notification procedure and establishing regional committees of experts, and ultimately to the introduction of the Act itself.

55. The 2007 evaluation study focused on obtaining greater insight into the way the Act works in practice. Since its entry came into force, doctors are obliged to report cases of euthanasia and assisted suicide. A high notification rate fosters transparency. This is an important aspect of policy on euthanasia. The research questions for the evaluation study should be understood in this light. Firstly, the study assesses physicians' willingness in recent years to notify the committee when they have performed euthanasia, and looks at the factors underlying this development. Secondly, the study collects information about the way in which institutions deal with end-of-life medical decisions and treatment. The evaluation is expected to be published spring 2007.

Euthanasia in the Netherlands Support and Assessment project (SCEN)

56. One of the requirements of due care stipulated by the Termination of Life on Request and Assisted Suicide (Review Procedures) Act is that the attending physician has consulted

at least one other, independent physician who has seen the patient and has given his written opinion on the requirements of due care.

57. For a number of years, the SCEN has been training physicians to perform independent assessments. More general practitioners have taken SCEN courses than any other group. In recent years, however, there have been considerable efforts to extend SCEN to hospitals and nursing homes. In 2005, 24 general practitioners, 19 medical specialists and 17 physicians working in nursing homes received SCEN training. The total number of SCEN physicians was 515.

Abolition of the death penalty in all circumstances

58. On 3 May 2002 the Kingdom of the Netherlands signed the Thirteenth Protocol to the European Convention on Human Rights, which abolishes the death penalty in all circumstances. It entered into force in the Netherlands on 1 June 2006. The Sixth Protocol to the Convention made exceptional provision for the death penalty in respect of acts committed in time of war, but is now superseded by the Thirteenth Protocol. Since the death penalty had been abolished in the Netherlands some years previously, the Protocol had no repercussions on Dutch legislation.

Suicide in custodial institutions

59. The chart below shows the number of suicides in penitentiary institutions as compared with total prison population. The latter includes foreign nationals but excludes offenders in remand centres and those released subject to strict controls such as electronic tagging.

Year	Number of suicides in Dutch custodial institutions	Total prison population (daily maximum)	Total prison population (daily average)
2001	11	12148	12009
2002	10	12885	12653
2003	13	14194	13503
2004	21	15466	14791

2005	20	15779	14877

Curbing gun crime by searching on suspicion

60. Following the introduction of a private member's bill, the Municipalities Act and the Firearms and Ammunition Act were amended on 13 July 2002 in order to combat gun crime. The amendments mean that a municipal council can empower its mayor to prevent a breach of the peace due to the presence of firearms in a particular area by designating it as a 'public safety risk area'. Once the Public Prosecutor has permitted searching on suspicion within an area, police officers may search for firearms in:

- packaged goods
- vehicles
- personal clothing

61. The initiative to amend the law arose out of the fact that in recent years, the Netherlands has had to deal with an increasing amount of violence directed at random individuals on random occasions. One of the recurrent features of this 'meaningless violence' is that it tends to occur in entertainment areas at night, and often involves drugs and/or alcohol. In addition to actual violence, the mere threat of violence generates major safety risks. Besides entertainment areas, there are certain types of public event (including sports events) and locations where drugs are sold or used, that inherently pose a threat to public safety. In view of the state's positive duty to protect its citizens' right to life, Parliament considered searching on suspicion to be a justifiable measure.

62. Research has been conducted into the practice of searching on suspicion in ten municipalities: Rotterdam, Amsterdam, Den Helder, Haarlemmermeer (Schiphol), Heerlen, Utrecht, Tilburg, Roermond, Maastricht and Zaanstad. In eight of the ten municipalities studied, 187 searches were conducted between 2002 and 2004. A total of 79,499 people were searched and 2,010 weapons were found. Of these weapons, 70% were stabbing instruments. As a result of the searches, 397 arrests were made.

63. Searching on suspicion does however lead to a dilemma. It must be done at random so as to avoid all appearance of discrimination. On the other hand, the results in terms of the offensive weapons yield and the effect on the incidence of firearms offences must be substantial in substantial relation to the time and effort invested by the police. In general, it

was found that people did not object to being searched. Around 70% did not regard it as an invasion of their privacy.

Article 7: Prohibition of torture and inhuman or degrading treatment

Convention against Torture

64. The Act of 29 September 1988 implementing the Convention against Torture was repealed with effect from 1 October 2003. The criminal offences defined in that Act were transferred to the new International Crimes Act on that date. The new Act classifies genocide, crimes against humanity, war crimes and the original offence of torture as international crimes governed by a common set of rules based on general principles of criminal law, including specific provisions on (secondary) universal jurisdiction, superior orders and responsibility, and exclusion of the statute of limitations. For linguistic and editorial reasons the wording of the definition in the International Crimes Act differs from that of the 1988 Implementation Act.

65. However, as confirmed by Rotterdam district court in the case against N. (7 April 2004, AA 53 (2004), pp. 729-736), these differences should not be seen as evidence of a substantive change in the legislator's views on the nature of the crime. Accordingly, the 1988 definition will continue to be applied to cases of torture that occurred before the entry into force of the International Crimes Act. In addition to this editorial amendment, the penalty for torture without aggravating circumstances was raised from 15 years' imprisonment and a fine to 20 years' imprisonment or life imprisonment and a fine. This was done to reflect more accurately the extreme seriousness of the crime and bring the sentence more into line with the penalties for most other international crimes.

66. Section 1 (1)(d) of the International Crimes Act defines torture within the meaning of the 1988 Convention as follows:
'the intentional infliction of severe physical or mental pain or suffering upon a person who is in the custody or under the control of the accused, subject to the proviso that the pain or suffering does not result solely from, and is not inherent in or incidental to lawful sanctions, when committed by or on behalf of a government authority and with a view to extracting information or a confession from him or from a third person, punishing him for an act he or a third person has committed or is suspected of committing, or intimidating him or a third person, or coercing him to do or permit something, or for any reason based on discrimination on any ground whatsoever'.

67. On the basis of that definition, section 8 of the International Crimes Act reads as follows:

'(1) Torture committed by a public servant or other person working in the service of the authorities in the course of his duties shall carry a sentence of life imprisonment or a term of imprisonment not exceeding twenty years or a fifth category fine.

(1) The following shall be liable to similar sentences:

(a) a public servant or other person working in the service of the authorities who, in the course of his duties and by one of the means referred to in article 47, paragraph 1 (ii), of the Criminal Code, solicits the commission of torture or intentionally permits another person to commit torture;

(b) a person who commits torture, if this has been solicited or intentionally permitted by a public servant or another person working in the service of the authorities, in the course of his duties and by one of the means referred to in article 47, paragraph 1(ii), of the Criminal Code.'

Optional Protocol to the United Nation Convention against Torture (OPCAT)

68. The Government is currently preparing the procedure for the approval of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment concluded in New York on 18 December 2002. Precisely how the Protocol will be implemented is currently under consideration. Once this has become clear, the documents will be laid before the Council of State for approval without delay.

CPT visit

69. The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) visited the Netherlands for the first time in 1992. The second CPT visit took place from 18 to 26 February 2002. The CPT's report on this visit was published on 2 September 2002 (report no. (2002) 28). The CPT visited the Amsterdam police force, various facilities of the Royal Military and Border Police (Koninklijke Marechaussee) at Schiphol Airport, the emergency facility in Bloemendaal, the asylum and application centre adjoining Schiphol Airport, the Sint Jacob R.C. Care Centre and Wittenberg nursing home. The Committee made a number of recommendations for improving the facilities. It devoted special attention to the Nieuw Vosseveld High Security Prison, which will be discussed at greater length later in this report.

70. In the report on its previous visit the CPT noted that there had been no violations by the Dutch authorities of the prohibition on torture and cruel or inhuman treatment. The 2002

report came to the same conclusion. In its previous report the CPT noted that the 'conditions of detention in law enforcement establishments' were in conformity with its criteria. The Netherlands also met these criteria in 2002. The CPT concluded that prisoners were in general well treated and was still impressed by the situation in the Netherlands. The Dutch government's response to the CPT's report on its visit can be found in CPT/INF (2003) 39 of 27 November 2003. In its response the Netherlands provided information on the implementation of its policy in reply to the CPT's practical questions.

Medical Research (Human Subjects) Act

71. The Human Rights Committee's concluding observations of 27 August 2001 (CCPR/CO/72/NET) included a passage about the Dutch Medical Research (Human Subjects) Act, or WMO: "The State Party should reconsider its Medical Research (Human Subjects) Act in the light of the Committee's concerns, in order to ensure that even high potential value of scientific research is not used to justify severe risks to the subjects of research. The State should further remove minors and other persons unable to give genuine consent from any medical experiments which do not directly benefit these individuals (non-therapeutic medical research). In its next report, the State party should inform the Committee of the steps taken and provide it with detailed statistics."

Below, we respond to the Committee's observations and supply the detailed statistics requested. We will also briefly sketch developments since 2000.

72. The Human Rights Committee was concerned that proportionality is assessed by weighing the risks of research to subjects against the expected value of research. The Committee feels that a limit should be incorporated in this subjective criterion, beyond which the risks to the individual are so great that no measure of expected benefit could outweigh them.

73. The Dutch government decided that reviews of research protocols would be conducted by independent experts for this very reason: to avoid any subjective influence on the weighing of risks and burden versus the benefits of research. The government feels that independent reviews provide sufficient guarantees of objective assessment. A fixed limit would be less advisable, in its opinion, as there are situations in which possible lasting damage caused by medical research, e.g. on patients with a fatal disease, might be justified. In these cases, genuine consent, given freely and in compliance with strict legal provisions, provides additional justification for the research.

74. The Human Rights Committee was also concerned that minors and other persons unable to give genuine consent might be subjected to medical research under certain circumstances. In its third periodic report (resubmitted 28 July 2000), the Dutch government explained the strict conditions in the WMO which apply to medical research with minors or decisionally incapacitated adults. This type of research is allowed, provided these strict conditions are met, because the government feels that children, persons with mental disabilities and persons with dementia must have just as much right to benefit from medical advances as other groups. The most stringent conditions apply to research which does not directly benefit research participants themselves. Such non-therapeutic research is allowed if it can only be conducted with the involvement of subjects in the category to which the person in question belongs and if the risks to the individual are negligible and the burden minimal.

75. These terms must be explained. Negligible risk means that the risks associated with research are no greater than the risks of everyday life in a relatively safe environment, or the risks of routine medical procedures or care, e.g. blood collection, which are so low as to be negligible. Minimal burden on the individual means that the medical procedures or behavioural instructions required may not, in their entirety, have a far-reaching impact on the individual's daily life. The disruption to daily life caused by participation in the trial must be limited, and any pain caused may not exceed the level of, for example, a venepuncture for blood collection.

76. In response to the concluding observations of the Human Rights Committee, the government asked the Central Committee on Research Involving Human Subjects (CCMO) to pay close attention to compliance with the law in the case of non-therapeutic research involving minors and/or decisionally incapacitated adults. CCMO's response was as follows:

1. CCMO paid extra attention to the registration of non-therapeutic research involving minors and decisionally incapacitated adults. Annexe IIIa contains a summary of the number of studies in each category of research, giving an approximate breakdown of medical research into the different categories.
2. CCMO assessed non-therapeutic, invasive observational research itself between 1 January 2002 and 1 January 2005. Annexe IIIb contains passages on reviewing non-therapeutic research involving minors and decisionally incapacitated adults from CCMO annual reports published in that period.
3. CCMO analysed all protocols for non-therapeutic, invasive observational studies reviewed in 2001. The results of this analysis can be found in Annexe IIIc. CCMO used the analysis results to write a memorandum entitled "Non-therapeutic research involving minors and decisionally incapacitated adults: 'no, unless'" (Annexe IIId).

4. CCMO wrote an "Assessment framework for non-therapeutic MRI research involving minors and decisionally incapacitated adults" (Annexe IIIe).
5. CCMO analysed all non-therapeutic observational studies involving minors and/or decisionally incapacitated adults submitted to the METCs for review between January and September 2005. The results of this analysis can be found in Annexe IIIf.

77. At the end of 2004, CCMO informed the METCs that they would once again be reviewing non-therapeutic intervention studies involving minors and/or decisionally incapacitated adults as of 1 January 2005. It wrote:

> "From 1 January 2002 up to October 2004, CCMO assessed more than 90 'invasive' protocols. It now has an accurate impression of the nature, burden and risks of invasive treatments in these studies. In its annual reports, CCMO informed the Minister and parliament of its findings. In most cases, the burden on subjects consisted of blood collection, physical examinations or psychological tests.
>
> Based on these findings, CCMO believes that the Medical Research (Human Subjects) Act (WMO) and the Dutch medical research review system are sufficient safeguards for the protection of participants in medical research who are not capable to give consent.
>
> CCMO makes one proviso, concerning the assessment of non-therapeutic MRI research involving children. This type of research was the subject of much discussion within CCMO. MRI is becoming more and more popular as a research instrument. CCMO recognises its value in medical research, but is concerned that the burden of an MRI scan may exceed the range of minimal burden. It is particularly concerned about the impact on young children: the machine may be 'scary', it is very noisy and it is difficult for young children to have to lie still. In the end, CCMO drew up an Assessment Framework, for internal use, to assess non-therapeutic MRI research involving minors and decisionally incapacitated adults (Annexe IIIe). The Assessment Framework is enclosed with this letter to the METCs."

78. The government feels that it made a justifiable decision in allowing medical research on decisionally incapacitated subjects, which does not directly benefit the subjects themselves, under the WMO. The Dutch government does not stand alone in this. Initiatives have been taken at EU level to allow, under strict conditions, pharmaceutical research

involving children and decisionally incapacitated adults. There are even moves towards making this type of research compulsory. On 1 March 2006, the revised WMO came into effect (Annexe IV), thus implementing Directive 2001/20/EC of the European Parliament and of the Council of 4 April 2001 on the approximation of the laws, regulations and administrative provisions of the Member States relating to the implementation of good clinical practice in the conduct of clinical trials on medicinal products for human use.

79. In October 2004, during the Dutch Presidency of the EU, the European Commission presented a first proposal for a Regulation on Medicinal Products for Paediatric Use. The Regulation entered into force on 26 January 2007. It encourages producers to reregister authorised medicinal products specifically for use with children and it makes this obligatory for new medicinal products. Under this regulation, when applying for registration of a new medicinal product or expanding the registration of a registered product, pharmaceutical companies must submit a plan for a pharmaceutical trial with children with the aim of registering the medicine for children. The definition of the term medicinal product is the same as in previous European legislation, so that diagnostic products also fall under the regulation.

80. Pharmaceutical companies' research plans will be assessed by a scientific committee – the Paediatrics Committee – which falls under the European Agency for the Evaluation of Medicinal Products (EMEA). They will review the scientific and ethical aspects of a trial and determine whether children would benefit from the results. Pharmaceutical companies will be exempted from this requirement for medicinal products for diseases which do not occur in children (e.g. Parkinson's disease, Alzheimer's disease). Similarly, a company will be given an extension for the paediatric clinical trials if there is insufficient information about the product's safety for adults. The results of the paediatric clinical trial will be assessed by another EMEA body, the Committee for Medicinal Products for Human Use (CHMP). Depending on the outcome, a medicinal product may be registered for paediatric use or the product information should clearly indicate that the product should not be used for children.

81. Finally, the Council of Europe's Additional Protocol to the Convention on Human Rights and Biomedicine, concerning Biomedical Research (see Annexe III g) provides some scope for research on people who do not have the capacity to give consent.

82. The Committee concluded that "the State party should remove minors and other persons unable to give genuine consent from any medical experiments which do not directly benefit these individuals (non-therapeutic medical research)".

83. The Dutch government wishes to observe that, sometimes, medical advances in diseases or impairments affecting children or decisionally incapacitated adults depends on research being done on that group of patients. It believes that it would be unfair if these vulnerable groups were to have less benefit from modern medicine than capable adults. It also observes that the WMO is in line with international law on this subject. The Dutch government therefore stands by its position, stated in the third periodic report (CCPR/C/NET/99/3): based on articles 31 and 32 of the Vienna Convention on the law of treaties, medical research with decisionally incapacitated persons which satisfies all the conditions of the Medical Research (Human Subjects) Act need not be incompatible with article 7 of the ICCPR. It is in keeping with the object and purpose of the Covenant to allow, under strict conditions, non-therapeutic medical research which is of great importance to the advance of medical care for minors and incapacitated adults, such as persons with mental disabilities and persons suffering from senile dementia. The government will not remove the provisions concerned from the Medical Research (Human Subjects) Act.

WMO developments since 2000

84. The WMO came into effect on 1 December 1999. The annual summaries published by CCMO give a good impression of the Act's implementation over the years (Annexe III h). The Act was amended in response to various problems encountered in the first few years. The amendment Act expanded the group of people who may give substitute consent for adult subjects who are unable to make their will known as regards participation in medical research. The amended Act also expands the criterion applying to designation of forms of research requiring CCMO approval by order in council (see Annexe IV, section 2, subsection 2 (b) (4).

85. The WMO was first evaluated in 2004 and found to be functioning well, in general. The government saw this as confirmation that it was on the right track. It will work with CCMO over the next few years to ensure progress along the chosen path. For example, it will work towards the development of a professional, coherent network of medical ethical review committees. This might ultimately result in fewer committees. The amended Medical Research (Human Subjects) Act came into effect on 1 March 2006, implementing Directive 2001/20/EC on good clinical practice. In order to work according to these standards, review committees need to operate more professionally and have more expertise in pharmaceutical research. Reporting frequency should also be increased.

86. The Dutch government observes that the WMO works in practice. The recent amendments to the Act implement our international obligations on legislation concerning research into medicinal products. The government will not reconsider the WMO.

Use of force by public authorities and the Code of Conduct for the Police, Royal Military and Border Police (KMar) and special investigating officers

87. The Code of Conduct for the Police, Royal Military and Border Police and special investigating officers (the 1994 Police Code of Conduct), which was adopted pursuant to section 9 of the Police Act 1993), includes rules governing the use of force by specified persons and what this entails. The 1994 Police Code of Conduct entered into force on 1 April 1994. It was amended on four occasions during the reporting period.

88. On 31 August 2001 the wording of the 1994 Police Code of Conduct was clarified and the substantive description of the use of force by the police was improved to include the drawing of a firearm. Since that date cases in which firearms are drawn must also be reported. On 29 March 2002 pepper spray was added to the list of means of force used by the police, thereby providing an extra means of defence against dangerous suspects. An important advantage of pepper spray is that it affords better protection from the increasing use of force against the police and that it does not generally cause injury. Pepper spray has been classified as closer to a baton than a firearm in the range of weapons available to the police. This will often mean that in situations that qualify for the use of firearms, pepper spray will not be the most appropriate weapon.

89. As the result of an amendment of 28 May 2004 a public servant responsible for deporting a foreign national by air may in some cases use aids to restrict the deportee's freedom of movement. Aids may be used only where this is necessary to ensure that the deportation procedure goes smoothly, i.e. only where there is a danger that the deportee may abscond or where the deportee poses a danger to safety or the life of others or there if a serious threat to public order and provided that the same result cannot be achieved by less drastic means. The use of pepper spray by special investigating officers specifically designated for this purpose was permitted on 9 March 2005.

Investigation of cases in which force is used by the police

90. On 10 November 2005 the ECtHR gave judgment in the case of Ramsahai v. the Netherlands and held that there had been a procedural violation of the protection of the right to life as provided for in article 2 ECHR. The facts of the case leading to this judgment were as follows. A person suspected of theft drew a firearm in order to resist arrest. The suspect

did not drop the firearm despite being ordered to do so by the police officers. One of the police officers then fired a shot and injured the suspect. A criminal investigation was instituted immediately after the incident. During the first 15 hours, the investigation was conducted by the local force (i.e. the force to which the officer who fired the fatal shot belonged). Thereafter it was taken over by the National Police Internal Investigations Department. The investigation gave the national authorities no grounds for prosecuting the police officers for excessive use of force. The investigators were convinced that the police officer had acted in legitimate self-defence. However, the relatives of the deceased lodged an objection to this decision by means of the complaints procedure under article 12 of the Code of Criminal Procedure. A hearing was held in camera. However, this did not result in a different decision on prosecution. The judgment in the complaints procedure was not made public. It should be noted at the outset that there was no substantive violation of article 2 of the ECHR; the ECtHR unanimously held that the police officer had acted in legitimate self-defence. The ECtHR concluded that there had been a procedural violation of article 2 of the ECHR in two respects: the (unduly) late involvement of the National Police Internal Investigations Department in the investigation and the fact that the decision under article 12 of the Code of Criminal Procedure not to prosecute the police officers concerned was not made public. The hearing of the internal appeal before the Grand Chamber of the ECtHR will take place in October 2006. This will culminate in a final judgment.

91. An incident occurred in Amsterdam on 6 August 2003 when Driss Arbib, a 33-year-old man of Moroccan background, was killed by the police during a riot in a restaurant in Mercatorplein. The incident sparked massive protests, especially from the local Moroccan community. Following an investigation of the incident, the Public Prosecutor concluded that the fatal shot had been fired in self-defence; it was decided not to bring criminal charges against the police officer concerned. Relatives of Mr Arbib disagreed and challenged that decision under the procedure laid down in article 12 of the Code of Criminal Procedure. In its decision of 23 June 2004 Amsterdam Court of Appeal acknowledged that the police officers had been confronted with a difficult situation. Yet it was not satisfied with the quality of the investigation into the incident. It ordered further investigation under the authority of an examining magistrate. It also directed that the investigation should include a reconstruction to ascertain whether the police officer had any alternatives to the use of his firearm. The reconstruction of the incident took place as ordered by the Court of Appeal. This bore out the Public Prosecutor's initial view that the fatal shot had been fired in self-defence. He therefore proposed not to bring criminal charges against the police officer concerned. In accordance with the applicable rules on the action to be taken after an 'Article 12 procedure' has been instituted, the Public Prosecutor requested the Court of Appeal for leave to take this decision.

92. In its lengthy decision of 9 December the Court of Appeal agreed with the Public Prosecutor (LJN AU7731). The reconstruction of the incident convinced the Court of Appeal that the police officer had indeed acted in self-defence and that it would therefore not be reasonable to bring proceedings against him. Referring to the Ramsahai judgment of the European Court of Human Rights (described above), the Court of Appeal accepted that the initial investigation into the incident may not have met all the procedural requirements of article 2 ECHR. However, it held that these potential defects had been cured by the subsequent reconstruction under the authority of an independent examining magistrate.

93. In December 2000 the 31-year-old Pierre Bouleij was killed by a police bullet in his home. The police had been called to quell a serious argument between neighbours. The fatal shot was fired when Bouleij, who was wielding a large knife, advanced on the police officer concerned. The Public Prosecutor decided not to prosecute the officer. A complaint about this decision was lodged with the Court of Appeal in accordance with article 12 of the Code of Criminal Procedure. On 10 October 2001 's-Hertogenbosch Court of Appeal held in a closely reasoned judgment, which set out all the facts and circumstances of the incident in considerable detail, that it was indeed correct that the police officer concerned need not be prosecuted since it had to be concluded that he had acted in self-defence (LJN AD4516).

Case law

94. On 7 April 2004 Rotterdam district court sentenced Sébastien N., the former commander of the Garde Civil in Matadi (in the former Zaire, now the Democratic Republic of Congo), to 2½ years' imprisonment for having been involved in committing various acts of torture in 1996. The defendant was acquitted of two other charges on the grounds of insufficient evidence. The district court rejected the defence that the defendant had already stood trial for these crimes in the Democratic Republic of Congo in 1997. The court held that the crimes of which the defendant was accused also affected the Dutch legal order as the defendant had taken up residence and requested asylum in the Netherlands. In determining the length of the sentence the district court took into account that the nickname – Roi des bêtes – by which the defendant was commonly known in the former Zaire and his above-mentioned conviction in Zaire on 6 May 1997 seemed to suggest that the crimes now held to have been proven were not isolated offences. The conviction has now become final since the defendant has not appealed against the conviction at first instance.

95. On Friday 14 October 2005 The Hague district court sentenced two former senior officials of the Khad, the military intelligence service under the communist regime in

Afghanistan, to prison sentences of 12 and 9 years respectively for involvement in war crimes and torture between 1985 and 1990. Both defendants – Hesamuddin H. and Habibullah J. – arrived in the Netherlands as asylum seekers in the early 1990s, but after they had obtained a decision within the meaning of section 1F of the Aliens Act their files were transferred by the Immigration and Naturalisation Service (IND) to the Public Prosecution Service in keeping with the agreement existing between the two organisations since 1997. The district court, which gave a very closely reasoned judgment, passed the sentence demanded by the Public Prosecutors and attached great importance to the fact that the defendants had sought refuge in the Netherlands, where many victims of the then Afghan regime were also resident. An appeal has been entered in this case.

Case law on the interviewing/hearing of persons in custody

96. On 8 May 2001 the Supreme Court held that the protracted and confrontational interrogation of a suspect, part of which took place at night, and the use of raised voices by the police did not constitute a violation of the rule prohibiting the pressuring of suspects or the rule prohibiting inhuman or degrading treatment. The Supreme Court shared the view of the Court of Appeal that it had not been shown that pressure had at any time been put on the suspect that was disproportionate to his mental state. One of the factors taken into account by the Supreme Court was the importance of establishing the truth about the very serious crime of which the defendant was suspected. The Supreme Court held that the statement made by the suspect to the police could be used in evidence. Although the suspect had not had an opportunity to contact his counsel, the Supreme Court did not consider that his interests had been harmed since he later repeated his confession to the examining magistrate in the presence of his counsel (Supreme Court, 8 May 2001, NJ 2001/481).

Case law on extradition and expulsion

97. Mention should be made of the case of R v. the Netherlands, the facts of which are as follows. The person concerned has Algerian nationality and has been in the Netherlands since 1998. He is regarded by the General Intelligence and Security Service (AIVD) as a danger to national security on account of his involvement in terrorist activities. The person concerned considers that it is his duty as a Muslim to take an active part in violent jihad. His application for asylum is based on the argument that his return (refoulement) to Algeria would constitute a violation of article 3 ECHR since it may be assumed that the Algerian authorities are aware of the Dutch criminal proceedings. In the proceedings before the Dutch courts the Administrative Jurisdiction Division of the Council of State finally held that even if it has to be assumed that the Algerian authorities are aware of the proceedings, the alien has not convincingly shown (in the light of the Minister of Foreign Affairs' country report on

Algeria of December 2003) that he runs a real risk of being tortured in the event of expulsion. The case is presently pending before the ECtHR.

98. Mention should also be made of the Kesbir case. Ms Kesbir, who is of Kurdish origin, is suspected by the Turkish authorities of having been involved in training terrorists and of having taken part in a number of armed attacks. The Turkish government asked the Dutch government to extradite her and stated in various notes to the Minister of Foreign Affairs that after her extradition she would be treated in accordance with all human rights conventions to which Turkey is a party. The Minister of Justice thereupon permitted her extradition to Turkey. Kesbir then applied for an interim injunction barring her extradition. The judge at The Hague district court responsible for hearing applications for provisional relief granted an injunction restraining the State from extraditing Kesbir to Turkey. This judgment was upheld by The Hague Court of Appeal on appeal by the State. The Court of Appeal ruled that Kesbir would run a specific and real risk of torture or other inhuman or degrading treatment after her extradition. It considered that the undertakings given by the Turkish government were too general and therefore inadequate.

99. The Supreme Court has upheld the judgment of the Court of Appeal. As the court of cassation the Supreme Court proceeds on the basis of the facts and description of the dangers as found by the Court of Appeal. The Supreme Court has concluded that the Court of Appeal was, based on the documents sumitted to the Court, justified in reaching its finding that Kesbir's extradition would be safe only if specific guarantees were obtained that the Turkish authorities will oversee that Kesbir will not be tortured or exposed to other inhuman treatment by police officers, staff of prison or other officials within the judicial system during her detention and trial. The same applies to the judgment of the Court that undertakings given by the Turkish government do not meet this requirement and that, therefore, extradition should be prohibited.

Article 8: Prohibition of slavery

Exploitation of prostitution

100. New legislation on human trafficking came into force on 1 October 2000. This provides that all forms of exploitation of prostitution are criminal offences. Sex with a prostitute aged 16 or 17 is expressly made a criminal offence (sex with a prostitute aged 15 or younger is covered by the general offence of sexual abuse of a minor under the age of 16). The general ban on brothels was also lifted in the new legislation. The reason given for

lifting the ban on brothels was that criminalising brothels and enforcing the prohibition were ineffective not only in controlling prostitution but also in tackling the crime associated with it.

The new legislation had six main objectives, namely,

- to control and regulate the prostitution trade, for instance by introducing a local licensing system; it is very important for municipalities to develop a local policy on all forms of prostitution;
- to act more effectively against involuntary prostitution;
- to protect minors against sexual abuse;
- to protect sex workers and improve their position;
- to break the link between prostitution and the offences commonly associated with it, and
- to reduce the scale of prostitution involving illegal aliens.

Sexual offences legislation

101. A partial amendment to the sexual offences legislation entered into force on 1 October 2002. This extended the scope of the criminal provision on human trafficking to cover all forms of sexual exploitation. At the same time the applicability of Dutch criminal law was extended to cover child sexual abuse and sexual violence against children by Dutch nationals abroad or foreign nationals who have their domicile or residence in the Netherlands, even if the act does not constitute a criminal offence under the law of the place where it is committed. The jurisdiction over cases of human trafficking was thus extended.

Implementation of international legislation

102. The last major change concerns the implementation of international legislation prohibiting trafficking in human beings and people smuggling. The legislation came into force on 1 January 2005 and implements, among other things, the UN protocols on these two issues.

103. With regard to people smuggling, the scope of article 197a of the Criminal Code has been extended to include smuggling to countries that are party to the Protocol, the "material gain" requirement in assisting illegal entry to the Netherlands has been scrapped, and the sentence for people smuggling that involves a risk to life or has led to death has been increased to 12 and 15 years respectively. The legislation also establishes jurisdiction over people smuggling carried out by a Dutch national outside the Netherlands.

104. With regard to trafficking in human beings, the scope of the criminal law provisions has been expanded considerably to include all forms of exploitation, including modern forms of slavery. In this context too, the sentence for offences featuring the aggravating circumstances referred to above has been increased. The changes relating to trafficking in human beings are laid down in a new article 273a of the Criminal Code. In view of its human rights aspect, this article will be included under Title XVIII of the Code (Crimes against personal freedom).

Article 273a

1.) Any person who:

1°. with the intention of exploiting another person or removing his or her organs, recruits, transports, transfers, accommodates or shelters that other person by means of duress, violence or another hostile act, or the threat of violence or other hostile act, or by means of extortion, fraud, deception or the abuse of power arising from a specific state of affairs, or by means of the abuse of a position of vulnerability, or by means of giving or receiving payments or benefits in order to obtain the consent of a person having control over that other person;

2°. recruits, transports, transfers, accommodates or shelters a person with the intention of exploiting that other person or removing his or her organs, if that person has not yet reached the age of eighteen years;

3°. recruits, takes away or abducts a person with the intention of inducing that person to make him or herself available for sexual acts with or for a third party for payment in another country;

4°. forces or induces another person by means referred to under 1° to make him or herself available for work or services or to make his/her organs available, or takes any action in the circumstances referred to under 1° which he knows or may reasonably be expected to know will result in that other person making him or herself available for work or services or making his or her organs available;

5°. induces another person to make him or herself available for sexual acts with or for a third party for payment or to make his or her organs available for payment, or takes any action in relation to another person which he knows or may reasonably be expected to know will result in that other person making him or herself available for these acts or making his or her organs available for payment, if that other person has not yet reached the age of eighteen years;

6°. intentionally profits from the exploitation of another person;

7°. intentionally profits from the removal of organs from another person, if he knows or may reasonably be expected to know that the organs of that person were removed under the circumstances referred to under 1°;

8°. intentionally profits from the sexual acts of another person with or for a third party for payment or the removal of that person's organs for payment, if this other person has not yet reached the age of eighteen years;

9°. forces or induces another person by the means referred to under 1° to provide him with the proceeds of that person's sexual acts with or for a third party or of the removal of that person's organs;

shall be guilty of trafficking in human beings and as such liable to a term of imprisonment not exceeding six years or a fifth category fine.

2.) Exploitation shall include, at the minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced or compulsory labour or services, slavery or practices comparable to slavery or servitude.

3.) The following offences shall be punishable by a term of imprisonment not exceeding eight years or a fifth category fine:

1°. offences as defined in paragraph 1 if they are committed by two or more persons acting in concert;

2°. offences as defined in paragraph 1 if they are committed in respect of a person who is under the age of sixteen.

4.) The offences defined in paragraph 1, if committed by two or more persons acting in concert under the circumstance referred to in paragraph 3 (2°), shall be punishable by a term of imprisonment not exceeding ten years or a fifth category fine.

5.) If one of the offences defined in paragraph 1 results in serious physical injury or threatens the life of another person, it shall be punishable by a term of imprisonment not exceeding twelve years or a fifth category fine.

6.) If one of the offences defined in paragraph 1 results in death, it shall be punishable by a term of imprisonment not exceeding fifteen years or a fifth category fine.

7.) Article 251 shall apply *mutatis mutandis*.

105. Central to the amendment of the Code is the broadening of the definition of trafficking in human beings to include other forms of slavery-like exploitation in economic sectors outside the sex industry. It is however clear that the excesses eligible for investigation and prosecution under the new article will primarily take place within the sex industry. Exploitation for sexual purposes falls into a separate category in view of the major violations of human rights it entails (for instance, violation of physical integrity). The specific nature and seriousness of exploitation for sexual purposes compared with exploitation in other socioeconomic sectors will therefore be clearly expressed in the new instructions from the Board of Procurators General.

106. As part of the above amendment of the Code, the exploitation of people in work other than that in the sex industry is being defined in as much detail as possible. The results of an exploratory study into the forms modern slavery takes are also being taken into consideration in this respect. In the light of the outcome of this study, agreement will be sought at European and possibly international level on the scope of the term 'exploitation at work', so that joint international investigations and extradition for this type of trafficking in human beings will largely focus on misconduct of comparable seriousness.

107. In the broad field of efforts to combat trafficking in human beings, each of the partners involved has to deal with the potential consequences of broadening the definition of trafficking in human beings and the relevant article in the Criminal Code. Consideration is now being given to ascertaining exactly what measures are needed and how they can be implemented. What is particularly needed is a clear definition of the role to be played by each of the organisations involved and steps to make these organisations aware of the importance of their contribution to tackling the problem. Given the definition's focus on exploitation in employment relationships, the Ministry of Social Affairs and Employment and the inspectorates that fall under it will be closely involved.

108. In response to the repeated call in international documents for training to be given to all officials and other individuals involved in tackling trafficking in human beings, more attention is being focused on education and training. In-depth knowledge that is regularly updated is indispensable. Several initiatives have already been developed and implemented for various partners. For example, a module dealing with the issue now forms part of police training, while a course has been added to the programme provided by the Training and Study Centre for the Judiciary (*Studiecentrum Rechtspleging – SSR*) for members of the Public Prosecution Service. At the present time, no provisions of this nature are available to members of the judiciary or officials from various other partners in combating trafficking in

human beings. Currently, consideration is being given to the question of whether all the partners can be provided with a structural programme on trafficking in human beings, in which specific attention is also paid to child trafficking.

Other legislation

109. Since a great deal of new international legislation on trafficking in human beings has been introduced in recent years, attention in the years ahead must focus primarily on its implementation and practical implications. Successful implementation is what matters to law enforcement and what will continue to make the legislation meaningful. New legislation should only be considered if it adds matters of substance to existing rules. However, a number of issues in the field of criminal law should be addressed further.

110. The EU Framework Decision on the standing of victims in criminal proceedings has not resulted in any amendments to Dutch legislation. This proved unnecessary, since the Netherlands already has a fairly high level of victim support. In general, victims are informed of their rights and legal position in time and, where necessary, are referred to branches of the victim support organisation (*Slachtofferhulp Nederland*) and legal aid offices. Both organisations are familiar with the specific needs of this group and their scope for obtaining redress. At present a bill is before Parliament to improve the position of victims in criminal proceedings.

111. For the time being, the Foreign Nationals (Employment) Act (*Wet Arbeid Vreemdelingen - WAV)* will continue to apply to the sex industry and the prohibitory provision laid down in Article 3 of the Implementation Decree will remain in force for the indefinite future. The reason for this is the apparent impossibility at the present time of developing an alternative system facilitating the assessment of whether or not any labour market interest could be served by admitting prostitutes from outside the EU/EEA. What is more, much uncertainty still exists on the status of employment relationships in prostitution. As a result, it is not yet possible to develop reliable criteria for the admission of prostitutes. Only when this and the determination of a specific need for admission are possible can the discussion on the WAV (Implementation) Decree be resumed.

112. Since 1 May 2004, a transitional regime has been applicable to nationals of the eight new EU member states in Central and Eastern Europe under which the free movement of employees will not apply until 1 January 2007. Accordingly, the conditions of the WAV apply. Nationals of these countries wishing to work in the sex industry in salaried employment are subject to the above-mentioned prohibition on issuing a work permit. Before 1 January 2007,

the Government will decide whether or not to extend the transition period. When the free movement of employees becomes possible for nationals of the new member states, this will apply in full to activities in the sex industry.

113. Various international instruments exist in the field of the slave trade and trafficking in human beings. Articles 274 to 277 inclusive of the Criminal Code serve partly to facilitate the implementation of instruments geared towards combating slavery, the slave trade and practices similar to slavery. For the time being, there is sufficient scope in Dutch criminal law for the separate penalisation of the slave trade and certain forms of participation in the trade on the one hand and of trafficking in human beings on the other. Once the necessary experience has been gained with the new article 273a of the Criminal Code and an insight has been obtained into its impact, it will be clear whether or not it is necessary to maintain separate provisions on the slave trade. When answering this question, the development of the law in other countries can also be considered.

National rapporteur on trafficking in human beings

114. Since the establishment of the national rapporteur, mentioned in the third periodic report, four annual reports have been published. These reports proved useful in formulating a National Human Trafficking Action Plan in 2004 and a plan incorporating supplementary activities in 2006. The measures set out in the National Action Plan may also be regarded as supporting policy for legislation implementing the international instruments referred to above. A number of issues play a role, both when formulating legislation (national and international) and when developing supporting policy.

115. With regard to the Committee's concluding observation 10, the Government would comment as follows. The Netherlands attaches great importance to the fact that our National Rapporteur is independent and not responsible for policy, which enables her to give an objective and independent opinion on human trafficking issues in this country..

116. The National Rapporteur has a range of options at her disposal for pursuing her investigations. She receives information from various sources and may consult police and criminal records. She is permitted to approach all the partners for information and to remind them of their responsibilities. Her annual report is presented in Parliament (through the Government) and is the subject of debate there between the Government (often the Minister of Justice) and MPs.

National Human Trafficking Action Plan

117. The National Human Trafficking Action Plan sets out a broad, integrated strategy incorporating measures in all kinds of areas. As a result, the implementation of the National Rapporteur's recommendations and the progress of various activities and initiatives can be monitored and adjusted. The Action Plan is currently being implemented.

Dutch Police Expert Group

118. An expert group has been formed and a number of objectives have been formulated in the framework of the National Police Project on Prostitution and Trafficking in Human Beings to combat such trafficking. For the time being, this approach will focus on excesses in the sex industry. The desired situation is one in which each regional police force deploys task-related *capacity*; which complies with the quality requirements stipulated; in which each regional force has an *information structure* such that internal and external antennae are in place to pick up signals of clandestine prostitution and trafficking in human beings; in which each regional force has a full *description of the investigation process* and in which the National Police Project on Prostitution and Trafficking in Human Beings has been properly concluded at the end of 2004 by *embedding the expert group within the existing structures* of the Dutch police. This will guarantee a structural approach on the part of the Dutch police to combating trafficking in human beings.

119. Besides information supplied by victims, intelligence from *other sources* is also relevant. Investigation and prosecution should not rely entirely on reports, but also on active intelligence gathering. To this end, the principles of intelligence-led investigation are being introduced within the police and Public Prosecution Service.

120. In May 2005 a special national Expertise Centre on Human Trafficking and People Smuggling was created within which different government agencies cooperate. The lines of authority are shorter, management is uniform and an integrated approach is adopted towards organised crime. The responsibilities include conducting investigations in the areas of trafficking in human beings and smuggling, processing complex international legal assistance applications, providing capacity for international collaboration (for a joint investigation team, for example) and providing expertise at national level.

Article 9: Right to liberty and security of person

Care of persons in custody

121. While the safeguards relating to deprivation of liberty are contained in article 15 of the Constitution (habeas corpus principle), practical matters concerning the care of persons in custody are regulated in the 1994 Code of Conduct (see also article 7). This includes a chapter on measures relating to persons in custody. Among the matters it regulates are:

- notification of the custody to family members or other members of the household;
- search prior to start of custody;
- the safekeeping of clothing and objects that could pose a danger during custody;
- orders to undress;
- the possibility of permanent camera surveillance;
- medical assistance;
- regular checks on the person in custody;
- on release from custody, the provision of transport and escort for those unable to get around on their own.

122. The Decree of 28 March 1994 containing rules governing the management of regional police forces and measures regarding persons in custody has a number of additional provisions concerning facilities necessary for persons in custody and concerning supervision of the care of such persons. This decree applies by analogy to the National Police Services Agency (Management of Persons in Custody (KLPD) Decree; Bulletin of Acts and Decrees 2005, 140). A new article – article 16a – was added to this decree in December 2000 to provide for the establishment of police cell monitoring boards. Under this article each regional police force manager must establish a monitoring board for the police cell complexes in his region; the board consists of at least three and no more than twelve independent members.

The duties of the board in any event include:

(a) monitoring the accommodation, safety, care and treatment of persons in custody in police cell complexes.
(b) reporting annually on its work to the regional police force manager;
(c) advising the regional police force manager and providing him with information, either on request or of its own volition, about matters concerning the police cell complexes.

The composition of the monitoring boards takes account of the requisite social and administrative expertise and experience of the members. Each regional police force manager sends an annual report of the activities and findings of the monitoring board to the Minister of the Interior and Kingdom Relations.

123. As regards complaints concerning the care of persons in custody, chapter X of the Police Act 1983 provides that each regional police force should draw up rules governing the handling of complaints about the acts of officials. The rules should in any event provide for a complaints committee, the registration of the complaints and their disposal, as well as annual publication of the registered complaints and their disposal. Upon receipt of a complaint the mayor and chief public prosecutor concerned are given an opportunity to express their opinion on the complaint.

124. Since 1 March 2004 the police complaints scheme has been brought into line with chapter 9 (handling of complaints) of the General Administrative Law Act (AWB). Notwithstanding section 9:11, subsection 1 AWB, a complaint must be dealt with within 10 weeks of its receipt. The period is 14 weeks if the complaint is considered by an advisory committee. If the complaints procedure does not produce a satisfactory result, the National Ombudsman may, on request, carry out a further investigation under the National Ombudsman Act to determine whether the police acted properly.

Administrative detention

125. The update to the third periodic report of the Netherlands in 2000 mentioned that a measure known as 'administrative detention' had been introduced that year by act of parliament. This gave mayors the power in the event of large-scale disturbances to arrest groups of people committing breaches of the peace and to detain them in police custody at a given location for a short period (maximum of 12 hours). Administrative detention is possible in the event of rioting, other serious disturbances, disasters or serious accidents, or if such events seem extremely likely. A separate provision authorising administrative detention is needed in the General Municipal By-laws (APV) of the municipality concerned. Some municipalities have already included such a provision. The Ministry of the Interior and Kingdom Relations issued the municipalities with a guide to administrative detention in May 2000 in order to explain to them the possible applications of the new instrument.

126. To date, however, this instrument has been used in only a single instance. This involved disturbances at a football match in Almelo in 2005. In this case the court held later that the administrative detention had not been applied by the mayor in accordance with the statutory conditions. In no other case has the instrument of administrative detention been applied by mayors, mainly because they consider it difficult to satisfy the legal requirements of necessity and proportionality.

Right to appear before a judge

127. In the concluding observations of the last periodic report concern was expressed about the provision of the law that enables a maximum of 3 days and 15 hours to elapse between a suspect's arrest and the moment when he or she is brought before a judge. While recognising the Committee's concerns, the Government continues to maintain that the period referred to in article 59a of the Code of Criminal Procedure is sufficiently prompt. It is evident from two decisions of the ECtHR – those of 4 July 1991 (no. 18090/91) and 30 March 1992 (no. 19139.91) – that periods longer than this have been held not to constitute a violation of the ECHR. The habeas corpus requirement of article 5 (4) ECHR has also been fulfilled. The Dutch government is not aware of any complaints since this article came into force in 1994. The present period has proved eminently workable both in the case law and in the administration of justice generally.

Aliens Act 2000

128. When the Aliens Act 2000 entered into force, it introduced a new system for the courts to assess the lawfulness of detention orders. Within three days of imposing a detention order the Minister was required to notify the district court, which would then interview the foreign national within seven days. If the court considered the order (or its continuation) to be lawful, the Minister had to notify the court again within not more than four weeks if the order was extended, unless the foreign national had himself already applied for review. Quite soon after the Aliens Act 2000 entered into force it became apparent that this system was creating a backlog of work in the courts. Owing to the increase in the number of custodial cases the lead times of applications for judicial review in residence application procedures lengthened. In 2004 the Aliens Act 2000 was amended in such a way that notice of the order now need be given only after 28 days, the foreign national must be heard within 14 days and the Minister need no longer notify the court of the prolongation of the custody. Notwithstanding these amendments, a foreign national may apply to the court for judicial review of the order (or its continuation) at any time he desires.

Expulsion centres

129. Two expulsion centres were established and opened in the Netherlands in 2003. The Minister for Immigration and Integration intended to step up the removal of illegal aliens and needed extra capacity for this purpose. The first expansion of capacity involved the establishment of two expulsion centres, one at Rotterdam Airport and the other at Schiphol Airport.

130. An airport location was chosen since this greatly facilitated the logistical process of expulsion. The centres are operational seven days a week. Almost all expulsions ultimately

take place through an expulsion centre. The location and round-the-clock operating hours mean that these centres are also ideally suited for large-scale operations to take into custody large groups of illegal aliens. The border accommodation regime, which is based on the Aliens Act, applies to these expulsion centres. After the expulsion centres were established, the other capacity available was used to establish detention centres. These serve as a kind of gateway to the expulsion centres. Most detention centres have a regime similar to that of a remand centre with limited association. Where foreign nationals with children or foreign nationals refused entry at the border are held in custody, the border accommodation regime applies.

Schiphol Airport fire

131. Fire broke out in the Schiphol-Oost cell complex in the night of 26 to 27 October 2005. Eleven people died in the fire. In addition, 15 people (both guards and detainees) were injured. On the basis of inquiries, among which the report of the independent Duch Safety Board, the government has decided that fire safety should consistently receive greater attention from central government and its agencies. To raise fire safety awareness and improve fire safety the government will implement the Safety Board's recommendations as a matter of priority. It has decided to take the requisite measures and to implement them. The government sees it as its duty to take vigorous action in the short term to ensure that whatever is necessary to enhance the safety of custodial institutions is done and to reduce the chances of a repetition of a fire of this kind.

132. Organisational and staff changes will continue to be made in the government agencies concerned to ensure their greater awareness of fire safety issues in the future. The government trusts that this will provide the basis for proper implementation of fire safety policy.

Article 10: Treatment of persons deprived of their liberty

Developments in legislation and policy

133. The Custodial Institutions Act, which was dealt with at length in the previous report, was evaluated by an independent audit in 2001. The evaluation report concluded that the Custodial Institutions Act was generally operating satisfactorily. The Act was found to have enhanced the uniformity and accessibility of prison rules and regulations, although it was evident that in practice not everyone was familiar with the new legislation. There was also still uncertainty in practice about the penal programme introduced by the Act, under which

certain categories of prisoners are no longer kept in a custodial institution but are instead obliged to take part in activities designed to promote their rehabilitation and reintegration into society. Prisoners are now permitted to take part in the penal programme on a large scale.

134. On the basis of the evaluation the researchers made a series of recommendations, including proposals for changes in the law. As part of a process of change initiated by the Dutch prison system, the need for further or other changes to the penal rules and regulations is now being studied. This will in due course lead to a bill to amend the Custodial Institutions Act.

Interim Emergency Capacity (Drug Couriers) Act

135. An act providing for separate detention arrangements for drug couriers was in force from 2002 to 2005. This legislation – the Interim Emergency Capacity (Drug Couriers) Act – was necessitated by a huge increase in the number of drug couriers entering the Netherlands through Schiphol Airport, where their arrest caused great capacity problems in the remand centres and prisons. This created an emergency situation. The purpose of the Act was to exclude application of the Custodial Institutions Act and the Young Offenders' Institutions Framework Act to the detention of drug couriers. As such it introduced a slimmed-down basic regime to replace that of the Custodial Institutions Act and the Young Offenders' Institutions Framework Act. The act was repealed in March 2005. Since that date drug couriers have once again been detained in the ordinary custodial institutions.

Transfer to prison after conviction at first instance

136. An act providing for the transfer of prisoners from remand centres to prison after conviction at first instance was passed by the Dutch parliament in 2005. During the passage of the legislation through parliament, much attention was paid to the meaning of article 10 (2)(a) of the ICCPR. The amendment to the act entered into force on 1 January 2006. As a consequence of the amendment, people held on remand in a remand centre on suspicion of committing a crime are transferred to prison after conviction by a court of first instance. Before the law was changed, prisoners sentenced to a term of imprisonment were held in a remand centre until the judgment had become final and conclusive. This meant that many offenders served much or all of their sentence in a remand centre and not in prison. The government considered this to be undesirable because in remand centres there are only very limited opportunities for rehabilitation activities and for preparing prisoners for their return to society. Moreover, remand centres have only limited scope for operating differentiated regimes. Transfer to prison is not only in the interests of the prisoner but also has the

advantage for the prison system that prisoners can be assigned to a prison with a regime suitable for the prisoner and the stage of his imprisonment.

137. In the light of the wording and aims of article 10 (2)(a) ICCPR the Dutch government and Dutch parliament concluded that the change in the law was in keeping with the principle contained in this article, namely that accused persons should be segregated from convicted persons.

138. The Custodial Institutions Agency (DJI) is responsible for ensuring that the ministerial rules setting out the criteria for assignment and leave are in keeping with the aims of this act on the transfer of prisoners. Changes have now been proposed to the Prisoner Assignment, Placement and Transfer Order and the Custodial Institutions (Temporary Leave) Order. The changes will make it possible, for example, for prisoners who are down for transfer and whose convictions are not yet final and conclusive to be allocated to low-security institutions and allowed temporary leave from the institution. As these prisoners are still involved in the judicial process, DJI is consulting with the Public Prosecution Service about the proposed changes to the rules and their implementation. Not only amended rules and regulations but also good working agreements between DJI and the Public Prosecution Service are essential for the proper implementation of the legislation on the transfer of prisoners. The amendments to the rules and the working agreements are expected to be finalised shortly. In the meantime, prisoners will, wherever possible, be transferred to a prison after conviction at first instance, but will not yet be eligible for 'general leave', 'regime-related leave' or assignment to low-security institutions.

Institutions for persistent offenders

139. An Act of 9 July 2004 (Bulletin of Acts and Decrees 2004, 351) under which persistent offenders can be assigned to a special institution entered into force on 1 October 2004. This measure is mainly intended as a means of dealing with those who commit multiple offences. These are people aged 18 or over who have been the subject of an official police report on more than ten occasions in the past five years, at least one of these occasions being in the current year. This group is responsible for a disproportionately large share of crime in the Netherlands.

140. The new measure makes it possible to tackle persistent offenders more effectively since the criminal courts can now sentence them to a longer term of imprisonment (maximum of two years). The existing measure for dealing with hard-drug addicts who are persistent offenders (Compulsory Treatment of Addicts) has in effect been subsumed into this new

measure. To ensure that offenders are not released quickly back into the community after a short custodial sentence, a person-oriented rather than a case-oriented approach has been adopted. The court takes into account not only the individual offences but the defendant's overall criminal record. Persistent offenders are held in an institution (or wing of an institution) specifically intended for them.

Camera surveillance

141. The regulations on camera surveillance in inmates' cells were amended again in 2005. Until 2005 the use of camera surveillance was regulated by ministerial order. As camera surveillance involves a major infringement of prisoners' privacy, it was considered desirable to regulate this matter by act of parliament. A basis for camera surveillance of prisoners was created by means of changes to the law. Camera surveillance involves the day and night monitoring of an inmate in his cell. It is permitted in a cell only if it is necessary for the protection of the inmate in the light of his mental or physical condition and also, in special cases, where inmates have been allocated to an individual regime or a high security institution.

Cell sharing

142. The scope for having prisoners share a cell was increased by an amendment to the Custodial Institutions Act in 2004. This change in the law was prompted by severe shortages of prison capacity, as a result of which prisoners had to be released early in many cases, and by the wish to use existing capacity more efficiently. The change in the law was preceded by a pilot in which inmates volunteered to share a cell. To increase the scope for cell sharing, cells in Dutch custodial institutions have been refurbished and made suitable for occupancy by two or more inmates.

Cell capacity

	2000	2001	2002	2003	2004	2005
Formal capacity of prison system at year-end: criminal law system	11,409	11,732	12,034	14,608	16,029	15,089
Formal capacity of prison system at year-end: foreign nationals detained with a view to extradition or expulsion (from 2003 including places in expulsion centres)	1,208	1,074	1,444	1,728	2,091	2,668
Formal capacity of prison system at year-end: Young Offenders' Institutions	1,906	2,122	2,346	2,399	2,566	2,571
Formal capacity of prison system at year-end: persons detained in custodial clinics under hospital orders	1,183	1,222	1,264	1,303	1,401	1,637
Prison system: occupancy of high security units at year-end	18	13	13	8	6	5
Young Offenders' Institutions: number of criminal allocations each year (entering either from the community or from a police cell)	2,291	2,873	2,848	3,270	3,683	3,536
Young Offenders' Institutions: number of non-criminal allocations each year (entering either from the community or from a police cell)	529	555	785	955	1,009	1,221
Number of persons awaiting placement in a custodial clinic	138	136	153	177	187	242

Electronic tagging

143. Electronic tagging has been used since November 2003 as one of the ways of modernising the application of penalties. It is a means of executing a custodial sentence at a place other than a custodial institution, generally at the offender's home. The whereabouts of the person concerned are monitored by means of electronic equipment. This is a trial that will be continued after evaluation. Electronic tagging is a substitute for a term of imprisonment not exceeding three months for convicted persons who are at liberty and would previously

have been required to report to an institution to serve their sentence. The intention is to include electronic tagging as a principal sentence in the Criminal Code in due course.

Evaluation of Young Offenders' Institutions Framework Act

144. The Young Offenders' Institutions Framework Act entered into force on 1 September 2001. The Act provides a framework for the execution of custodial sentences in young offenders' institutions and meets the need for a comprehensive regime regulating both the substantive and the procedural aspects of detention in such institutions.

145. The Act was evaluated by means of an independent audit in 2004. The evaluators concluded that although the Act is broadly satisfactory, certain aspects could be improved. They found that the need for clear regulations governing the legal status of persons detained in young offenders' institutions was to some extent at odds with the need to allow the staff of such institutions a degree of latitude in providing a quick and instructive response to undesirable behaviour by inmates.

146. Another important recommendation of the evaluation team concerned people placed in young offenders' institutions under civil rather than criminal law. The category consists of young people who have serious behavioural problems but are not criminals. Pending placement in a youth treatment centre, they are allocated to a young offenders' institution where they mix with young criminals. The evaluation team considered this to be undesirable and advocated that they be held separately. This recommendation was in keeping with the government's own proposals for separating these categories. It was also in keeping with a report on this problem by the National Ombudsman dating from 2004. He noted that the length of such temporary placements is unacceptable (often between several months and a year) and that these young people are therefore deprived of treatment for too long. According to the Ombudsman, everything possible must be done to ensure that temporary placement in a young offenders' institution does not exceed six weeks. The preparations to terminate the joint placement of young people detained under the criminal and the civil law in young offenders' institutions are now in full swing.

The Glen Mills School

147. The Glen Mills Schools were started in the United States some 25 years ago as residential schools for young male delinquents, particularly gang members, referred by the criminal courts. A Glen Mills School (or rather the Dutch variant) opened in the Netherlands on 1 January 1999. The school's aim is to change the behaviour of the young people 'from

anti-social to pro-social'. The Glen Mills School uses a positive group culture to try to change the standards and values picked up by the boys on the streets.

148. The main ways of achieving this are: peer pressure, a positive normative culture, confrontation, hierarchy, student participation, participation in a clear and structured programme from early morning to late evening and the provision of a good education. The young people themselves (known as students) are responsible for creating a positive normative culture. Besides teaching different behaviour, the school regards training as a key goal. An education programme tailored to the level and pace of the individual student is designed to provide a completed education. The GMS takes the view that its students are not 'bad boys'; they may have done bad things, but are not intrinsically bad. A system of six status levels, each with its own privileges, encourages the students to climb in the hierarchy. GMS emphasises the value of dispensing with restraints such as fences and bars as this helps the students to learn to take responsibility for themselves and for others. Nonetheless, the school takes numerous measures to ensure that the students do not abscond (attendance is checked every twenty minutes; everything is done in groups of at least three students; students may not have a special relationship of trust with staff or fellow students; coaches spend much time monitoring security). Students receive follow-up counselling of diminishing intensity for one and a half years after they leave the school. The aim of this counselling is to help these young men reintegrate into society as quickly and fully as possible.

Of those receiving counselling 56% are estimated to be doing well and 18% to be having a hard time, while 26% probably reoffend (i.e. have been arrested). These figures are from an internal report of the Counselling Programme Unit (May 2004) to estimate the recidivism of 117 ex-students who had left the Glen Mills School between 3 months and 3 years ago.

Hospital Orders (Framework) Act

149. The Hospital Orders (Framework) Act entered into force in October 1997, together with a number of amendments to the Criminal Code and the Code of Criminal Procedure concerning hospital orders. The main aim of the Hospital Orders (Framework) Act is to achieve a balance between the three key elements of hospital orders: security, treatment and legal status. The Act greatly increases the number of grounds on which hospital order patients can lodge complaints. The aim of the legislation is to do justice to the specific character of hospital orders as a non-punitive criminal measure positioned at the overlap between forensic psychiatry and penal custody.

150. An evaluation of the new legislation was published in 2001. The main findings were as follows. The Hospital Orders (Framework) Act seems to strike the right balance between the various elements - legal status, security and treatment. However, a problem that emerged was that hospital order patients have few enforceable rights in relation to the nature, course and evaluation of their treatment. It was concluded that hospital order patients should have more influence over the broad lines of their treatment (rather than over its day-to-day details) and over the main decisions (on rehabilitation) based on the opinion of the institution about the success of the treatment. The evaluation shows that in custodial clinics the monitoring board plays an important role in implementing the internal legal status of the patients.

151. It may also be concluded from the evaluation that the legal status of hospital order patients is broadly satisfactory under the Hospital Orders (Framework) Act and its implementation in practice, and in general seems to combine well both with the basic security requirement and with the ultimate aim of providing forensic psychiatric treatment.

152. On 22 September 2005 an interim parliamentary committee of inquiry was established to investigate the operation of hospital orders following a number of very serious incidents involving hospital order patients who had absconded while being escorted outside the institution and then committed crimes such as sexual assaults. The aim of the inquiry is to determine why the hospital order system in its present form is unable to adequately protect society from people who reoffend by committing serious crimes even after treatment. The inquiry is also intended to produce recommendations that can help to improve the hospital order system and introduce appropriate legislation and policy in this field.

Pre-placement detention problem

153. A problem that is essentially unconnected with the new legislation but is nonetheless identified in the evaluation is the sharp increase in the number of hospital orders and the related problems of the number of people detained in a remand centre pending placement in a custodial clinic. These waiting times can often exceed a year.

154. For this reason two people awaiting placement (Brand and Morsink) lodged applications with the European Court of Human Rights (ECtHR), which gave judgment on 11 May 2004. It held, among other things, that although there was bound to be some discrepancy between available and required capacity, a delay of six months (Brand) and fifteen months (Morsink) in admission to a custodial clinic constituted a violation of article 5.1 of the European Convention on Human Rights. A reasoned request of the government to

have the case referred to the Grand Chamber of the ECtHR was rejected by decision of 10 November 2004.

155. Since this judgment the Dutch government has taken measures to increase the capacity substantially. Funds have been earmarked in the budget of the Ministry of Justice for 120 extra treatment places from 2006. This increase is in addition to the expansion of the number of long-stay places, which should also generate extra treatment capacity. 140 extra long-stay places will be created in the next two years. They are intended for the growing group of hospital order patients whose treatment proves fruitless and who therefore remain a risk to society. This increase will bring the number of long-stay places to 200 in 2007. As hospital order patients whose treatment has been completed can now be transferred to long-stay places at an earlier stage, this will free up an extra 140 treatment places. As a result of this increase of 260 treatment places in total, it is expected that the transfer of hospital order patients from pre-placement detention in remand centres can be speeded up.

Long stay

156. In terms of treatment a long stay can be compared with the closed wing of a psychiatric hospital for chronic patients. A long stay is intended for inmates who are likely to reoffend, have little or no prospect of returning to society, have spent six years or more in a custodial clinic and are 'tired of treatment'. Long-stay capacity is at present 118 places. Preparations are being made to increase this capacity, and 164 places are expected to be available in 2008.

Enforcement of Penalties Inspectorate

157. The Enforcement of Penalties Inspectorate was formally established on 1 January 2005. For organisational purposes, this independent inspectorate forms part of the Ministry of Justice. The remit of the Inspectorate covers all branch offices of the probation service and all services and institutions coming under the Custodial Institutions Agency (DJI). Although the head offices of the probation service and DJI are not a primary object of investigation, they may be included in a thematic investigation.

The duties of the Inspectorate are:

- to monitor the effectiveness and quality of the implementation of sanctions, in particular in terms of welfare and security;
- to identify risks in the local implementation of penalties;
- to monitor compliance with legislation;
- to coordinate with other supervisory authorities;

- to assess the operation and completeness of other monitoring arrangements.

158. The primary role of the Inspectorate is to provide constructive advice rather than to exercise strict supervision. Promoting the quality of implementation is its chief aim. Wherever possible, the Inspectorate makes use of work done by others. Its monitoring is therefore complementary. The Inspectorate guards against duplication of effort, competing jurisdictions and conflicting results. By coordinating its activities with those of other supervisory authorities, the Inspectorate can help to reduce the monitoring burden. It is free to carry out investigations as it sees fit and to formulate its own findings. The Inspectorate reports to the Minister of Justice, who may add his own position to the report and then make it public by forwarding it to the House of Representatives.

In so far as the Inspectorate carries out its own investigation, four categories may be distinguished:

- the auditing of an institution or branch office;
- thematic investigation;
- examination of incidents;
- follow-up investigations.

High security institutions (EBIs)

159. By judgment of 4 February 2003 the European Court of Human Rights (ECtHR) held that the regime in the high security prison in Vught, in particular the routine strip searches and the length of the period over which they were carried out, constituted a breach of the prohibition of inhuman or degrading treatment contained in article 3 of the ECHR. Following this judgment of the ECtHR, the institution made changes to the system of strip searches. The rules of the high security institution no longer provide that strip searches should be carried out together with the weekly cell inspection, but still state that they should take place fairly regularly. The number of strip searches has been reduced. The need for such searches is examined on a case-by-case basis. A search of body and clothing is carried out in the following cases:

(a) when a prisoner enters and leaves the institution;

(b) when a prisoner is placed in a punishment cell or in segregation;

(c) before and after a visit, if this has taken place in an area without a transparent partition wall;

(d) in other circumstances if this would be in the interests of maintaining order or security.

160. Various other changes have also been made. A plan to reward good behaviour is drawn up for each inmate. On arrival at the high security institution the prisoner is allocated to a regime that does not offer more facilities than those prescribed by law. If it transpires in due course that he has behaved correctly, he will have the opportunity to earn some extra privileges such as more frequent airing and more sporting and recreational activities. Improving contact between prison staff and prisoners will continue to require constant attention. For example, a fence has been placed along the airing yards so that staff can walk alongside the yard and chat to the prisoners. Some modifications are being made to the surroundings in which the prisoners live. Greenery has recently been planted. The prisoners are being encouraged to take more part in the available activities. A possible increase in the number of activities is being kept under review. The aim of this modification is to minimise the damage that may possibly be caused by a stay in a high security institution.

As the survey below shows, the occupancy rate of the high security institution in Vught has steadily declined in recent years.

Vught high security prison - occupancy rate 2001 - 2006

2001 - 2002

Month	Cap.	Occ. rate	%
Jan 01	24	17	70.8
Feb 01	24	16	66.7
Mar 01	24	17	70.8
Apr 01	24	18	75.0
May 01	24	17	70.8
Jun 01	24	16	66.7
Jul 01	24	15	62.5
Aug 01	24	15	62.5
Sep 01	24	15	62.5
Oct 01	24	15	62.5
Nov 01	24	14	58.3
Dec 01	24	14	58.3
Jan 02	24	13	54.2
Feb 02	24	15	62.5
Mar 02	24	15	62.5
Apr 02	24	13	54.2
May 02	24	13	54.2
Jun 02	24	13	54.2
Jul 02	24	11	45.8
Aug 02	24	11	45.8
Sep 02	24	12	50.0
Oct 02	24	12	50.0
Nov 02	24	12	50.0
Dec 02	24	12	50.0

2003 - 2004

Month	Cap.	Occ. rate	%
Jan 03	24	13	54.2
Feb 03	24	14	58.3
Mar 03	24	14	58.3
Apr 03	24	15	62.5
May 03	24	15	62.5
Jun 03	24	14	58.3
Jul 03	24	12	50.0
Aug 03	24	10	41.7
Sep 03	24	8	33.3
Oct 03	24	8	33.3
Nov 03	24	7	29.2
Dec 03	24	7	29.2
Jan 04	18	8	44.4
Feb 04	18	8	44.4
Mar 04	18	7	38.9
Apr 04	18	6	33.3
May 04	18	7	38.9
Jun 04	18	7	38.9
Jul 04	18	8	44.4
Aug 04	18	8	44.4
Sep 04	18	8	44.4
Oct 04	18	8	44.4
Nov 04	18	7	38.9
Dec 04	18	7	38.9

2005 - 2006

Month	Cap.	Occ. rate	%
Jan 05	18	6	33.3
Feb 05	18	4	22.2
Mar 05	18	4	22.2
Apr 05	18	6	33.3
May 05	18	5	27.8
Jun 05	18	5	27.8
Jul 05	18	5	27.8
Aug 05	18	5	27.8
Sep 05	18	6	33.3
Oct 05	18	6	33.3
Nov 05	18	7	38.9
Dec 05	18	6	33.3
Jan 06	18	6	33.3
Feb 06	18	3	16.7

Psychiatric Hospitals (Compulsory Admissions) Act

161. There are just under 1,000 psychiatric hospitals in the Netherlands to which people may be compulsorily admitted. The reason for the increase since the previous report is a change in the policy on designating such institutions. The policy is now that the institutions must have a designation for each separate address if they are to be allowed to admit people compulsorily. In other words, the increased number reflects the fact that institutions have

branches at various addresses. Each branch must be designated separately by the Ministry of Health, Welfare and Sport. There were 12,071 compulsory admissions in 2005.

162. There have been two changes and/or additions to the ways in which people may be committed to a psychiatric institution by court order since the previous report submitted by the Netherlands. The first to enter into force (on 1 January 2004) was the conditional order. The special feature of such an order is that if the patient complies with the conditions he is not committed to the psychiatric hospital. The second, which entered into force on 1 January 2006, was the observation order. Such an order allows the observation of a person who is seriously suspected of suffering from a mental disorder of such a kind that they are a danger to themselves. The observation and assessment takes place during a compulsory admission (maximum of three weeks) in a psychiatric hospital. The observation order is intended for people who have no understanding of their own sickness, decline any form of assistance or treatment and are not prepared to agree to a voluntary admission. The effects and effectiveness of observation orders are being assessed for the first two years by an independent committee appointed for this purpose in 2005. Only then will be it decided whether or not to continue the instrument of observation order. If not, the scheme will lapse automatically.

163. A change has also been made to the right of complaint. When a patient lodges a complaint, a ruling is first given by an independent committee. If the patient does not agree with the ruling he may appeal to the district court. There is no right of appeal for the institution concerned. Another change to the right of complaint took effect on 1 March 2006. It is now possible both for a patient and for the treating institution to appeal in cassation against the judgment of a district court on a complaint by a patient.

164. The independent Evaluation Committee for the third evaluation of the Psychiatric Hospitals (Compulsory Admissions) Act was established on 1 December 2005 (term ends on 1 July 2007). The role of the committee is to advice the Government on whether the Act has functioned adequately since the various changes and improvements have been made and what further changes, if any, are necessary.

Report of the National Ombudsman on the living conditions of asylum seekers in the application centres

165. As a consequence of a change to the Aliens Act in 1999, the time limit on the initial processing of an asylum application was extended from 24 to 48 office hours. As a result, the period in which asylum seekers can be held in an application centre was extended to 3-4

days and nights. The National Ombudsman noted in a report in 2001 that asylum seekers were often forced as a result to stay for days at a time in unhygienic, hot and overcrowded waiting areas without any privacy. He regarded this as contrary to the requirement of humane reception conditions and pointed out that it was hardly conducive to the proper processing of asylum applications. The Ombudsman also noted that there was no statutory basis for the present practice in some application centres of carrying out the reception procedure behind closed doors. The Ombudsman made a series of recommendations to the Minister of Justice. One of them was that the Minister should arrange to be advised without delay by experts about how application centres are organised and furnished.

On 31 August 2001 the Ombudsman informed the State Secretary for Justice that he considered that almost all aspects of his recommendations had been carried out. However, he continued to disagree with the State Secretary about the nature of the limitations on the freedom of movement imposed on the asylum-seekers in some application centres.

Article 11: Prohibition of detention for inability to fulfil contractual obligations

166. No new developments have occurred and reference should be made to previous reports.

Article 12: Freedom of movement

Passport Act

167. A bill to amend the Passport Act was presented to the House of Representatives on 22 April 2002. The chief aim of this bill is to create a legal basis for the inclusion of biometric data in Dutch travel documents in order to prevent their fraudulent use. The bill is discussed later in this report (in relation to article 17).

Urban Areas (Special Measures) Act

168. After being passed by the Senate on 20 December 2005 the Urban Areas (Special Measures) Act was published in the Bulletin of Acts and Decrees and entered into force on 29 December 2005. One of the results of the Act is that 'disadvantaged' people (i.e. people without earned income or a pension or student grant or loan) can be refused permission to occupy dwellings in certain areas. Another way in which demand for certain dwellings can be controlled in such areas is by reserving them for certain socioeconomic categories. This measure represents interference with the freedom to choose one's residence as laid down in

article 12 ICCPR. During the passage of the Act through parliament, both this point and the question of whether such interference constitutes a form of indirect discrimination were considered at length.

169. On account of these two issues, a provision was included in the Act that the areas in which the disadvantaged can be refused should generally be of limited size and that the measure may be applied only in areas where habitability is seriously jeopardised by a high concentration of disadvantaged persons. In principle, any municipality which can show that it has a serious problem qualifies under the Act. A hardship clause has been added to the Act as the result of amendment by the House of Representatives. If municipalities apply this measure individuals can invoke the hardship clause if they consider that the measure operates unreasonably in their case. Municipalities may apply to the Minister of Housing, Spatial Planning and the Environment for permission to apply this measure. In such cases the municipality must clearly show that it has exhausted all other options for promoting the habitability of the district concerned and that they have proved inadequate. The measure to refuse the disadvantaged in certain districts can be applied only for a maximum of four years, with a possible extension for a further four years. Subject to these conditions the legislator considers that the measure is justified and proportional, for example in the light of article 12 ICCPR.

Case law

170. In the cases of Landvreugd and Olivieira the European Court of Human Rights (ECtHR) reviewed the prohibition orders that had been imposed by the Mayor of Amsterdam after the applicants had been found in possession of hard drugs or openly using hard drugs. The applicants were banned for 14 days from designated emergency areas. Neither applicant lived or worked in the area concerned. Both were convicted and sentenced for failing to comply with their prohibition orders. In each case, the ECtHR held that there had been no violation of Article 2 of Protocol No. 4 to the European Convention on Human Rights (liberty of movement) (ECtHR, Olivieira and Landvreugd v. the Netherlands (judgments), nos. 37331/97 and 33129/96, 4 June 2002).

171. In a somewhat similar case the Court of Appeal of 's-Hertogenbosch accepted a prohibition order which had been imposed by the Mayor of Venlo under the general municipal by-laws. In its judgment of 4 February 2003, the Court of Appeal found that the order did not violate Article 12 ICCPR or Article 2 of Protocol No. 4 to the European Convention on Human Rights. The Court of Appeal accepted that the by-laws were sufficient as a legal basis (LJN AF3987).

Article 13: Prohibition of expulsion without legal guarantees

New Aliens Act

172. A new Aliens Act (the Aliens Act 2000) entered into force on 1 April 2001. However, the general principles of policy on aliens remain unchanged. The Netherlands pursues a restrictive policy on the admission of aliens, with the exception of refugees. Admission is possible on the following grounds (section 13): (a) international obligations (Convention relating to the Status of Refugees, human rights conventions); (b) a genuine Dutch interest; (c) urgent reasons of a humanitarian nature.

The most important changes to the former Aliens Act relate to the asylum procedure. Some aspects of this procedure have, however, remained unchanged. Just as under the former Aliens Act, asylum seekers will be eligible for a residence permit on the grounds of international obligations (including the Geneva Conventions and the European Convention on Human Rights), on the grounds of urgent reasons of a humanitarian nature, and because return to the country of origin would constitute an exceptional hardship in view of the overall situation there.

173. The main changes are as follows. Under the former procedure, rejected asylum seekers could lodge an objection and ask for their case to be reconsidered. This administrative objection stage has ceased to exist. Decisions on applications must now be made within six months, and rejected applicants may apply for judicial review by the courts. They may remain in the Netherlands pending the outcome of this application for review; there is no longer any need to obtain a separate decision to this effect. As the objection stage has been abolished it is important for the quality of the decisions of the Immigration and Naturalisation Service (IND) on applications to be improved. To achieve this, asylum seekers are now given the opportunity to clarify their reasons for seeking asylum and, where there is a stated intention to reject their application, to express their views on this intention before the decision is finalised. The IND takes their response into account in making its decision. As the decision makes clear how the alien and the IND view the application, the courts have a sufficient basis for ruling on the lawfulness of the decision. The new Act introduced the possibility of appeal to the Council of State.

174. Section 45 of the Aliens Act 2000 states that a decision rejecting an asylum application automatically has the following consequences:[2] the alien is no longer lawfully

[2] Section 45 of the Aliens Act 2000 reads:
1. The consequences of a decision whereby an application for the issue of a temporary residence permit as referred to in section 28 or a residence permit for an indefinite period as referred to in section 33 shall, by operation of law, be that:

resident in the Netherlands, he is required to leave the Netherlands, his access to benefits in kind for asylum seekers is terminated and the competent officers are authorised to expel him. This type of decision is therefore known as a multi-purpose decision. The Aliens Act 2000 abolished the objection procedure. An asylum seeker whose application for asylum is rejected may now apply directly to The Hague District Court for judicial review of the decision. He may, in principle, await the result of this application in the Netherlands, unless for example it is a repeat application. Appeal against the district court's judgment lies to the Administrative Jurisdiction Division of the Council of State ('the Division'). Appeal also lies to the Division from a ruling of the judge hearing applications for provisional relief on the alien's application for judicial review. Unlike aliens who apply to the district court for judicial review, an alien who has lodged an appeal with the Division may not await the outcome of the appeal in the Netherlands. Under section 42 of the Council of State Act, the Division may either uphold the district court's judgment (adopting or improving on the grounds for the judgment) or, reversing the judgment in whole or in part, do that which the district court should have done. Under section 91, subsection 2 of the Aliens Act 2000, the Division may also choose to uphold the district court's judgment without stating its grounds for doing so.

175. In the case of Hilal v. the United Kingdom (judgment of 6 March 2001, Reports of Decisions and Judgments 2001-II) the ECtHR held that although judicial review extends only to ensuring that the decision was not one that no reasonable administrative authority could take, this did not detract from the effectiveness of the remedy. The ECtHR held, inter alia, as follows: *'The Court is not convinced that the fact that this scrutiny takes place against the background of the criteria applied in judicial review of administrative decisions, namely,*

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a. the alien is no longer lawfully resident, unless another legal ground for lawful residence as referred to in section 8 exists;
b. the alien should leave the Netherlands of his own accord within the time limit prescribed in section 62, failing which the alien may be expelled;
c. the benefits in kind provided for by or pursuant to the Central Reception Organisation for Asylum Seekers Act or another statutory provision that regulates similar benefits in kind will cease in the manner provided for by or pursuant to that Act or statutory provision and within the set time limit;
d. the aliens supervision officers are authorised, after the expiry of the time limit within which the alien must leave the Netherlands of his own accord, to enter every place, including a dwelling, without the occupant's consent, in order to expel the alien;
e. the aliens supervision officers are authorised, after the expiry of the time limit referred to in (c), to compel the vacation of property in order to terminate the accommodation or the stay in the residential premises provided as a benefit in kind as referred to in (c).
2. Subsection 1 shall apply mutatis mutandis if:
a. it has been decided under section 4:5 of the General Administrative Law Act that the application will not be processed, or
b. a residence permit has been revoked or not renewed.
3. The consequences referred to in subsection 1 shall not take effect as long as the application for judicial review lodged by the alien suspends the operation of the decision.
4. Our Minister may order that, notwithstanding subsection 1, chapeau and (c), the benefits in kind provided for by or pursuant to the Act on the Central Reception Organisation for Asylum Seekers or another statutory provision that regulates benefits in kind of this nature will not cease for certain categories of aliens. The order shall be repealed no later than one year after its notification.

rationality and perverseness, deprives the procedure of its effectiveness'. Review of this kind is applied by many European countries.

176. Rejected asylum seekers are automatically under an obligation to leave the Netherlands within a set period. The rejection also automatically ends entitlement to accommodation and other benefits as well as empowering the authorities to evict the persons concerned and expel them from the country.

177. The Act provides for a ministerial order extending the normal period for decision-making for certain categories of aliens from six to eighteen months. This option can be used if a brief period of uncertainty is expected regarding the situation in the country of origin, if the situation in the country of origin is expected to improve in the short term, or if the number of applications submitted is so large that the IND cannot decide on all of them within the prescribed period of six months.

178. Every asylum seeker whose application is successful is given the same temporary permit for a maximum of three years, to which a package of entitlements is attached. There is only one asylum status. Under the new Act there can be no further litigation once someone has been granted a temporary permit, as there is only one status. However, after three years asylum seekers may qualify for a permanent residence permit. This means there are two types of residence permit: a temporary one, possibly followed three years later by a permanent one.

179. In the new system, all asylum seekers admitted on a temporary basis have the same rights and entitlements. These entitlements are to a large extent determined by international obligations. Holders of temporary permits will be allowed to take paid employment. They are also eligible for student grants and housing. Family reunification is possible, but only for permit holders with an independent income at least equal to the social assistance level (this is stricter than the former requirement of 70% of that level). This financial criterion does not apply to spouses and minor children who entered the Netherlands at the same time as the principal applicant and have the same nationality, or who entered the Netherlands not later than three months after the principal applicant was granted a temporary permit. In these cases no income requirements are set. Nor does the new financial criterion apply to other dependants of the principal applicant, such as partners or children over the age of 18 who entered the Netherlands at the same time as the principal applicant or within three months thereafter, and who have the same nationality.

180. The new Act also provides measures for supervision, and for the restriction and deprivation of liberty. Under the former Aliens Act (section 19), officials could exercise their

powers only if they had 'specific indications of illegal residence'. In practice, this meant that there were scarcely any checks on the identity of aliens in the streets, as there would seldom be any overt signs of illegal residence. For this reason, this criterion has been changed and now reads: 'if facts and circumstances exist that give rise to a reasonable suspicion, on objective grounds, of illegal residence' (section 50). This criterion encompasses safeguards against the discriminatory use of these supervisory powers.

181. Since entering into force the Aliens Act 2000 has been amended several times, partly in order to implement EU directives (2001/51/EU and 2001/55/EU). One of the changes to the asylum procedure is that the validity of temporary asylum residence permits has been extended from three into five years.

The Aliens Act 2000 has also been amended to change the system of judicial review of deprivation of liberty.

AC procedure

182. The AC procedure, also known as the 48-hour procedure, is the procedure applied in application centres. The procedure lasts for a maximum of 48 hours (spread over a number of working days). It starts with questions to determine the identity, nationality and travel route of the asylum seeker. Part of this investigation is the first interview. After the first interview it is decided whether the application is suitable for consideration in the application centre or whether more time is need for investigation. In the former case a further interview is conducted with the asylum seeker in the application centre. During this second interview the asylum seeker can explain why he/she has requested asylum. If more time is needed for a decision on an asylum application, the asylum seeker is transferred to a reception centre for the remainder of the procedure.

183. The procedure in the application centres is a full asylum procedure, in which asylum seekers have the opportunity to explain their reasons for requesting asylum in full. There is free legal aid and asylum seekers who have their application for asylum rejected may apply to the courts for review of the decision. This procedure is not restricted to manifestly unfounded cases. If an asylum request can be rejected after careful consideration and without the necessity of further investigation, it can be dealt with in this procedure. Since December 2004 it has been possible for residence permits to be granted under a fast-track asylum procedure. If further investigation is necessary in order to make a decision with due care, the case is dealt with in the standard procedure. Each asylum application is judged first and foremost on its own merits.

Sliding scale

184. A sliding-scale approach is taken to decisions to cancel a residence permit and declare a person to be an undesirable alien. In immigration law the sliding scale is based on the strength of the foreign national's ties with Dutch society: the stronger the ties the more serious must be the offence in order to justify termination of residence. It follows that where a foreign national commits a criminal offence the longer he has been lawfully resident in the Netherlands the more serious must be the offence in order to warrant termination of residence. Several aspects of the sliding scale have been adjusted in order to combat more effectively the residence or continued residence of legal and illegal aliens who commit crimes. The sentences necessary in order to expel an alien after a given length of residence have been lowered. In future, the term of the measures imposed will also be taken into account. Finally, the length of the sentences and measures imposed will be aggregated more often than in the past before applying the sliding scale.

Rules and policy on unaccompanied minor asylum-seekers

185. Unaccompanied minors may apply for asylum in the Netherlands. In accordance with standard policy, such applications are carefully checked to ensure compliance with the conditions for granting a fixed-term asylum residence permit. The terms of reference are the same as those for adult asylum seekers, although account is taken of the special position of the minors. Unaccompanied minors whose application for an asylum residence permit is refused must return to their country of origin or to another country to which they can reasonably be expected to gain entry. This is also in the interests of the children themselves. It is generally in the interests of the child to be reunited with its parents, family and community. This is why there will be an assessment in each individual case of whether return is possible and responsible. However, the facts and circumstances of the case may suggest that the minor could not survive independently in the country of origin or in another country to which he or she could reasonably be expected to gain entry. In such cases it will be decided whether in the event of return the reception facilities available for the minor are adequate according to local criteria. If this is not the case, the minor may be eligible for an ordinary fixed-term residence permit subject to the limitation 'residence as an unaccompanied minor'. Even after a residence permit is renewed the basic rule is that an unaccompanied minor should in principle return. The criteria of this special policy are applicable only to unaccompanied minors who have applied for asylum.

186. Under this policy a residence permit may be granted only:

(a) to a minor, i.e. a person who has not yet reached the age of 18 and is not and has not

been married or registered as a partner or declared to be adult. A minor is not treated as an adult solely by virtue of an unrecognised traditional marriage. Nor is a marriage recognised if this would be contrary to public policy. Examples would be forced marriages or marriages between young children. Anyone who has entered into a registered partnership under Dutch law is deemed by law to be adult. However, a person who cohabits without being married is not thereby treated as adult (even if there is a cohabitation contract).
(b) to an unaccompanied minor, i.e. a person who is not accompanied by his adult parent(s) or by a guardian already appointed abroad;
(c) by the authorities of their own volition in the course of an asylum procedure after it becomes clear that the application for an asylum residence permit for a fixed or indefinite term will be refused (under the policy on minor aliens and asylum seekers the residence permit is therefore not granted on application);
(d) to a minor who is unable to survive independently in the country of origin or in another country to which he could reasonably be expected to gain entry or if the reception facilities available to the minor in the country of origin or another country to which he could reasonably be expected to gain entry are not adequate according to local criteria.

187. Compliance with the special policy on unaccompanied minor asylum seekers and foreign nationals is assessed ex nunc. It is therefore the situation at the moment when the decision is made and not the situation at the moment of application for asylum that is important.

Amnesty for long-stay asylum seekers / Return project

188. Over 2,300 foreign nationals were granted a residence permit in 2002-2003 under an amnesty and the inherent discretionary power of the Minister for Immigration and Integration to derogate from policy. Failed asylum seekers who entered the Netherlands before 1 April 2001 and who are not and can no longer become eligible for a residence permit and do not leave the Netherlands of their own accord are expelled through the departure centres or, if they can be quickly removed, through expulsion centres. Under the amnesty 2,097 people have been notified that they are eligible for a residence permit. They comply with the objectively verifiable criteria of the amnesty.

189. Failed asylum seekers who are governed by the old Aliens Act (i.e. the legislation applicable before 1 April 2001) and who are not and can no longer become eligible for a residence permit and do not leave the Netherlands of their own accord are expelled wherever possible. After consultation with the Association of Netherlands Municipalities and the four major cities, the government has decided to make an extra effort to arrange the

return of the group of asylum seekers covered by the old Aliens Act. This applies to approximately 26,000 people who are staying in accommodation provided either by the Central Reception Organisation for Asylum Seekers or by the municipalities. As and when these people exhaust their legal remedies, they will be contacted by the Immigration and Naturalisation Service (acting in collaboration with the municipalities, the Central Reception Organisation for Asylum Seekers and other organisations for foreign nationals) and be closely and individually supervised in arranging their actual return and departure. To encourage them to return independently, the government is studying the possibility of establishing a scheme under which they receive their airfare and an as yet undefined amount to enable them to start afresh in their country of origin (the 'Rean-plus scheme'). Foreign nationals who produce objective evidence that they are unable to return for reasons beyond their control can obtain a residence permit on this ground. If the arrangements described above do not result in departure, the persons concerned will be evicted from the reception facilities by or with the assistance of the municipalities. They will then be transferred to a departure centre (or an expulsion centre if expulsion is possible in the short term). Where people are unwilling to leave of their own volition and cannot be deported forcibly because they do not cooperate and there is also no prospect of their deportation, their stay in a departure centre will be terminated after eight weeks. Thereafter they may be detained with a view to deportation.

Requirement of independent income

190. Other changes concerning foreign nationals are the requirement that those seeking entry for the purpose of family formation (as opposed to family reunification) should have an independent income at least equal to 120% of the minimum wage, and the requirement that both partners be at least 21 years old. These requirements (contained in the Aliens Decree 2000) entered into force in 2004.

Genital mutilation

191. The Human Rights Committee expressed its concern that a well-founded fear of female genital mutilation (FGM) or of other traditional practices in the country of origin that infringe the physical integrity or health of women (article 7 ICCPR) does not always result in favourable asylum decisions, for example when genital mutilation, despite a nominal legal prohibition, remains an established practice that would pose a risk to the asylum seeker. Indeed, the Netherlands has not incorporated any interpretative guidance and/or procedural safeguards on FGM in legislation. However, the Aliens Act implementation guidelines do include several paragraphs on gender-related persecution and a gender-inclusive approach to asylum applications. The policy rules are in line with the instructions in the UNHCR

Handbook. The Dutch asylum procedure also incorporates a number of safeguards to ensure that female claimants can fully disclose relevant facts. These safeguards include separate interviews of husband and wife, female interviewers and separate independent residence status for women (rather than indirect status). In certain circumstances, political or other opposition to FGM may warrant the conclusion that a person is a refugee under the 1951 Geneva Convention (section 29, subsection 1 (a) of the Aliens Act 2000). But in most cases FGM is deemed to be an inhuman or degrading treatment as referred to in Article 3 ECHR (section 29, section 1 (b) of the Aliens Act 2000). If there is a real risk that a woman or girl will be subjected to FGM, she may be granted an asylum residence permit. The Netherlands complies with its obligations regarding asylum in cases where there is a justified fear of FGM. Women who fear that they will be subjected to FGM and cannot find protection elsewhere can obtain asylum in the Netherlands.

Article 14: Entitlement to a fair and public hearing

Threatened witness

192. The Dutch government regrets the fact that the Committee expressed concerns in its concluding observations on the third report about the use of the possibility of interviewing witnesses in a manner that conceals their identity from the defence. The legislation incorporates adequate safeguards, for example the fact that the witness is heard under oath by an independent examining magistrate who assesses whether he or she meets the criteria laid down in article 136c (in conjunction with article 226g) of the Code of Criminal Procedure. In such cases the threat must be such that there are reasonable grounds for fearing that the life, health or safety of the witness or members of his/her family is in jeopardy or that his/her family life or social and economic existence is at risk. There must be a real threat capable of objective assessment by the court. A subjective fear that something may happen is not sufficient to qualify a person as a threatened witness. Moreover, the case must involve serious crimes. The defence may appeal to the district court against the decision of an examining magistrate to grant the status of threatened witness (article 226b Code of Criminal Procedure).

193. When the witness is questioned the examining magistrate makes every effort to ensure that the questions raised by the defence are answered, provided that this would not result in disclosure of the witness's identity. The defence will therefore always be given the opportunity to raise the questions which it wants answered. In this respect no limitation is put on the right to examine witnesses. On the other hand, the defence has no absolute

entitlement to obtain an answer to all its questions. Under the current law too, the courts are also entitled to prevent questions being answered. They may do this for example in the interests of the investigation (by barring the use of bugging equipment), in the interests of State security (to protect the sources of the intelligence services) or to prevent intimidation and improper treatment of victims or witnesses.

194. Nor does a defendant have an absolute right to a physical confrontation with a witness; however, his right to ask questions about the correctness and reliability of the statement must be safeguarded. The Dutch regulations also make it possible to allow limited anonymity (omission of personal particulars of members of surveillance and arrest teams, witness disguise in court and voice distortion). A decision to grant limited anonymity may be challenged on appeal.

195. Physical protection measures may also be taken if this is necessary. Nonetheless, it must be noted that the arrangements for threatened witnesses will remain necessary for a special category of cases. An evaluation by the University of Leiden (1996) shows that the statutory regulation is regarded as exceptional and is applied sparingly and cautiously, and as such has a clear function.

196. The European Court of Human Rights has held in various cases that the application of the Dutch regulations on hearing threatened witnesses does not constitute an infringement of article 6 ECHR. In the case of Mink K. v. the Netherlands (ECtHR 4 July 2000, appl. no. 43149/98) the ECtHR held that a person who is a member of a criminal organisation should realise that in general people who are aware of his criminal acts may feel threatened by him. The threatened witness procedure provides a solution in such cases. The ECtHR has held that if the rights of the defence are observed as carefully as possible under the threatened witness procedure the procedure can be deemed to be in accordance with article 6 ECHR. It should be noted in this connection that other evidence besides the statements of the threatened witness must be adduced.

Article 15: Principle of nulla poena sine previa lege poenali

197. The Dutch courts have consistently held in relation to article 15 ICCPR (and the virtually identical provisions of article 16 of the Constitution and article 7 ECHR) that they include the requirement of determinability. This means that it must be possible for an individual to know for what actions he may be punished. This is a requirement of legal

certainty. The legislator may therefore be expected to draft the definition of offences as clearly as possible. It should not be forgotten here that the legislator sometimes defines offences rather vaguely (using general terms) in order to ensure that acts that deserve punishment do not fall outside the scope of the definition. This vagueness can be inevitable, because it is not always possible to foresee how the interests to be protected will be violated in the future and because (if this could be foreseen) the definitions of offences would otherwise be too refined, with the result that overall clarity would cease and the interests of the general clarity of the legislation would be damaged (see inter alia Supreme Court 31 October 2000, NJ 2001/14). In this case the Supreme Court held that the imposition of a fine for offering for sale a consignment of curly lettuce with a nitrate content higher than permitted in the commodities legislation did not constitute an infringement of the nulla poena principle since the term 'lettuce' in the Vegetables Nitrate Content (Commodities Act) Regulations could be deemed sufficiently broad to include subcategories of lettuce such as curly lettuce.

198. In 2002 the Supreme Court held in a judgment that a prohibition of assembly contained in the 1997 general municipal by-laws of Tilburg was binding. The defendant in this case had submitted that the term 'assembly' in the relevant article of the general municipal by-laws was too indeterminate and unclear to fulfil the requirements resulting from article 16 of the Constitution. The Supreme Court held that in view of, among other things, what was said in the explanatory notes on this provision about the meaning attributed to this expression in common parlance it was sufficiently clear what acts in public places were prohibited and punishable and the defendant had had a sufficient opportunity to adjust his behaviour accordingly (Supreme Court 28 May 2002, NJ 2002/483).

199. On 18 September 2001 the Supreme Court gave judgment in the case of the 'December murders' committed in Suriname in 1982. It followed from the judgment that the former Surinamese army commander, D.D. Bouterse, could not be prosecuted in the Netherlands for involvement in the murders. One of the reasons why a prosecution could not be brought was that the offences dated from December 1982, whereas the legislation on which prosecution would be based (the Torture Convention (Implementation) Act) was not introduced until 1989. The Supreme Court took the view that the Act could not be applied with retroactive effect. It noted that the UN Convention against Torture did not set aside the constitutional and treaty law prohibition of criminal legislation with retroactive effect. The possibility that this prohibition was contrary to customary international law (i.e. the worldwide acceptance that torture should be punishable with retroactive effect) was left undecided by the Supreme Court. Article 94 of the Constitution bars the courts from ruling on whether the constitution or acts of parliament (and hence the prohibition in article 16 of the Constitution)

are compatible with customary international law (Supreme Court 18 September 2001, NJ 2002/559).

200. The national courts have held in various administrative law proceedings relating to social security that – in the light of the last sentence of article 15 (1) ICCPR – the appellants should benefit from a reduction in an administrative fine in the period between the commission of the offence and the imposition of the administrative sanction (see inter alia Central Appeals Court for Public Service and Social Security Matters 1 November 2005, LJN AU5652).

Article 16: Right to recognition as a person before the law

201. As no new developments have occurred, reference should be made to previous reports.

Article 17: Right to liberty and security of person

Privacy in the Dutch Constitution

202. As explained at A (on fundamental rights in the digital society) the government decided in October 2004 not to present a bill to amend articles 10 (privacy) and 13 (privacy of correspondence) of the Constitution. The government is now working to prepare new articles, which will be published if possible before mid-2007.

Compulsory Identification (Extended Scope) Act

203. The Compulsory Identification (Extended Scope) Act entered into force on 1 January 2005. The purpose of this change in the law is to empower the police, special investigating officers and supervisory officials to ask citizens to identify themselves. As a result of the entry into force of this provision, everyone aged 14 and over is obliged to produce an identity document at the first request of a police officer, special investigating officer or supervisory official. This identification duty can be satisfied by production of a valid identity document, namely a passport, valid Dutch travel document or document which a foreign national can possess under the Aliens Act 2000.

204. Since 1 January 2005 the other documents which may be produced are a driving licence or, in the case of people from the EU or the EEA, a valid national, diplomatic or service passport or driving licence. The aim of the new legislation is to provide an instrument

to support and strengthen enforcement and supervision by government across the board. The government considers that expansion of the duty of identification is necessary in an increasingly complex society. The proposed power is sufficiently clear and not unduly broadly formulated and is in keeping with the specific duties to be performed by officials charged with enforcing statutory rules. The police or other supervisory officials may not demand the production of identification arbitrarily. They must have a reason. It must be necessary for the performance of their duties, for example for traffic control, provision of assistance, investigation of offences or maintenance of public order. No separate checks of possession of identity documents are carried out. The government considers that the imposition of this identification duty is a relatively light measure, which is not disproportionate to the aims to be achieved.

205. If someone is unwilling or unable to produce a valid identity document when requested to do so by the police or a supervisory official, he may be taken to a police station. There further steps are taken to determine his identity. He may also be liable to a penalty not exceeding €250. People of Dutch nationality may identify themselves by means of a passport, driving licence or Dutch identity card. Foreign nationals may identify themselves by means of an alien's document. The Board of Procurators General's Instructions on the Extension of Compulsory Identification came into force at the same time as this legislation.

DNA legislation in criminal law

206. The statutory scope for using DNA analysis to solve criminal cases has been expanded as a result of the positive experience of such analysis and the rapid pace of technological advance. Even under the extended scheme, DNA analysis in connection with criminal proceedings may be performed only for the purpose of identifying the perpetrator by profile matching and may not be used to obtain other information irrelevant to profile matching, for example identifying hereditary characteristics or diseases. Under the new legislation, however, the power to order the collection of a DNA sample exists in respect of more offences. Although suspicion of commission of a crime is still a requirement, it need no longer be a specific crime of violence or sex crime or a crime that carries a sentence of 8 or more years' imprisonment. In future, suspicion of a crime for which pre-trial detention is admissible will be sufficient. Nor is there any longer a requirement that the DNA analysis should be 'urgently necessary in order to reveal the truth'. It is sufficient that it is 'in the interests of the investigation'. This means that it is no longer necessary to apply first of all other less far-reaching investigative powers. The importance of the investigation is a broader – albeit not unlimited – criterion. It covers only the interests of the investigation of the crime of which the person concerned is suspected, not the solution of other or future crimes.

207. The new legislation expressly regulates the position of a suspect or non-suspect who cooperates voluntarily. Voluntary cooperation as referred to here exists if the person concerned has given written consent for a DNA sample to be taken (article 151a, paragraph 1, last sentence, and article 195a, paragraph 1, last sentence, Code of Criminal Procedure). Before such consent is given, the public prosecutor should inform him of his right to be assisted by counsel or (in the case of a third party) by a lawyer in making his decision. Before giving his consent the person concerned should also be informed in writing of the consequences of his voluntary cooperation. These differ according to whether the person concerned is or is not a suspect. He must therefore be informed whether his cooperation is requested as a suspect or as a third party.

208. The consequences of voluntary cooperation as a third party differ in one important respect from those of voluntary cooperation as a suspect. The DNA profile of a third party is not recorded in the DNA database and is not matched either with other DNA profiles already in the database. The position is different with a suspect. The DNA profile of a suspect is entered in the DNA database and not only compared with the DNA profile of the trace in the case in which he is voluntarily cooperating but also with the other profiles recorded in the DNA database. A third party who cooperates voluntarily and whose DNA profile is found to match the trace in the case can naturally become a suspect. In that case his profile is included in the DNA database and compared with other DNA profiles recorded in the database.

209. This legislation is complemented by rules on DNA analysis in the case of convicted persons. As discussed above in relation to the legislation on suspects, the DNA profiles of suspects who are later convicted are kept in the DNA database for a long period. The aim is to assist in solving past and future crimes committed by the convicted person. Keeping the DNA profile in the database may also deter the offender from committing further offences. To this extent the DNA database can have a special preventative effect. The legislation on DNA analysis in the case of convicted persons builds on the reasons given above for keeping the DNA profiles of convicted suspects. Even in cases where there was no real necessity during the preparatory investigation to determine the DNA profile of the suspect and enter it in the DNA database, it is important to be able to solve efficiently any other past or future offences committed by the offender and, if possible, deter him from committing further offences. This is why the public prosecutor is obliged under the new legislation to order that DNA material be taken for analysis from each convicted person who comes within the scope of the Act, in so far as no DNA profile was entered in the DNA database during

the preparatory investigation. It is not a requirement that the public prosecutor believes there to be a danger of reoffending. However, provision is made in the Act for an important exception to the obligation to take a DNA sample. No order for a DNA sample is made if it is reasonable to assume that the determination and processing of a DNA profile of the convicted person would not be of assistance in preventing, investigating, prosecuting and trying offences of the convicted person.

210. A new type of DNA analysis which is now regulated by statute and expands the possibilities of such analysis in preparatory investigations in criminal cases is the identification of observable external personal characteristics of an unknown suspect. This new type of analysis can be used where traditional DNA analysis and other methods of investigation have failed to yield any result. DNA analysis to identify external traits is used by the police and criminal justice authorities as a last resort in solving crimes. The idea is that in these cases the DNA material found at the scene of the crime should, if possible, provide a basis for a composite drawing by yielding information about the sex, race and, in due course, other observable external personal characteristics of the unknown suspect. Examples of these other characteristics are the colour of the eyes and hair, facial features, height and weight.

211. The main safeguard in this Act is that the purpose of the analysis must be to determine observable external personal characteristics. It follows that the characteristics must be those which a person has from birth and which are immediately visible to everyone. This criterion implies that the aim of the DNA analysis may not be to identify:

- personal characteristics such as hereditary disorders and diseases which cannot be said with certainty to have already manifested themselves to the person concerned or which are only potentially present;
- hereditary disorders and diseases which manifest themselves in the form of a given type of behaviour or mental condition.

Data requisitioning powers in criminal investigations

212. The Telecommunication Data Requisitioning Act entered into force on 1 September 2004. It regulates the powers granted in the Code of Criminal Procedure to requisition telecommunication data in the interests of a criminal investigation. This concerns first and foremost the requisitioning of telecommunication traffic data. The power is more precisely defined than previously since the data that can be collected are designated in an order in council. A distinction is made in this connection between data that relate to the past and data that relate to the future. The power may be exercised by the public prosecutor where there is

a suspicion of a crime for which pre-trial detention is possible or where the investigation is into certain serious crimes committed or planned by a criminal organisation (serious breach of the legal order).

213. Second, the Act regulates the power to demand user data. This concerns the identity and address of people who use telecommunication networks or services. Under the privacy legislation previously applicable, the decision on whether data could be provided in a specific case was made by the data holder. Under the Telecommunication Data Requisitioning Act the power may be exercised by an investigating officer where there is a suspicion of a crime or where the investigation is into certain serious crimes committed or planned by a criminal organisation (serious breach of the legal order).

214. The Data Requisitioning Powers Act entered into force on 1 January 2006. It regulates the powers granted in the Code of Criminal Procedure to requisition the data of persons, institutions and businesses in the interests of a criminal investigation. At issue here are the power of an investigating officer to requisition identifying data (i.e. name, address and administrative characteristics) and the power of the public prosecutor to requisition data other than the identifying data and to demand sensitive data (i.e. data concerning religion, belief and sex life). The act also includes a power to demand that data are provided immediately after receipt (monitoring). The last two powers may be exercised only with the prior order of an examining magistrate.

215. The greater the impact of the data on the privacy of the individual the stricter are the conditions. The same is true of the acts required of the citizen or institution. A requisition must be made in writing and an official record is made of the provision of the data. The powers may be exercised only where there is a suspicion of a crime or where the investigation is into certain serious crimes committed or planned by a criminal organisation and only in the interests of the investigation. Personal data may be requisitioned only if they can help to solve a criminal case. In addition to the power to requisition data, the act also confers a power to order persons to cooperate in decrypting data. The Act also provides for a power to search places where data are recorded.

216. The Financial Services Industry Data Requisitioning Act came into force on 1 June 2004 to implement the protocol to the EU Convention on Mutual Assistance in Criminal Matters. It regulated the powers contained in the Code of Criminal Procedure to requisition the data of institutions in the financial services industry. The specific provisions for the financial sector lapsed as a result of the entry into force of the Data Requisitioning Powers

Act. This does not affect the financial institutions concerned since the powers remain the same.

217. As indicated above, the Code of Criminal Procedure contains specific powers for requisitioning certain telecommunication data (traffic data and user data). Data that may be requisitioned under the Telecommunication Data Requisitioning Act may not be requisitioned under the Data Requisitioning Powers Act according to the provisions of the latter Act. However, data that are available from telecom providers and cannot be collected under the powers to requisition telecommunication data may be requisitioned under the Data Requisitioning Powers Act.

Functioning of the Data Protection Authority

218. The Dutch Data Protection Authority (CBP) is an independent supervisory authority that monitors the application of the legislation concerning the processing of personal data. The Data Protection Authority advises the government on data protection issues, gives information to the general public, hears claims concerning possible breaches of the data protection legislation, approves codes of conduct and privacy regulations and has investigative powers too. The 2000 update on the third periodic report of the Netherlands included a section on the activities of the Data Protection Authority (nos. 101-105). Information on its activities, with English summaries, can be found at its English website www.dutchdpa.nl.

219. In the period covered by this report the Data Protection Authority offered its advice on numerous occasions, for instance when legislation was being prepared or evaluated. The recommendations and comments of the Authority often play an important role in parliamentary debates on proposed legislation in the field of data protection and privacy. In July 2005 the Authority concluded a cooperation agreement with the Independent Post and Telecom Authority (OPTA). The two organisations made arrangements for supervision of the protection of personal data in the telecom sector. A similar agreement was concluded with the Inspectorate for Work and Income (IWI), once again in July 2005. The aim of the cooperation is to make more effective and efficient supervision of the use of personal data in the area of social security (Government Gazette 129, 7 July 2005).

220. In October 2002 the Data Protection Authority advised the police that any decision on a request to have access to the police registers should be in writing. An interesting issue concerns the exchange of information between the police services of the Kingdom of the Netherlands in Europe and the services of the Netherlands Antilles and Aruba. Noting that

there is no specific privacy legislation in force in the Netherlands Antilles and Aruba, the Authority advised the Minister of Justice in April 2002 that a bill enabling the exchange of information concerning individual criminal records should contain express safeguards. The Authority also issued guidelines for the use of surveillance cameras in public areas (including shops and residential areas) in 2002. In 2002 the Data Protection Authority issued a second updated edition of its report 'Goed werken in netwerken' (Working well in networks'), in which it seeks to strike the right balance between the legitimate interests of employers and the protection of employees' privacy. The protection of privacy in the information infrastructures of the government and of health service organisations was the subject of two background studies published in 2002.

221. On 12 July 2005 the Data Protection Authority issued a paper proposing a number of changes to the Data Protection Act (WBP). The proposals include changes to 'special data' (i.e. data on health, race or religion). Current legislation prohibits the processing of these data, but problems occur in practice, for instance when accountants and auditors have good reason to use these data.

222. Meanwhile, the results of research ('Burgers en hun privacy' (Citizens and their privacy)) commissioned by the Data Protection Authority were published in February 2005 . The outcome of the study was that the public believe that data protection is important, even if they accept that other interests may prevail in certain circumstances. People are not exactly aware of how their data are processed and tend to mistrust businesses in this respect. 92% of respondents stated that the Data Protection Act was an important asset (although they were not really familiar with its contents), but were largely unaware of the existence of the Data Protection Authority.

Searching for weapons on suspicion

223. In 2003 a section was added to the Municipalities Act – section 151a – to empower mayors to designate areas within their municipality where members of the public can be searched for weapons without being suspected of a criminal offence (as one of the measures to combat violence involving weapons). This legislation is discussed above in relation to article 6.

Camera surveillance of public areas

224. The Camera Surveillance of Public Areas Act was passed in June 2005 (Bulletin of Acts and Decrees 2005, 392). The Act explicitly authorises the use of camera surveillance by local authorities. Some 50 to 80 municipalities have recently experimented with camera

surveillance. The government believes that there is wide public support for camera surveillance, and the initial fear that the public would perceive camera surveillance as an interference with their privacy has proved unfounded. Under the new Act the municipal council can empower the mayor to introduce camera surveillance in a particular area if he believes it necessary for the maintenance of public order. Cameras must be static and surveillance must always be over long periods (i.e. ad hoc camera monitoring is not allowed). There should be clear signs to alert members of the public to the fact they are entering an area that is under surveillance; surveillance may take place only in public places. Images may be recorded and stored, and used later for criminal investigations. The Dutch Data Protection Authority published its recommendations on the bill, which played an important role during the parliamentary debate. These recommendations led to several changes to the bill to improve the standard of privacy protection. Parliament believes that the Act meets the requirements of proportionality and subsidiarity and is fully compatible with article 17 ICCPR.

Inclusion of biometric data in passports

225. A bill to amend the Passport Act was presented to the House of Representatives on 22 April 2002. The chief aim of this bill is to create a legal basis for the inclusion of biometric data in Dutch travel documents. The use of biometrics increases the reliability of the travel document and thus helps to prevent identity fraud in which people acquire a false identity. The statutory provisions contain a number of basic principles to ensure the specific use of biometrics and guarantee the privacy of the holder of the travel document.

226. The bill provides that a travel document should not only contain a photograph and signature but also record the holder's digitised biometric characteristics for the purpose of verifying that he or she is the person to whom the travel document was issued. The term biometric characteristics means a person's unique physical characteristics which can be used to verify identity.

227. In view of the need for privacy protection and the requirements resulting from the Data Protection Act it is important to ensure that the biometric data are processed in a fair and lawful manner, are obtained only for clearly defined and justified purposes and are not subsequently processed in a manner that is incompatible with these purposes. This condition is met by the provisions of the Passport Act regulating the collection and recording of biometric data. The Act and the rules based upon it can therefore be consulted by members of the public to find out for what purposes they must make biometric data available, what biometric characteristics are involved, how the data are collected and recorded and to whom they may be disclosed.

228. For the purposes of privacy protection, it is also important to note that the Act provides that the data to be recorded in a travel document concerning biometric characteristics of the holder are taken from the person concerned by the authority competent to receive the application and are immediately digitised in such a way that no physical or personal characteristics of the holder can be reconstructed from them. The chosen technology records the biometric data in a template. This template is recorded in a chip on the travel document itself and also – together with the other personal data of the holder of the travel document – in the electronic travel document records. The digital data is stored on the template in such a way that it is not possible to reconstruct the physical or personal characteristics of the holder of the travel document from the template (the algorithm cannot calculate backwards and reconstruct the complete original (analogue) signal).

229. Finally, the protection against forms of unlawful or careless use is important for privacy protection. For this purpose a special provision has been included in the Passport Act for the protection of data on the biometric characteristics of the holder of the travel document and it has been arranged that the travel document records can be accessed only by name and document number.

230. The bill is still pending before the House of Representatives and has been deferred in connection with the introduction of an EU Regulation on the inclusion of biometric characteristics in travel documents.

Police Data Bill

231. A bill to replace the present Data Protection (Police Files) Act was presented to the House of Representatives in October 2005. The Police Data Bill, as it is known, provides greater scope for the use of personal data and creates possible ways of using data for a purpose other than that for which they were processed and supplying police data to persons and institutions outside the police. At the same time, the bill provides safeguards for members of the public against unjustified infringements of their private life.

232. The bill has been drawn up on the basis of the following criteria:

- police data may be processed only in so far as this is necessary to carry out police duties properly;
- the data to be processed should be accurate and have been lawfully obtained; if it is found that they are not correct, they should be destroyed;

- police data should be used only for certain well-defined and justified purposes and in so far as the use is proportionate to the purpose;
- the more specific the use made of the data the more protection should be provided against infringement of privacy;
- access to police data should be limited by means of authorisations;
- police data which are used for separate purposes in different systems may be combined in certain circumstances;
- data may be supplied by the police to other organisations (i.e. other than the police and the Royal Military and Border Police) if this is expressly permitted by law or is essential in the public interest.

233. The organisation of the new Police Data Bill is based as far as possible on the system and principles of the Personal Data Protection Act. The bill describes the purposes for which data may be processed by the police. Like the Data Protection (Police Files) Act the bill is intended to regulate the powers to obtain police data. Such powers are derived both from the Code of Criminal Procedure, the Police Act 1993 and the regulations based on this legislation and from specific legislation. Under the bill, the Data Protection Authority (CPB) supervises the processing of police data in accordance with the provisions laid down by and under the law.

Public Administration (Probity Screening) Act

234. The Public Administration (Probity Screening) Act (BIBOB) entered into force in 2003. Basically, the Act introduces statutory grounds on which administrative authorities can refuse or cancel licences or grants or not award public contracts if there is a serious risk that this would facilitate criminal activities. To provide administrative authorities with relevant information about this, a BIBOB Office has been established at the Ministry of Justice.

235. The Act was introduced as it had been found in practice that the existing legislation was insufficient to enable public bodies to render themselves proof against criminal organisations and activities. The report of a parliamentary committee of inquiry also noted that as various economic sectors were vulnerable to both organised and corporate crime, the public and private sectors were suffering great financial damage.

236. The Act centres on the need to strike a balance between infringement of the right to respect for private life on the one hand and protection of the integrity of the administrative authorities on the other. This receives express attention in the organisation of the instruments. Privacy is protected as far as possible by arranging for the screening to be

carried out by a national agency, yet at the same time the administrative authorities themselves retain the power to use the instruments and to request and even disregard advice. It is also important to note that the instruments under the act are part of a broader approach by the administrative authorities to tackling crime, in order to guarantee observance of the principles of subsidiarity and proportionality.

237. The BIBOB Office obtains the data it needs for its investigations from the personal data records of the police, the justice authorities, the Tax and Customs Administration and the special investigation agencies and from the registers of the Chambers of Commerce. At present the BIBOB Office advises mainly on tendering procedures in the fields of construction, the environment and ICT and the granting of licenses to firms in the hospitality sector, the prostitution and escort trade, soft drug retail outlets ('coffee shops' and 'smart shops'), transport, the environment, construction, housing corporations, and orders of drugs for medicinal use. In view of the radical nature of the legislation, a broadly constituted monitoring committee has been set up to oversee the working of the act and carry out an evaluation after three years.

Article 18: Freedom of religion and belief

Debate on manifestation of religion or belief

238. In the current reporting period, various court cases centred on the conflict between freedom of religion and religious expression on the one hand, and the ban on discrimination on the other. These led to the publication of the policy document entitled 'Fundamental rights in a plural society', referred to in the section on article 5. The policy document (see the English translation attached to this report) describes a number of these cases. It concluded that the outcome of these cases provided no justification for amending Dutch law. The document also concluded that there was no need to regulate the wearing of clothing that might express religious views, such as headscarves, unless urgently required for reasons of functionality, safety or the exercise of authority in an impersonal manner.

Case law

239. In the period covered in this report, the rights of students and teachers to wear headscarves and veils at school caused a number of controversies. In 2003 the Equal Treatment Commission (*Commissie Gelijke Behandeling*) issued an opinion on whether there was any scope under equal treatment legislation for prohibiting these items of clothing. The Commission said that exceptions to the ban on direct discrimination can only be

sanctioned by law, while exceptions to the ban on indirect discrimination are only allowed when an objective justification can be found. Examples of the latter are impediments to communication in the classroom and conflict with the religious identity of a school (see (available in Dutch only) *Advies inzake gezichtssluiers en hoofddoeken op scholen*, 16 April 2003, opinion 2003/01, www.cgb.nl).

240. The Ministry of Education subsequently issued guidelines, which set out three requirements for 'objective justification': (a) the aim must be legitimate; (b) appropriate means must be used; and (c) the means used must be necessary to achieve that aim (*Leidraad kleding op scholen*, May 2003, www.ocw.nl).

241. In a dispute relating to the same question, the Equal Treatment Commission issued an opinion on 6 August 2003 concerning the right to wear headscarves at school. A Catholic secondary school had banned the wearing of headscarves or any other clothing that reflected non-Catholic religious beliefs. Although the Commission considered this to be unequal treatment, it was of the opinion that it fell within the scope of one of the exceptions to the general prohibition on discrimination: religious schools can apply admission requirements that are necessary in order to uphold their religious identity (CGB, 5 August 2003, opinion 2003-122).

242. In another case the Commission found that educational institutions may prohibit the wearing of the niqab, a veil that covers the entire face. The CGB accepted that the decision to wear the niqab may well be an expression of religious beliefs, but it found that the prohibition was justified: niqabs render communication between staff and students (and between the students themselves) more difficult. In addition identification of those visiting the school premises is impossible if niqabs are allowed (CGB, 20 March 2003, opinion 2003-40 40).

243. Yet another case was that of Samira Haddad, a Muslim woman who applied for the position of Arabic teacher at an Islamic school. She was turned down because she did not wear a head scarf. According to the staff rules at the school, all women teachers had to wear a head scarf unless they were non-Muslims, in which case the school board would offer a dispensation. According to the Commission, taking into account the requirement that exceptions to the standard of equal treatment should be narrowly interpreted, the school had not succeeded in establishing that the contested clothing requirement for a teacher of Arabic was necessary to uphold its religious identity. It therefore concluded that the discrimination in this case was unlawful. (CGB, 15 November 2005, opinion 2005-222).

244. In 2003 the Equal Treatment Commission also dealt with the case of a Protestant school that put a limit on the number of pupils in each class for whom Dutch was the second language. The Commission considered that this amounted to indirect discrimination on the basis of race, which was not justified on a number of grounds, including the fact that the maximum of 15% was arbitrary (CGB, 29 July 2003, opinion 2003-105).

245. In 2005, an organisation in Amersfoort that provides assistance to local residents regarding housing and other benefits, study costs, tax and debt problems asked the Commission to give an opinion on whether it was discriminating on grounds of religion by asking clients wearing a veil that covers the face to remove the veil during interviews with a member of staff. If the client did not comply, no assistance was provided. The organisation believed it was important for clients to cooperate in facilitating communication, which involves being able to observe facial expressions. The Commission concluded on 20 May 2005 that this constituted indirect discrimination because the rule particularly affected women who wear a veil covering their faces for religious reasons. There is no objective justification for such discrimination because there is a satisfactory alternative to terminating assistance: if the person concerned is assisted by a female member of staff, eye contact is possible. At a hearing before the Commission the organisation in question stated that in future veiled clients would be assisted by female staff (CGB opinion 2005-86).

246. As will be clear from the examples given above, the Equal Treatment Commission decides in each case involving the wearing of the veil on the basis of the specific circumstances, since these are of the utmost importance for the outcome of its deliberations.

Article 19: Freedom of expression

247. As explained under A (on fundamental rights in the digital society) the Government decided in October 2004 not to introduce a bill amending article 7 of the Constitution (freedom of expression). The bill was intended to formulate the article in question in such a way that it could withstand future technological developments. The Government is currently preparing a new article that will if possible be published before mid-2007.

Murder of Theo van Gogh

248. Filmmaker and newspaper columnist Van Gogh (47) was known for his vitriolic and provocative style, and his readiness to criticise the political establishment and various groups

in society. In 1991 he lost an appeal in cassation before the Supreme Court (*Hoge Raad*) against a conviction for insulting Jews and making fun of the holocaust. In the years before his death he wrote very critically about Muslims – first aiming at fundamentalists and then also targeting Muslims residing in the Netherlands who, in his eyes, were insufficiently integrated into Dutch society. In August 2004 Dutch television aired his short film, *Submission Part I*, which was meant to show the plight of Muslim women who are the victims of domestic violence. The film showed verses of the Koran displayed on the thinly-veiled, naked bodies of abused women. Some members of the Dutch Muslim community considered this film blasphemous. After the broadcasting of *Submission Part I* Van Gogh was threatened, as had happened before, but he declined offers of personal protection.

249. Theo van Gogh was murdered on 2 November 2004. His assailant shot and stabbed him several times and then fled into a nearby park. After a gunfight with the police, which left a police officer wounded, Mohammed B., a 26-year old man of Moroccan-Dutch nationality, was shot in the leg and arrested. The murderer used a knife to attach a letter to Van Gogh's body, the contents of which strongly suggested that the killing was inspired by radical Islamist convictions.

250. The letter contained a death threat directed against Ayaan Hirsi Ali, a member of Parliament who had cooperated with Van Gogh in making *Submission Part 1*. Ms Hirsi Ali too had received numerous threats and was already under protection. Following Van Gogh's murder, she felt compelled to go into hiding. Another member of Parliament, Geert Wilders, had been under permanent protection since October 2004; he decided early in December 2004 to go into hiding for a number of weeks. Ms Hirsi Ali and Mr Wilders were not the only ones to receive threats. Several academics who had published critical analyses of the position of Islam in Western society, like Professors Paul Cliteur and Afshin Ellian, as well as local politicians known for their open mind and attitude towards Islam, like Job Cohen, mayor of Amsterdam, had been threatened well before 2 November 2004.

251. Against this background it is understandable that the murder of Theo van Gogh, which followed on a series of threats, was perceived primarily as an attack on freedom of expression – not, as one might expect, by the State, but rather an attempt by radical Muslims to intimidate their opponents. In a series of demonstrations immediately following the murder, public figures and members of the public expressed their determination to uphold freedom of expression despite all threats. In 2005 Mohammed B. was sentenced to life imprisonment for murder and for making death threats to a member of parliament.

252. At the point when Van Gogh was murdered, changes were already under way to the organisation of security for politicians and other prominent figures (see under article 25). But the serious events described above did not in fact lead to changes to the law protecting freedom of speech. The conclusion reached in spring 2004 in the policy document 'Fundamental rights in a plural society' (that no constitutional amendments were required in this respect) remained valid in the Government's view even after these events had taken place.

Audiovisual self regulation censorship

253. The bill to amend the Media Act and the Criminal Code and to repeal the Film Censorship Act, which was mentioned in § 116 of the 2000 update to the third periodic report of the Netherlands, was adopted by parliament in December 2000. Since then a system of self-regulation designed to protect young people from the harmful effects of video, film and TV productions has come into force. With government support the industries concerned have established a separate institute (the Dutch Institute for the Classification of Audiovisual Media – NICAM) for this purpose. The functioning of NICAM and the Kijkwijzer (a viewing classification guide which provides information for users) was evaluated in 2002.

254. Following this evaluation the government concluded that NICAM had performed well in the first two years and that self-regulation was operating adequately. The protection afforded to young people improved in all industries, above all in the film industry. Following the abolition of statutory film censorship, the 'Kijkwijzer' viewing guide was successfully introduced. Cinema operators have monitored admission to films more strictly. There has been a considerable improvement in the case of television, and improvements are also occurring in the video and DVD trade.

255. The government also noted on the basis of the evaluation and the reactions to it – for example from parents' organisations and the Dutch Media Authority – that various matters still needed to be improved. These included:

- systematic quality control, for example by reclassification of products previously issued or broadcast; the classifications on older videos must be replaced;
- parents must be more closely involved in NICAM; organisations of school parents have been asked to participate in NICAM's advisory committee;
- more account should be taken of children when announcing during daytime television classified programmes that will be broadcast in the evening.
- the independent complaints committee should have a greater role in the disposal of complaints by NICAM itself.

256. This prompted a public and parliamentary debate on the theme of young people, violence and the media, and in particular the question of whether more can and should be done in the Netherlands to prevent young people from being harmed by what is shown on the media. This was partly in the light of new ways of disseminating audiovisual products. The Youth, Violence and the Media Committee instituted to advise on this subject presented its report in December 2005. This report describes how audiovisual media can harm, benefit or educate young people and makes recommendations. The government will examine in 2006 whether in the light of the report adjustments should be made to policy and to the self-regulation system.

Case law on freedom of the press

257. On 6 August 2003, The Hague District Court held that a by-law of the municipality of Wassenaar prohibiting the taking of photographs on and around the Eikenhorst estate, the home of Crown Prince Willem-Alexander and his family, was not binding. The case involved two conflicting fundamental rights, namely on the one hand the right to freedom of expression (including the freedom to seek information through newsgathering) and on the other the right to respect for and protection of private life. The court held that if the right to freedom of expression were to be limited the principles of proportionality and subsidiarity should be observed and that the by-law adopted by the municipality prohibiting photography was an excessively drastic instrument for ensuring the privacy of the occupants of the estate. The district court considered it relevant that there were other ways of achieving the same objective. It had not been alleged or shown that no reasonable alternative could be found (AB 2003/470).

258. On 28 July 2005, Amsterdam District Court gave judgment in interim injunction proceedings between the broadcasting organisation SBS and Quote Media about the publication of programme listings for the SBS6, Net 5 and Veronica television channels in IN magazine. SBS claimed that its intellectual property rights in these data prevented publication without its consent. Quote Media invoked its right to freedom of expression, since the case concerned data that were in the public domain and could be obtained from magazines or sources other than SBS. The court held, however, that as the requirement of consent is regulated in the Copyright Act (section 10, subsection 1) and the Media Act (section 71w) the interference with the exercise of the freedom of expression is provided for by law. The court also held that the protection of documents in general and – in view of the Dutch broadcasting system – the protection of programme listings in particular can be regarded as a public interest that warrants this interference.

259. On 2 September 2005, the Supreme Court held that a search of the premises of a journalist in order to seize material, as a result of which the right of freedom to seek information through newsgathering could be infringed, was by its very nature a far-reaching measure, partly because access could thereby be obtained to other data in the possession of the journalist which could possibly be protected by article 10 ECHR (and article 19 ICCPR). Even if seizure does not occur, such a measure constitutes an unauthorised infringement of the rights protected by article 10 ECHR unless it is justified by 'an overriding requirement in the public interest'. It follows that if the State is held liable in tort for infringing article 10 ECHR, it is in principle required to submit arguments and if necessary prove that this infringement is necessary; in so doing, it must show that the search and seizure was in accordance with the requirements of proportionality and subsidiarity. The decision – in the context of proportionality – as to whether the interests concerned are of such a serious nature as to justify infringement of the freedom of expression in the case in question should attach importance not only to the seriousness of the offences to be prevented and the seriousness of the threat to public safety but also to the extent to which it was likely that the offences would be committed and that public safety would actually be endangered. The case concerned a search-and-seize operation carried out with prior judicial leave by the criminal justice authorities at the office of 'Ravage' magazine in 1996. This was occasioned by a press release issued by Ravage about a letter received by the magazine in which responsibility was claimed for one of three bomb attacks committed in Arnhem in 1995 and 1996. During the search computers, subscriber databases, other editorial material and private particulars of the editors were seized. In the circumstances of the case the Supreme Court held that the danger was sufficiently concrete to warrant the search and seizure (NJ 2006/291).

Case law on other aspects of freedom of expression

260. On 9 January 2001, the Supreme Court held that utterances by a member of parliament about homosexuality did not constitute insulting behaviour within the meaning of the criminal law. The member of parliament in question, who belonged to a Calvinist political party, had explained in a magazine interview how the rank and file of his party applied religious rules and biblical teachings. The Supreme Court held that in the interview he had made a comparison with fraudsters and thieves which was – in itself – hurtful and/or offensive to practising homosexuals. However, the Supreme Court considered that it did not amount to insulting behaviour since the reference to fraud and theft was made by the defendant to indicate that his views on the equally sinful nature of a homosexual lifestyle were an intrinsic part of his religious beliefs. The Supreme Court held that the right to

freedom of religion and expression was a factor in the decision on whether or not utterances that could in themselves be regarded as hurtful or offensive were also insulting. It took into account in this connection that the relevant utterances were clearly directly connected with the expression of the defendant's religious views and were, as such, of importance for him in the public debate (AB 2001/303).

261. On 9 February 2005, the Administrative Jurisdiction Division of the Council of State held that the procedure for obtaining exemption from planning permission under section 19 of the Spatial Planning Act did not need to be followed in relation to the erection of a radio mast for the exercise of the right to freedom of expression (freedom to receive information), provided that the mast would not cause undue inconvenience to local residents. The mast in question was for an amateur radio operator, who held the licences required for this purpose and needed the mast to send and receive information. According to the Division, it was not necessary to follow the lengthy exemption procedure under section 19 of the Spatial Planning Act in this particular situation owing to the direct effect of article 10 ECHR and article ICCPR in Dutch law (AB 2005/224).

262. On 19 April 2005, the Supreme Court held that in the case of a person who had thrown a paint bomb at the golden coach on the wedding day of Crown Prince Willem-Alexander and Princess Máxima a criminal conviction for insulting behaviour could be upheld even in the light of the right to freedom of expression. The Court considered that the throwing of a paint bomb did not constitute an expression of opinion that was protected by article 10 ECHR or article 19 ICCPR. An act cannot be treated as an expression of opinion protected by the treaty provisions in question, even if it is based on a particular conviction, if it is not apparent that the act must be understood as a contribution to a debate on the subject to which the conviction relates. The throwing of a paint bomb cannot be regarded as a contribution to a debate (NJ 2005/566).

Article 20: Prohibition of war propaganda

263. No new developments have occurred, reference should be made to previous reports.

Article 21: Freedom of assembly

264. In the period covered in this report the courts allowed several controversial demonstrations to go ahead. In January 2002 Rotterdam district court (*rechtbank*) decided in

interlocutory injunction proceedings that a demonstration by extreme right-wing groupings should go ahead. Initially the mayor of Rotterdam had banned the demonstration, fearing hostility from onlookers. The police had indicated that maintaining public order would require a police presence comparable to that needed during the European Football Championship in 2000, which is more than what is required when local football clubs play high-risk matches. The court decided that the exercise of constitutional rights should be a legitimate reason for a greater effort on the part of the authorities than a football match. It found that it would not be disproportionate to require the authorities to provide for the necessary police presence. To prohibit the demonstration would be a breach of Article 9 of the Constitution (Rotterdam district court, LJN no.[3] AD8502; KG[4] 2002, 42; 24 January 2002).

265. Along similar lines, Zutphen district court decided in interlocutory injunction proceedings to suspend the ban on a demonstration "against the assassination of right-wing politicians", that was to take place days after Dutch politician Pim Fortuyn was shot in May 2002 (LJN no. AE2673; KG 2002, 136; 16 May 2002).

266. In 2005 Arnhem district court held in interlocutory injunction proceedings that limitations imposed on an anti-EU demonstration were in breach of freedom of assembly. The mayor of the city of Arnhem had imposed restrictions as to time and location: the demonstration was confined to an industrial estate and had to take place between 09.00 and 11.00. These restrictions were deemed necessary to prevent serious public disorder resulting from a counter-demonstration that was to be held on the same day by an anti-fascist movement. The district court ruled, however, that the restrictions were of such a severe nature that they could not be justified by the mere possibility of unlawful behaviour by third parties. Public authorities are responsible for taking appropriate measures to guarantee freedom of peaceful assembly; only in a situation involving circumstances beyond the authorities' control are severe curtailments on that freedom justified (LJN no. AT5504, judgment of 13 May 2005).

267. Questions were asked in Parliament following a demonstration held in Assen on 24 April 2002 in order to commemorate the Armenian genocide. During the demonstration the police ordered the participants to remove words such as 'Turkey' and 'Turkish government' from their banners. In Parliament the question was raised of whether the police were empowered to impose this type of censorship. The minister responsible admitted that this

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[3] LJN = *Landelijk jurisprudentienummer*, the national case-law registration number
[4] KG = *Kort Geding*, a weekly magazine featuring decisions given in interlocutory injunction proceedings

measure was not justified, even if the Public Assemblies Act allows measures to prevent serious disturbances. The police may only intervene if utterances are discriminatory or incite hatred. This was not the case in Assen (Proceedings of the House of Representatives 2001/02, appendix 1304). Following this case local authorities were reminded of the rules laid down in the Public Assemblies Act.

Article 22: Freedom of association

Termination of a political party's public funding

268. On 7 September 2005 The Hague district court ruled that the Netherlands had failed to fulfil its obligations under the UN Convention on the Elimination of All Forms of Discrimination against Women by granting a subsidy to a political party that does not allow women to become full members. The party in question is the conservative protestant SGP. In its judgment, the court ordered the State when deciding on funding under the Political Parties (Public Funding) Act, to exclude application of section 2 of the Act (the basis for granting funding) to the SGP as long as women cannot join the party on an equal footing with men. This was to apply from the date of the court's ruling. This judgment was executed, which means that henceforth any new applications for funding submitted by the SGP will be turned down on the grounds referred to in the judgment and under the circumstances it describes. Any decisions on funding already taken will not be reversed.

269. However, the State has appealed against the judgment. The Government believes that these proceedings have given rise to all manner of questions of principle on which it is important to obtain the views of the appeal court. These also include procedural issues such as the admissibility of a claim filed by an NGO. The question of the scope of the right to file a class action lawsuit is closely related to interference in the freedom of others, in this case of political parties. At stake here are issues of major importance such as the conflict between fundamental rights such as freedom of religion, and of association and assembly on the one hand, and the principle of equality and the right to equal treatment on the other. Also at issue is the relationship between the State and political parties. The government is firmly convinced that interference with political parties must be kept to a minimum. Finally, it should be noted that in 2006 the SGP modified its policy on women in a publication entitled "Man en vrouw schiep Hij hen. Politieke participatie in Bijbels perspectief" (Male and female He created them. Political participation from a Biblical perspective). Special membership for women was abolished and women were allowed to become ordinary members of the party, although they remain ineligible for leadership posts.

Membership of trade unions

270. Worthy of note is a judgment (330263) given by the limited jurisdiction sector of 's-Hertogenbosch district court on 5 March 2004. The ruling denied an employer's application for the dissolution of an employment contract pursuant to a provision (in force since 1999) in article 7:670, paragraph 5 of the Civil Code, which prohibits termination of an employee's contract on the grounds of membership of a trade union or the performance of trade union activities. The employee in question was an active member of a trade union. His conduct did not justify summary dismissal or termination of his contract.

Article 23: Protection of family

Domestic violence

271. Some 57,000 incidents involving domestic violence are reported annually to the police. This is just the tip of the iceberg – the real figure is thought to be somewhere around 500,000. The Government wants to put in place an effective strategy to combat domestic violence and in 2002 published a policy document entitled 'Privé Geweld – Publieke Zaak' (Private violence, public issue). On the basis of this document, the Ministry of Justice and other ministries, the Association of Netherlands Municipalities, the police, the Public Prosecution Service and other partners introduced a long-term programme in 2002 to develop a joint strategy and good infrastructure and facilities for combating and where possible preventing domestic violence. Successes under the programme include:

- a growing number of local and regional partnerships, such as the Domestic Violence Advice and Support Centres being set up by all the regional authorities for shelters with the aid of a special grant from the State Secretary for Health, Welfare and Sport;
- a national support programme developed by TransAct (centre for gender issues in health care and prevention of domestic violence) for all the partners in the system;
- progress with the police project: not only have the police greatly improved their expertise, they have also developed a special registration system that provides more insight into the nature and extent of domestic violence.

A few years ago, the Board of Procurators General issued instructions on domestic violence, with guidelines for the police, the public prosecution service and the probation service. The instructions encourage the police and public prosecution service to take action in cases of domestic violence, even if the victim does not file a complaint.

272. In 2006 the Association of Netherlands Municipalities was expected to complete a project funded with a grant from the Ministry of Justice. The intention was that over 250 municipalities would be ready to begin coordinating the local approach to domestic violence by the end of 2006. As stated above, Domestic Violence Advice and Support Centres were to be set up in all 35 regional authorities for women's shelters and in the large cities with funding from the Ministry of Health, Welfare and Sport.

Same-sex marriages

273. In January 1998 it become possible to enter into a registered partnership instead of marriage. This was open to persons of the same sex as well as persons of the opposite sex. And since 1 April 2001 same-sex couples have been allowed to marry.

Pension settlement (conflict of laws)

274. On 1 March 2001 an Act regulating the conflict of laws relating to pension settlement after divorce entered into force. The basic premise of the Act is that the question of whether divorced couples are entitled to a pension settlement is determined by the law governing their matrimonial property regime. A special rule has been devised to cover pension entitlements accrued under a Dutch pension scheme. Whatever the law applicable to the matrimonial property regime in question, such entitlements should be settled in accordance with the Dutch Pension Settlement (Divorce) Act. Pension entitlements accrued under a foreign pension scheme will be settled in accordance with the Dutch legislation only if the matrimonial property regime is governed by Dutch law. If the regime is governed by the law of another State, the foreign pension entitlements will only be split if the law in question provides for settlement.

Article 24: Protection of the child

Youth protection

275. If children's development is seriously under threat, and parents are shouldering too little responsibility for bringing them up, the Dutch authorities will take measures. It is usually enough for assistance to be offered by the state, provided the parents are willing to accept it. Sometimes, however, children have no parents or carers, or the parents refuse the assistance that is offered to them. In those cases, the authorities will apply to the court for a youth protection measure. The court may sometimes appoint a guardian, but it will usually issue a supervision order, with the parents retaining all or part of their parental responsibility. This is a less far-reaching measure. In all cases, however, the aim is to create a binding

framework within which the child or the family is given the assistance society feels it needs. An evaluation carried out several years ago identified a number of problems in providing youth protection services. The agencies responsible were failing to cooperate and coordinate their work and were slow to take action. What is more, existing legislation and implementation of child protection measures needed improving.

276. A programme has been launched to tackle these problems. Entitled 'Better Protected', it is made up of four projects aimed at seeking coherent solutions. The programme's objective is therefore to improve youth assistance. Minors whose development is under threat will be given more efficient and effective assistance. This will mainly be evident in the speed with which services are provided, and results achieved. The Ministry of Justice is implementing the programme in close cooperation with the public and private agencies responsible for providing youth protection services.

Improving implementation of youth protection measures

277. The project to improve implementation of youth protection measures comprises the following components.

1) Supervision orders

Between 2003 and 2005 a new procedure was developed for implementing supervision orders, which was tested in the regions. Essentially, family supervisors have adopted improved, systematic working methods, making matters clearer for their clients and encouraging their involvement. Since the results have proved to be highly satisfactory, for professional and client alike, these methods will be introduced nationwide.

2) Guardianship

A new working method will also be developed to implement guardianship orders, with the interests of the child always taking first place. A strategy will be established and then translated into a national procedure to be adopted by the Youth Care Offices and national guardianship agencies.

Sexual abuse of children

278. Sexual abuse is a form of child abuse, and so strategies aim to counter both. On the basis of foreign studies, it has been estimated that 50,000 to 80,000 children are the victims of abuse in the Netherlands each year, and that 50 children die as a result. However, only about 26,000 cases of child abuse are reported to the Advice and Reporting Centres for Child Abuse and Neglect (AMK) each year and in 2005, the AMKs were asked approximately 11,000 times for advice. This would suggest that many cases are never reported. To determine whether this is true, Leiden University and Amsterdam Free University are now

conducting studies into the incidence of child abuse in the Netherlands. The results are expected in late 2006.

279. The AMKs are part of the youth care offices, of which there is one in each province. Since 2000, the AMK network has covered the entire country. A regional information campaign was conducted in 2004 to make people more familiar with these centres and their work. A code of practice has also been developed to help professionals take the right action if they suspect that a child is being abused. It was introduced in the youth health care, education and childcare sectors between February 2004 and February 2006 and more than 60% of the institutions in these sectors are using it on a voluntary basis. The State Secretary for Health, Welfare and Sport has now decided to make the code compulsory, and is investigating scope to introduce the relevant statutory provisions.

280. Four regions – South Limburg, Zaanstreek Waterland, Amsterdam Noord and Flevoland – are working on a broad strategy to tackle child abuse. The aim is to achieve a comprehensive approach, covering all elements from prevention to aftercare, by mid-2006. These regions are working on a method to prevent child abuse wherever possible, to detect it at an early stage, and then to take adequate measures. This should lead to support services for parents, an early warning system for cases of abuse, and a package of measures to deal with them. The best practice and methods developed in these regions will be introduced nationwide wherever possible.

Adoption

281. Since 1 April 2000 it has been possible for same-sex couples living in the Netherlands to adopt children from the Netherlands. In this way, a child cared for by two men or two women in a lasting relationship enjoys the same legal protection as a child being cared for and brought up by a man and a woman. A new condition was introduced at the same time, i.e. children may only be adopted if they can expect nothing more from their birth parents. It is up to the court to decide whether this is the case, i.e. whether the birth parent can signify anything more to the child as a parent.

282. The Adoption (Conflict of Laws) Act entered into force on 1 January 2004 to govern adoption where there is a conflict of laws. Both the 1993 Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption and Dutch legislation on adoption remain fully in force. The basic principle underpinning the Adoption (Conflict of Laws) Act is that Dutch law is applicable to an adoption order made by a court in the Netherlands. However, where the permission or consultation of the birth parents or others is

concerned, the law of the country of which the child is a national applies. Where the establishment of family law ties between the adoptive parent and the child and the severance of those between the child and his birth parents are concerned, the consequences for a child adopted in the Netherlands will be determined by Dutch law. The Act also provides rules for the recognition of foreign adoptions that do not fall within the scope of the Convention referred to above, and allows for an adoption order made by a court in another country to be converted into an adoption under Dutch law. The Adoption (Conflict of Laws) Act led to an amendment of the Netherlands Nationality Act. Children whose adoption falls outside the scope of the Convention but is recognised by the Netherlands acquire Dutch nationality provided either the adoptive mother or father is Dutch.

Change of surname

283. Three amendments have been made to the rules relating to a change of surname by minors. The first, which came into force on 15 February 2001, allows parents to change a child's surname into that of their other children if the difference in surname within the family was due to the application of the rules of private international law on the birth of the child in question. The difference may also have arisen due to recognition, legitimation or adoption of the child.

284. The rules on change of surname by minors were also amended as of 9 June 2004 in response to the judgment of 2 October 2003 of the Court of Justice of the European Communities in case C-148/02, Garcia Avello v. Belgium. Dutch minors with dual nationality, i.e. Dutch nationality and the nationality of another state, may now change their surnames to the name they bear under the law of the other state.

285. As of 2 April 2004, the rules governing changes of surname by minors under the age of 12 have been tightened up. For minors over the age of 12, a parent's request for a change of surname will be granted if the child agrees, and continues to agree even if the other parent objects. As a result of these amendments, the Child Protection Board no longer has a role to play in changes of surname.

Sperm and egg donors no longer anonymous

286. Most provisions of the Artificial Fertilisation (Donor Information) Act entered into force on 1 January 2004 (Act of 25 April 2002, Bulletin of Acts and Decrees 2002, 240). As a result, sperm and egg donors will in most cases no longer be able to remain anonymous. The thinking behind this is that the interests of children seeking information about their parents outweigh those of donors wishing to remain anonymous.

Article 25: Right to take part in public affairs

Political participation of women

287. Chapter III A referred to the legislation governing the temporary replacement of representatives (members of the House of Representatives and Senate of the States General, provincial councils and municipal councils) in connection with pregnancy and childbirth. One of the aims of the legislation is to foster the participation of women in political life.

The section under Article 22 reported the decision of the court in The Hague which found that the State had neglected its international obligations under article 7(C) of the United Nations Convention on the Elimination of all Forms of Discrimination Against Women.

The political participation of women has increased slightly since the end of the 1990s. Currently, 24% of all political representatives are women (in the House of Representatives the percentage stands somewhat higher at 38%). The government's objective is to increase the number of elected female representatives to 45% by 2010.

Political participation of ethnic minorities

288. The participation of ethnic minorities is also on the increase, particularly in local council elections (non-Dutch residents are entitled to vote in municipal elections). In 2002, 204 immigrants were elected as municipal councillors, compared with 150 in 1998. However, the 2002 figures only account for 2% of the total number of municipal representatives. The following list shows the breakdown of non-Dutch municipal councillors by geographical origin:

Turkey	113
Suriname	36
Morocco	26
Moluccan Islands	6
Dutch Antilles	5
Other	18

(N.B. This is an estimate. No exact figures are available since municipal councils are not obliged to provide information about the ethnic or national identity of their members).

Assassination of politician and protective measures

289. A salient role in the parliamentary election campaign of May 2002 was played by Pim Fortuyn, a newcomer to the political scene who gained broad popular support in a very short time. In his campaign he focused on immigration and the integration of ethnic minorities, crime and the quality of the healthcare system. In the municipal elections of 6 March his political party, the Pim Fortuyn List (LPF), was the winner in Rotterdam, the second most important city in the Netherlands. On 6 May, less than two weeks before the national elections were due to take place, Fortuyn was shot by an animal and environmental rights activist in what became widely known as 'the first political assassination in the Netherlands since 1672'. The perpetrator was arrested immediately afterwards and sentenced to 18 years' imprisonment.

290. Following this incident, several politicians received death threats and were put under constant police surveillance. The elections went ahead as planned on 15 May 2002 and the LPF became the second largest party in Parliament, with 26 seats. In the summer a new government was formed. However, internal wrangling within the LPF (one of the three parties supporting the new government) forced the government to resign on 16 October 2002, within three months of taking office. The new elections that took place in January 2003 left the LPF with only 8 seats in parliament.

291. Immediately following Pim Fortuyn's murder, an independent inquiry was set up, led by H.F. van den Haak (former president of the Amsterdam Court of Appeal. The inquiry's mandate was to provide a clear picture of Pim Fortuyn's safety and security situation up to the time of his assassination, and to examine the activities of the government bodies responsible for security and threat analysis. The Inquiry came to two main conclusions: There had been sufficient reason to provide Fortuyn with personal protection between February and April 2002 and there were two reasons why this had not been done: on the one hand, Fortuyn's own relatively uncooperative attitude in this respect, and on the other, poor organisation of personal security by the authorities. Based on its findings as a whole, the Inquiry recommended that the existing system of personal security should be reformed and a national coordinator appointed. It called for an improvement in the preparation of threat analyses and recommended introducing collective or individual risk analyses for 'special persons' .The government and the House of Representatives stated that they shared the Inquiry's views and that they would accept its findings. Since then, two Bills incorporating the Commission's recommendations have been passed by the House of Representatives.

292. For its part, the government regrets that it is necessary to introduce the kind of protective measures and changes recommended by the Van den Haak inquiry, since up until then, there had been a consensus that an open and accessible style of public leadership was desirable and could not be seen as imprudent. Nevertheless, the murder of Fortuyn should be understood in the context of a more general deterioration in the social climate, which has necessitated such changes. At the same time, effective intelligence and organisation can actually facilitate a more balanced response in individual situations, hence de-escalating tension in the long-term. Be that as it may, the inquiry's recommendations (which were incorporated in the Bills referred to above) contain some fundamental choices that have far-reaching implications, particularly since the government is authorised to actively collect information about politicians and ordinary citizens who need protection. For these individuals, the most obvious consequence is the erosion of personal privacy, since they often have to share information of an extremely personal kind with the police or other government agencies so that their personal security can be assessed. It should also be remembered that surveillance or personal security may seriously intrude upon a person's private life and that of their relatives. For that reason, the new system means that such individuals must be prepared to put up with a certain loss of privacy.

Referenda

293. On 1 June 2005, the first-ever national referendum was held in the Netherlands. The subject was the proposed constitution of the European Union. The Bill on the Consultative Referendum on the European Constitution was submitted on 20 May 2003 by members of parliament Karimi, Dubbelboer and Van der Ham. On 25 January 2005, the Act on the Consultative Referendum on the European Constitution entered into force. Those who had proposed the legislation stated at the time that the result would constitute a powerful recommendation to government and parliament. A number of political parties indicated beforehand the conditions (for instance a certain level of turnout) under which they would adopt the outcome of the referendum. In fact, 63.3% of the electorate turned out to vote. With 38.4% in favour and 61.6% against, the referendum resulted in rejection of the European Constitution. The Dutch government accordingly withdrew the Bill approving the Treaty establishing a Constitution for Europe.

294. Although the government and most political parties were disappointed by the result (most of the parties represented in the House of Representatives were in favour of the European Constitution), the referendum was considered a success. The debate about Europe had seized the public imagination and voter turnout had been high.

Article 26: Prohibition of discrimination

295. As explained above, articles 2, 3 and 26 will be dealt with jointly under this article.

Age

296. On 1 May 2004 the Equal Treatment in Employment (Age Discrimination) Act (*Wet gelijke behandeling op grond van leeftijd*) came into force. The Act addresses the fight against age discrimination and is intended to implement a Council Directive establishing a general framework for equal treatment in employment and occupation (2000/78/EC).

297. This Act bans age discrimination in employment, occupation and vocational training. Discrimination on grounds of age is only permitted if setting an age limit can be objectively justified. The ban on age discrimination applies to all areas of employment, from recruitment and selection and job placement to conditions of employment and terminating an employment relationship. It also applies to vocational training, vocational guidance, careers advice and membership of employers' organisations and trade unions or professional or occupational associations. The Act specifies that the Equal Treatment Commission (*Commissie Gelijke Behandeling*) is to monitor the ban on age discrimination and can initiate an investigation when a complaint is made. If a distinction on the grounds of age is made in advertising a vacancy, the reasons for doing so must be stated clearly. It is only possible to specify an age limit if it can be objectively justified. The Act also contains provisions on protection against victimisation (not only for employees, but also for witnesses) and against dismissal on grounds of age. Any conditions that are in breach of the Act are invalid. Finally, the Act bans harassment and instructing others to discriminate.

Disability

298. The Equal Treatment of Disabled and Chronically Ill People Act (*Wet gelijke behandeling op grond van handicap of chronische ziekte*) implements Council Directive 2000/78/EC. This Act came into force on 1 December 2003, and gives disabled and chronically ill people the right to effective adaptations, which, in this context, mean suitable adaptations which are necessary to enable the disabled or chronically ill to take as full and active a part in society as anyone else. However, such modifications must not place a disproportionate burden on those responsible. The meaning of the term will be further developed through case law. The Act currently applies to leisure activities, vocational training and public transport. In the future this right will be extended to cover other areas, such as housing and, possibly, access to goods and services. Public authorities, businesses and organisations need to make effective adaptations in these areas if disabled or chronically ill

people ask for them. People with a disability or chronicle illness can address any complaints regarding failure to make effective modifications to the Equal Treatment Commission.

299. The Act also bans harassment and instructing others to discriminate. A ban on discrimination concerning membership of or involvement in employers' organisations, trade unions or professional or occupational associations has been added.

300. As of 1 January 2006 it will be a criminal offence to discriminate on grounds of disability. This will include both making insulting comments in writing and discriminating against people in everyday situations. Anyone who insults or discriminates against a person because of their disability risks prosecution.

Criminalising structural discrimination

301. On 1 February 2004 legislation on discrimination came into force, making structural discrimination a separate offence and doubling the penalty in comparison to that imposed for other types of discrimination. The legislation describes structural discrimination as follows: discrimination on the part of a person who makes an occupation or habit of such discrimination; or discrimination on the part of two or more persons acting in concert. The legislation thus emphasises the gravity of more serious forms of discrimination. The introduction of legislation criminalising discrimination on the grounds of disability was accompanied by a comprehensive information campaign targeting office culture and individual professions and trades, conducted mainly through specialist publications. The campaign also made specific information available to the disabled.

Changes to the Equal Treatment Act

302. The 1994 Equal Treatment Act (*Algemene wet gelijke behandeling*, or AWGB), prohibits discrimination on the grounds of religion, belief, political opinion, race, sex, nationality, heterosexual or homosexual orientation or civil status in a number of areas, including employment. On 1 April 2004 an Act amending the Equal Treatment Act and certain other Acts came into force (Equal Treatment (Implementation of EC Directives) Act, *EG implementatiewet Awgb*). This Act implements Council Directives 2000/43/EC (equal treatment between persons, irrespective of racial or ethnic origin) and 2000/78/EC (framework directive). The Equal Treatment (Implementation of EC Directives) Act supplemented the protection offered by the Equal Treatment Act by prohibiting both harassment and instructing others to discriminate. A prohibition on discrimination on the grounds of membership of or involvement in employers' organisation and trade unions, or occupational associations, was also added. This prohibition covers all grounds, including

race. Since 1 April 2004 the prohibition on discrimination on grounds of race has also applied to social protection, including social security and access to social advantages.

303. On 1 November 2005 the Equal Treatment (Evaluation) Act came into force, expanding the Equal Treatment Commission's powers of investigation. Until the Act was passed the Commission was only authorised to carry out investigations on its own initiative on a sector-wide basis. As such investigations require a great deal of manpower, the Commission only carried out a limited number. As of 1 November 2005 the Commission has been able to initiate investigations into specific companies.

Sexual harassment

304. On 24 January 2004 the House of Representatives passed a Bill implementing Council Directive 2002/73/EC of 23 September 2002, amending Council Directive 76/207/EEC on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions. The Bill makes both harassment and sexual harassment forms of prohibited discrimination, thereby extending legal protection for employees. The Bill also aims to prevent any disadvantage being suffered by employees confronted with harassment or sexual harassment, and slightly strengthens employees' legal position should harassment or sexual harassment arise, by:

- shifting the burden of proof, which also applies to harassment and sexual harassment;
- making it possible for complainants to appeal to the Equal Treatment Commission;
- expanding the protection against disadvantage in the event of a harassment or sexual harassment claim.

The intention is that the Bill will come into force as soon as possible, once it is approved by the Senate.

Policy document on possible expansion of article 1 of the Constitution

305. In December 2001 the House of Representatives backed a motion calling on the government to expand the prohibition on discrimination contained in Article 1 of the Constitution by adding disability and chronic illness to the grounds given. In response to this, in August 2004 the government published a policy document in which it expressed the view that extension was neither desirable, nor legally necessary to protect the rights of the disabled or chronically ill. The list of grounds specified in article 1 of the Constitution, as in article 26 of the Covenant, is not exhaustive. However, discrimination is prohibited on "any [...] grounds whatsoever". In the document the government also looked at other grounds not explicitly mentioned in article 1. The Equal Treatment Commission had advised that article 1

of the Constitution be expanded by adding the grounds specified in the Equal Treatment Act. Following a debate in the House of Representatives it was decided to set up a committee to investigate whether, if an article does not refer explicitly to a ground, legal protection is affected. Once the committee's report is ready, in spring 2006, the debate will be reopened.

Policy on equal treatment for homosexual and bisexual men and women

306. The Dutch government believes that respect, tolerance and the fight against discrimination are essential ingredients for social cohesion. In recent decades the foundations have been laid in the Netherlands for equal treatment of homosexual and bisexual men and women. The prohibition on discriminating against these groups is an unassailable norm in Dutch society. The basic aim of policy in this area is: "the protection of human dignity and the right to participate in society as equals, regardless of sexual orientation".

307. Since the appointment of a coordinating minister in September 1986, equal treatment whatever a person's sexual orientation has been an integral part of policy at every ministry. This "inclusive policy" means that the ministers concerned automatically take the possible consequences for homosexuals into account when drafting policy measures. The Interministerial Government Policy and Sexual Orientation Working Party (IWOH) meets regularly for this purpose. In other words, policy on equal treatment is considered as part of policy in general, but receives special attention or is underlined where necessary.

308. Central government sees its role as establishing rules and frameworks, encouraging others (including local government and civil society organisations) to implement the rules and frameworks, and following social developments. The government also remains committed to fighting discrimination on the grounds of sexual orientation and to eliminating differences in the legal protection offered against the various types of discrimination at European and international level.

309. In 2005 a government assessment concluded that, in general, good progress is being made regarding equal treatment for homosexuals. A landmark in the period assessed was the introduction of same-sex marriages in 2001, when it also became possible for such couples to adopt children.

310. This general picture does not, however, alter the fact that some groups (for example, young people and ethnic minorities) can be reluctant to accept homosexuals as equals. The government has discussed these problems and possible measures with a number of different

parties (other European countries, local government, national knowledge institutes and field organisations). As a result, three policy goals have been identified in the policy letter on equal rights for homosexuals in the 2005-2007 period:

- Encouraging the social acceptance of homosexuals in the Netherlands, partly by assisting in dialogue between homosexuals and various ethnic and ideological groups, and keeping a close track of social developments.
- Helping a number of vulnerable homosexual groups to benefit from stronger ties to society and improved integration. This applies in particular to isolated groups or those who are excluded or are vulnerable to exclusion, such as ethnic minority homosexuals, young homosexuals or older homosexuals dependent on care. The government will therefore concentrate on quality of life and social cohesion on the street, in residential areas, at school and in the workplace. This is to take place through discussion, supporting individual projects and making specialist advice available.
- Looking at homosexuals' safety and combating discrimination, partly by building up police expertise and by improving the system for registering reports of offences, so that it is easier to establish how often homophobia is an element of crime (see below for more information on police policy on combating discrimination).

Police policy on combating discrimination

311. On 1 September 2002 the National Bureau for Discrimination Cases (LBD) was set up at the request of the Board of Chief Commissioners (RHC). The RHC tasked the LBD with supporting regional police forces in tackling discrimination cases. The aim is to encourage the police to follow the Discrimination Instructions issued by the Board of Procurators General. The LBD's first step was to examine regional police forces' approach to discrimination cases. In autumn 2004 the LBD repeated the investigation. Both investigations highlighted the fact that a number of police forces did not yet meet the organisational requirements for implementing the Discrimination Instructions.

312. At the start of 2005 the LBD became part of the Diversity and Police Expertise Centre (LECD). It continued to support regional police forces in tackling discrimination cases as part of its remit to encourage the police to follow the Discrimination Instructions. The Instructions were updated in 2003 and contain policy guidelines on how the Public Prosecution Service (OM) and the police should handle discrimination cases. The LBD will now be focusing on the regional police forces' approach to discrimination and diversity, as part of efforts to encourage resistance to radicalisation.

313. Regional police forces have achieved a number of results, such as appointing liaisons for discrimination cases in most police regions and developing a national response protocol and a national privacy protocol. The LBD is partly responsible for this success. Even so, some matters still require attention, for example the way in which discrimination cases are registered. Marked improvements are expected in the short term.

314. A major cause of inadequate registration is the difficulty of retrieving information in the system currently used by the police. The 'Blue View' system – a search engine similar to Google – makes it possible for the first time to search all the regional forces' systems for discrimination cases. This represents a major step forward in improving access to police information systems, particularly in cases in which discrimination features.

315. A number of police forces are currently experimenting with another method of improving the input of data on discrimination cases. The intention is to introduce a standard questionnaire as an obligatory part of procedure when offences are reported. The aim is to gain a better picture of the background to the crime, such as discrimination.

316. The 2003 Discrimination Instructions specify that any complaints raising the possibility that a police officer has committed a discriminatory offence should be dealt with in line with the regional force's complaints procedure, which is based on the Police Act 1993. Any such offences committed in office are also punishable under articles 137g and 429 *quater* of the Dutch Criminal Code, amongst others. This means that criminal charges may be brought, either in addition to or in place of disciplinary consequences. The Discrimination Instructions indicate that criminal charges are appropriate in these circumstances.

Article 13 project

317. Between 2002 and 2004 the Ministry of Social Affairs and Employment ran the Article 13 project. The aim of the project (named after the non-discrimination article in the EC Treaty) was to better embed equal treatment in work culture. The project focused on all the grounds listed in article 13. The choice was made to initially target smaller employers and Works Councils. In 2004 this was widened to encompass large companies.

318. The project worked together with a monitoring group consisting of the Equal Treatment Commission, the Expertise Centre (*LBL expertisecentrum voor leeftijd en maatschappij*), the National Bureau against Race Discrimination (*Landelijke Bureau ter bestrijding van Rassendiscriminatie*), COC, an organisation supporting gays and lesbians, E-Quality (a knowledge centre for women's rights in multicultural society) and the Council for

the Disabled and Chronically Ill People (*Chronisch Zieken en Gehandicapten Raad Nederland*).

319. The project developed educational material on equal treatment for Works Councils; published articles in a number of specialist periodicals (published for example by trade unions, Works Councils and professional associations); worked together with the Royal Association MKB-Nederland and the MKB's Labour Market support service point through a website and publications in the 'Wisselwerk' magazine, and through addressing the question of equal treatment in Quickscan (a questionnaire used to screen a company on a number of aspects, such as turnover, personnel policy and operational management), as used by MKB advisors; and integrated equal treatment into the Employment Law course run by MKB's courses and training division for employers, managers and personnel officers in small and medium-sized enterprises.

Equal pay

320. On 15 December 2005 the Minister of Social Affairs and Employment launched the 'Gelijke beloning, dat werkt!' ('Equal pay pays!') working group. The group is lead by the Director of *Loonwijzer*, an online salary checker. The working group has a 12-month term, with the option to extend this by a further 6 months. All organisations involved in the question of equal pay are members of the working group. In addition to umbrella organisations represented in the Labour Foundation and the Council for Public Sector Personnel Policy, this also includes the Equal Treatment Commission and the Dutch Personnel Policy Association (NVP). Organisations which are not a member of the working group can take on a different role.

321. The working group's core tasks are encouraging familiarity and compliance with equal pay legislation on the part of employers' organisations and trade unions, individual employers and employees, personnel advisors, Works Councils and collective agreements negotiators. The working group is also tasked with informing people about and promoting new instruments, such as the Equal Pay Management Tool, the Equal Pay Checklist, the Gender-neutral Job Evaluation Manual and the Equal Pay step-by-step plan for Works Councils. Promoting training for employers, employees, collective agreements negotiators, Works Councils and personnel advisors also falls under the working group's remit, as does encouraging efforts to increase internal expertise and expertise within its members' organisations. The working group may also carry out research in other appropriate areas, to be chosen by its members. The working group itself is responsible for fleshing out or supplementing its core tasks. It should also be noted that the working group concerns itself

not only with equal pay for men and women, but also for ethnic Dutch and ethnic minorities and full-time and part-time workers.

The 'Discriminatie? Bel gelijk!' awareness-raising campaign

322. The 'Discriminatie? Bel gelijk!' ('Discrimination? Call now!') awareness-raising campaign was launched on 29 July 2004. The campaign encourages possible victims of discrimination and persons who believe discrimination is taking place to call a national helpline (0900 2 354 354) or surf to a dedicated website (www.belgelijk.nl) for advice and information. The campaign focuses on all the grounds referred to in article 13 (sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation) and discrimination prevalent in other areas, including the workplace. The campaign has two sources of financing; 80% of the costs are covered by the European action programme to combat discrimination (article 13 of the EC Treaty), the remaining 20% is funded jointly by the Ministry of the Interior and Kingdom Relations, the Ministry of Health, Welfare and Sport, the Ministry of Justice (Immigration and Integration) and the Ministry of Social Affairs and Employment.

323. A network of organisations specialising in equal treatment and non-discrimination are responsible for running the helpline, working together and exchanging information in the interests of providing appropriate support to callers. The joint anti-discrimination bureaus man the telephones and offer callers information and help, where necessary advising them to contact national NGOs specialising in particular grounds of discrimination and the Equal Treatment Commission (CGB). The implementation of the project is in the hands of Radar (a Rotterdam-based anti-discrimination bureau) under the auspices of the National Federation of Antidiscrimination Bureaus and Hotlines.

The 'Discriminatie? Niet met mij!' campaign

324. 'Discriminatie? Bel gelijk!' was followed on 1 December 2004 by the 'Discriminatie? Niet met mij!' ('Discrimination? Not against me!") campaign. Eighty per cent of the costs are covered by the European action programme to combat discrimination (article 13 of the EC Treaty), the remaining 20% is funded jointly by the Ministry of the Interior and Kingdom Relations, the Ministry of Health, Welfare and Sport, the Ministry of Justice (Immigration and Integration) and the Ministry of Social Affairs and Employment. The campaign, run by the National Bureau against Racial Discrimination, targets those who may be vulnerable to discrimination and unequal treatment. Those who may be at risk are informed how they can handle discrimination in such a way that it has minimal impact on their daily life and how they can confront persons acting in a discriminatory manner, whether consciously or

unconsciously. It also targets environments in which discriminatory behaviour can take place. The 'Discrimination? Niet met mij!' booklet, intended for the general public, contains practical tips on combating discrimination. A reader, containing more specific information, has been produced for organisations.

Equal Treatment Network

325. In 2003 the Ministry of Social Affairs and Employment established the Equal Treatment Network. The Network comprises actors involved in fighting discrimination, such as social partners, ministries, NGOs and expertise centres and offers members the opportunity to exchange information on equal treatment and anti-discrimination twice a year. A newsletter is produced biannually.

326. The age and employment project aimed to achieve sustainable participation of people of all ages in employment. The project was run by the LEEFtijd Expertise Centre (an independent expertise centre on age and life course issues) and was funded by a grant from the Ministry of Social Affairs and Employment. The project ran from March 2004 to March 2005, targeting a number of groups such as trade unions, employers and employment brokers and focusing on the Equal Treatment in Employment (Age Discrimination) Act (*Wet gelijke behandeling op grond van leeftijd*). The LEEFtijd Expertise Centre ran workshops for the target groups.

Vacancies for all ages

327. The Ministry for Social Affairs and Employment also provided a grant for the 'Vacatures voor alle leeftijden' ('Vacancies for all ages') project, run by the LEEFtijd Expertise Centre and the Equal Treatment Commission. The project aimed to combat unjustified age discrimination in job advertising. Where a justifiable age limit applies to a particular post, the employer must give the reasons for this in the vacancy. A checklist to this end was developed during the project.

Psychological tests

328. The Ministry for Social Affairs and Employment gave the National Bureau Against Race Discrimination a grant for developing a procedure for psychological testing of members of ethnic minorities, together with the Netherlands Institute of Psychologists. The procedure is intended to encourage the equal treatment of ethnic minorities, so that they have equal opportunities in job applications and in a future career within a company when psychological tests and/or structured questionnaires are used. The aim was also to compile a summary of usable psychological tests for ethnic minorities, with recommendations for continued

improvements. Two publications have been produced, one containing guidelines on the use of psychological tests for ethnic minorities, the other a summary of usable psychological tests for ethnic minorities with recommendations.

On 23 August 2005 guidelines on the use of psychological tests for ethnic minorities were presented to the House of Representatives.

Article 27: Minorities

Framework Convention for the Protection of National Minorities

329. On 16 February 2005 the Dutch government ratified the Council of Europe's Framework Convention for the Protection of National Minorities. The Convention entered into force on 1 June 2005. The Act approving the Convention was before the Senate of the States General for a considerable time, while it debated the Act's interpretation of the term 'national minorities'. According to the Act – and in conformity with the freedom of interpretation that the Convention gives to national governments – this term refers in the Netherlands exclusively to the Frisians and not to the target groups of foreign origin of its integration policy. At the beginning of 2007, the Netherlands will submit its initial report pursuant to the Framework Convention.

Dutch civic integration policy

330. The new civic integration system is an important tool to help migrants settle into Dutch society. Prior to arrival, potential immigrants can make a head start by learning the language and finding out what Dutch society is like. Their knowledge of Dutch society and language is tested abroad by an examination which takes place at the Dutch mission in their country. So the new policy calls for commitment prior to arrival, especially from those that want to settle permanently in the Netherlands (to join relatives there or start a family of their own). The relevant legislation entered into force in March 2006.

331. In addition, newcomers have three years after arrival in which to pass a civic integration test; those that fail will not be granted permanent residence in the Netherlands, but will have to renew their temporary residence permit on a regular basis. The new civic integration system primarily focuses on the responsibility of the individual and will involve both newcomers and settled immigrants. The new law on the civic integration of newcomers has now entered into force.

332. The rationale behind this new integration policy is to give migrants the opportunity to find their own way in Dutch society. By acquiring the necessary skills they can create opportunities for themselves, for example on the labour market, and effectively integrate into society, and more specifically, into their own neighbourhood.

333. As indicated above, the new civic integration system emphasises obligations for immigrants. But at the same time, it recognises that integration is a two-way-process, which means that people of Dutch origin also have obligations. At the end of 2004, the Dutch Government launched the Social Cohesion Initiative in order to improve social cohesion in Dutch society, and in particular to bridge the gap between various cultural and religious groupings.

Professional training courses for imams

334. On 17 January 2005, the Ministry of Education, Culture and Science called on the universities to come up with plans for degree courses in Islam and a programme for training Muslim clergy, both of which could eventually serve as a basis for a professional training course for imams. On 1 February 2005, based on the advice of experts in the field, the Ministry of Education, Culture and Science awarded a grant to the VU University, Amsterdam, for 2005 to 2010. In September 2005, the VU launched its master's degree programme in Muslim spiritual counselling and simultaneously began setting up a bachelor's degree programme which would lead up to the master's programme. In addition, during a second grant allocation phase, the University of Leiden submitted a plan for bachelor's and master's degree programmes in Islamic Theology. The content and structure of the courses linked in with the situation in Muslim countries and hence would serve as a sound basis for professional training for imams. The University of Leiden was also awarded a grant for 2006 to 2010. On 29 April 2005 the Policy rules project on grants for the development of professional training for imams were published. This was a collaborative effort – in terms of both content and financing – by the Ministry of Education, Culture and Science and the Ministry of Justice. Its aim was to invite organisations to submit proposals for a curriculum and an occupational profile for imams. Collaboration between recognised educational institutions and Muslim umbrella organisations was one of the main conditions. INHOLLAND College of Higher Professional Education and five Muslim umbrella organisations were to jointly develop a curriculum for a bachelor's degree course for imams, scheduled to start in September 2006 at INHOLLAND.

National dialogue structure (NDS) on minorities policy in the Netherlands

335. Since the early 1970s, the Dutch government has attached great value to the participation of minority groups in the political decision-making process. In 1971 a mixed consultative committee was formed, consisting of representatives and experts on the policy on Roma. In 1976 the government set up a consultative council of representatives from Moluccan organisations. In 1985 a national dialogue structure was launched to shape policy on non-Dutch minorities. After eleven years of experience with this dialogue structure, the government is preparing a Parliamentary bill which will give it a statutory foundation.

1.) Purpose

The national dialogue structure for minorities policy aims to increase the participation of minority groups in political decision-making. This should boost the quality of minorities policy, which cannot succeed unless it has the overall support of minority groups. This structure also contributes to equality for minority groups since they are being consulted on the policies that apply to them.

2.) Participation

Minorities are represented in this national dialogue structure by federations of minority organisations. These federations give their opinion on the government's policy proposals. However the federations can also give the government their unsolicited views on matters relating to national policy on minorities. Their views are discussed at regular meetings between members of the government and the federations, which take place three or four times a year and may contain any topical issues which affect minorities.

3.) Political character

The meetings between the government and federations of minority organisations are distinctly political in character. Formal decisions can only be taken by majority vote. The following minority groups are represented: Moluccan, Surinamese, Antillean and Aruban, Turkish, Moroccan, Tunisian, Southern European (from Italy, Greece, Spain, Portugal and former Yugoslavia, Chinese and refugees. Depending on the agenda, members of the government may attend these meetings, which are always chaired by the Minister for Immigration and Integration.

4.) Agenda

As stated above, these federations of minority organisations give the government their views on policy proposals on a variety of topics such as inner city issues, employment, education, the separation of church and state, and ethnic registration. The federations have given their spontaneous opinion on, for example, legal action against discrimination, marginalised young

people from ethnic minorities, educational facilities for teaching minority languages, affirmative action, housing policy for caravan dwellers and dialogue structure at local level.

Integration Council

336. The National Ethnic Minorities Consultative Committee has existed since 1997. It meets three times a year and is chaired by the Minister for Immigration and Integration. It discusses the government's proposed policy on minorities and developments that affect them and the design of integration policy. In addition to the National Ethnic Minorities Consultative Committee, an Integration Council is to be set up, which will also involve civil society representatives. The purpose of discussion in the Integration Council is to show how far the various partners can support each other in implementing policy.

'Fundamental rights in a plural society'

337. As mentioned above in relation to article 5 of the Covenant, in 2004 the government presented a policy document entitled 'Fundamental rights in a society' (Grondrechten in een pluriforme samenleving), in response to questions from Parliament on whether dealing with topical issues in a multicultural society (such as discrimination, the wearing of headscarves, female genital mutilation etc.) required a change in the Constitution. The government concluded that this was not necessary. Instead, the government recommended a more active advocacy of democratic values and greater tolerance, debate and communication in the context of controversial judicial decisions on fundamental rights. It is important to note that the government is of the opinion that religious garments should not be forbidden for public servants or teachers, as long as they do not hamper effective functioning or endanger impartiality (e.g. in the case of judges).

Employment participation

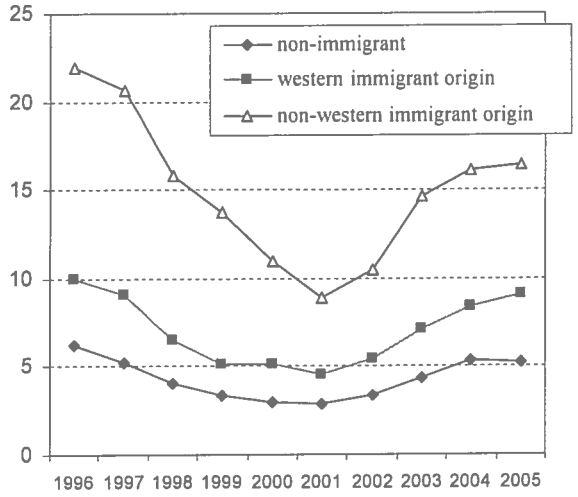
338. The Netherlands has noted the Committee's wish, expressed in concluding observation 14, to receive more information about the practical result of the measures taken to improve the position of ethnic minorities. A short updat on the policy measures is given in the next paragraphs.

339. Until 2002, the objective was to reduce by 50% the difference in unemployment between people of ethnic Dutch and immigrant origin[5]. This objective was achieved. In 2001,

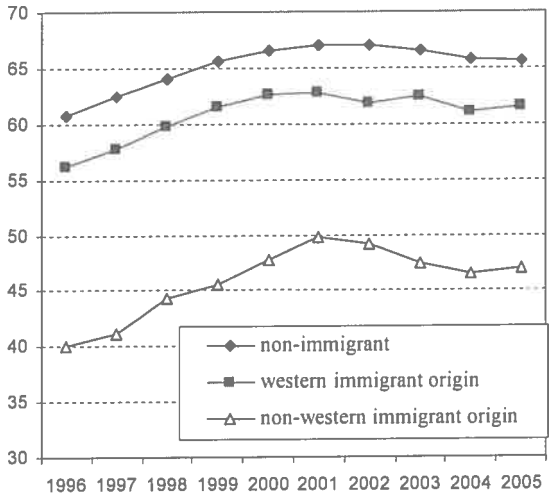
[5] According to Statistics Netherlands (CBS), the definition of 'of immigrant origin' (*allochtoon*) is ' a person of whom at least one parent was born abroad'. In its statistics, the CBS distinguishes two categories: western and non-western. The category 'non-western' includes migrants from Turkey, Africa, Latin America and Asia, excluding Indonesia and Japan. Nationals of these two countries count as 'western' on account of their social, economic and cultural position.

unemployment among people of non-western immigrant origin dropped to 9%, compared with 3% among non-immigrants. The proportion of non-western immigrants in employment grew considerably, but at 49%, it still lagged far below that of non-immigrants (67% in 2003). The period which saw an improvement in the position of ethnic minorities was also largely characterised by economic growth. In terms of policy, the emphasis was on addressing the needs of particular target groups: employment agencies used a customised approach and specific agreements were made with employers about vacancies for ethnic minorities and about diversity. The approach worked: 78,000 vacancies were published and the project helped well over 70,000 job-seekers to a job. Of those, almost 62,000 were from ethnic minorities.

Unemployment by ethnic origin, 1996-2005



Employment participation by ethnic origin, 1996-2005



340. The year 2002 marked the end of a long period of falling unemployment among people of non-western immigrant origin. Unemployment went up to 16% in 2004 and now seems to have stabilised. The high proportion of unemployed immigrant young people and women can largely be attributed to the economic downturn and is a cause for concern. From 2002 on, the government sought to increase the participation of minorities to 54% in 2005. It was unsuccessful. Although the minorities' participation had risen sharply in the 1990s, they were the group worst affected by the downturn in the economy. Governmental policy centred around a generic approach. Supplementary initiatives were also launched, aimed at fostering

a policy of diversity within businesses, and the participation of more young people of all origins and of women of immigrant origin.

341. The year 2005 saw the start of various initiatives such as the Social Cohesion Initiative (see Article 27), which aimed to improve the social climate and strengthen the ties between citizens and society at large. Various projects were launched. The EU's European Social Fund and Equal programmes aim to prevent dropout and stimulate regular employment among people of immigrant origin and to help them with civic integration in the Netherlands. The projects were cofinanced by the Ministry of Social Affairs and Employment, which also set up numerous other activities for immigrants, including the following:

- The Job Offensive for Refugees. With the help of a grant from the Ministry of Social Affairs and Employment, refugee and other organisations launched a joint employment offensive for refugees. Their target was to find jobs for 2,600 refugees within three and a half years.
- ECHO Talent Bank. With a grant from the Ministry of Social Affairs and Employment, the ECHO expertise and diversity centre set up a 'talent bank' designed to match supply and demand for work placements, thus providing immigrant students with appropriate experience.
- Shop Floor Dialogue. With a grant from the Ministry of Social Affairs and Employment, the FNV trade union launched a project designed to foster interactive dialogue at work. It aim was to get Dutch employers and their ethnic minority employees to discuss cultural differences and their effect on working life.
- National Network for Diversity Management. It encourages employers to make the most of the diversity in their workforce and to adapt their human resources policy accordingly.