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# Country report

## Non-discrimination

Netherlands  
2026  
including summary



Justice  
and Consumers

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*European Commission*

*B-1049 Brussels*

# **Country report**

## **Non-discrimination**

Transposition and implementation at national level of  
Council Directives 2000/43 and 2000/78

## **Netherlands**

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Reporting period 1 January 2025 – 1 January 2026

2026 Directorate-General for Justice and Consumers

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\* The author is grateful to the previous expert, Karin de Vries, whose reports until 2025 provide the foundation for the current report.

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## EXECUTIVE SUMMARY

### 1. Introduction

The Netherlands is a decentralised, unitary state and part of the Kingdom of the Netherlands (which also includes the Caribbean islands of Aruba, Curaçao and Sint Maarten). King Willem-Alexander is head of state. The Netherlands has a parliamentary system of Government with a bicameral Parliament. The Dutch electoral system is based on proportional representation, which means that the Government is always formed by a coalition of political parties. The fragmentation of the political landscape, which has increased since 2023, has persisted in recent years. In the reporting period there were still fifteen political parties in the House of Representatives, which has 150 seats. This number was the result of the 2023 general elections and was consolidated in the 2025 general elections. Since the turn of the millennium, considerable influence has been gained by populist parties on the radical right, notably the Freedom Party (PVV), whose political agendas are typically nativist, anti-immigrant and anti-Islam. On the other side of the political spectrum, the parties DENK and Bij1 strongly advocate the eradication of racism and discrimination, albeit with a much smaller number of seats. On 3 June 2025, the Schoof-coalition<sup>1</sup> resigned. After the general elections on 29 October 2025, Democrats 66 (D66), the Liberal Party (VVD) and the Christian Democrats (CDA) engaged in negotiations to form a new Government.

The Netherlands is party to all the major international agreements relevant to combating discrimination, including the European Convention on Human Rights (including Protocol No. 12), the International Covenant on Civil and Political Rights (ICCPR), the Optional Protocol to the Covenant, the International Covenant on Economic, Social and Cultural Rights (ICESCR), the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), including the Optional Protocol to this Convention, the Convention on the Rights of the Child (UNCRC) and the Convention on the Rights of Persons with Disabilities (CRPD). The latter was ratified in 2016. The instruments constitute part of the domestic legal order following publication in the official Law Gazette (*Staatsblad*) and can be applied directly by domestic courts, if the provision concerned is sufficiently clear and precise.

The Kingdom of the Netherlands has the second-highest population density in the European Union, after Malta.<sup>2</sup> On 1 January 2025, the Dutch population was just over 18 million persons, of whom almost 17 % migrated to the Netherlands, and almost 12 % has one or both parents who were born abroad.<sup>3</sup> The largest migrant groups are people of Turkish origin (2.6 %), followed by people of Moroccan (2.4 %), Surinamese (2.0 %) and Polish origin (1.5 %).<sup>4</sup> The main religions are Roman Catholicism (17 %), Protestantism (14 %) and Islam (6 %). Seven per cent of the population subscribes to another religious faith and 56 % identifies as not religious.<sup>5</sup> In 2025, 21 % of the Dutch population were younger than 20, 26 % were between 20 and 40, 32 % between 40 and 65 and 21 % were 65 or older.<sup>6</sup>

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<sup>1</sup> It consisted of the PVV, the Liberal Party (VVD), New Social Contract (NSC) and the Farmer-Citizen Movement (Boer Burger Beweging, BBB).

<sup>2</sup> See Eurostat: 'Demography of Europe – 2025 edition', <https://ec.europa.eu/eurostat/web/interactive-publications/demography-2025>.

<sup>3</sup> Centraal Bureau voor de Statistiek (Statistics Netherlands), key population figures, <https://www.cbs.nl/en-gb/figures/detail/85496ENG>.

<sup>4</sup> Centraal Bureau voor de Statistiek (Statistics Netherlands), Bevolking; positie in het huishouden, herkomstland, <https://www.cbs.nl/nl-nl/cijfers/detail/85378NED>, Bevolking; geslacht, leeftijd, herkomstland en geboorteland ouders, <https://www.cbs.nl/nl-nl/cijfers/detail/85384NED>.

<sup>5</sup> Statistics Netherlands, Religie in Nederland (Religion in the Netherlands), <https://www.cbs.nl/nl-nl/cijfers/detail/82904NED?dl=75268>. The percentages cited are from 2023.

<sup>6</sup> Statistics Netherlands, Tabel: bevolking naar leeftijd (Table: Population by age groups), <https://www.cbs.nl/nl-nl/visualisaties/dashboard-bevolking/leeftijd/bevolking>.

## 2. Main legislation

*International law:* the Netherlands adheres to a 'monist theory' of international law. This means that international norms of equal treatment and non-discrimination can be applied directly by the Dutch courts and take precedence over statutory acts.

*The Constitution:* a non-discrimination clause is contained in Article 1 of the Dutch Constitution. It covers the grounds of religion, belief, political opinion, race, sex, disability and sexual orientation as well as 'any other ground'. Article 120 Dutch Constitution, however, excludes the possibility of judicial constitutional review of statutory acts. There are ongoing debates about changing this exclusion, which, during the reporting period, have not yet resulted in legislative change.<sup>7</sup> Article 1 of the Dutch Constitution can be invoked before the courts against non-statutory forms of legislation, e.g. Government decrees, and against administrative acts.

*Criminal law provisions:* there are several provisions in the Criminal Code prohibiting discriminatory speech and prohibiting discrimination in the social and economic sphere.

*General civil law:* provisions in the Civil Code offer protection against unlawful discrimination, notably through provisions on tort and labour law provisions.

*Employment:* the Act on Working Conditions contains an obligation to prevent any labour conditions that may cause stress or psychological or physical damage. This provision also puts a positive obligation on employers to prevent and combat discrimination and (sexual) harassment.

*Statutory equal treatment acts:* the relevant equal treatment acts are the 1994 General Equal Treatment Act (GETA); the 2003 Disability Discrimination Act (DDA); and the 2004 Age Discrimination Act (ADA). The GETA covers religion, belief, political opinion, race, sex, nationality, hetero- or homosexual orientation and marital status. The DDA covers disability and chronic illness, while the ADA provides protection against age discrimination in the field of employment. These acts elaborate Article 1 of the Constitution, in particular for horizontal relations. In addition, they must be perceived as measures transposing the EU anti-discrimination directives.

Regarding the implementation of Directives 2000/43/EC and 2000/78/EC, the Dutch legislature has gone beyond what is strictly required by the directives. For example, protection against discrimination on the grounds of religion and belief, sexual orientation (defined as hetero- or homosexual orientation) and disability also applies in the area of goods and services.

Given the scope of this summary, the discussion is limited to the GETA, DDA and ADA with regard to the implementation of Directives 2000/43/EC and 2000/78/EC.

## 3. Main principles and definitions

The Dutch equal treatment laws (GETA, DDA and ADA) cover the grounds mentioned in Article 19 TFEU as well as nationality, political opinion, civil (or) marital status and chronic illness. In contrast to other areas of Dutch anti-discrimination law and in contrast to EU law, these acts are centred on the concept of 'distinction' (*onderscheid*) instead of 'discrimination' (*discriminatie*). 'Distinction' does not have the same negative connotation, and there may be a suggestion that it is possible to justify such distinctions. In practice, however, the laws are interpreted in line with the directives and the case law of the CJEU.

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<sup>7</sup> See, for the consultation, reactions to the proposed legislation: <https://internetconsultatie.nl/constitutieetoetsing/b1>.

*Direct discrimination* – Since 2011, the definition of direct discrimination in the equal treatment laws copies the wording of the directives, except for the use of the word 'distinction' instead of 'discrimination'. Although this is not explicitly mentioned in the equal treatment legislation, the Dutch equality body (the Netherlands Institute for Human Rights, previously the Equal Treatment Commission) accepts that the equal treatment laws cover discrimination by association<sup>8</sup> and discrimination by assumption.<sup>9</sup>

*Indirect discrimination* – Since 2011, indirect discrimination is defined in the GETA, ADA and DDA in a similar way to the definition in the directives, except for the use of the word 'distinction' instead of 'discrimination'.

*Intersectional discrimination* – Dutch equal treatment legislation does not explicitly prohibit intersectional discrimination. However, the national equality body (Netherlands Institute for Human Rights) accepts that cases of intersectional discrimination can be addressed under the existing legislative framework.<sup>10</sup>

*Victimisation* – Legal measures of protection against victimisation are available. All three acts (GETA, DDA and ADA) provide protection against dismissal related to victimisation and against other forms of disadvantage as a result of the fact that an individual has invoked the statutory equality act or has otherwise assisted in proceedings under these acts.

*Harassment* – Harassment is explicitly defined as a form of discrimination that can never be justified. The current definition of 'harassment' in the GETA, DDA and ADA mirrors the definition given in the directives. However, the current definition is narrower than the one used by the (predecessor of) the NIHR in its pre-implementation case law. Hence, the Dutch approach could fall short of the directives' non-regression clause.

*Instruction to discriminate* – Prior to implementation, the prohibition of the 'instruction to make a distinction' was already implied in Dutch equal treatment legislation. During the implementation, this implication was made explicit in the GETA, DDA and ADA. Both the person who *instructs* (e.g. the employer) and the person who carries out the instruction (e.g. a recruitment agency) act in contravention of the law. If the instruction has been given within a hierarchical employment relationship (a manager instructing an employee to discriminate), it is only the person in charge (the manager, not the employee) whom an individual victim can hold (vicariously) liable. The Dutch approach in this respect arguably reflects an unduly narrow interpretation of the concept as contained in the directives.

*Reasonable accommodation* – This concept is only enshrined in the DDA. The law speaks of 'effective' instead of 'reasonable' accommodation: the accommodation sought must have the pursued effect(s), which means that the accommodation must be both 'appropriate' and 'necessary'.<sup>11</sup> It must also be reasonable, in the sense that it may not impose a disproportionate (financial) burden upon the employer. The duty to make an 'effective accommodation' is not a generic obligation: it must respond to the specific need of an individual employee.

*Exceptions* – The GETA, DDA and ADA all enshrine exceptions to the central norm. In the first two acts, the legislature lists these exceptions explicitly and exhaustively as far as direct discrimination is concerned. These exceptions are interpreted restrictively by the

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<sup>8</sup> E.g. NIHR Opinion 2012-204 of 28 December 2012; NIHR Opinion 2018-115 of 8 November 2018; NIHR Opinion 2021-149 of 14 December 2021; and NIHR Opinion 2022-100 of 26 August 2022.

<sup>9</sup> E.g. NIHR Opinion 2018-87 of 21 August 2018; NIHR Opinion 2021-90 of 13 July 2021; NIHR Opinion 2022-131 of 21 November 2022; and NIHR Opinion 2023-128 of 6 December 2023.

<sup>10</sup> E.g. NIHR Opinion 2022-132 of 21 November 2022 and NIHR Opinion 2023-132 of 14 December 2023.

<sup>11</sup> Since 1 January 2017, a more general duty exists under the DD to improve accessibility for persons with disabilities in addition to the duty to provide reasonable accommodation in individual cases. This proactive, general duty entails the duty to ensure accessibility at least gradually for persons with disabilities, unless this creates a disproportionate burden.

courts and the NIHR. The ADA offers more flexibility for (semi-)judicial interpretation: both direct and indirect age discrimination may be 'objectively justified', and only certain exceptions have been *a priori* and explicitly listed within the act itself. Overall, the exceptions in the equal treatment laws, such as the general occupational requirement and the exception for ethos-based organisations, are in line with those possible under the directives.

#### 4. Material scope

The GETA applies to the areas of employment and occupation, provision of goods and services (including education and healthcare) and, only in the context of racial discrimination, the areas of social security and social protection. The DDA applies to employment, professional education and goods and services. Some specific restrictions apply in the fields of housing and public transport. The ADA is the most limited in its material scope: it only applies to employment and employment-related education.

The concept of 'employment' in all three acts must be interpreted broadly, covering both public and private sector employment, as well as self-employment, and ranging from recruitment to dismissal, including promotion, employment conditions, employment mediation and (vocational) training.

The boundaries of the GETA's scope are threefold. First, the act is not applicable with regard to the internal affairs of churches and religious communities; secondly, it remains without prejudice to already existing sex discrimination law; and thirdly it is not applicable to the internal affairs of associations (this follows implicitly from the constitutionally guaranteed freedom of association). Furthermore, the law is not applicable to unilateral acts by public officials or Government bodies (i.e. acts of regulation and legislation and acts by which such rules are executed).<sup>12</sup> The latter limitation to the scope does not apply to statutory social security provisions (which are only covered for the ground of race/ethnicity).

The prohibition of age discrimination in the ADA is inapplicable with regard to (occupational) pension provision (supplementary to pension provision on the basis of social security law) and with regard to actuarial calculations for pension provision.<sup>13</sup>

#### 5. Enforcing the law

The GETA, the DDA and the ADA do not prescribe compulsory judicial procedures. Normal civil or administrative procedures can be used to enforce the equal treatment standards laid down in these acts. In addition, certain discriminatory acts are covered by the Criminal Code, which can be enforced through criminal law, although this possibility is not often used in practice. Individual victims can report discrimination to the police but cannot instigate criminal proceedings; the decision to prosecute is always taken by the Public Prosecutor (*Openbaar Ministerie*). Victims who disagree with a decision not to prosecute can apply to the Court of Appeal, which may overrule the Public Prosecutor and order prosecution (Article 12, Code of Criminal Procedure).

Of great practical relevance is the special low-threshold procedure before the Netherlands Institute for Human Rights (NIHR). It is low threshold because claimants do not require legal assistance and do not have to pay legal fees. Additionally, a complaint can be easily submitted by completing an online form on the NIHR's website.<sup>14</sup> The NIHR is an

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<sup>12</sup> As the directives do not require this, this is not an issue from an EU perspective.

<sup>13</sup> No adjustments have been made to this exception in response to the Court's judgment in the Court of Justice of the European Union (CJEU), Case C-476/11 HK Danmark, 26 September 2013, <https://curia.europa.eu/juris/document/document.jsf?text=&docid=142214&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=1934200>, in which age-related increases in pension contributions were found to be outside the scope of Article 6(2) of the Employment Equality Framework Directive.

<sup>14</sup> See <https://klachtenformulier.mensenrechten.nl/>.

independent quasi-judicial body whose case law (opinions) is non-binding but authoritative. Interest groups (NGOs and other organisations) have legal standing before both the courts and the NIHR and can act on behalf of or in support of victims and also defend the public interest (*actio popularis*). The local anti-discrimination services (ADV's) can assist victims in bringing discrimination cases to the NIHR or to the courts. In addition, the NIHR may conduct investigations on its own initiative. Despite their non-binding character, the opinions issued by the NIHR are frequently followed by the parties concerned.<sup>15</sup>

The 'partially reversed burden of proof' applies in procedures before the courts and the NIHR. Regarding sanctions, the GETA, DDA and ADA only stipulate that discriminatory dismissals (and dismissals related to victimisation) are voidable and that contractual provisions that are in contravention of the equal treatment acts are null and void. Under the ordinary court procedures, if an employee has been dismissed contrary to equal treatment law, the termination of the contract can be invalidated and the employee can thereupon claim wages. They can also request to be reinstated in the job. Alternatively, they can claim pecuniary damages under general administrative, contract or tort law. Sanctions in criminal proceedings can be imposed in the form of either a fine or a prison sentence. In practice, however, prison sentences are not imposed for discrimination. The provisions of the Criminal Code cover all grounds of discrimination mentioned in the Directives, except age. Hence, for age discrimination, only civil law sanctions apply.

The laws' complicated and, in fact, limited arsenal of sanctions raises doubts about whether they meet the requirement in the directives that sanctions be 'effective', 'proportionate' and 'dissuasive'. Unlike the courts, the NIHR has no competence to impose sanctions. The NIHR can make recommendations to a party that has discriminated against someone, and it may forward its findings to the minister concerned and to organisations of employers, employees, professionals and the like. The NIHR can also bring legal action with a view to obtaining a court ruling on situations of unequal treatment. To date, however, it has not made use of this power.

## 6. Equality bodies

The NIHR is the designated equality body (on the basis of Article 13 of Directive 2000/43/EC) at the national level. It has a broad human rights mandate within which it also operates as a quasi-judicial equality body with the competence to give legal opinions on discrimination complaints. These opinions are not binding, but are in practice very authoritative. The NIHR mandate further covers conducting surveys and issuing reports and recommendations. The NIHR does not assist victims of discrimination; this function is carried out by the ADVs (see below). The NIHR also has an advisory task (e.g. for the Government when it is drafting or amending equality laws or for employers when they are developing new policies) and it performs information and research activities (e.g. through its annual bulletins and by assigning research projects to independent institutes). The NIHR deals with all non-discrimination grounds in the GETA, DDA and ADA, as well as more specific equal treatment grounds (such as the type or duration of employment contracts). It is also responsible for monitoring the implementation of the CRPD. It also fulfils a role as the National Prevention Mechanism,<sup>16</sup> and as the Fundamental Rights Authority on Artificial Intelligence.<sup>17</sup> All reports, advice and Opinions (judgments in individual cases) are published on the Institute's website.<sup>18</sup>

The NIHR Act lays down that the NIHR must consist of 9 to 12 members, including a president and two vice-presidents. This act also contains guarantees for their

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<sup>15</sup> The NIHR reports on the follow-up to its Opinions in its annual reports, see further section 7.8.a below.

<sup>16</sup> Pursuant to the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, Article 17 ff.

<sup>17</sup> Pursuant to the EU Artificial Intelligence Act, Regulation 2024/1689, Article 70 ff.

<sup>18</sup> See [www.mensenrechten.nl/oordelen](https://www.mensenrechten.nl/oordelen).

independence. The NIHR and its staff bureau are funded by the Government (from the budgets of a number of ministries) and are accountable to the Government by means of an annual report and by independent financial auditing. Every five years, an internal and external evaluation report is published and submitted to the Government and Parliament. The 2025 Country Report described how several members of the NIHR reported harassment, discrimination and favouritism by the Institute's president and other members. In 2025, the Institute entered a period where the mandates of previous members expired and new members, including a president, were appointed.<sup>19</sup>

The local anti-discrimination services (ADV's) have also been designated by the Government as equality bodies in the terms of the directives. Their tasks are closely related to but do not overlap with those of the NIHR. All local authorities are obliged by law to have an ADV in place. The ADVs have two legal tasks: to assist people who have a discrimination complaint and to register all such complaints and bring them to the attention of the Minister of the Interior and Kingdom Relations. A report published in 2023 signalled a number of problems concerning the functioning of the ADVs, including with regard to their visibility, independence and the availability of financial resources (see section 7.1.b of this report, below).

## 7. Key issues

The following key issues are of concern in the Dutch context, regarding the implementation and transposition of the directives.

- Overall, Dutch legislation and policies in the field of anti-discrimination are of a high standard. Still, there is ample evidence that (structural) discrimination continues to be prevalent in the Netherlands (see further section 11), and that there has been a sharp increase in online discrimination;
- The great majority of people who experience discrimination in the Netherlands do not report it. Most people who chose not to report an incident of discrimination did so because they believed that reporting would not help (see further section 11);
- A high level of discrimination continues to be experienced in the banking sector. People with a 'non-western' migration background, including Muslims, are especially affected. The discrimination is mostly experienced in the form of excessive controls, following from institutional policies to prevent money laundering and financing of terrorism (see further section 11);
- Although the newest Government no longer includes an extreme right/populist party, support for political parties on the extreme right/populist far right of the political spectrum continues to grow. Although they are currently not part of the Government, these parties have become an established presence in the Dutch political landscape, attesting to the increasing normalisation of racist and xenophobic attitudes in the Netherlands (see further section 11);
- Research shows that digital technologies, including algorithms, are widely used in the field of education, including in primary, secondary and higher education, possibly enhancing bias against, for example, pupils with disabilities or those with a migration background (see section 11);
- In its most recent evaluation of the Dutch equal treatment legislation,<sup>20</sup> the NIHR expressed concern about the fragmented nature of this legislation (see further section 11). This systemic feature of Dutch non-discrimination law may partially gain an extra dimension with the call by the State Commission against Discrimination and Racism for a public sector equality duty;

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<sup>19</sup> See section 7.2 of this report.

<sup>20</sup> Netherlands Institute for Human Rights, 'Evaluation of equal treatment legislation 2017–2022: Future-proof equal treatment?' (*Evaluatie gelijkebehandelingswetgeving 2017-2022. Toekomstbestendige gelijke behandeling?*) Available at: <https://www.rijksoverheid.nl/documenten/2024/01/09/evaluatie-gelijkebehandelingswetgeving-2017-2022>.

- In the same evaluation referred to in the previous paragraph, the NIHR points out that it currently lacks the capacity to conduct investigations into situations of institutional discrimination, including algorithmic discrimination, on a regular basis (see section 11);
- The Netherlands does not have a legal or policy framework for the collection of (disaggregated) equality data, which makes it more difficult to monitor the prevalence of discrimination and formulate adequate anti-discrimination policies.

Some elements of Dutch legislation or practice do not seem to comply fully with the EU directives:

- the accumulative conditions in the 'harassment' definition may be considered to fall short of the directives' 'non-regression' clause (see section 2.4 of the report);
- arguably, the Dutch Government interprets the prohibition of an 'instruction to make a distinction' unduly narrowly, including in relation to the scope of liability for this type of discrimination (see section 2.5 of the report);
- the use of risk profiles that include the criterion 'of non-Dutch origin' could be in contravention of Directive 2000/43/EC (see section 3.2.5 of the report);
- case law from the Dutch courts on residence requirements for social security show that the courts do not always establish whether the use of such requirements amounts to indirect discrimination on the ground of racial or ethnic origin before proceeding to the question of justification. By failing to establish whether the residence requirements put persons of a certain racial or ethnic origin at a particular disadvantage, the courts do not give full effect to the Racial Equality Directive (RED) (see section 3.2.5);
- it is doubtful whether the sanctions imposed by Dutch courts in discrimination cases, in particular given the high threshold for awarding non-material damages, meet the requirements of being 'effective', 'dissuasive' and 'proportionate' as required by EU law (see section 6.5 of the report).

Positive developments and good practices that stand out in 2025 are as follows:

- Investigations are ongoing into the possibility of expanding the scope of the General Equal Treatment Act (GETA) to cover so-called unilateral Government acts (*eenzijdig overheidshandelen*). This would make it easier for individuals to obtain legal protection against discrimination resulting from, for example, ethnic profiling and other law enforcement practices, and to combat institutional discrimination (see section 10). At the time of writing this report, the research on such an expansion is ongoing, and a legislative proposal is expected in 2026;<sup>21</sup>
- The State Commission against Discrimination and Racism has done in-depth research into a public sector equality duty and calls for introducing such a duty in the Netherlands.<sup>22</sup> Additionally, it has published a more overarching vision of discrimination law (see section 10);
- In 2024, the Dutch Data Protection Authority (*Autoriteit Persoonsgegevens*) was expanded with a new directorate to monitor risks resulting from the use of algorithms. Among the priorities identified by the Directorate is the prevention of discrimination through algorithms (see section 10). In 2025, it published a report on AI and algorithms, including discrimination risks;
- The Government confirmed its intention to ratify the Optional Protocol to the CRPD (accepting the right of individual petition).<sup>23</sup>

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<sup>21</sup> Tweede Kamer, 2025–2026, 30 950, No. 502, p. 35.

<sup>22</sup> As yet, there is no clarity whether the Government will consider following up on the call for introducing such a duty.

<sup>23</sup> The Netherlands signed the Optional Protocol of the CRPD on 27 January 2026, just after the cut-off date for this report. The ratification process is pending at the time of writing the report (see section 10 below).

## INTRODUCTION

### The national legal system

The Netherlands is a decentralised, unitary state. Equal treatment legislation is passed at the national level. Municipalities may pursue their own anti-discrimination policies within the boundaries set by national law. The principles of equality and non-discrimination are embedded in various legal instruments. Relevant are the Constitution, specific statutory equal treatment acts, criminal law, administrative law and labour law. The Dutch constitutional system adheres to a monist theory of international law, meaning that international equality guarantees are automatically applicable in the national legal system (provided that they are sufficiently clear and precise to be justiciable in individual cases) and that statutory acts that are not compatible with such guarantees will be set aside, (Articles 93 and 94 Dutch Constitution). Because the Netherlands does not allow constitutional review of statutory acts,<sup>24</sup> international provisions such as Article 14 ECHR and Article 26 ICCPR play a major role in ensuring that statutory law complies with the principle of non-discrimination.

Private employment contracts are regulated by Book 7 of the Civil Code (*Burgerlijk Wetboek*), which contains equal treatment provisions, and by the statutory equal treatment acts. Regulation also occurs through collective labour agreements (CAOs) at the level of the sector or individual employer. Civil servants are subject to the same employment rules as private sector employees, with the exception of specific categories such as judges and military personnel.<sup>25</sup> The main equality body is the Netherlands Institute for Human Rights (NIHR) (*College voor de Rechten van de Mens*), which is also a quasi-judicial body dealing with complaints of unequal treatment.

### List of main legislation transposing and implementing the directives

**Official title of the law: Constitution for the Kingdom of the Netherlands of 24 August 1815<sup>26</sup>**

Name used in this report: (Dutch) Constitution

Abbreviation: N/A

Date of adoption: 24 August 1815

Entry into force: 24 August 1815

Latest amendment: 22 February 2023

Web link: <https://wetten.overheid.nl/BWBR0001840/2023-02-22><sup>27</sup>

Grounds covered: Religion, belief, political opinion, race, sex, disability, sexual orientation or any other ground<sup>28</sup>

Constitutional law

Material scope: all fields

Principal content: Article 1 Dutch Constitution is a general non-discrimination provision, prohibiting discrimination on the above-mentioned grounds

<sup>24</sup> There are ongoing discussions to change this. A draft legislative proposal went through an internet consultation in mid-2025. The President of the Council of State has also welcomed abolishing the exclusion, see <https://www.raadvanstate.nl/publicaties/consultaties/contourennota-constitutionele-toetsing/>. Concrete plans to change the legislation were halted when the Government fell, but will continue under the new Government.

<sup>25</sup> Act on the regularisation of the legal status of civil servants (Wet normaliserend rechtspositie ambtenaren), Staatsblad 2017, 123. The Act entered into force on 1 January 2020. The exempted categories are listed in Article 3 Civil Servants Act (Ambtenarenwet 2017).

<sup>26</sup> Constitution for the Kingdom of the Netherlands of 24 August 1815 (Grondwet voor het Koninkrijk der Nederlanden van 24 augustus 1815), Staatsblad 1815, 45.

<sup>27</sup> All links for the Acts refer to the text in force until 31 December 2025 (and may sometimes be a historical version of the text).

<sup>28</sup> The grounds of disability and sexual orientation were expressly added to the text of Article 1 of the Netherlands Constitution by means of the constitutional amendment of 22 February 2023.

**Official title of the law: General Equal Treatment Act<sup>29</sup>**

Abbreviation: GETA

Date of adoption: 2 March 1994

Entry into force: 1 September 1994

Latest amendment: 1 January 2020

Web link: <https://wetten.overheid.nl/BWBR0006502/2020-01-01/0>

Grounds covered: Race, religion & belief, political opinion, hetero- or homosexual orientation, sex (including sex characteristics, gender identity and gender expression), nationality and civil (or marital) status

Civil/administrative law

Material scope: Employment relationships (both civil and public), occupational training and education, goods and services (including general education) + liberal professions

Principal content: Prohibition of direct and indirect discrimination

**Official title of the law: Act on equal treatment on the ground of disability or chronic illness<sup>30</sup>**

Name used in this report: Disability Discrimination Act

Abbreviation: DDA

Date of adoption: 3 April 2003

Entry into force: 1 December 2003

Latest amendment: 28 June 2025

Web link: <https://wetten.overheid.nl/BWBR0014915/2025-06-28/0>

Grounds covered: Disability and chronic illness

Civil/administrative law

Material scope: Employment relationships (both civil and public), occupational training and education + liberal professions + goods and services (including general education)

Principal content: Prohibition of direct and indirect discrimination

**Official title of the law: Act on equal treatment on the ground of age in employment<sup>31</sup>**

Name used in this report: Age Discrimination Act

Abbreviation: ADA

Date of adoption: 17 December 2003

Entry into force: 1 May 2004

Latest amendment: 1 July 2023

Web link: <https://wetten.overheid.nl/BWBR0016185/2023-07-01/0>

Grounds covered: Age

Civil/administrative law

Material scope: Employment relationships (both civil and public), occupational training and education + liberal professions

Principal content: Prohibition of direct and indirect discrimination

**Official title of the law: Criminal Code<sup>32</sup>**

Abbreviation: N/A

Date of adoption: 3 March 1881

Entry into force: 15 January 1886

Latest amendment: 29 October 2025

Web link: <https://wetten.overheid.nl/BWBR0001854/2025-07-01/0>

Grounds covered: race, religion, belief, sex, hetero- or homosexual orientation

Criminal law

<sup>29</sup> General Equal Treatment Act (Algemene wet gelijke behandeling), Staatsblad 1994, 230.

<sup>30</sup> Act on equal treatment on the ground of disability or chronic illness (Wet gelijke behandeling op grond van handicap of chronische ziekte), Staatsblad 2003, 206, entry into force Staatsblad 2003, 329.

<sup>31</sup> Act on equal treatment on the ground of age in employment (Wet gelijke behandeling op grond van leeftijd bij de arbeid), Staatsblad 2004, 30, entry into force Staatsblad 2004, 90.

<sup>32</sup> Criminal Code (Wetboek van Strafrecht), Staatsblad 1881, 35.

Material scope: employment (private and public sector), access to goods and services, public services  
Principal content: Several provisions prohibit discriminatory acts, for instance Article 429<sup>quater</sup> prohibits discriminatory acts committed in the performance of one's function, employment or enterprise

**Official title of the law: Civil Code<sup>33</sup>**

Abbreviation: N/A  
Date of adoption: 22 November 1991  
Entry into force: 22 November 1991  
Latest amendment: 18 July 2025  
Web link: <https://wetten.overheid.nl/BWBR0005290/2025-07-18/0>  
Grounds covered: sex, duration of contract, permanent or fixed-term contract  
Civil law  
Material scope: employment  
Principal content: Book 7 of the Civil Code includes specific articles prohibiting sex discrimination and discrimination in relation to the duration of employment contracts and whether they are permanent or fixed-term contracts (Articles 7:646-7:649).

**Official title of the law: Act on working conditions<sup>34</sup>**

Abbreviation: N/A  
Date of adoption: 18 March 1999  
Entry into force: 1 November 1999  
Latest amendment: 1 July 2025  
Web link: <https://wetten.overheid.nl/BWBR0010346/2025-07-01/0>  
Grounds covered: all grounds  
Civil law  
Material scope: employment  
Principal content: Article 3(2) Act on Working Conditions contains a positive obligation for employers to prevent and combat discrimination and (sexual) harassment in the workplace.

**Official title of the law: Act on the establishment of the Netherlands Institute for Human Rights<sup>35</sup>**

Name used in this report: Netherlands Institute for Human Rights Act  
Abbreviation: NIHR Act  
Date of adoption: 24 November 2011  
Entry into force: 1 October 2012  
Latest amendment: 1 January 2020  
Web link: <https://wetten.overheid.nl/BWBR0030733/2020-01-01/0>  
Grounds covered: all grounds  
Administrative law  
Material scope: all fields  
Principal content: The NIHR establishes the Netherlands Institute for Human Rights, the national equality body.

<sup>33</sup> Civil Code (Burgerlijk Wetboek), Staatsblad 1991, 600.

<sup>34</sup> Act on Working Conditions (Arbeidsomstandighedenwet), Staatsblad 1999, 184.

<sup>35</sup> Act on the establishment of the Netherlands Institute for Human Rights (Wet College voor de rechten van de mens), Staatsblad 2011, 573.

## 1 GENERAL LEGAL FRAMEWORK

### Constitutional provisions on protection against discrimination and the promotion of equality

The constitution of the Netherlands includes the following article dealing with non-discrimination:

#### Article 1

'All persons in the Netherlands shall be treated equally in equal circumstances. Discrimination on the grounds of religion, belief, political opinion, race, sex, disability, sexual orientation or on any other ground shall be prohibited.'

As the wording of this provision shows, it is a general clause with an open-ended list of grounds and no limitation in terms of its material scope. The term 'any other ground' is understood to include age, which is expressly protected in statutory equal treatment legislation implementing the constitutional non-discrimination clause. It was also understood to include disability and sexual orientation, until Article 1 was amended in 2023 so as to explicitly include these grounds. The bill proposing this amendment took 13 years to get through Parliament (in the Netherlands, constitutional amendments require two readings in differently composed Chambers to be passed). During this period, there have been many political debates in which alternative formulations were considered, such as a provision that does not mention any grounds at all ('Discrimination on any ground shall be prohibited') or a provision adding still more grounds (e.g. age or socio-economic status).<sup>36</sup> An amendment to add the ground of 'age' was rejected after the Council of State advised against its inclusion because it was of a different degree of 'suspectness' compared to disability and sexual orientation.<sup>37</sup> On 7 January 2023, the amendment bill was adopted at its second reading. The amendment entered into force on 22 February 2023.<sup>38</sup>

The provision applies to all areas covered by the directives. Its material scope is broader than those of the directives.

The provision is directly applicable, but Article 120 of the Dutch Constitution prohibits the courts from assessing the constitutionality of statutory laws, including their compatibility with Article 1 of the Constitution. Consequently, statutory acts cannot be set aside by a court, if they prove to be discriminatory. The consequences of this in terms of legal protection of persons against discrimination are mitigated, however, since Articles 93 and 94 of the Dutch Constitution allow all domestic courts to set aside and disapply even statutory legislation if it is in conflict with a treaty provision on equal treatment. Moreover, Article 120 of the Dutch Constitution only applies to statutory legislation. Lower legislation (such as Government decrees or municipal bylaws), administrative decisions etc. can be reviewed for their compatibility with the Constitution.

<sup>36</sup> For further analysis of the history and debates surrounding the amended provision, see De Vries, K. M. (2023), 'Constitutionalising the Status Quo: Expanding non-discrimination protections to include disability and sexual orientation in the Dutch Constitution', Constitutionnet 27 February 2023, <https://constitutionnet.org/news/constitutionalising-status-quo-expanding-non-discrimination-protections> and Gerards, J. H. (2023) 'De nieuwe discriminatiegronden van artikel 1 Grondwet – lijnen in het debat' (The new grounds of discrimination of Article 1 of the Constitution – lines in the debate), in: Gerards, J.H., Goossens, J. and Van Vugt, E.Y. (eds.), *Constitutionele verandering in Nederland? De grondwetswijzigingen van 2022-2023* (Constitutional Change in the Netherlands? The Constitutional Amendments of 2022-2023), The Hague: Bju 2023, pp. 273-307.

<sup>37</sup> *Handelingen II* (Parliamentary Proceedings of the Second Chamber) 2019-2020, No. 89, item 14. The advice of the Council of State is published as *Tweede Kamer* 2019-2020, 32 411, No. 14. The Council found that the ground of 'age' was of a different nature from 'disability' and 'sexual orientation' because there are many situations in which differences on the ground of age are objectively and reasonably justified.

<sup>38</sup> See: *Staatsblad* 2023, 62.

The provision can be enforced against private individuals<sup>39</sup> as well as against the state, with the exception stated above. However, because of its open character, the provision does not specify what the equal treatment or non-discrimination norm entails in concrete situations and how this norm should be weighed against other constitutional rights (e.g. freedom of speech/opinion or freedom of belief/religion). In order to ensure the applicability of the equality principle in horizontal relations, the constitutional guarantee has been incorporated into criminal law provisions and specific statutory equal treatment legislation (ADA, DDA, GETA and ETA).

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<sup>39</sup> E.g. Supreme Court 8 October 2004, NJ 2005/117 (Van Pelt/Martinair and KLM / Vereniging van Verkeersvliegers), ECLI:NL:HR:2004:AP0425.

## 2 THE DEFINITION OF DISCRIMINATION

### 2.1 Definition of the grounds of unlawful discrimination within the directives

The grounds of racial or ethnic origin, religion or belief, disability, age and sexual orientation are not defined in Dutch equal treatment law. Dutch equal treatment legislation applies symmetrically, meaning that people from both the dominant group and the disadvantaged group are covered. As grounds of discrimination have to be interpreted in concrete cases, some indications about the definition of grounds can be derived from case law.

#### a) Racial or ethnic origin

The Explanatory Memorandum to the GETA stresses that 'race' is a broad concept, which must be interpreted in line with the UN International Convention on the Elimination of Racial Discrimination (ICERD). The concept embraces race, colour, descent and national or ethnic origin.<sup>40</sup> In the EC Implementation Act of 2004, the Government did not deem it necessary to explicitly include the notion of 'ethnic origin', since this is sufficiently captured by the aforementioned interpretation of 'race'.<sup>41</sup>

The Supreme Court and the NIHR (formerly the ETC) both subscribe to the ICERD definition of race.<sup>42</sup> Both the courts and the NIHR tend to interpret the definition of 'race' as referring to particular characteristics (e.g. colour, national origin or culture) rather than as a category resulting from processes of racialisation.<sup>43</sup> To determine whether an applicant in an individual case can rely on the ground of 'race' (including ethnic origin), the NIHR uses as a yardstick whether the applicant belongs to 'a coherent group with collective physical, ethnic, geographical or cultural characteristics and which distinguishes itself from other groups by common features or a common behaviour'.<sup>44</sup> It is commonly accepted in the case law of the NIHR that the ground of 'race' applies to persons belonging to so-called 'non-western' migrant minorities, for example, persons of Turkish or Surinamese origin.<sup>45</sup> However, the NIHR has also applied the ground more generally to the group of 'persons of non-Dutch origin'.<sup>46</sup> Travellers can also invoke the ground of race.<sup>47</sup>

In 2017, the NIHR explicitly stated that its interpretation of the ground of 'race' in Dutch equal treatment legislation is broader than the definition of 'racial and ethnic origin' provided by the CJEU in the case of *Jyske Finans*. Unlike how the CJEU used to approach this, the NIHR does not require that persons belonging to a disadvantaged group must be of any particular ethnic origin. Hence, the ground of 'race' in the GETA also covers, for example, 'persons of non-Dutch origin'. In the NIHR's view, if the CJEU's interpretation of 'ethnic origin' were to be followed, this would mean a significant lowering of the level of protection provided by the GETA.<sup>48</sup> Since the Danish Ghetto case,<sup>49</sup> the CJEU has applied a broader interpretation with which the NIHR approach is even more in line.

<sup>40</sup> Explanatory Memorandum to the GETA, Tweede Kamer 1990-1991, 22 014, No. 3, p. 13. The notion of 'national origin' only embraces nationality in an ethnic sense. Nationality in a civic sense is covered by the non-discrimination ground of nationality.

<sup>41</sup> Explanatory Memorandum to the EC Implementation Act, Tweede Kamer 2002-2003, 28 770, No. 3, p. 3. See also Gerards, J. H. and Heringa, A. W. (2003), *Wetgeving gelijke behandeling* (Equal treatment legislation), Deventer, Kluwer, pp. 28-30.

<sup>42</sup> E.g. Supreme Court 14 March 1978, ECLI:NL:PHR:1978:AC3463; ETC 1995-23.

<sup>43</sup> E.g. Supreme Court 20 March 2016, ECLI:NL:HR:2016:510; NIHR Opinion 2019-135 of 23 December 2019.

<sup>44</sup> See, for example, ETC 1997-119 and 1998-57.

<sup>45</sup> E.g. NIHR 2020-100 and NIHR 2020-76.

<sup>46</sup> NIHR Opinion 2023-97 of 12 September 2023. For details see the case law section (12.2) in this report.

<sup>47</sup> E.g. NIHR 2020-108, NIHR 2020-88.

<sup>48</sup> NIHR 2017-67.

<sup>49</sup> CJEU, 18 December 2025, *Slagelse Almennyttige Boligselskab Afdeling Schackenborgvænge and Others/MV and Others*, C-417/23, ECLI:EU:C:2025:1017, para. 104 ff.

It can be difficult to draw the line between race, ethnicity and religion.<sup>50</sup> If all three grounds were protected to the same extent (as far as the personal and material scope of the legislation is concerned, and the exceptions to the non-discrimination ground are similar for each of these grounds), that would be no problem. However, this is not the case in the Dutch legal system where – following the directives – race is covered more broadly than religion.

Another discussion concerns the exact borderline between ‘race/ethnicity’ and nationality.<sup>51</sup> The GETA mentions nationality as a separate discrimination ground next to race, but race discrimination is covered more broadly (including the field of social security/social protection). In cases concerning hate speech and group insult, the Supreme Court does accept that the ground of ‘race’ covers references to nationality and immigration status (e.g. ‘Surinamese’, ‘Moroccans’ or ‘asylum seekers’).<sup>52</sup> In line with this case law, politician Geert Wilders was found guilty in 2016 of incitement to racial discrimination against ‘Moroccans’. This verdict was upheld in 2020 by the Court of Appeal.<sup>53</sup>

In the most recent evaluation of the GETA, the NIHR observed that further specification of the term ‘race’ in the equal treatment legislation, for example by adding ‘skin colour’, ‘descent’, ‘ethnic origin’ and ‘language’, could potentially help to clarify the scope of the prohibition on discrimination, especially towards actors who may be liable for discrimination. At the same time, however, the NIHR also pointed to complexities such as the need to maintain the possibility of objective justification at least in relation to the ground ‘language’.<sup>54</sup> In the majority of cases concerning language requirements, the NIHR has assessed whether there is indirect discrimination on ethnic origin.<sup>55</sup> In other cases, the NIHR has resorted to nationality to assess whether there is indirect discrimination.<sup>56</sup> In one case, the NIHR has used both grounds to establish intersectional discrimination (see further section 2.2).<sup>57</sup>

#### b) Religion or belief

‘Religion’ is not defined in the Constitution, the GETA or anywhere else in the equal treatment legislation. According to the legislative history of the GETA, the term ‘religion’ covers both the fact of having religious beliefs or adhering to a certain philosophy of life and the fact of acting in accordance with that conviction.<sup>58</sup>

In the Netherlands, the term ‘belief’ (*geloof*) is not used. In the Explanatory Memorandum to the EC Implementation Act, the Government explained that it wished to continue using the term *levensovertuiging*, which translates as ‘philosophy of life’, rather than introducing the term *geloof*. According to the Government, there is no material difference between the two terms. In this report, the term ‘belief’ is used where Dutch law uses the term

<sup>50</sup> In line with the interpretation by e.g. the European Court of Human Rights, discrimination against Jews is put on a par with discrimination on grounds of race. Discrimination against Muslims is not approached in a similar way.

<sup>51</sup> See, for example, ETC 2011-97 and 2011-98, including the case comment by A. Böcker and S. Dursum-Aksel in Foster, C. J. et al. (eds.) (2012), *Oordelenbundel 2011* (‘NIHR Opinions 2011’). Nijmegen, Wolf Legal Publishers, pp. 453-464. For a more recent example see NIHR Opinion 2023-79 of 19 July 2023, para 4.6.

<sup>52</sup> E.g. Supreme Court 16 April 1996, ECLI:NL:PHR:1996:AD2525; Supreme Court 26 June 2012, ECLI:NL:HR:2012:BW9189.

<sup>53</sup> Court of Appeal of The Hague 4 September 2020, ECLI:NL:GHDHA:2020:1606.

<sup>54</sup> Netherlands Institute for Human Rights (2023), ‘Evaluation of equal treatment legislation 2017–2022’ (*Evaluatie gelijkebehandelingswetgeving 2017–2022*), Utrecht, pp. 34-35.

<sup>55</sup> For example, NIHR Opinions 2022-55 of 22 May 2022 and 2024-11 of 1 February 2022.

<sup>56</sup> For example, NIHR Opinion 2025-1 of 9 January 2025.

<sup>57</sup> NIHR Opinions 2025-120 and 2025-121 of 29 October 2025.

<sup>58</sup> Explanatory Memorandum to the GETA, Tweede Kamer 1990-1991, 22 014, No. 3, pp. 39-40 and Memorandum in Response to the GETA (*Memorie van Antwoord bij de Algemene Wet Gelijke Behandeling*), Tweede Kamer 1990-1991, 22 014, No. 5, pp. 39-40. See also, inter alia, ETC 1997-46, 2004-112 and 2004-148.

*levensovertuiging*.<sup>59</sup> This term has no further definition in the Constitution, the GETA or elsewhere in the equal treatment legislation.

'Religion' and 'belief' are interpreted in a broad sense by the NIHR and the courts (including in cases concerning freedom of religion). The interpretation of these terms is strongly inspired by the case law of the European Court of Human Rights (ECtHR) and other international institutions (e.g. the UN Human Rights Committee).<sup>60</sup> To qualify as an expression of religion or belief, it is not necessary for a particular manifestation (e.g. the wearing of headscarves by women) to be a mandatory requirement of the religion or belief concerned<sup>61</sup> or to be practised by all persons adhering to that religion or belief.<sup>62</sup> The wearing of a headscarf and the wish not to shake hands with a person of the opposite sex are among the acts that are commonly accepted by the NIHR as manifestations of religion.<sup>63</sup>

The NIHR has found that a man who refused to be tested for or vaccinated against COVID-19 could not rely on the discrimination ground 'belief', because his convictions, which he himself qualified as 'libertine-legalistic freedom thinking', were insufficiently encompassing and did not include fundamental convictions relating to the human condition. Instead they related predominantly to his interpretation of the Dutch Constitution, as the man had argued that his views were based on the right to freedom as it is laid down in the Constitution.<sup>64</sup> The NIHR did accept that the man could rely on the discrimination ground 'political opinion'. Since both grounds are protected in the same way, the practical consequences of distinguishing between them were considered to be limited.

#### c) Disability

The Dutch equal treatment legislation does not define disability, as the Government deemed it unnecessary and undesirable to do so.<sup>65</sup> However, unlike the Employment Equality Directive, the DDA expressly mentions 'chronic illness' as a ground alongside 'disability'. Criteria mentioned during the parliamentary discussions on the DDA to define 'disability' were, amongst others, the long duration of the disability or chronic illness and the fact that – in the case of disability – the impairment is irreversible. This means that a short-term disability is excluded.<sup>66</sup> According to the Explanatory Memorandum to the DDA, the concept of disability (*handicap*) covers not only physical, but also intellectual and psychological impairments.<sup>67</sup> The Government held the opinion that differences in treatment on the ground of disability do not only result from the physical or psychological characteristics of the individual, but also from a physical and/or social environment that prevents them from participating on an equal footing.<sup>68</sup> This interpretation appears to be in line with the definition of disability provided by the CJEU in *HK Danmark (Ring and Skouboe Werge)*.

Both the courts and the NIHR accept that the term 'disability' must be defined in conformity with the CRPD and with the Employment Equality Directive as interpreted by the CJEU,

<sup>59</sup> The NIHR, in the English translation of the GETA on its website, also translates 'levensovertuiging' as 'belief'.

<sup>60</sup> E.g. Administrative Jurisdiction Division (AJD) of the Council of State 15 August 2018, ECLI:NL:RVS:2018:2715, para 9. In this case the AJD found that pastafarianism did not meet the requirements of 'seriousness' and 'cohesion' as formulated by the ECtHR in relation to Article 9 ECHR (freedom of religion).

<sup>61</sup> Administrative Jurisdiction Division (AJD) of the Council of State 15 August 2018, ECLI:NL:RVS:2018:2715, para 8.

<sup>62</sup> See, for example, ETC 2008-12.

<sup>63</sup> E.g. ETC 2007-173, NIHR 2018-102 and 2020-74.

<sup>64</sup> NIHR Opinion 2022-44 of 2 May 2022.

<sup>65</sup> Explanatory Memorandum to the DDA, Tweede Kamer 2001-2002, 28 169, No. 3, p. 9.

<sup>66</sup> Explanatory Memorandum to the DDA, Tweede Kamer, 2001-2002, 28169, No. 3, p. 24 and No. 5, p. 16. See also ETC 2005-234.

<sup>67</sup> Tweede Kamer 2001-2002, 28 169, No. 3, p. 24.

<sup>68</sup> Tweede Kamer 2001-2002, 28 169, No. 3, p. 7.

including in the cases of *HK Danmark (Ring and Skouboe Werge)* (C-335/11 and C-337/11), *Kaltoft* (C-354/13) and *Daouidi* (C-395/15).<sup>69</sup> Despite this general acceptance of the CJEU's definition of 'disability', application of this discrimination ground in individual cases sometimes remains focused on the existence of physical impairments.<sup>70</sup> Moreover, the courts do not always explain why they consider a particular situation to be covered by the ground 'disability'.<sup>71</sup>

The NIHR held, in Opinions 2021-83 and 2021-84, that a girl with a very high IQ (over 145), which prevented her from attending school regularly, could not rely on the discrimination ground disability because she was not fully excluded from participating in the classes on offer.<sup>72</sup> Although the NIHR referred to the definition of disability in the CRPD, it is the opinion of the author of this report that the criterion of being 'fully' excluded is more restrictive than required by the CRPD or CJEU case law. To date the NIHR has not addressed this particular question in cases coming within the scope of the Employment Equality Directive.

In 2023 the Administrative Jurisdiction Division of the Council of State (AJD) rejected a claim for reasonable accommodation by a university student who had missed several exams because he needed surgery following a traffic accident. After confirming that the ground 'disability' has to be interpreted in conformity with the CRPD and the Employment Equality Directive, the AJD held that the applicant's medical situation was not long-lasting and did not prevent him from fully and effectively participating in professional life on an equal basis with others.<sup>73</sup> In the same vein, the Amsterdam district court found that a rider for a grocery delivery service could not claim disability discrimination because, at the time of his dismissal, it could not be established that the injuries he sustained in a bike accident resulted in long-term incapacity for work.<sup>74</sup> Both judgments seem in line with the CJEU's definition of 'disability' in *Daouidi* (C-395/15). Meanwhile, both the NIHR and the courts accept that illness resulting in long-term incapacity for work, such as (breast) cancer, falls under the definition of 'chronic illness' in the DDA even if a chance exists that the person concerned will fully recover.<sup>75</sup> In 2024, the NIHR accepted for the first time that limitations in working capacity due to long COVID (or post-COVID syndrome) qualify as a disability.<sup>76</sup>

A clear application of the social model approach to disability can be found in NIHR Opinion 2023-31.<sup>77</sup> The case concerned a young child who was denied access to several primary schools that claimed that they were unable to support the child's special learning needs. Although it emerged from a psychologist's report that the child experienced several difficulties, including in terms of his linguistic development, behaviour and concentration, no medical diagnosis was available. The fact that the child had not attended school had impeded reaching such a diagnosis, as it had not been possible to evaluate his functioning

<sup>69</sup> See, for example, Court of Appeal of Den Bosch, 30 June 2020, ECLI:NL:GHSHE:2020:1978, para 3.6.4; District Court of Northern Holland 14 July 2020, ECLI:NL:RBNHO:2020:5426, para 4.8 and District Court of the Central Netherlands 26 August 2021, ECLI:NL:RBMNE:2021:4061, para 3.3. For the NIHR see, amongst others, NIHR Opinion 2014-158 of 11 December 2014, NIHR Opinion 2019-94 of 12 August 2019 and NIHR Opinion 2022-13 of 24 February 2022.

<sup>70</sup> See, for example, Court of Appeal of Den Bosch 30 June 2020, ECLI:NL:GHSHE:2020:1978 and District Court of Northern Holland 14 July 2020, ECLI:NL:RBNHO:2020:5426. A more social-contextual approach can be found in District Court of East Brabant 18 January 2018, ECLI:NL:RBOBR:2018:2005. All cases are discussed in more detail in the European network of legal experts in gender equality and non-discrimination (2023) Country report 2022 on non-discrimination for the Netherlands, pp. 18-19.

<sup>71</sup> See e.g. District Court of Limburg 25 October 2022, ECLI:NL:RBLIM:2022:8265, para 4.7. The district court found that a woman who was dismissed after she was diagnosed with pulmonary cancer could claim disability discrimination, but did so without referring to the expected duration of the disease or its effects on the woman's condition.

<sup>72</sup> NIHR Opinions 2021-83 and 2021-84 of 2 July 2021.

<sup>73</sup> Administrative Jurisdiction Division of the Council of State 30 August 2023, ECLI:NL:RVS:2023:3307, para. 4.2.

<sup>74</sup> District court Amsterdam 3 May 2023, ECLI:NL:RBAMS:2023:2812, para 11.

<sup>75</sup> District court Zeeland-West-Brabant 22 March 2024, ECLI:NL:RBZWB:2024:2334; NIHR Opinion 2014-9 of 30 January 2014; NIHR Opinion 2024-45 of 17 April 2024 and NIHR Opinion 2020-32 of 14 April 2020.

<sup>76</sup> NIHR Opinion 2024-98 of 2 December 2024, for details see the case law overview at the end of this report.

<sup>77</sup> NIHR Opinion 2023-31 of 8 March 2023, for details see section 12.2.

in a group of pupils. Before the NIHR, the school board argued that the applicant (the child's father) could not rely on the DDA because the child did not have a disability. In response, the NIHR stated that 'in interpreting [the term 'disability'] it must have regard to the social restrictions experienced by an individual as a result of their impairment and not exclusively to the medical-scientific definition of such impairment'.<sup>78</sup> The NIHR therefore considered itself competent to hear the case.

d) Age

The legislator has not defined the word 'age'. Case law shows that it is not only direct references to someone's age that are considered to be direct distinctions on this ground. The use of classifications like 'young', 'old', 'adult', 'pensioner' or 'student' may also be considered as such, as was established in the case of an applicant who believed he had been denied a job because he had too much work experience.<sup>79</sup> In another case, an applicant claimed age discrimination because his employer had given a pay rise only to employees on the lower salary scales. The court established that the salary scales were linked to the different functions performed in the company rather than to age-related factors, such as the number of service years. Therefore, no age discrimination was found to have taken place.<sup>80</sup>

In 2023, the NIHR reversed the position of the ETC, which held that a distinction based on 'relative age' (the age difference between a person and her partner, in the context of a widow's pension) resulted in indirect age discrimination. Referring to the Opinion of Advocate-General Sharpston in *Bartsch* (C-427/06), the NIHR held that a distinction based on 'relative age' qualifies as direct age discrimination.<sup>81</sup>

Since the ADA allows for objective justifications (open system) in case of both direct and indirect discrimination, the boundary between what kind of classification constitutes direct or indirect discrimination is not problematic.

e) Sexual orientation

The GETA employs the terminology 'hetero- or homosexual orientation' to cover the ground 'sexual orientation' of Directive 2000/78/EC, without specifying what is covered by these terms. The Dutch Government opted for the term 'orientation' (*gerichtheid*) rather than 'preference' (*voorkeur*) to reflect that it is not only individual emotions that are covered, but also concrete expressions thereof. It further follows from parliamentary history that 'hetero- or homosexual orientation' covers bisexual orientation.<sup>82</sup> One reason for the legislature's preference for the term 'hetero- or homosexual orientation' over 'sexual preference' or 'sexual orientation' was that the latter terms might be understood to include 'paedophile orientation'. However, since its amendment in 2023 (see section 1 above) Article 1 of the Dutch Constitution uses the term 'sexual orientation', which the authors of the amendment considered to be more inclusive (especially towards lesbians and bisexuals) and more in line with the terminology used in international and European law.<sup>83</sup> In 2020, based on the same arguments, the Government announced its intention to replace the term 'hetero- or homosexual orientation' with 'sexual orientation' in both the equal treatment legislation (GETA) and the Criminal Code.<sup>84</sup> The Government added that, although 'sexual orientation' does not encompass all forms of sexuality, it can be defined as 'a sexual orientation – based on consensus and equality – towards persons of different

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<sup>78</sup> NIHR Opinion 2023-31 of 8 March 2023.

<sup>79</sup> Court of Appeal of Den Bosch 1 September 2020, ECLI:NL:GHSHE:2020:2703.

<sup>80</sup> Court of Appeal of The Hague 11 February 2020, ECLI:NL:GHDHA:2020:154.

<sup>81</sup> NIHR Opinion 2023-123 of 22 November 2023.

<sup>82</sup> Tweede Kamer 1991-1992, 22 014, No. 10, p. 12.

<sup>83</sup> Tweede Kamer 2018-2019, 32 411, No. 9.

<sup>84</sup> Tweede Kamer 2019-2020, 30 950, No. 185, p. 21.

or the same gender or of more than one gender’.<sup>85</sup> A bill to introduce the new terminology was sent to Parliament in March 2024.<sup>86</sup> As at the cut-off date for this report (1 January 2026), the legislative process was still ongoing and will be continued when prioritised again

## **2.2 Multiple and intersectional discrimination**

In the Netherlands, multiple and intersectional discrimination are not expressly prohibited by law. A suggestion made by the then Equal Treatment Commission (ETC) in 2011 to include an explicit prohibition of multiple discrimination in the GETA was rejected by the Government.<sup>87</sup> Hence, when cases of such discrimination arise in practice, they have to be solved by means of interpretation of the applicable legislative, constitutional, EU and international law provisions. Although the GETA contains a closed list of non-discrimination grounds, the legislative history does not exclude the possibility that a finding of discrimination is based on a combination of grounds. An interpretation of Article 1(1) GETA that allows for findings of multiple or intersectional discrimination further seems to be most in line with the legislator’s objectives. However, in cases brought before the NIHR no material difference results from the recognition of multiple or intersectional discrimination, as the NIHR cannot impose sanctions and can only establish that an unlawful distinction has been made.

In the Netherlands, multiple discrimination is taken into account when deciding on discrimination cases. The NIHR occasionally deals with cases in which the applicant claims to have been discriminated against on multiple grounds. A distinction can be drawn between cases in which the claim concerns different (alleged) acts of discrimination, each relating to a different discrimination ground, and cases in which it is claimed that a single (alleged) act of discrimination is based on multiple grounds. One example of a case that falls in the first category concerns an employee of a university for applied sciences who experienced discrimination on the ground of gender by a student and, in a separate incident, discrimination on the ground of racial or ethnic origin by a colleague.<sup>88</sup> The equality body considered both acts separately and found that there had been discrimination on the ground of gender but not on the ground of racial or ethnic origin. An example from the second category concerns a woman with autism who worked as an assistant pharmacist in an academic hospital and had to take sick leave twice following miscarriages.<sup>89</sup> Because of her autism, the woman required several accommodations, including working at different locations, in a low-stimulus working environment and with work days spread out over the week, enabling her to rest in between. The woman claimed that the hospital’s refusal to renew her (second) temporary contract amounted to discrimination on the grounds of disability and sex (pregnancy). The NIHR investigated each discrimination ground separately and found that the hospital had done all that could reasonably be expected to accommodate the woman (hence there had been no disability discrimination) and that it had effectively rebutted her claim that the pregnancy had been (one of) the reason(s) for not extending her contract.

The NIHR’s recognition of multiple discrimination grounds allows it to address claims in full, considering different elements put forward by claimants.

The author of this report is not aware of any court decisions concerning multiple or intersectional discrimination.

In the Netherlands, intersectional discrimination is occasionally taken into account when deciding on discrimination cases, as is explained further below.

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<sup>85</sup> This can be derived from the advice that has been published by the Advisory Division of the Council of State: <https://www.raadvanstate.nl/adviezen/@126198/w04-21-0211/>.

<sup>86</sup> Tweede Kamer 2023-2024, 36 510, No. 2.

<sup>87</sup> ETC (2011), Third evaluation report (2004-2009), p. 64.

<sup>88</sup> NIHR Opinion 2024-82 of 2 October 2024. See also NIHR Opinion 2024-28 of 2 April 2024, NIHR Opinion 2024-6 of 25 January 2024 and NIHR Opinion 2021-149 of 14 December 2021.

<sup>89</sup> NIHR Opinion 2024-17 of 15 February 2024. See also NIHR Opinion 2024-14 of 6 February 2024.

Between 2012, when the Equal Treatment Commission was replaced by the NIHR, and 2022, the concept of intersectionality did not play a role in the Opinions issued by the NIHR.<sup>90</sup> During this period, cases were either treated as involving (potential) multiple discrimination or as involving discrimination on a single ground. The latter approach is illustrated in cases concerning Islamic headscarves, which are almost always treated only as direct or indirect discrimination on the ground of religion. This may also be due to the fact that applicants often rely only on this ground.<sup>91</sup>

From 2022 onwards, the NIHR has begun to engage more explicitly with the concept of intersectionality. This can be seen in Opinion 2022-132, where the equality body dealt with the complaint of a woman of colour who claimed discrimination on the grounds of race and sex because she had not been considered for a position in the company where she was contracted as a temporary worker.<sup>92</sup> In 2023, the NIHR again expressly addressed intersectional discrimination in the case of a man of Ghanaian origin who was suspected of shoplifting. In this case, the equality body confirmed, in general terms, that a single case can involve multiple discrimination grounds, whereby both grounds can apply independently from each other, one ground can reinforce the other, or the different grounds can be intertwined to such an extent that it is their combination that results in the distinction being made. Despite this recognition, the NIHR did not actually take an intersectional approach.<sup>93</sup> In 2024, the NIHR considered a complaint by a female employee of a public health organisation who had suffered racist harassment by a client and complained that the organisation had failed to adequately protect her. The NIHR acknowledged that the woman had claimed intersectional discrimination (as a black woman) but held that this part of the claim fell outside the scope of its assessment.<sup>94</sup> In 2025, intersectionality was a recurring theme in several opinions, even if it was not yet front and centre in most of them. For instance, Opinion 2025-54 dealt with a complaint from a woman who wanted to swim without the upper part of a swimsuit, because that was painful for her after her mastectomy due to breast cancer. The NIHR considered, of its own initiative, that 'there is a particular concurrence of two grounds for discrimination – namely, gender and disability/chronic illness – which are closely interrelated due to the nature of the disability/chronic illness, and the specific dress codes for women at swimming pools'. Because the main focus in this case was the ground of disability, the NIHR opted to address this ground primarily while factoring in its interrelatedness with the other ground. In Opinions 2025-120 and 121, however, the NIHR used an intersectional lens. Firstly, it considered that a language requirement is an apparently neutral criterion which disproportionately affects persons of non-Dutch origin (race) and who do not have Dutch as their first language, compared to persons of Dutch origin. Furthermore, a person's language is connected to their nationality. Therefore, the requirement predominantly affects persons of non-Dutch origin and nationality, and who do not have Dutch as their first language. Consequently, the grounds of race and nationality may mutually reinforce each other. In applying this to the case, the NIHR found that there was indirect discrimination against the applicant, who suffered a particular disadvantage because of these two mutually reinforcing grounds. In sum, the NIHR does recognise the possibility of intersectional discrimination but appears to still be searching for a way to effectively integrate an intersectional approach into its assessment of discrimination complaints.

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<sup>90</sup> De Vries, K. (2024), '*Het College voor de Rechten van de Mens en het stereotype van de 'stelende kleurling'*'. Een vingeroefening in intersectionaliteit' in: Loof, J.-P. and Lawson, R. (eds.), *Diverse mensen en gelijke rechten anno 2024 (liber amicorum Titia Loenen)*, Leiden: Stichting NJCM-boekerij, pp. 205-209.

<sup>91</sup> E.g. NIHR Opinions 2017-135, 2018-24, 2019-57 and 2024-5. In Opinion 2017-91, the NIHR treated the case as involving race as well as religion; however, the claim was deemed unsubstantiated.

<sup>92</sup> NIHR Opinion 2022-132 of 21 November 2022, for further details see the European network of legal experts in gender equality and non-discrimination (2023) Country report 2023 on non-discrimination for the Netherlands, pp. 21-22.

<sup>93</sup> NIHR Opinion 2023-132 of 14 December 2023. For further details see the European network of legal experts in gender equality and non-discrimination (2024) Country report 2024 on non-discrimination for the Netherlands, p. 23. See also De Vries (2024) (op cit, fn 111).

<sup>94</sup> NIHR Opinions 2024-39 and 2024-40 of 14 May 2024.

Indeed, it has indicated that it will further explore the application of intersectionality in its opinions in the coming year.<sup>95</sup>

### 2.3 Assumed and associated discrimination

#### a) Discrimination by assumption

In the Netherlands, discrimination based on a perception or assumption of a person's characteristics, is not prohibited in national law (GETA, ADA and DDA) explicitly, but such cases are covered implicitly, as case law shows. For example, the NIHR treated the complaint of a man who alleged he had been refused a job because of his non-Dutch-sounding name as a case of potential racial discrimination.<sup>96</sup>

#### b) Discrimination by association

In the Netherlands, discrimination based on association with people with particular characteristics is not prohibited in national law in an explicit way. However, the wording of Article 1(1) GETA (the legal definition of what is a 'distinction' for the purpose of equal treatment law) does not explicitly require that the alleged distinction is based on the race, religion/belief or sexual orientation of the alleged victim. It is therefore possible to interpret the Act so that it includes discrimination by association. The same goes for the grounds of age and disability, under Articles 1(b) ADA and DDA. In several opinions, the ETC and later the NIHR, relying on the CJEU's judgment in *Coleman* and/or *CHEZ Razpredelenie*, indeed followed this line.<sup>97</sup> To date, the equality bodies have considered claims of discrimination by association in relation to the grounds of disability, race and nationality.<sup>98</sup> It appears that Dutch law is in line with the judgments of the CJEU in *Coleman* (C-303/06), *CHEZ Razpredelenie* (C-83/14) and *Bervidi* (C-38/24).

In a noteworthy NIHR Opinion from 2022, the NIHR accepted that a man had suffered discrimination on the ground of racial or ethnic origin because of racist remarks made by his co-workers concerning 'negroes'.<sup>99</sup> It was undisputed that the applicant himself was light-skinned and that the remarks were not directed at him, still the applicant claimed that he was affected by the remarks because his father was a person of colour. The NIHR noted that it can consider complaints from anyone who has been 'disadvantaged' by an alleged discriminatory act. It further considered that it was clear that the applicant had been (very much) bothered by the remarks, to the point where he had felt compelled to resign from his job. The NIHR therefore concluded that the applicant had suffered 'personal and concrete' disadvantage from the remarks. It remains unclear from the opinion whether the applicant's direct family relationship to a person of colour (his father) played a role in this finding.

In 2023, the NIHR established that the relationships that can result in a finding of discrimination by association include the relationship between a grandparent and a grandchild.<sup>100</sup> The applicant was a grandfather who had attempted to book accommodation for a family holiday, but was denied a reservation because his granddaughter, who had a disability, needed to bring her assistance dog.

<sup>95</sup> NIHR, 2026 Yearly plan (Jaarplan 2026), p. 9.

<sup>96</sup> NIHR 2018-87. The complaint was deemed unfounded because of a lack of proof.

<sup>97</sup> In 2025, for example, NIHR, Opinion 2025-19 of 21 February 2025 and Opinion 2025-80 of 29 August 2025. There are not yet opinions referring to *Bervidi*.

<sup>98</sup> E.g. ETC 2011-90 of 15 June 2011 (disability); NIHR Opinion 2012-204 of 28 December 2012 (nationality); NIHR Opinion 2013-180 of 30 December 2013 (race); NIHR Opinion 2018-115 of 8 November 2018 (race); NIHR Opinion 2021-21 of 4 March 2021 (disability); NIHR Opinion 2021-149 of 14 December 2021 (disability); NIHR Opinion 2022-100 of 26 August 2022 (race); NIHR Opinion 2023-73 of 29 June 2023 (disability); NIHR Opinion 2023-90 of 22 August 2023 (nationality; claim found not admissible for lack of interest) and NIHR Opinion 2023-104 of 5 October 2023 (disability).

<sup>99</sup> NIHR Opinion 2022-100 of 26 August 2022.

<sup>100</sup> NIHR Opinion 2023-73 of 29 June 2023.

## 2.4 Direct discrimination (Article 2(2)(a))

### Prohibition and definition of direct discrimination

In the Netherlands, direct discrimination is defined and prohibited in national law. In November 2011, Dutch equal treatment legislation was amended in order to bring the definitions of direct and indirect discrimination in line with the EU directives.<sup>101</sup> This change was required by the European Commission, which maintained that, as a consequence of the different wording of the definitions, victims of discrimination were offered less protection than the EU directives require.<sup>102</sup> The Government has always held that this was not the case,<sup>103</sup> but nevertheless proposed the amendment in 2008, in which the definitions from the directives are included word for word.<sup>104</sup> One difference between the directives and Dutch legislation remains, where the latter uses the word 'distinction' instead of 'discrimination'. There is no material difference between the terms.

Direct discrimination is defined in Article 1 GETA, Article 1 DDA and Article 1 ADA.

Article 1 GETA reads:

'In this Act and in the provisions based upon this Act the following definitions apply:

- a. Distinction: direct and indirect distinction, as well as the instruction to make a distinction;
- b. Direct distinction: if a person is treated differently from another person in a comparable situation is or would be treated on the grounds of religion, belief, political opinion, race, sex, nationality, hetero- or homosexual orientation or marital status.'

Article 1 DDA reads:

'In this Act the following definitions apply:

- a. Distinction: direct and indirect distinction, as well as the instruction to make a distinction;
- b. Direct distinction: if a person is treated differently from another person in a comparable situation is or would be treated on the grounds of disability or chronic illness.'

Article 1 ADA reads:

'In this Act the following definitions apply:

- a. Distinction: direct and indirect distinction, as well as the instruction to make a distinction;
- b. Direct distinction: if a person is treated differently from another person in a comparable situation is or would be treated on the grounds of age.'

Subsequent provisions in each of the above-mentioned acts prohibit direct discrimination in different fields:

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<sup>101</sup> Act of 7 November 2011 (Wet van 7 November 2011), Staatsblad 2011, 554.

<sup>102</sup> Letter dated 31 January 2008, with reference to the infringement procedure of 18 December 2006, infringement No. 2006/2444.

<sup>103</sup> Letter from the Dutch Government to Vladimír Špidla, dated 18 March, entitled *Reactie Nederlandse regering op het met redenen omkleed advies van de Europese Commissie; ingebrekestelling No. 2006/2444* (response to letter dated 31 January 2008).

<sup>104</sup> See Tweede Kamer 2008-2009, 31 832, nos. 1-3 and Tweede Kamer 2009-2010, 31 832, nos. 4-8.

- Articles 5-7a GETA prohibit direct discrimination in the fields of employment and access to goods and services (including education, healthcare, housing and social security);
- Articles 4-8 DDA prohibit direct discrimination in the fields of employment, access to goods and services (including education and healthcare), housing and public transport;
- Articles 3-6 ADA prohibit direct discrimination in the fields of employment and vocational education and training.

#### Justification of direct discrimination

Under the GETA, DDA and ADA, direct distinctions can never be justified unless one of the statutory exception clauses applies. To the extent that the distinctions covered by the GETA, DDA and ADA are also covered by the directives, the statutory exception clauses correspond to the exceptions stipulated in the directives (see Sections 4 and 5 of this report).

On a few occasions, the former ETC accepted that direct discrimination may be objectively justified in the absence of a statutory exception, namely when the prohibition of a certain distinction would be absolutely unacceptable or completely irrational.<sup>105</sup> In the past discussions have been held, on the initiative of the ETC, about whether the closed system of justifications should be opened up, but this was eventually deemed unnecessary due to the limited number of cases in which the existing exceptions do not suffice.<sup>106</sup>

## 2.5 Indirect discrimination (Article 2(2)(b))

#### Prohibition and definition of indirect discrimination

In the Netherlands, indirect discrimination is defined and prohibited in national law. In November 2011, Dutch equal treatment legislation was amended to bring the definitions of direct and indirect discrimination in line with the directives (see section 2.4 above). There is no material difference between the term 'distinction' used in the Dutch legislation and the term 'discrimination' in the directives.

Indirect discrimination is defined in Article 1 GETA, Article 1 DDA and Article 1 ADA.

Article 1 GETA, first sentence and (a) and (c), read as follows:

'In this Act and in the provisions based upon this Act the following definitions apply:

- a. Distinction: direct and indirect distinction, as well as the instruction to make a distinction [...]
- c. Indirect distinction: where an apparently neutral provision, criterion or practice would affect persons of a particular religion, belief, political opinion, race, sex, nationality, hetero- or homosexual orientation or marital status in a particular way.'

Article 1 DDA, first sentence and (a) and (c), read:

'In this Act the following definitions apply:

- a. Distinction: direct and indirect distinction, as well as the instruction to make a distinction [...]

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<sup>105</sup> See, for example, ETC 2006-20 and ETC 2007-85; other cases are ETC 2005-155 and ETC 2010-62.

<sup>106</sup> ETC (2011), Third evaluation report (2004-2009), p. 7 and the Evaluation of the NIHR Act (Evaluatie Wet College voor de rechten van de mens) of 2017, published as annex to Tweede Kamer 2017-2018, 34 338, No. 3, p. 11.

- c. Indirect distinction: where an apparently neutral provision, criterion or practice would affect persons with a disability or chronic illness in a particular way.'

Article 1 ADA, first sentence and (a) and (c), read:

'In this Act the following definitions apply:

- a. Distinction: direct and indirect distinction, as well as the instruction to make a distinction [...]
- c. Indirect distinction: where an apparently neutral provision, criterion or practice would affect persons of a particular age in a particular way.'

Subsequent provisions in each of the above-mentioned acts prohibit indirect discrimination in different fields:

- Articles 5-7a GETA prohibit indirect discrimination in the fields of employment and access to goods and services (including education, healthcare, housing and social security);
- Articles 4-8 DDA prohibit indirect discrimination in the fields of employment, access to goods and services (including education and healthcare), housing and public transport;
- Articles 3-6 ADA prohibit indirect discrimination in the fields of employment and vocational education and training.

In the Netherlands, the cases on the Child Benefits Scandal come close to exemplifying cases where the prohibition of indirect discrimination has been used to address structural discrimination.<sup>107</sup> Apart from these cases, neither courts nor the NIHR yet employ the concept of indirect discrimination in this way.

Justification test for indirect discrimination

Article 2(1) GETA contains an objective justification test for indirect discrimination, which includes the elements of legitimate aim, appropriateness and necessity. The same applies to Article 3(2) DDA and Article 7(1)(c) ADA. All three provisions mirror the core substantive elements of the objective justification test in indirect discrimination cases as laid down in Article 2(2)(b)(i) of Directive 2000/78/EC. This also reflects the case law of the CJEU in indirect discrimination cases, which is followed by the NIHR and the courts.<sup>108</sup>

### 2.5.1 Statistical evidence

#### a) Legal framework

In the Netherlands, there is legislation regulating the collection of personal data. In 2018 the existing regulation was replaced by the EU General Data Protection Regulation (GDPR).<sup>109</sup> As a result, the GDPR standards (see in particular Article 9 GDPR) regarding data collection of a sensitive nature, such as data on the grounds covered by the EU equality directives, are applicable as of May 2018.

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<sup>107</sup> See, for example, Netherlands Institute for Human Rights, 'Preparatory study on the presumed discriminatory effects of the methods employed by the Tax Agency/Benefits department' (*Vooronderzoek naar de vermeende discriminerende effecten van de werkwijzen van de Belastingdienst/Toeslagen*), available at <https://publicaties.mensenrechten.nl/publicatie/a356efac-8752-4843-a86c-665bb0a98667>, p. 8.

<sup>108</sup> See, for example, NIHR 2020-100 (race discrimination) and NIHR 2020-120 (age discrimination). An extended – although somewhat older – overview of the Dutch justification tests in equal treatment cases can be found in: Gerards, J.H. (2005), *Judicial review in equal treatment cases*, Leiden/Boston, Martinus Nijhoff Publishers.

<sup>109</sup> General Data Protection Regulation Implementation Act (Uitvoeringswet Algemene verordening gegevensbescherming) of 16 May 2018, Staatsblad 2018, 144.

In the Netherlands, statistical evidence may be admitted under national law in order to establish indirect discrimination. Rules on the admission of evidence can be found in different acts depending on the legal field concerned (e.g. the Code of Civil Procedure (*Wetboek van Burgerlijke Rechtsvordering*) for claims made under civil law, the General Administrative Law Act (*Algemene wet bestuursrecht*) for administrative law procedures). These rules do not contain any specific provisions regarding the use of statistical evidence in court, nor has any clear doctrine been developed in the case law. There also exists no specific regulatory framework for the use of statistical evidence before the NIHR, however the equality body has developed some standards in this regard. These are discussed below (under 'Practice').

In the Netherlands, ethnic data collection as promoted in the EU anti-racism action plan is considered controversial because of the (alleged) risk that such data may be used for discriminatory purposes. In a different way, this became apparent at the end of 2024, when debate arose after a political motion to collect data about religious and cultural norms of Dutch persons with a migration background.<sup>110</sup> At the level of civil society, however, a conference on the topic of ethnic data collection was organised on 20 October 2023 by the Meijers Committee (Standing Committee of Experts on International Migration, Refugee and Criminal Law). During the conference, which brought together academic experts and representatives of the NIHR and the Ministry of the Interior and featured a keynote speech by EU anti-racism coordinator Michaela Moua, the possibility of ethnic data collection was discussed in relation to rules on data protection. It is as yet uncertain whether ethnic data collection will become subject to political attention at any time in the near future.

#### b) Practice

In the Netherlands, statistical evidence is used in practice to establish indirect discrimination. The use of this type of evidence is neither widespread nor very rare.

In general terms, statistical evidence is occasionally put forward in procedures before the NIHR and is accepted by this body. When using statistical evidence, the NIHR considers that a presumption of indirect discrimination has been established if the contested rule or practice results in a 'particular disadvantage' for a group of people protected by one of the non-discrimination grounds.<sup>111</sup> The NIHR stresses that the disadvantage should not be calculated on the basis of absolute figures, but should be seen relatively. In earlier cases, the ETC used the standard rule that people in the group alleged to be indirectly discriminated against (e.g. women) should at least be disadvantaged by the apparently neutral rule or practice 1.5 times as often as people from the comparator group. However, since 2004, the ETC/ NIHR has no longer mentioned this standard. Instead, it started to use more sophisticated statistical methods to calculate whether a particular group has a greater chance of experiencing negative effects than another group.<sup>112</sup> The NIHR currently uses a correlation test to determine the correlation between the measure said to cause the disadvantage and the characteristic linking to the discrimination ground. If a sufficiently strong correlation is found, a significance test is applied to test the significance of the correlation.<sup>113</sup>

<sup>110</sup> Tweede Kamer, 2024–2025, 36600-XV No. 18. See, for example: <https://nos.nl/artikel/2547199-kamer-motie-over-onderzoek-naar-nederlanders-met-migratieachtergrond-maakt-veel-los>. The motion also mentioned that the Government does not carry out in-depth studies of data about the norms and values and possible ensuing actions of closed religious communities. Evidently, this motion itself is not intended to carry out the EU anti-racism action plan and is discriminatory in nature, focusing on Dutch persons with a migration background, but it gives an impression of the sensitivity of collecting data.

<sup>111</sup> E.g. NIHR Opinion 2017-11 of 9 February 2017 and NIHR Opinion 2020-84 of 9 October 2020.

<sup>112</sup> Waaldijk, K. (2004) 'The Netherlands', in: Waaldijk, K. and Bonini-Baraldi, M. (eds.) (2004), Combating sexual orientation discrimination in employment: legislation in fifteen EU member states, report of the European Group of Experts on Combating Sexual Orientation Discrimination, Leiden, Universiteit Leiden, pp. 341-375, available online at: <https://openaccess.leidenuniv.nl/handle/1887/12587>. For an example from NIHR case law see NIHR 2017-11.

<sup>113</sup> E.g. NIHR Opinion 2020-84 of 9 October 2020 and 2025-91 of 19 September 2025.

Facts of common knowledge are taken into account by the NIHR, either in the absence of relevant statistics or to support such statistics. For example, the NIHR accepts, without relying on statistical evidence, that Dutch language requirements amount to indirect differential treatment on the ground of racial or ethnic origin because people with a migration background are less likely to be proficient in Dutch.<sup>114</sup>

In the childcare benefits scandal cases, statistical evidence has played a prominent role, and it has been used in the NIHR opinions since 2023.<sup>115</sup> Apart from the context in which they were issued, these Opinions are noteworthy because a statistical report was prepared by the NIHR itself in the form of a preparatory study (*vooronderzoek*) to support its decision-making on individual complaints arising from the scandal. In the study, which was published in September 2022,<sup>116</sup> the NIHR analysed the effects of several enforcement procedures employed by the benefits department of the Dutch Tax Agency on benefits recipients with a migration background.<sup>117</sup> The analysis aimed to establish whether people's migration background structurally entailed a higher probability of them being selected for closer investigation. It concluded, amongst other things, that for each of the procedures examined, benefits recipients with a migration background were selected relatively more often compared to recipients without a migration background.<sup>118</sup>

In a majority of the cases considered, the results from the preparatory study led the NIHR to establish a presumption of indirect racial discrimination. In three cases decided in 2024, the NIHR (also) relied on another statistical report, prepared by Statistics Netherlands,<sup>119</sup> which showed that benefit recipients with a migration background had a higher chance of being affected by the childcare benefits scandal.<sup>120</sup> One of the results of this report was that about 75 % of the persons considered to be affected by the scandal were of foreign origin. In one of these cases, the NIHR even went so far as to establish a presumption of discrimination based solely on the applicant's group membership (i.e. her migration background), in the absence of any evidence showing that she had in fact been negatively affected by the Tax Agency's enforcement procedures.<sup>121</sup>

Meanwhile, the courts have not developed any identifiable doctrine regarding the use of statistical evidence. Case law involving assessments of statistical evidence is rather sparse and practice appears to vary (although it is difficult to say this with certainty because court judgments on equal treatment cases are not registered as such and therefore cannot be researched separately). An example of where statistical evidence was accepted by a court is a 2020 judgment concerning indirect age discrimination.<sup>122</sup> Remarkably, the court did not follow the statistical analysis previously conducted by the NIHR in the same case.<sup>123</sup>

<sup>114</sup> See, for example, NIHR Opinion 2020-100 of 17 November 2020.

<sup>115</sup> See also section 3.2.5 of this report, with references to the relevant Opinions. On the childcare benefits scandal, see the European network of legal experts in gender equality and non-discrimination (2023) Country report 2023 on non-discrimination for the Netherlands, section 3.2.6.

<sup>116</sup> Netherlands Institute for Human Rights, Preparatory study on the presumed discriminatory effects of the methods employed by the Tax Agency/Benefits department (*Vooronderzoek naar de vermeende discriminerende effecten van de werkwijzen van de Belastingdienst/Toeslagen*), available at <https://publicaties.mensenrechten.nl/publicatie/a356efac-8752-4843-a86c-665bb0a98667>.

<sup>117</sup> Defined for the purpose of the study as persons a) with one or more foreign nationalities, b) with Dutch and a foreign nationality, or c) who immigrated to the Netherlands after 1 January 1989. See p. 26 of the study. Preparatory study, p. 37.

<sup>118</sup> Statistics Netherlands, Characteristics of families affected by the childcare benefits scandal (*Kenmerken van gedupeerde gezinnen toeslagenaffaire*), 28 June 2022, <https://www.cbs.nl/nl-nl/maatwerk/2022/26/kenmerken-van-gedupeerde-gezinnen-toeslagenaffaire>.

<sup>120</sup> NIHR Opinion 2024-51 of 12 June 2024; NIHR Opinion 2024-77 of 6 September 2024 and NIHR Opinion 2024-96 of 21 November 2024.

<sup>121</sup> NIHR Opinion 2024-96 of 21 November 2024 and NIHR Opinion 2025-139 of 22 December 2025, para. 6.21.

<sup>122</sup> Court of Appeal Den Bosch 30 June 2020, ECLI:NL:GHSHE:2020:1978, para 3.5.6. The case is discussed in more detail in the Country report non-discrimination, Netherlands 2021, para 2.3.1. See also Central Appeals Tribunal, 18 July 2016, ECLI:NL:CRVB:2016:2609, para.3, where it was considered that it is generally known that a lower income 'statistically' entails a lower life expectancy.

<sup>123</sup> See NIHR Opinion 2017-19 of 21 February 2017.

As a result, it did not find a presumption of indirect age discrimination, whereas such a presumption had been established by the NIHR.

Another example shows statistical evidence being disregarded by the court in a case concerning the deprivation of citizenship. The applicant submitted statistical evidence to prove that the Dutch legislation was indirectly discriminatory against Dutch citizens of non-Western ethnic origin. The court, however, neglected this claim, stating that the applicable legislation was formulated in a neutral manner ('can be applied to anyone who has been convicted for terrorist activities') and therefore did not amount to discrimination.<sup>124</sup> On appeal, the Administrative Jurisdiction Division of the Council of State did not even assess whether there was a presumption of indirect discrimination and merely stated that 'to the extent that [the legislation] makes an indirect distinction on the ground of race, ethnic origin and religion' this was objectively and reasonably justified because of the seriousness of the applicant's conduct and its prejudicial effects on the interests of the Dutch State.<sup>125</sup> While this case demonstrates reluctance on the part of the courts to rely on statistical evidence, this reluctance is not defended by reference to ethical or methodological arguments.

## 2.6 Harassment (Article 2(3))

### a) Prohibition and definition of harassment

In the Netherlands, harassment is defined and prohibited in national law. A definition of (sexual) harassment is provided in Article 1a GETA, Article 1a DDA and Article 2 ADA.

Article 1a GETA reads as follows:

- '1. The prohibition of distinction as laid down in this Act shall also include a prohibition of harassment and a prohibition of sexual harassment.
2. Harassment as referred to in the first subsection shall mean: conduct related to the characteristics or behaviour as referred to in Article 1(1)(b) and that has the purpose or effect of violating the dignity of a person and creating an intimidating, hostile, degrading, offensive, humiliating or grievous environment.
3. Sexual harassment as referred to in the first subsection shall mean: any form of verbal, non-verbal or physical behaviour with a sexual connotation that has the purpose or effect of violating the dignity of a person, in particular when an intimidating, hostile, degrading, offensive, humiliating or grievous environment is created. [...]'

Article 1a DDA reads as follows:

- '1. The prohibition of distinction as laid down in this Act shall also include a prohibition of harassment.
2. Harassment as referred to in the first subsection shall mean: conduct related to disability or chronic illness and that has the purpose or effect of violating the dignity of a person and creating an intimidating, hostile, degrading, offensive, humiliating or grievous environment. [...]'

Article 2 ADA reads as follows:

- '1. The prohibition of distinction as laid down in this Act shall also include a prohibition of harassment.

<sup>124</sup> The Hague District Court 16 September 2019, ECLI:NL:RBDHA:2019:9682, para 9.

<sup>125</sup> Administrative Jurisdiction Division of the Council of State 30 December 2020, ECLI:NL:RVS:2020:3045, para 6.3.

2. Harassment as referred to in the first subsection shall mean: conduct related to age and that has the purpose or effect of violating the dignity of a person and creating an intimidating, hostile, degrading, offensive, humiliating or grievous environment. [...]

Subsequent provisions in each of the acts mentioned above prohibit harassment in different fields:

- Articles 5-7a GETA prohibit harassment in the fields of employment and access to goods and services (including education, healthcare, housing and social security);
- Articles 4-8 DDA prohibit indirect discrimination in the fields of employment, access to goods and services (including education and healthcare), housing and public transport;
- Articles 3-6 ADA prohibit harassment in the fields of employment and vocational education and training.

In the Netherlands, harassment explicitly constitutes a form of discrimination (see the provisions mentioned above).

b) Scope of liability for harassment

Where harassment is perpetrated by an employee, in the Netherlands, the employer is liable. The employer should act as a good employer on the basis, inter alia, of Article 7:611 of the Civil Code. Accordingly, the employer should guarantee adequate labour circumstances. This includes responding promptly and appropriately to harassment reports. The prohibition of (sexual) harassment is aimed at the employer or anyone who acts on their behalf. This means that if harassment takes place between colleagues, in principle the victim cannot (under the equal treatment legislation) hold their colleague(s) accountable but should address the employer instead.

The ADA, the DDA and the GETA do not specify to whom the prohibition of discrimination, including harassment, is addressed.<sup>126</sup> Regarding employment, the only area that is covered by all three Acts, the prohibition of discrimination is aimed not only at public and private employers, but also at employers' organisations, workers' organisations, (public) recruitment agencies, pension funds, members of the liberal professions, schools, universities, etc. However, it is not clear whether only the official owners or managers of these enterprises or institutions can be held liable under the Acts or whether this also applies to colleagues or third parties. The matter of personal scope was raised in parliamentary discussions on the implementation of the directives. It follows clearly from these discussions that the Government did not intend to make the equal treatment legislation applicable in relationships between colleagues, let alone in relationships with third parties.<sup>127</sup> However, it indicated that the equal treatment legislation is aimed at employees who, in the name of their employer, exercise authority over their co-employees. Such employees function *de facto* in the capacity of employer.<sup>128</sup>

According to ETC case law, the duty of an employer to prevent acts of harassment is not limited to acts committed by employees but extends to all persons under their supervision, which may include third parties such as a patient.<sup>129</sup> Furthermore, service providers can be held liable for harassment in situations where the harassment occurs between persons

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<sup>126</sup> Cremers-Hartman, E. 'Werkingsfeer AWGB (Article 3, 4 sub c, 5 lid 1, 6, 7 lid 1 AWGB)' ('The scope of the GETA'), in: Asscher-Vonk, I.P. and Groenendijk, C.A. (1999), *Gelijke behandeling: regels en realiteit* (Equal treatment: regulations and reality), The Hague, SDU Uitgevers, pp. 29-88 at p. 33.

<sup>127</sup> Explanatory Memorandum to the ADA, Tweede Kamer 2001-2002, 28169, No. 3, p. 19. See also Tweede Kamer 2002-2003, 28770, No. 5, p. 28.

<sup>128</sup> Explanatory Memorandum to the ADA, Tweede Kamer 2001-2002, 28169, No. 3, p. 19.

<sup>129</sup> ETC Opinion 1997-82.

who make use of a service.<sup>130</sup> In addition to preventing acts of harassment (which may be difficult to prove) employers have a legal duty to seriously investigate any complaint about this kind of behaviour and take adequate protective measures. Where they fail to do so, the norm that the employer should not discriminate as regards (equal) working conditions is considered to have been breached.<sup>131</sup> The same can be said about providers of education, social protection/advantages and goods. For instance, providers of housing services should prevent their users from suffering harassment, including from third persons. Even when these users have contributed to deteriorating relationships with coercive communication, such communication does not take away the duty of care that service providers have.<sup>132</sup> In short, an employer, provider of education, social protection (including healthcare), social advantages and goods or services can be held liable for third-party harassment, i.e. for failing to address harassment between staff/persons under their charge and third parties. The purported inapplicability of the Dutch equal treatment acts in relationships between colleagues appears overly restrictive in the light of the presumed broad scope of Directives 2000/43/EC and 2000/78/EC. In their current form and in light of the legislative history, Dutch equal treatment laws prevent alleged victims of harassment from holding a colleague or a third party directly liable for the contested behaviour. The only way to do this would be by seeking recourse to the general provisions of tort law enshrined in the Dutch Civil Code. Furthermore, Article 429*quater* Criminal Code prohibits discrimination by individuals in the exercise of their function, profession or enterprise. This provision could be interpreted to cover harassment by colleagues or third parties and serve as a basis for criminal liability, however it is rarely invoked in practice and no relevant case law is available.

Beyond the scope of Dutch equal treatment legislation, it is worth observing that employers may be held vicariously liable for discriminatory acts or harassment perpetrated by colleagues under employment law. The relevant articles upon which a claim can be based are (a) good employer practice (Article 7:611 of the Civil Code); and (b) the employer's general duty of care (i.e. the employer's liability for damages suffered by an employee in the performance of job-related duties, laid down in Article 7:658 of the Civil Code). Both articles concern the employer's liability for acts perpetrated by employers themselves or by others over whom they exercise control. In the past it was much disputed whether Article 7:658 of the Civil Code could form the legal basis for claims that concern mere psychological damage, rather than physical damage.<sup>133</sup> In 2005, the Supreme Court accepted that Article 7:658 Civil Code covers psychological damage.<sup>134</sup> The lower courts have accepted that, in cases of sexual harassment, this article can form the basis for financial compensation of psychological damage resulting from such behaviour.<sup>135</sup>

<sup>130</sup> ETC Opinion 2004-128. The case concerned harassment of a participant in a community project by another participant and a volunteer working for the project. The ETC held that the foundation that organised the project was under a duty, in its capacity as service provider in the field of social protection (welzijn), to ensure an environment that was free of discrimination and harassment.

<sup>131</sup> See, for example, ETC 2011-148 and NIHR Opinions 2021-91 and 2021-92 of 15 July 2021.

<sup>132</sup> NIHR Opinion 2024-81.

<sup>133</sup> Geers, A. 'Intimidatie op de werkplek' ('Harassment in the workplace'), in: van Maanen, G. (ed.) (2003), *De rol van het aansprakelijkheidsrecht bij de verwerking van persoonlijk leed* (The role of liability law in processing personal suffering), Den Haag, Boom, pp. 183-198, at p. 188, with further references to the literature on this question. See also Vegter, M. S. A. (2001) 'Aansprakelijkheid werkgever voor psychische schade werknemer als gevolg van seksuele intimidatie van de werknemer' ('Liability of the employer for psychological harm to the employee caused by sexual harassment'), in: *Aansprakelijkheid, verzekering en schade* (Liability, insurance and damage) No. 5, October 2001, pp. 133-140, at p. 134. With regard to Article 7:611 of the Civil Code, the Supreme Court has decided that this article may be relied upon to claim compensation for damages of only a psychological nature. See Supreme Court 11 July 1993, NJ 1993/667 (Nuts/Hofman), ECLI:NL:HR:1993:ZJ 1032.

<sup>134</sup> Supreme Court 11 March 2005, RvdW 2005/37 (ABN AMRO/Nieuwenhuys), ECLI:NL:HR:2005:AR6657.

<sup>135</sup> See Vegter, M. S. A. (2001), 'Aansprakelijkheid werkgever voor psychische schade werknemer als gevolg van seksuele intimidatie van de werknemer' ('Liability of the employer for psychological harm to the employee caused by sexual harassment'), in: *Aansprakelijkheid, verzekering en schade* (Liability, insurance and damage) No. 5, October 2001, pp. 133-140 and pp. 134-135. See also Holtmaat, R. (2009) *Seksuele intimidatie; de juridische gids* (Sexual harassment: legal guide), Nijmegen, Ars Aequi Libri.

## 2.7 Instructions to discriminate (Article 2(4))

### a) Prohibition of instructions to discriminate

In the Netherlands, instructions to discriminate are prohibited in national law, but they are not explicitly defined. Instructions to discriminate are covered by Article 1(1)(a) GETA, Article 1(a) ADA and Article 1(a) DDA. The prohibition on issuing an instruction to discriminate is applicable to the whole scope of the equal treatment legislation and is thus not limited to the field of employment.<sup>136</sup> The legislative history of the ADA shows that the Dutch legislature considered that instructions to discriminate imply active rather than passive behaviour and therefore in principle do not cover the passive toleration of an existing discriminatory situation or act.<sup>137</sup> This is a narrow interpretation of the verb 'to instruct'. The ETC and NIHR have applied their own interpretation, which covers situations where there was no explicit instruction.<sup>138</sup> Furthermore, suggestions with a discriminatory impact can be considered as constituting indirect discrimination. For instance, requiring a maximum number of years of work experience can result in indirect discrimination based on age.<sup>139</sup>

In the Netherlands, instructions explicitly constitute a form of discrimination. Article 1(a) GETA and the counterpart provisions in the ADA and DDA define 'distinctions' as: 'direct or indirect distinctions, as well as instructions to make a distinction'. Prior to the implementation of the directives, a prohibition of the instruction to make a distinction was implied within the GETA. However, to avoid any misunderstanding, the phrase 'as well as instructions to make a distinction' was added through the EC Implementation Act.<sup>140</sup> Instructions to discriminate do not require a hierarchical relationship between the instructor and the instructed person.

In addition to the above, instructions to discriminate on the grounds of race, religion or belief, sex, hetero- or homosexual orientation or disability can be subject to criminal prosecution under Article 137d of the Criminal Code – 'age' is not included in the list. For this article to be applicable, the instructions must qualify as incitement to hatred, discrimination or violence. In criminal law cases based on this provision, the public prosecution service (Openbaar Ministerie, OM) will have to offer clear proof that an individual or group is guilty of acting contrary to all elements contained in it. The interpretation of the element of 'incitement to hatred, discrimination or violence' closely follows the ECtHR's case law on this matter.

### b) Scope of liability for instructions to discriminate

In the Netherlands, the instructor is liable, but the discriminator is not.

The ADA, the DDA and the GETA do not specify to whom the prohibition of discrimination, including instructions to discriminate, is addressed (see section 2.6, under b), above). The wording of the relevant provisions clearly indicates that it is the *instruction* to discriminate that is prohibited. This suggests that the prohibition of instructions to discriminate only applies to the instructor. However, the discriminator may still be liable for violating the prohibition of direct or indirect discrimination. In this regard, the legislative history of the ADA mentions that instructions to discriminate include the notion of '*opdracht*'

<sup>136</sup> Examples of cases where the ETC/NIHR found that there was a (possible) case of 'instruction to discriminate' are ETC 2010-95, 2010-180, 2012-82, 2014-88, 2014-104, 2014-176, 2015-95, 2016-26, 2018-51 and 2022-82.

<sup>137</sup> Explanatory Memorandum to the ADA, Tweede Kamer 2001-2002, 28170, No. 3, p.18. It does say however: 'This does not alter the fact that tolerating or allowing such a situation to persist may, under certain circumstances, fall within the scope of the prohibition of discrimination'.

<sup>138</sup> ETC (2011) Third evaluation report (2004-2009), p. 30. The ETC mentions Opinion 2005-154 as an example of such a case. See also several opinions of the NIHR, such as 2012-175/176/177.

<sup>139</sup> For example, NIHR Opinion 2013-55 of 2 May 2013.

<sup>140</sup> Explanatory Memorandum to the EC Implementation Act, Tweede Kamer 2002-2003, 28 770, No. 3, p. 7.

(commission) in Article 7:400 Civil Code.<sup>141</sup> This article regulates the law on contracts for the provision of services. The Government mentioned the example of an employer who instructs a recruitment agency to select only people under the age of 30 (without a sound justification for this). In such a scenario, both the person who gives the contested instruction and the person who carries out the instruction are considered to violate the non-discrimination norm. If the 'recipient' of the instruction refuses to abide by it and, as a consequence thereof, suffers damages, they can hold the person who gave the instruction liable for it.

The legislative history of the ADA further shows that instructions that are given within an employment relationship are not covered by the prohibition of instructions to discriminate (e.g. if a director instructs a member of the personnel department to recruit only young people). Instead, this scenario is considered to involve the exercise of authority by an employer over an employee within the employment relationship (*'gezagsuitoefening in het kader van de arbeidsovereenkomst'*). Any distinction that results from such an exercise of authority can only be attributed to the employer and not to the employee.<sup>142</sup> This interpretation is followed by the ETC (now the NIHR).<sup>143</sup> The reasoning might fall short of what the EU legislature had in mind with the prohibition of instruction to discriminate. Arguably, on this point, the Dutch Government interprets the prohibition of an instruction to make a distinction unduly narrowly.

Article 429*quater* Criminal Code prohibits discrimination by individuals in the exercise of their function, profession or enterprise. This provision could be interpreted to cover instructions to discriminate. However, it is rarely invoked in practice, and no relevant case law is available.

## **2.8 Reasonable accommodation duties (Article 2(2)(b)(ii) and Article 5 Directive 2000/78)**

- a) Implementation of the duty to provide reasonable accommodation for persons with disabilities in the area of employment

In the Netherlands, the duty to provide reasonable accommodation is included in the law and is defined in Article 2 DDA, which reads as follows:

'The prohibition of making a distinction also includes the duty for the person to whom the prohibition is addressed to make effective accommodations in accordance with the need for this, unless doing so would constitute a disproportionate burden upon him.'

Instead of the term 'reasonable', which is used in Article 5 of the directive, Article 2 DDA employs the term 'effective' (*'doeltreffend'*). In the Government's view, the latter term better reflects the fact that an accommodation must have the desired effect.<sup>144</sup> The aspect of reasonableness is reflected in the second part of the provision, which states that there is no obligation to accommodate if doing so would constitute a disproportionate burden (i.e. would not be reasonable). In the remainder of this section, the term 'reasonable accommodation' will be used unless the reference specifically concerns the requirement of effectiveness.

It follows from the legislative history of the DDA that a reasonable accommodation measure must be both appropriate (*geschikt*) and necessary (*noodzakelijk*).<sup>145</sup> Reasonable accommodation can be tangible (e.g. a special chair or adjustments to the accessibility of the building) or intangible (e.g. adjustments to working hours or supervision). The

<sup>141</sup> Explanatory Memorandum to the ADA, Tweede Kamer 2001-2002, 28169, No. 3, p.18.

<sup>142</sup> Explanatory Memorandum to the ADA, Tweede Kamer 2001-2002, 28169, No. 3, p. 19.

<sup>143</sup> ETC (2011), Third evaluation report (2004-2009), p. 30.

<sup>144</sup> Explanatory Memorandum to the DDA, Tweede Kamer 2001-2002, 28 169, No. 3, p. 25.

<sup>145</sup> Explanatory Memorandum to the DDA, Tweede Kamer 2001-2002, 28 169, No. 3, p. 8.

requirement of *appropriateness* means that the accommodation must actually have the effect of undoing any limitations experienced by a person with a disability and contribute to their full and autonomous participation. The requirement of *necessity* means that the same effect cannot be achieved by means of another (cheaper) accommodation. It was expected that medical and occupational health expertise would play an important role in determining the effectiveness of proposed accommodation measures. The Government noted that the views of persons with disabilities should also be taken into account. Finally, it was observed that if a particular accommodation is eligible for reimbursement under the Labour Reintegration Act (*Wet op de (re)integratie arbeidsgehandicapten*) this may be taken as an indication that it would be an effective accommodation.<sup>146</sup>

To determine whether an effective accommodation constitutes a disproportionate burden, a balancing exercise must be undertaken whereby the interests of the person with disabilities are weighed against the interests of the employer.<sup>147</sup> This balancing exercise must be carried out in the light of 'open norms' of civil law (i.e. the duty to act as a good employer and the notion of 'reasonableness').<sup>148</sup> The Government highlighted the factors mentioned in Consideration 21 of the Preamble to Directive 2000/78/EC and added as an additional criterion that the duration of the employment contract may be a weighty factor.<sup>149</sup> In the field of vocational education, additional criteria to determine the proportionality of the burden imposed on the educational institution include the effect of the accommodation on other students and the availability of comparable education within the same region.<sup>150</sup>

If financial assistance for the realisation of the reasonable accommodation is provided by the State, the burden cannot be regarded as 'disproportionate'.<sup>151</sup> Financial assistance is available, for example, through Article 36 of the Work and Income according to Labour Capacity Act (*Wet werk en inkomen naar arbeidsvermogen*) for employers who hire a person with disabilities for at least six months and provided that the costs of the accommodation exceed a certain threshold.<sup>152</sup>

The duty to provide reasonable accommodation applies to existing employment relationships and in relation to access to employment (the 'pre-contractual phase').<sup>153</sup> It applies in the public and private sectors alike.

## b) Case law

The NIHR is strict in its assessment of employers' efforts to provide reasonable accommodation. In practice, most cases brought before the NIHR do not start with a request for reasonable accommodation by a person with disabilities. Instead, it is often the case that a person with disabilities is refused a job or an internship or the employment relationship is terminated because the employer finds that, because of the disability, the person concerned cannot do the job well enough or that workplace safety is at stake.<sup>154</sup> The NIHR will then assess whether reasonable accommodation could have been provided

<sup>146</sup> Explanatory Memorandum to the DDA, Tweede Kamer 2001-2002, 28 169, No. 3, p. 25-26. The Labour Reintegration Act was replaced in 2005 by the Act on Work and Income according to Labour Capacity (*Wet werk en inkomen naar arbeidsvermogen*).

<sup>147</sup> Explanatory Memorandum to the DDA, Tweede Kamer 2001-2002, 28 169, No. 3, p. 8.

<sup>148</sup> Explanatory Memorandum to the DDA, Tweede Kamer 2001-2002, 28 169, No. 3, p. 27-30.

<sup>149</sup> Explanatory Memorandum to the DDA, Tweede Kamer, 2001-2002, 28 169, No. 3, p. 29.

<sup>150</sup> Explanatory Memorandum to the DDA, Tweede Kamer 2001-2002, 28 169, No. 3, p. 29. It is submitted that this might trigger indirect sex discrimination, since women are more likely than men to be employed on the basis of a fixed-term contract.

<sup>151</sup> This follows from the Explanatory Memorandum to the DDA, Tweede Kamer 2001-2002, 28 169, No. 3, p. 28 but is not explicitly mentioned in Article 2.

<sup>152</sup> The existence of a disability (*structurele functionele beperking*) is determined by the Employee Insurance Agency (*Uitvoeringsinstituut Werknemersverzekeringen, UWV*).

<sup>153</sup> Explanatory Memorandum to the DDA, Tweede Kamer 2001-2002, 28 169, No. 3, p. 27.

<sup>154</sup> E.g. NIHR Opinions 2020-26, 2020-77 and 2020-116.

that would have allowed the applicant to fulfil the job requirements or that could have removed the safety hazard.

The NIHR consistently holds that employers must actively investigate the possibilities of providing reasonable accommodation. This obligation comes into existence at the moment when the employer becomes aware of the disability.<sup>155</sup> A lack of proper investigation amounts to discrimination in violation of the DDA.<sup>156</sup> The obligation for employers (and vocational education institutions) to investigate the possibility of reasonable accommodation includes the obligation to actively involve the person with a disability by asking them what they consider to be reasonable accommodation.<sup>157</sup>

In the context of vocational education, in principle, the student is expected to request reasonable accommodation. Educational institutions are not required to investigate the possibility of providing reasonable accommodation of their own accord unless the need for such accommodation is evident.<sup>158</sup> In the case of a student with ADHD (attention deficit hyperactivity disorder), the NIHR found that, although the university was aware of the applicant's disability, it had been his responsibility to indicate that he needed additional support to plan his studies following a change in the curriculum.<sup>159</sup>

#### Reasonableness of the accommodation

In cases where a violation of the DDA is found, this is often because the employer failed altogether to investigate whether reasonable accommodation could have been provided that would have enabled a person with disabilities to meet the job requirements or to perform the job in a safe manner. Nevertheless, more case law and NIHR Opinions (at least in the field of employment) are gradually becoming available regarding the question of what constitutes effective accommodation and/or a disproportionate burden.

Existing case law indicates that a reasonable accommodation must be of such a nature that it enables the person concerned to meet the relevant job requirement. Thus, a refusal to provide reasonable accommodation was found to be objectively justified in the case of a student at the police academy who could not pass a mandatory test because she had fibromyalgia. The court accepted that the test was a necessary requirement to qualify as a police officer and that the competences needed to pass it could not be adequately assessed by other means.<sup>160</sup> Meanwhile, a judgment from the Central Appeals Tribunal (one of the administrative supreme courts) establishes that the burden of proof lies with the employer to show that a reasonable accommodation would be incompatible with the requirements of the job concerned. The case also regarded a police officer, who had been denied a promotion on the ground that the reasonable accommodation that was already provided to him in his current function (amongst other things, limited and fixed working hours and an exemption from tasks potentially involving the use of force), would not allow him to fulfil the function he applied for. In light of the applicant's claim that he was able to comply with the job requirements, the Tribunal found that it had been up to the employer to provide evidence to the contrary (e.g. in the form of an expert report), which they had failed to do.<sup>161</sup>

The NIHR has further held that the duty to provide reasonable accommodation cannot be satisfied by offering an applicant an unpaid internship instead of a paid job.<sup>162</sup> Still, it is standing NIHR case law that this duty does not extend so far as to provide persons with

<sup>155</sup> E.g. NIHR Opinion 2024-6 of 25 January 2024.

<sup>156</sup> E.g. NIHR 2014-1 and 2014-2; 2018-148, 2020-26, 2024-46 of 6 June 2024 and 2025-92 of 23 September 2025.

<sup>157</sup> E.g. NIHR Opinion 2020-26 of 19 March 2020, NIHR Opinion 2020-71 of 11 August 2020 and NIHR Opinion 2021-108 of 10 August 2021.

<sup>158</sup> NIHR Opinion 2021-71 of 8 June 2021.

<sup>159</sup> NIHR Opinion 2021-71 of 8 June 2021, para 4.8.

<sup>160</sup> District Court of the Northern Netherlands 11 May 2021, ECLI:NL:RBNNE:2021:2358.

<sup>161</sup> Central Appeals Tribunal 9 March 2023, ECLI:NL:CRVB:2023:453.

<sup>162</sup> NIHR Opinion 2020-71 of 11 August 2020.

disabilities with different tasks within the organisation from those belonging to the core tasks of the employee.<sup>163</sup> Thus, it held that a university board was not obliged to redefine the curriculum so that the applicant, an assistant professor with a visual impairment, could continue to teach the same courses even though the faculty's financial situation did not allow for this.<sup>164</sup> The NIHR also dismissed the claim of a man who asked to be assisted by his wife while performing his job, on the ground that the job must be performed by the person who signed the employment contract.<sup>165</sup> The above Opinions were issued before the CJEU judgment in *HR Rail* (C-485/20). Arguably, the rather generally formulated statement by the NIHR in Opinion 2020-109 that reasonable accommodation cannot involve the assignment of different tasks within the organisation is not compatible with the *HR Rail* judgment. Regarding future cases, it is submitted that the NIHR will need to assess whether a different function or different tasks were available within the organisation before concluding whether a possibility of reasonable accommodation exists. At present, this does not (yet) appear to be part of the assessment conducted by the NIHR.<sup>166</sup>

Meanwhile, where an employee is unable to continue their job because of disability following illness the employer is under an obligation to offer another, suitable function if such a function is available (Article 7:658a Civil Code). A judgment by the Amsterdam Court of Appeal suggests that this obligation must also be understood as a way to counter discrimination on the ground of disability.<sup>167</sup>

Regarding the interpretation of 'effective accommodation' and 'disproportionate burden', an illustrative judgment was issued in 2018 by the District Court of Amsterdam, which held that an employer had not discriminated against a candidate for an internship by refusing to make the office accessible for a person who used a wheelchair.<sup>168</sup> In reaching this conclusion, the court considered a variety of circumstances, including the fact that a large-scale renovation of the office building would be required, that the internship sought by the candidate was for five months only and that the employer had looked into the possibility of offering the candidate an internship in another office where she would be able to enter with her wheelchair. The court's conclusion differed from that reached earlier by the NIHR in what was apparently the same case, which may, however, be due to increased efforts on the part of the employer to substantiate the argument that the burden of providing the accommodation was disproportionate.<sup>169</sup> Meanwhile, the short (remaining) duration of an employment contract has also led the NIHR to find that it would have been a disproportionate burden for the employer to provide effective accommodation.<sup>170</sup> Another case in which the NIHR agreed that the accommodation requested by the applicant imposed an unreasonable burden on the employer concerned an intern at a university for applied sciences, who requested the support of colleagues for a number of activities, including both professional tasks and personal care for the applicant.<sup>171</sup> A more recent judgment by the Court of Appeal illustrates how it concludes that the accommodation would impose a disproportionate burden on the employer with reference to the specific measures needed to enable the employee to make use of their employable capacities (*benutbare mogelijkheden*), as it was assessed within the reintegration framework (see section 7.2).<sup>172</sup>

<sup>163</sup> NIHR Opinion 2020-109 of 8 December 2020.

<sup>164</sup> NIHR Opinion 2020-5 of 27 January 2020.

<sup>165</sup> NIHR Opinion 2021-135 of 16 November 2021.

<sup>166</sup> E.g. NIHR Opinion 2024-17 of 15 February 2024. The NIHR found that an employer was entitled to end an employment relationship after it emerged that multiple accommodations provided did not sufficiently enable the applicant to perform her job. The NIHR found that there had not been discrimination without assessing whether the assignment of different tasks would have been possible. Meanwhile, the facts of the case and the extent of the accommodations already provided make it seem unlikely that this would have been a realistic possibility.

<sup>167</sup> Court of Appeal of Amsterdam 26 January 2021, ECLI:NL:GHAMS:2021:199.

<sup>168</sup> District Court (kantonrechter) of Amsterdam 26 January 2018, ECLI:NL:RBAMS:2018:1086.

<sup>169</sup> NIHR Opinion 2014-154 of 10 December 2014. Before the NIHR the employer did not put forward any evidence to show that they had actually investigated the costs involved in providing the accommodation or had contacted the owner of the building.

<sup>170</sup> NIHR Opinion 2021-125 of 18 October 2021.

<sup>171</sup> NIHR Opinion 2024-26 of 14 March 2024.

<sup>172</sup> Court of Appeal of 's-Hertogenbosch of 27 February 2025, ECLI:NL:GHSHE:2025:564, para. 6.20.

The courts and the NIHR also deal regularly with cases concerning reasonable accommodation in vocational education. In the past years, several of these cases have reached the Administrative Jurisdiction Division (AJD) of the Council of State (another one of the Dutch administrative supreme courts). Overall, this court appears to carefully balance the interests of students requiring a reasonable accommodation against the burden imposed on the educational institution. In 2023, the AJD accepted that a university had fulfilled its duty to provide reasonable accommodation by offering a student with a visual impairment the possibility to take oral exams instead of written tests.<sup>173</sup> In this case the university had offered the student an oral examination, however this was refused by the student on the ground that she was psychologically unfit to take oral exams at a scheduled time. The student subsequently requested to be given an individual (written) assignment, which the university refused to do. The AJD found in favour of the university because the student had failed to substantiate the psychological difficulties she claimed to experience. It also accepted the university's argument that an individual assignment would not allow for an adequate assessment of the course objectives. Finally, the AJD considered it relevant (although not decisive in this case) that an individual assignment would take up more of the lecturers' time compared to an oral exam.<sup>174</sup> In a similar case decided in 2024, the AJD also concluded that the school had fulfilled its obligations under the DDA.<sup>175</sup> The AJD further issued judgments regarding reasonable accommodation in relation to admission tests for university programmes and regarding a request for a substantial prolongation of the study programme followed by the applicant.<sup>176</sup> In most of these cases, the AJD found in favour of the educational institution. Meanwhile, the NIHR found that a university had failed to provide a reasonable accommodation by taking too much time to grant an extension to a student with both physical and psychosocial disabilities.<sup>177</sup>

The ETC determined that the duty to provide reasonable accommodation goes further than what is required by general accessibility and building regulations and applies to situations where compliance with general accessibility norms does not suffice to make a building accessible to a particular applicant.<sup>178</sup> Instead, non-compliance with general accessibility and building regulations is likely to be viewed as a form of indirect discrimination (putting persons with disabilities at a particular disadvantage).<sup>179</sup>

#### c) Definition of disability and non-discrimination protection

Disability is not explicitly defined in Dutch equal treatment law. There are no signs that the concept of disability is applied in different ways in cases of non-discrimination protection in general, on the one hand, and the right to claim reasonable accommodation, on the other hand. Additionally, there is no difference as to how the definition is applied in the private and the general public sectors.

#### d) Failure to meet the duty of reasonable accommodation for persons with disabilities

In the Netherlands, failure to meet the duty of reasonable accommodation in employment for persons with disabilities is recognised as a form of discrimination to which the ordinary sanctions apply. This recognition exists in both the private and the general public sectors. This follows from the wording of Article 2 DDA (see section 2.8.a above). The provisions of

<sup>173</sup> Administrative Jurisdiction Division of the Council of State 20 September 2023, ECLI:NL:RVS:2023:3544, para 5.1.

<sup>174</sup> Administrative Jurisdiction Division of the Council of State 20 September 2023, ECLI:NL:RVS:2023:3544, para 5.2.

<sup>175</sup> Administrative Jurisdiction Division of the Council of State 21 August 2024, ECLI:NL:RVS:2024:3410. For details, see the case law overview at the end of this report.

<sup>176</sup> Administrative Jurisdiction Division of the Council of State 20 March 2024, ECLI:NL:RVS:2024:1154 and Administrative Jurisdiction Division of the Council of State 28 August 2024, ECLI:NL:RVS:2024:3484. For details on both cases, see the case law overview at the end of this report. See also Administrative Jurisdiction Division of the Council of State 2 October 2024, ECLI:NL:RVS:2024:3960.

<sup>177</sup> NIHR Opinion 2024-29 of 2 April 2024.

<sup>178</sup> ETC Opinion 2010-11 of 27 January 2010, para 3.4.

<sup>179</sup> ETC Opinion 2010-11 of 27 January 2010, para 3.3.

the DDA do not shed light on the question of whether a failure to provide reasonable accommodation constitutes direct, indirect or a third type of distinction.<sup>180</sup> Article 10(2) DDA provides that the burden of proof is shifted if the person alleging discrimination establishes facts that are capable of supporting the presumption that the duty to provide reasonable accommodation has not been met.

It follows from the text of Article 2 DDA that no duty to provide reasonable accommodation exists if making such an accommodation would constitute a disproportionate burden on the employer (cf. Article 5 of Directive 2000/78/EC). In terms of justifications, Article 3(1) DDA enshrines three general exceptions to the central norm (i.e. the prohibition of making a distinction, which on the basis of Article 2 includes the failure to provide reasonable accommodation). In brief, these exceptions relate to public security and health, supportive social policies, and positive action measures. Thus, a textual reading of Article 3(1) DDA suggests that these three general exceptions could also 'lift' the reasonable accommodation duty, as this falls within the central norm. However, logically and in accordance with what the Government observed in its Explanatory Memorandum, only the exception concerning public security and health can have the effect of 'lifting' the duty enshrined in Article 2.<sup>181</sup> Consequently, the other two exceptions mentioned cannot be invoked by employers with respect to their reasonable accommodation duty. It is indeed difficult to perceive in what ways the other exceptions could be applicable in a case concerning the failure to provide reasonable accommodation.<sup>182</sup>

e) Duties to provide reasonable accommodation in areas other than employment for persons with disabilities

In the Netherlands, there is a legal duty to provide reasonable accommodation for persons with disabilities outside the area of employment. Originally, the DDA only covered employment and vocational education. However, in 2009 the Dutch legislature extended the scope of the DDA to housing and primary and secondary education.<sup>183</sup> In 2016 the DDA was extended further, in parallel with the ratification of the CRPD, to include the entire field of goods and services, including public transport and public sector services such as healthcare.

A limitation to the duty to provide reasonable accommodation in the field of housing is laid down in Article 6c DDA. This provision states that no duty to provide reasonable accommodation exists if such accommodation would require reconstruction or building work in or around a residential building.

The Decree on public transport accessibility (*Besluit toegankelijkheid van het openbaar vervoer*) specifies the adjustments that must be made in the field of public transport.<sup>184</sup> These adjustments are classified in the DDA as a form of reasonable accommodation, although they are not individualised measures.<sup>185</sup> They include adjustments to vehicles and stations/stops as well as to the provision of travel information. Article 17 of the Decree contains a timeline providing for a phased implementation of the necessary adjustments. For example, buses and metros had to be adapted for persons with disabilities as of 1 July 2011, bus stations as of 1 January 2016 and trams and tram stations as of 1 January 2020. At the moment, the only remaining deadline is for trains: they have to be adapted as of 1 January 2030.

<sup>180</sup> See: Waddington, L. and Hendriks, A. (2002), 'The expanding concept of employment discrimination in Europe: from direct and indirect discrimination to reasonable accommodation discrimination', in: *International journal of comparative labour law and industrial relations*, Winter 2002, pp. 403-427.

<sup>181</sup> Explanatory Memorandum to the DDA, Tweede Kamer 2001-2002, 28 169, No. 3, p. 33.

<sup>182</sup> Article 3(2) DDA moreover stipulates that indirect distinction can be objectively justified.

<sup>183</sup> Act of 29 January 2009, *Staatsblad* 2009, 101.

<sup>184</sup> *Staatsblad* 2011, 225.

<sup>185</sup> Article 8 in conjunction with Article 2 DDA.

The first ETC opinion concerning the duty to provide reasonable accommodation outside the area of employment was issued in 2010.<sup>186</sup> Many cases that have come before the NIHR since then have concerned reasonable accommodation in the area of education.<sup>187</sup> This is partly caused by the fact that mainstream schools are obliged to admit children with disabilities, unless they can prove that they are unable to provide adequate education. However, the NIHR has also issued opinions on reasonable accommodation in the fields of housing, public transport and other goods and services.<sup>188</sup> There are no indications that the concepts of reasonable accommodation or disproportionate burden are interpreted differently in these fields than in employment cases. The NIHR applies the requirement of 'reasonable accommodation' strictly and puts a duty on the provider to actively investigate the possibility of providing a requested accommodation, with due regard to the wishes of the person in need thereof.<sup>189</sup> In this respect, and referring to the parliamentary discussions on the extension of the DDA in the context of the ratification of the CRPD, the NIHR emphasises that the purpose of the obligation to provide reasonable accommodation is to realise the autonomy of persons with disabilities to the greatest extent possible.<sup>190</sup> In 2023, a district court issued a decision on reasonable accommodation in the field of goods and services in which it followed the decision previously taken by the NIHR in the same case.<sup>191</sup> From 2023 onwards, the NIHR has issued a series of Opinions concerning refusals by service providers to admit assistance dogs (*assistentiehonden*).<sup>192</sup> In most cases, the NIHR found that such a refusal amounted to discrimination under the DDA. Occasionally, however, the Institute accepts that a refusal is justified under the health exception, for example if the service provider is a medical practice and the health of other patients is at stake.<sup>193</sup> In a 2025 Opinion, the NIHR concluded similarly in a case concerning care units, because of the other inhabitants' interests.<sup>194</sup>

Arguments concerning public security and health are also met with strict review.<sup>195</sup> An illustration of this approach can be found in a series of NIHR Opinions concerning the accessibility of public buses for users of electric wheelchairs.<sup>196</sup> Nevertheless, the NIHR held that a public transport provider who is able to demonstrate the existence of safety risks can rely on the health and safety exception of Article 3 DDA, even if it is established that the buses concerned meet the legal requirements of accessibility for wheelchairs.<sup>197</sup> This finding was confirmed in 2024 by the Court of Appeal of The Hague.<sup>198</sup> Previously, in 2022, the Court of Appeal of Arnhem-Leeuwarden found that the owner's association of an apartment building could lawfully require the removal of all objects, including electric

<sup>186</sup> See ETC 2010-35, and ETC 2011-30, in which the ETC reached the same conclusion.

<sup>187</sup> E.g. NIHR Opinion 2017-41 of 4 April 2017; NIHR Opinion 2023-31 of 8 March 2023; NIHR Opinion 2023-60 of 30 May 2023; NIHR Opinion 2023-84 of 8 August 2023.

<sup>188</sup> E.g. NIHR Opinion 2016-136 of 9 December 2016 (notary services); NIHR Opinion 2017-104 of 7 September 2017 (access to a drugstore); NIHR Opinion 2021-86 of 8 July 2021 (public transport); NIHR Opinion 2021-106 of 30 July 2021 (housing); NIHR Opinion 2023-73 of 29 June 2023 (access to holiday home); NIHR Opinion 2023-74 of 30 June 2023 (housing) and NIHR Opinion 2024-42 of 17 May 2024 (access to a café).

<sup>189</sup> E.g. NIHR Opinion 2023-60 of 30 May 2023; NIHR Opinion 2023-74 of 30 June 2023; NIHR Opinion 2023-89 of 22 August 2023.

<sup>190</sup> E.g. NIHR Opinion 2017-104 of 7 September 2017; NIHR Opinion 2023-89 of 22 August 2023.

<sup>191</sup> District court Central Netherlands 1 March 2023, ECLI:NL:RBMNE:2023:4197.

<sup>192</sup> E.g. NIHR Opinions 2023-136 of 22 December 2023, 2024-4 of 4 January 2024 and 2024-31 of 11 April 2024.

<sup>193</sup> E.g. NIHR Opinions 2024-4 of 4 January 2024 and 2024-104 of 17 December 2024.

<sup>194</sup> NIHR Opinion 2025-14 of 12 February 2025.

<sup>195</sup> E.g. NIHR Opinion 2023-73 of 29 June 2023.

<sup>196</sup> See NIHR Opinions 2016-39 of 12 May 2016, 2020-107 of 7 December 2020; 2020-123 of 24 December 2020 and 2023-120 of 16 November 2023.

<sup>197</sup> NIHR Opinion 2020-107 of 7 December 2020. See also NIHR Opinion 2022-49 of 10 May 2022, concerning a man in a wheelchair who had been denied access to a local bus service during the COVID-19 pandemic. The bus company successfully relied on the health and safety exception by pointing out that many of the (elderly) volunteers running the bus service belonged to a high risk group for COVID-19, and that it was not possible for the volunteers to maintain the required one and a half metres distance while fastening wheelchairs in the bus. The NIHR nevertheless found that the bus company had discriminated against the applicant by not informing him of alternative transport options and because his complaint was treated with insufficient diligence.

<sup>198</sup> Court of Appeal of The Hague 12 March 2024, ECLI:NL:GHDHA:2024:352.

wheelchairs, from the building's common spaces because of the fire hazard involved. Although the court recognised that the requirement to remove the wheelchairs disadvantaged persons with disabilities, it found that the owner's association could reasonably allow the prevention of fire hazard to prevail. In coming to this decision, it took into account that the removal of the wheelchairs had been recommended by the local fire brigade.<sup>199</sup>

There are, moreover, limits to what can be expected of the duty bearer. The efforts required to provide accommodation may be considered disproportionate,<sup>200</sup> or a possibility for accommodation may simply not be available as was the case in the above-mentioned case concerning the placement of electric wheelchairs in an apartment building. Also, both the NIHR and the courts have held on occasion that the duty bearer had fulfilled the duty of reasonable accommodation by offering a reasonable alternative.<sup>201</sup>

#### f) Duties to provide reasonable accommodation in respect of other grounds

In the Netherlands, there is no legal duty to provide reasonable accommodation in respect of other grounds than disability and chronic illness in the public and/or the private sector.

The ETC/NIHR has, on several occasions, implicitly construed a duty of reasonable accommodation in respect of religion. These concerned cases where the applicants had suffered discrimination because they had not been permitted to express their religion, for example by wearing a headscarf or by choosing not to shake hands with a person of the opposite sex.<sup>202</sup> Two additional cases were decided in 2023, one concerned a woman who did not want to work on Sundays and the other concerned students who trained as beauty specialists and who would be required to take off their headscarves in order to act as models for each other.<sup>203</sup> In these cases the NIHR did not (expressly) rely on the concept of reasonable accommodation, instead it assessed whether there existed indirect discrimination. However, both cases involved the question of whether the employer or the school should have treated certain individuals differently because of their religious beliefs. In determining whether a refusal to treat them differently amounted to indirect discrimination, the NIHR paid much attention to investigating the possibility and proportionality of measures of accommodation.

Meanwhile, the same approach is not always followed by the courts, which often allow more leeway for employers to refuse to accommodate religious expressions.<sup>204</sup> In 2020, however, a district court held that an employer had acted negligently by not allowing a Muslim woman to wear a long headscarf (khimar).<sup>205</sup> Although the court did not expressly refer to the concept of reasonable accommodation, it did reproach the employer for not investigating whether accommodating measures (e.g. a different type of khimar or working elsewhere in the organisation) could have provided a solution. In 2025, a district court also paid attention to the extent to which the employer had considered opportunities for a Muslim employee to pray during their work. Specifically, the employer had suggested that the employee could pray in their van, which was not considered to be an appropriate accommodation, as they need to pray on the ground. Conversely, the employee had offered to pray in the parking lot. The court held that this offer showed sufficient flexibility on the

<sup>199</sup> Court of Appeal of Arnhem-Leeuwarden 20 December 2022, ECLI:NL:GHARL:2022:10932. The case arose after the applicants brought a claim under civil law, asking the court to annul or invalidate the decision of the owner's association. It is noteworthy that, in this civil law context, the Court of Appeal held that its task was to provide a marginal review of the reasonableness of the association's decision rather than the strict review applied by the NIHR.

<sup>200</sup> E.g. NIHR Opinion 2017-41 of 4 April 2017; NIHR Opinion 2023-84 of 8 August 2023.

<sup>201</sup> NIHR Opinion 2021-106 of 30 July 2021; Central Netherlands District Court 1 March 2023, ECLI:NL:RBMNE:2023:4197.

<sup>202</sup> E.g. ETC 2006-202, NIHR 2016-45, NIHR 2017-135, NIHR 2020-96.

<sup>203</sup> NIHR Opinion 2023-23 of 23 February 2023 and NIHR Opinion 2023-76 of 5 July 2023. For details of both cases see the case law section (12.2) of this report.

<sup>204</sup> See notably Central Appeals Tribunal (Centrale Raad van Beroep) 7 May 2009, ECLI:NL:CRVB:2009:BI2440.

<sup>205</sup> District Court Amsterdam 10 January 2020, ECLI:NL:RBAMS:2020:575.

employee's part. It mostly assessed these 'accommodating measures' in the context of their contribution to objectively justifying indirect discrimination (see section 12.2).<sup>206</sup>

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<sup>206</sup> District court North-Holland of 26 September 2025, ECLI:NL:RBNHO:2025:11085, para. 4.9.

### 3 PERSONAL AND MATERIAL SCOPE

#### 3.1 Personal scope

The author is not aware of any relevant case law concerning discrimination stemming from or involving the use of artificial intelligence and/or automated systems.

##### 3.1.1 EU and non-EU nationals (Recital 13 and Article 3(2), Directive 2000/43 and Recital 12 and Article 3(2), Directive 2000/78)

In the Netherlands, there are no residence or citizenship/nationality requirements for protection under the relevant national laws transposing the directives. The principle in Dutch law is that ‘all persons in the Netherlands shall be treated equally in equal circumstances’, as provided for in Article 1 of the Constitution. Thus, the protection against discrimination provided by equal treatment legislation, criminal law, civil law and administrative law covers any person on the territory of the Netherlands. This wide personal scope means that, in principle, migrants, regardless of their immigration status, are protected by the broad range of non-discrimination law if they encounter discrimination on grounds of, for instance, their race or ethnic origin, or their religion.<sup>207</sup>

However, whereas irregularised migrants are not expressly excluded from the scope of Dutch anti-discrimination law, they are excluded from legal employment<sup>208</sup> and are not entitled to public services such as housing, healthcare or social protection.<sup>209</sup> It follows that they do not have legal access to many of the fields in respect of which the anti-discrimination legislation applies. Limitations also exist with regard to the rights of migrants with temporary residence permits: their access to employment and public services depends on the purpose for which they have been admitted. These legislative restrictions on the rights of (irregularised) migrants are not themselves subject to the equal treatment legislation as the GETA covers nationality discrimination only in horizontal relationships (see section 4.4 below).

##### 3.1.2. Natural and legal persons (Recital 16, Directive 2000/43)

###### a) Protection against discrimination

In the Netherlands, the personal scope of anti-discrimination law does not cover legal persons for the purpose of protection against discrimination. Only natural persons are protected. This follows from the wording of Articles 1 GETA, 1 DDA and 1 ADA (‘where one person is treated less favourably, etc...’) as well as the legislative history of the GETA, where the Government explained that the definition of ‘distinction’ in Article 1 GETA refers to making a distinction *between persons*.<sup>210</sup>

However, where a group of natural persons is collectively subject to discrimination (e.g. when an association of professionals, a political party or a religious organisation is refused a contract for hiring a meeting room in a hotel), their organisation may be seen as the rights holder, according to the ETC and NIHR in several Opinions.<sup>211</sup> The relevant cases all concerned access to and supply of goods and services. In 2018, the NIHR found the GETA to be applicable in a case where a bank refused to open a bank account for a not-for-profit

<sup>207</sup> See, for example, NIHR Opinion 2016-83 of 28 July 2016.

<sup>208</sup> Article 2(1) Aliens Employment Act (Wet arbeid vreemdelingen), Staatsblad 1994, 959, entered into force 1 September 1995.

<sup>209</sup> Article 10(1) Aliens Act 2000 (Vreemdelingenwet 2000), Staatsblad 2000, 495, entered into force 1 April 2001. The second paragraph contains some exceptions concerning, including emergency healthcare and legal assistance.

<sup>210</sup> Tweede Kamer 1991-1992, 22 014, No. 5, p. 87-88.

<sup>211</sup> E.g. ETC Opinions 1996-110 and 1998-31 and NIHR Opinions 2013-94 and 2014-109. In addition, there is a possibility for associations to act on behalf of victims of discrimination when this is a (statutory) goal of their organisation, see section 6.2 of this report for more details.

organisation.<sup>212</sup> The request to open an account had been made by one of the organisation's board members, who claimed that she had been discriminated against because of her foreign-sounding surname. Although the bank account had been formally requested by the organisation, the NIHR agreed that the discrimination claim related to the applicant in her capacity as a natural person and was therefore admissible. Finally, in one case, the ETC allowed a company to submit a complaint against a customer.<sup>213</sup>

There are no indications that the personal scope of Dutch equal treatment legislation, as regards the distinction between natural and legal persons, falls short of what is required by the directives.

#### b) Liability for discrimination

In the Netherlands, the personal scope of anti-discrimination law covers natural and legal persons for the purpose of liability for discrimination (GETA, ADA and DDA, Article 1). This means that both natural and legal persons can be held accountable for discrimination.

### **3.1.3. Private and public sector including public bodies (Article 3(1))**

#### Protection against discrimination

In the Netherlands, the personal scope of anti-discrimination law covers the private and public sectors, including public bodies, for the purpose of protection against discrimination (GETA, ADA and DDA, Article 1). The GETA does not apply to legal relationships within religious communities or to religious functions (Article 3 GETA).

#### Liability for discrimination

The personal scope of anti-discrimination law covers the private and public sectors, including public bodies, for the purpose of liability for discrimination (GETA, ADA and DDA, Article 1). The GETA does not apply to legal relationships within religious communities or to religious functions (Article 3 GETA).

### **3.2. Material scope**

The author is not aware of any relevant case law concerning discrimination stemming from or involving the use of artificial intelligence and/or automated systems in the domains covered in this section. This is not to say that AI or automated systems are not used by public or private bodies acting in these domains, nor that this does not result in discrimination, as is illustrated by the examples provided in sections 3.2.5 and 3.2.8. However, such systems tend to function 'behind the scenes' and hence can be invisible to the individuals who are affected by the resulting decisions. This likely explains the lack of case law.

#### **3.2.1. Conditions for access to employment, to self-employment or to occupation, including selection criteria, recruitment conditions and promotion, whatever the branch of activity and at all levels of the professional hierarchy (Article 3(1)(a))**

In the Netherlands, national legislation prohibits discrimination in relation to conditions for access to employment, to self-employment or to occupation, including selection criteria, recruitment conditions and promotion, whatever the branch of activity and at all levels of the professional hierarchy for the five grounds (i.e. race, religion and belief, political opinion, hetero- or homosexual orientation and sex (including gender identity, gender

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<sup>212</sup> NIHR Opinion 2018-145 of 27 December 2018.

<sup>213</sup> ETC Opinion 2003-142.

expression and sex characteristics)) and in both the public and private sectors, as described in the directives.

Article 5(1) GETA prohibits discrimination in the context of employment. It provides that no unlawful distinctions be made in the following areas:

- a. advertisements for employment and procedures leading to the filling of vacancies;
- b. employment of a worker via an employment agency or job placement (inserted by the EC Implementation Act);
- c. the commencement or termination of an employment relationship;
- d. the appointment and dismissal of civil servants;
- e. terms and conditions of employment;
- f. permitting employees to receive education or training during or prior to the employment relationship;
- g. promotions;
- h. working conditions (inserted by the EC Implementation Act).

The ADA and DDA have counterpart provisions in Articles 3 and 4 respectively. Both public and private sector labour relations are covered. The central norm (the prohibition of discrimination) applies to the entire employment process, i.e. from the moment of a vacancy being published until the termination of an employment relationship.<sup>214</sup>

Article 6 GETA provides that, 'it shall be unlawful to make distinctions with regard to the conditions for and access to the liberal professions and with regard to pursuing the liberal professions or for development within them'. Identical provisions are included in Article 4 ADA and Article 5 DDA. The term 'self-employment' is not used in the articles mentioned, which instead speak of the 'liberal professions' (*vrije beroepen*). However, the legislative history of the ADA confirms that the term 'liberal profession' covers all employment relationships where a relationship of authority between the employer and employee is absent.<sup>215</sup> This includes the more traditional 'liberal professions' such as doctors and notaries as well as freelancers and entrepreneurs working in any other field.<sup>216</sup> Given this explanation, it can be assumed that 'occupation' is also covered by Articles 6 GETA, 4 ADA and 5 DDA.

For persons with disabilities or chronic illness, a major barrier to access to employment may consist of being asked about their physical or medical condition during the selection procedure and their answers leading to a decision not to appoint them. In 2012, the law was amended in order to make the regulations in this regard stricter and to create the possibility for a complaints procedure at the national level.<sup>217</sup> In particular, from that moment it was prohibited for persons other than the medical expert involved in assessing an employee's health to ask questions about or enquire in any other way into the state of health of the employee or that employee's medical history.

The most recent iteration of the monitoring process of equal opportunities on the labour market showed, in line with earlier monitors, that people with a 'non-western' migration background are generally (still) at a disadvantage in the employment field.<sup>218</sup> Amongst other things they have to wait longer before finding a job and before obtaining a permanent contract and they are paid less than people who do not have a 'non-western' migration

<sup>214</sup> Explanatory Memorandum to the DDA, Tweede Kamer 2001-2002, 28 169, No. 3, p. 34. The same applies in the context of the ADA and the GETA.

<sup>215</sup> Tweede Kamer 2001-2002, 28 170, No. 3, p. 22.

<sup>216</sup> See also, for example, NIHR Opinions 2012-122 and 2017-81.

<sup>217</sup> Medical Examinations Act (Wet aanscherping medische keuringen) Staatsblad 2012, 146.

<sup>218</sup> Bosma, M. et al (2024), 'Monitor of equal opportunities and equal positions on the labour market, regardless of migration background' (*Monitor gelijke kansen en evenredige posities op de arbeidsmarkt, ongeacht migratieachtergrond*), *Significant*, 4 January 2024, available at <https://www.rijksoverheid.nl/documenten/rapporten/2024/01/04/monitor-van-gelijkwaardige-kansen-en-evenredige-posities-op-de-arbeidsmarkt-ongeacht-migratieachtergrond-3e-meting>.

background.<sup>219</sup> Additionally, other factors also influence the extent to which these groups are at a disadvantage, such as the generation they belong to or the education level they have.<sup>220</sup> This example shows that, although Dutch legislation complies with the directives, this proves insufficient to actually prevent discrimination from taking place in the employment field.

In 2019, the Minister of Social Affairs and Employment presented a legislative proposal to oblige employers and intermediary agencies to develop policies for non-discriminatory recruitment and selection procedures.<sup>221</sup> This obligation would be subject to enforcement by the labour inspection agency (Inspectie SZW). The proposal was adopted by the Second Chamber of Parliament in March 2023 but was rejected by the Dutch Senate (*Eerste Kamer*) in March 2024, after the liberal party (VVD) withdrew its support.<sup>222</sup>

The NIHR regularly receives complaints about racial or ethnic discrimination from persons who were rejected when applying for a job under their own name and invited for an interview when they applied under a 'white' Dutch name. Such situation tests are accepted by the NIHR as evidence of direct racial or ethnic discrimination and result in findings of unlawful discrimination unless the employer can prove that the rejection was based on reasons other than the applicant's racial or ethnic origin.<sup>223</sup> The NIHR applies a strict approach in these cases. For example, the fact that the employer has previously hired people of different racial or ethnic origin does not suffice to rebut the presumption of discrimination established by the situation test.<sup>224</sup> The NIHR also holds that selection procedures must be transparent, systematic and able to be monitored to avoid discrimination. It follows that the presumption of discrimination is not rebutted by the employer's statement that the procedure has been deficient (rather than discriminatory).<sup>225</sup>

### 3.2.2. Employment and working conditions, including pay and dismissals (Article 3(1)(c))

In the Netherlands, national legislation prohibits discrimination in working conditions including pay and dismissals, for all five grounds (i.e. race, religion and belief, political opinion, hetero- or homosexual orientation and sex)<sup>226</sup> and for both public and private employment. The relevant provisions are Article 5(1)(c)-(e) and (h) GETA, Article 4(b), (c), (e) and (h) DDA and Article 3(c)-(e) and (h) ADA.

The prohibition of discrimination in relation to employment and working conditions is interpreted by the NIHR, in a longstanding line of case law, as including a duty for employers to ensure a 'working environment free from discrimination' (*discriminatievrije werkomgeving*).<sup>227</sup> This entails an obligation to ensure that persons subject to the employer's authority refrain from discriminatory acts. Where an employer knows or should have known that an employee has experienced discrimination at the hands of colleagues

<sup>219</sup> Gielen, M. et al (2021), 'Monitor of equal opportunities and equal positions on the labour market, regardless of migration background' (*Monitor gelijke kansen en evenredige posities op de arbeidsmarkt, ongeacht migratieachtergrond*), *Significant*, 5 November 2021, published as Annex to Tweede Kamer 2021-2022, 29 544, No. 1081. This was the first iteration of the monitor.

<sup>220</sup> Bosma, M. et al (2024), Bosma, M. et al (2024), 'Monitor of equal opportunities and equal positions on the labour market, regardless of migration background' (*Monitor gelijke kansen en evenredige posities op de arbeidsmarkt, ongeacht migratieachtergrond*), *Significant*, 4 January 2024, p. 60 ff.

<sup>221</sup> Act on the supervision of equal opportunities in recruitment and selection procedures (Wet toezicht gelijke kansen bij werving en selectie), Tweede Kamer 2020-2021, 35 673, No. 2.

<sup>222</sup> A flash report was published on this development; see <https://www.equalitylaw.eu/downloads/6100-netherlands-act-against-labour-market-discrimination>. At the time of writing this report, a revised version of this legislative proposal had been presented again and is currently pending.

<sup>223</sup> E.g. NIHR Opinion 2021-70 of 7 June 2021 and NIHR Opinion 2021-101 of 27 July 2021.

<sup>224</sup> E.g. NIHR Opinion 2021-101 of 27 July 2021.

<sup>225</sup> E.g. NIHR Opinion 2021-70 of 7 June 2021.

<sup>226</sup> In the GETA, 'sex' also covers gender identity, gender expression and sex characteristics.

<sup>227</sup> See also section 2.6 on harassment.

or third parties (clients), they must take adequate measures.<sup>228</sup> Such measures must be proportionate to the severity of the discriminatory acts.<sup>229</sup>

### **3.2.3. Access to all types and all levels of vocational guidance, vocational training, advanced vocational training and retraining, including practical work experience (Article 3(1)(b))**

In the Netherlands, legislation prohibits discrimination in vocational training outside the employment relationship, such as adult lifelong learning courses or vocational training provided by technical schools or universities.

All three equal treatment laws (GETA, ADA and DDA) contain prohibitions against discrimination with respect to enabling employees to receive education or training during or prior to the employment relationship. The relevant provisions are Article 5(1)(f) GETA (which prohibits discrimination based on race, religion and belief, political opinion, hetero- or homosexual orientation and sex),<sup>230</sup> Article 3(f) ADA and Article 4(f) DDA.

Discrimination by providers of vocational training and professional guidance is prohibited in Article 7 GETA, Article 5b DDA and Article 5 ADA. Both Article 7 GETA and Article 5b DDA prohibit (in brief): distinctions made with regard to the supply of or access to goods or services, including all forms of education,<sup>231</sup> and with regard to vocational orientation and advice or information relating to the choice of an educational institution or career. The provisions furthermore specify that the prohibition applies to distinctions made:

- a. in the course of carrying on a business or exercising a profession;
- b. by a public service;
- c. by institutions that are active in the field of housing, social services, healthcare, cultural affairs or education; or
- d. by private persons not engaged in carrying on a business or exercising a profession in so far as the offer is made publicly.

Article 5 ADA prohibits distinctions on the ground of age with regard to:

- a. access to and the provision of vocational orientation and advice or information relating to career choice (*loopbaanoriëntatie en beroepskeuzevoorlichting*); and
- b. education aimed at entering and functioning in the labour market (*onderwijs gericht op toetreding tot en functioneren op de arbeidsmarkt*).

Subsection (b) covers education and training that form the final stage prior to entering the labour market, including retraining and further training courses.<sup>232</sup> In practice, this covers practical education (*praktijkonderwijs*, which forms part of secondary education); technical and vocational training for 16 to 18-year-olds (*middelbaar beroepsonderwijs*); technical and vocational training for those aged 18+ (*hoger beroepsonderwijs*) and university education. Adult lifelong learning courses are not mentioned specifically but are covered by Article 5 ADA as well. Subsections (a) and (b) of Article 5 ADA are not aimed at a specific group. The norm therefore applies to 'everyone' working within these institutions. With regard to subsection (b), this includes 'public education, private/belief-based education and education that is not publicly funded'.<sup>233</sup>

Whereas Article 3(1)(b) of the Employment Equality Directive only prohibits discrimination at the stage of 'entry to' vocational training, Dutch equal treatment legislation covers the

<sup>228</sup> E.g. NIHR Opinion 2020-86 of 13 October 2020; NIHR Opinion 2022-12 of 22 December 2022.

<sup>229</sup> NIHR Opinion 2023-70 of 26 June 2023.

<sup>230</sup> In the GETA, 'sex' also covers gender identity, gender expression and sex characteristics.

<sup>231</sup> The material scope of the GETA and DDA covers the entire field of education, including primary and secondary education. These acts thus offers wider protection than the directives.

<sup>232</sup> Explanatory Memorandum to the DDA, Tweede Kamer 2001-2002, 28 169, No. 3, p. 38.

<sup>233</sup> Explanatory Memorandum to the DDA, Tweede Kamer 2001-2002, 28 169, No. 3, p. 37.

entire path from registration until the termination of the education or training.<sup>234</sup> The scope of the Dutch legislation is therefore broader than that of the Directive. The NIHR regularly decides on applications by individuals who claim discrimination in relation to vocational education.<sup>235</sup> Although it is not very common for such cases to come before the courts, some case law is available.<sup>236</sup>

Although the Dutch legal framework against discrimination in the field of vocational education and guidance complies with the directives, the reality on the ground does not always reflect legal non-discrimination standards. Studies show that ethnic minority students, in particular, face discrimination in finding internships to help prepare them for the labour market.<sup>237</sup> In 2018, the Ministry of Education launched a policy initiative to promote equal internship opportunities, including by raising awareness of (unconscious) bias amongst employers and educational institutions and by lowering the threshold for students to report experiences of discrimination.<sup>238</sup> In 2020, the Amsterdam district court held an employer liable under labour law for dismissing a young Muslim woman from her traineeship because she chose to wear a khimar (long headscarf). The court found that the employer had acted with 'serious negligence' by dismissing the applicant on discriminatory grounds.<sup>239</sup>

### **3.2.4. Membership of, and involvement in, an organisation of workers or employers, or any organisation whose members carry on a particular profession, including the benefits provided for by such organisations (Article 3(1)(d))**

In the Netherlands, national legislation prohibits discrimination in relation to membership of and involvement in workers' or employers' organisations as formulated in the directives for all five grounds (i.e. race, religion and belief, political opinion, hetero- or homosexual orientation and sex)<sup>240</sup> and for both private and public employment.

Article 6a(1) GETA provides:

'It shall be unlawful to make distinctions with regard to the membership of or involvement in an employers' organisation or trade union, or a professional occupational organisation, as well as with regard to the benefits which arise from such membership or involvement.'

Article 5a DDA and Article 6 ADA are identical to this provision.

### **3.2.5. Social protection, including social security and healthcare (Article 3(1)(e) Directive 2000/43)**

In the Netherlands, national legislation prohibits discrimination in social protection, including social security and healthcare, as formulated in the Racial Equality Directive.

<sup>234</sup> This follows from the formulation of the legislative provisions. See, in addition, Explanatory Memorandum to the DDA, Tweede Kamer 2001-2002, 28 169, No. 3, pp. 37-38.

<sup>235</sup> See, for example, NIHR Opinion 2016-77 of 12 July 2016; NIHR Opinion 2018-103 of 15 October 2018 and NIHR Opinion 2021-71 of 8 June 2021.

<sup>236</sup> See, for example, Administrative Jurisdiction Division of the Council of State 30 August 2023, ECLI:NL:RVS:2023:3307 (failure to provide reasonable accommodation to a student who missed exams because of a medical injury – no discrimination on the ground of disability).

<sup>237</sup> See, for example, Statistics Netherlands (2025), '1 in 10 students in the vocational learning track of senior secondary vocational education experienced discrimination with the internship' (*1 op de 10 mbo-bol-studenten ervaart discriminatie bij stage*), 19 December 2025, available at [1 op de 10 mbo-bol-studenten ervaart discriminatie bij stage](https://www.cbs.nl/en-gb/actualiteiten/1-op-de-10-mbo-bol-studenten-ervaart-discriminatie-bij-stage) | CBS. This confirms earlier research results, for instance ROA (2018) MBO stages en de migratieachtergrond van studenten (MBO internships and student's migration background), 2018/17; KIS (2018), *Gelijke kansen op gelijke stages. Een vervolgonderzoek naar stagediscriminatie* (Equal opportunities for equal internships. A follow-up study of discrimination in internships).

<sup>238</sup> Tweede Kamer 2019-2020, 31 524, No. 443.

<sup>239</sup> District Court of Amsterdam 10 January 2020, ECLI:NL:RBAMS:2020:575.

<sup>240</sup> In the GETA, 'sex' also covers gender identity, gender expression and sex characteristics.

Discrimination in the field of social protection, including social security, is prohibited in Article 7a GETA. This extension to social protection is restricted to discrimination on the ground of racial or ethnic origin. However, discrimination in the field of healthcare and (social) housing is prohibited by Article 7 GETA, which covers the entire field of goods and services and extends to all grounds listed in that Act (i.e. race, religion and belief, political opinion, hetero- or homosexual orientation, sex,<sup>241</sup> nationality and marital status). Article 7(1)(c) GETA specifies that the provision covers discrimination by institutions working in the field of housing and healthcare. Protection against disability discrimination in social housing and healthcare is guaranteed in Article 5b(1)(c) DDA.

No specific provisions exist regarding age discrimination in social protection or discrimination on the ground of religion or belief, sexual orientation or disability in social protection other than healthcare or housing. Claims of discrimination in these fields/on these grounds would have to be assessed under the more general, constitutional and international prohibitions of discrimination, in particular Article 14 ECHR and Article 26 ICCPR.<sup>242</sup>

In recent years, it has come to light that several elements of Dutch social security/social protection schemes (potentially) involve structural discrimination, notably on the ground of racial or ethnic origin. Some key issues are addressed below.

#### Case law on racial or ethnic discrimination in relation to residence requirements

Several Dutch social security schemes differentiate in one way or another on the ground of place of residence. One example is the General Pensions Act (*Algemene Ouderdomswet*) which stipulates a reduction of state pension benefits for beneficiaries who lived outside the Netherlands for one or more years between the ages of 15 and 65. Another example is the General Act on Child Benefits (*Algemene Kinderbijslagwet*) which provides that no benefits are payable for children whose place of residence is not in the Netherlands.<sup>243</sup> These residence requirements lead, with some regularity, to claims of indirect discrimination on the ground of nationality and/or racial or ethnic origin.

In 2012, the NIHR found that the residence requirement in the General Pensions Act amounted to indirect differential treatment on the ground of racial or ethnic origin (albeit objectively justified).<sup>244</sup> Meanwhile, the courts tend to refrain from establishing whether there is indirect racial or ethnic discrimination and move directly to the issue of justification ('if there is indirect discrimination on the ground of nationality or racial/ethnic origin, it is in any case objectively justified').<sup>245</sup> This is problematic because a finding of indirect discrimination on the ground of racial or ethnic origin would mean that the RED is applicable, and should moreover result in stricter scrutiny under Article 14 ECHR and the case law of the ECtHR (e.g. *Biao/Denmark*, ECtHR 24 May 2016, application No. 38590/10). In the opinion of the author of this report, by not determining whether a measure results in a particular disadvantage for a group based on racial or ethnic origin, the courts do not give full effect to the RED, at least in cases where racial or ethnic discrimination is explicitly claimed.<sup>246</sup>

<sup>241</sup> In the GETA, 'sex' also covers gender identity, gender expression and sex characteristics.

<sup>242</sup> See, for example, District Court of Amsterdam 1 November 2018, ECLI:NL:RBAMS:2018:7835 (age discrimination, social assistance – no violation) and Central Appeals Tribunal (Centrale Raad van Beroep) 9 July 2019, ECLI:NL:CRVB:2019:2263 (age discrimination in relation to income supplement – no violation).

<sup>243</sup> Subject to the provisions of Regulation 883/2004 on the coordination of social security.

<sup>244</sup> NIHR Opinion 2012-129 of 27 July 2012.

<sup>245</sup> Central Appeals Tribunal 22 February 2013, ECLI:NL:CRVB:2013:BZ2161; Central Appeals Tribunal 1 April 2016, ECLI:NL:CRVB:2016:1225; Central Appeals Tribunal 16 July 2021, ECLI:NL:CRVB:2021:1772.

<sup>246</sup> This is not always the case, sometimes discrimination is claimed without specification of the discrimination ground(s), or only on the basis of nationality and/or place of residence. See, for example, Central Appeals Tribunal 14 February 2019, ECLI:NL:CRVB:2019:510.

Investigations into foreign assets of social assistance recipients

Another recurring issue in case law on social assistance concerns investigations into the foreign assets of people with a migration background. Under Dutch law, eligibility for social assistance is restricted to persons who do not have other means of subsistence. The municipalities, which are responsible for social assistance, are competent to investigate whether the information provided by recipients of social assistance regarding their income and other means/assets is correct. In this context, municipalities regularly conduct investigations abroad to determine whether welfare recipients possess real estate or other financial assets in foreign countries. During these so-called 'thematic investigations' (*themacontroles*) municipalities have relied on risk profiles to select social assistance recipients with specific national origins (amongst other criteria).

Similar investigations are conducted by the SVB (*Sociale Verzekeringsbank*), the administrative body responsible for the payment of state pensions and other benefits, in relation to 'supplementary pension benefits' (*aanvullende inkomensvoorziening ouderen*). These (means-tested) benefits are granted to people who do not receive a full state pension because they spent part of their lives between the ages of 16 and 65 living outside the Netherlands. Many recipients of 'supplementary pension income' are former labour migrants. The practice of thematic investigations by municipalities and the SVB has given rise to numerous claims by people who claim to have been selected for investigation on the basis of their national origin.

Since 2015, the Central Appeals Tribunal (*Centrale Raad van Beroep*) has developed a line of case law setting out the conditions under which investigations into foreign assets of recipients of social assistance are justified. It is notable that in this case law only the non-discrimination provisions of Article 14 and Article 1 Protocol 12 ECHR are invoked. The RED is not referred to, which may be due to the fact that the GETA (which implements the RED) is not generally applicable to the field of social security, and courts (and applicants) are more familiar with the guarantees in the ECHR. The case law allows municipalities and the SVB to use the criterion 'of non-Dutch origin' in risk profiles, in combination with other criteria such as age and 'travelling patterns'.<sup>247</sup> According to the Central Appeals Tribunal, persons who are not of Dutch origin have lived part of their lives in a country other than the Netherlands and are therefore more likely to have assets in a foreign country.<sup>248</sup> Administrative bodies may also apply different risk profiles to persons of Dutch and non-Dutch origin.<sup>249</sup> The Tribunal did not qualify 'being of non-Dutch origin' as a racial or ethnic criterion to which the RED or the 'very weighty reasons' test of Article 14 ECHR would have applied.

Although municipalities and the SVB may select persons who are not of Dutch origin, they may not select persons of a specific foreign origin (e.g. Moroccan or Turkish origin).<sup>250</sup> However, they may focus their investigation on persons of a particular national origin if this forms part of a phased investigation in which different countries of origin are investigated in sequence.<sup>251</sup> It is not clear whether such 'sequential selection' (*gefaseerd onderzoek*) is only allowed if the municipality intends to investigate all countries of origin or if it is enough that several countries of origin have been or will be investigated.

<sup>247</sup> It is not clear from the case law how 'being of non-Dutch origin' is determined. This is most likely by country of birth. Country of birth was explicitly used as a selection criterion in Central Appeals Tribunal 28 August 2018, ECLI:NL:CRVB:2018:2702. See also Central Appeals Tribunal 15 June 2021, ECLI:NL:CRVB:2021:1498 and Central Appeals Tribunal 12 October 2021, ECLI:NL:CRVB:2021:2621, where the Tribunal decided that the selection of beneficiaries on the ground that they had stayed abroad for longer periods of time at a specified address was not discriminatory as the selection criterion was not related to racial or ethnic origin.

<sup>248</sup> Central Appeals Tribunal 14 April 2015, ECLI:NL:CRVB:2015:1229.

<sup>249</sup> Central Appeals Tribunal 23 June 2020, ECLI:NL:CRVB:2020:1431 and ECLI:NL:CRVB:2020:1335.

<sup>250</sup> Central Appeals Tribunal 12 December 2017, ECLI:NL:CRVB:2017:4327 and Central Appeals Tribunal 14 August 2018, ECLI:NL:CRVB:2018:4329.

<sup>251</sup> E.g. Central Appeals Tribunal 6 August 2019, ECLI:NL:CRVB:2019:2611 and Central Appeals Tribunal 17 March 2020, ECLI:NL:CRVB:2020:835.

The Central Appeals Tribunal upheld a municipal practice to investigate foreign assets of residents who had stated their intention to return to their country of origin (Turkey).<sup>252</sup> It also allowed an investigation whereby the frequency and duration of stays abroad was used as a risk indicator (all recipients of social assistance who had been abroad for more than 30 days or more than twice per year were investigated).<sup>253</sup> In both cases, the Tribunal dismissed the applicants' arguments that the applied selection criteria were (indirectly discriminatory) on the ground of racial or ethnic origin.

It is doubtful whether the above-mentioned uses of origin-related criteria by Dutch administrative bodies and the case law of the Central Appeals Tribunal are compatible with Article 3(1)(e) RED. In the *Jyske Finans* and *Maniero* judgments the CJEU gave a narrow interpretation of the ground of 'racial or ethnic origin'.<sup>254</sup> According to this interpretation, 'ethnic origin' is determined through a combination of objective and subjective factors and the single criterion of a person's country of birth cannot be decisive in establishing their ethnic origin.<sup>255</sup> Moreover, the CJEU determined that indirect discrimination on the ground of racial or ethnic origin can only be taken to occur where the disadvantage incurred by the allegedly discriminatory measure is suffered by a person or persons belonging to a particular ethnic group.<sup>256</sup> This would seem to imply that the criterion 'of non-Dutch origin' is indeed not a racial or ethnic criterion, as held by the Central Appeals Tribunal. However, the CJEU requires a concrete, contextual analysis to determine whether a measure affects any particular ethnic group. This follows from the judgments in *Jyske Finans* and *Maniero*, where the CJEU clarified that the establishment of a presumption of indirect discrimination must be based on a specific, concrete comparison rather than a general, abstract one.<sup>257</sup>

Although in *Jyske Finans* the criterion 'country of birth outside the EU/EFTA' did not indicate any particular ethnic group, this may be different depending on the circumstances of the case. For example, in a municipality where 90 % of the population of non-Dutch origin is of Moroccan origin, the general criterion 'non-Dutch origin' would still impose a disadvantage on a particular ethnic group. This happened in at least one of the cases decided by the Central Appeals Tribunal, where application of the 'non-Dutch origin' criterion (together with the criteria of age, travel behaviour and 'indications of fraud') resulted in a selection consisting of 15 people of Turkish origin, between 30 and 40 people of Moroccan origin and around 10 people of Central and Eastern European origin.<sup>258</sup> This approach was also confirmed by the CJEU in the Danish Ghetto case where considered that the concept of immigrants from non-Western countries and their descendants could also establish a presumption of indirect discrimination.<sup>259</sup>

In summary, Dutch case law suggests that there are cases where the general criterion of 'non-Dutch origin' results in indirect discrimination on the grounds of racial or ethnic origin,

<sup>252</sup> Central Appeals Tribunal 19 October 2021, ECLI:NL:CRVB:2021:2622. For further details, see the European network of legal experts in gender equality and non-discrimination (2023) Country report 2023 on non-discrimination for the Netherlands.

<sup>253</sup> Central Appeals Tribunal 26 September 2023, ECLI:NL:CRVB:2023:1912.

<sup>254</sup> Court of Justice of the European Union (CJEU), 6 April 2017, *Jyske Finans A/S*, C-668/15, ECLI:EU:C:2017:278, <https://curia.europa.eu/juris/document/document.jsf?text=&docid=189652&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=1934758> and CJEU, 15 November 2018, *Heiko Jonny Maniero*, C-457/17 ECLI:EU:C:2018:912, <https://curia.europa.eu/juris/document/document.jsf?text=&docid=207787&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=1934957>.

<sup>255</sup> CJEU, 6 April 2017, *Jyske Finans A/S*, C-668/15, ECLI:EU:C:2017:278, <https://curia.europa.eu/juris/document/document.jsf?text=&docid=189652&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=1934758>, paras 19-20.

<sup>256</sup> CJEU, 15 November 2018, *Heiko Jonny Maniero*, C-457/17 ECLI:EU:C:2018:912, para 47.

<sup>257</sup> CJEU, 15 November 2018, *Heiko Jonny Maniero*, C-457/17 ECLI:EU:C:2018:912, para 48.

<sup>258</sup> District Court of The Hague 7 July 2020, ECLI:NL:RBDHA:2020:6148. Following the case law of the Central Appeals Tribunal, the court did not find any discrimination. The possibility of indirect discrimination against a particular national origin was not assessed.

<sup>259</sup> CJEU, 18 December 2025, C-417/23, *Slagelse Almennyttige Boligselskab Afdeling Schackenborgvænge and Others v. MV and Others*, ECLI:EU:C:2025:1017.

as defined by the CJEU, because it has the effect of putting particular ethnic groups at a disadvantage. In the view of the author this raises issues of compliance with the RED.<sup>260</sup>

Moreover, in most of the cases that have come before the Central Appeals Tribunal, the thematic checks conducted by Dutch municipalities or the SVB were not directed at 'persons of non-Dutch origin' but at a specific ethnic group (most often people of Turkish origin) or in some cases at several groups (e.g. people of Turkish and Moroccan origin).<sup>261</sup> Both the Turkish and Moroccan communities are amongst the largest ethnic minority groups in the Netherlands and members of these groups are known to experience discrimination on the grounds of ethnic origin in various fields of daily life.<sup>262</sup> While it is true that the Central Appeals Tribunal found the targeting of specific ethnic groups to be contrary to the prohibition of racial and ethnic discrimination if it is not part of a 'phased investigation' in which other ethnic groups are also included (see above), CJEU case law on this point is lacking. It is therefore unclear whether the CJEU would agree that a phased investigation involving sequential targeting of particular ethnic groups remains within the parameters of the RED and, if so, whether it would agree with the Tribunal's approach to establishing whether the targeting in fact did form part of a phased investigation. It is not clear whether the standard set by the Central Appeals Tribunal requires that municipalities must, in the end, include all countries of origin in their investigations. If this is not the case, there is a chance that municipalities will continue to focus their investigations on people who belong to specific ethnic minority groups, which in the view of the author would be contrary to the RED.

Finally, the author of this report is not convinced by the Central Appeals Tribunal's reasoning that it is not discriminatory to start an investigation into the foreign possessions of welfare recipients intending to return to their country of origin. The Tribunal's reasoning is based on the lack of a suitable comparator, as only foreign-born welfare recipients can return to their country of origin. However, a (hypothetical) comparison could be made with Dutch-born welfare recipients who move to a foreign country (e.g. France, Spain or Portugal). It is unclear why the likelihood of a person having assets in a foreign country would be higher if the destination country is the person's country of origin (but not, for example, in the case of a Dutch-born welfare recipient moving to France, Spain or Portugal).

### Childcare benefits scandal

In 2020, it became known that the Dutch Tax Agency/Benefits Office (*Belastingdienst/Toeslagen*) had wrongly accused thousands of families of fraud with childcare benefits and forced them to repay large sums of money, in many cases resulting in huge debts and severe suffering.<sup>263</sup> This scandal became known as the childcare benefits scandal (*Toeslagenaffaire*). Apart from particularly harsh enforcement practices by the Tax Agency and a lack of access to justice for those affected, the childcare benefits scandal also involved discriminatory treatment. In 2020, a report by the Data Protection Authority

<sup>260</sup> A contextual assessment as described here would also allow reconciling the CJEU judgments in *Jyske Finans* and *Maniero* with the ECtHR Grand Chamber's judgment in *Biao/Denmark*. In that case, the Grand Chamber found that 'Danish citizens of foreign origin' did constitute an ethnic group (ECtHR (GC) 24 May 2016, application No. 38590/10). Following Article 6(3) TEU and Article 52(3) CFR, this interpretation by the ECtHR is relevant to the interpretation of EU law and should be taken into account when determining the meaning of 'racial or ethnic origin' in the RED.

<sup>261</sup> See e.g. Central Appeals Tribunal 12 December 2017, ECLI:NL:CRVB:2017:4327 (Turkish and Moroccan origin); Central Appeals Tribunal 14 August 2018, ECLI:NL:CRVB:2018:4329 (Turkish origin); Central Appeals Tribunal 23 June 2020, ECLI:NL:CRVB:2020:1335 (Turkish origin).

<sup>262</sup> European Union Agency for Fundamental Rights (2017), *Second European Union Minorities and Discrimination Survey. Main Results*, Luxembourg: Publications Office of the European Union, Figure 4 (p. 26).

<sup>263</sup> Victims are reported to have lost their jobs and homes as a result of their financial troubles. In October 2021, Statistics Netherlands reported that between 2015 and 2020 at least 1 115 children of families affected by the childcare benefits scandal were placed in foster care, see: <https://www.cbs.nl/nl-nl/maatwerk/2021/47/uitsplitsing-uithuisplaatsingen-toeslagenaffaire>.

(*Autoriteit Persoonsgegevens*) established that the Tax Agency had unlawfully kept records on dual nationality of benefits recipients and used nationality as a risk indicator to detect fraud.<sup>264</sup> Parents affected by the childcare benefits scandal have also reported differential treatment on account of their dual nationality as well as the use of discriminatory language by Tax Agency employees.<sup>265</sup> In May 2022, the state secretary responsible (Marnix van Rij) acknowledged the occurrence of institutional racism within the Tax Agency.<sup>266</sup> At that time, the Dutch Government had already announced several measures to prevent (further) discrimination.<sup>267</sup>

Several of the parents affected by the childcare benefits scandal lodged discrimination complaints with the NIHR. The first three cases were decided by the equality body in 2023. It found in each case, based on statistical evidence (see section 2.5.1), that there had been indirect discrimination of parents with a migration background, and hence on the ground of racial or ethnic origin.<sup>268</sup> In 2024, the NIHR decided another seven cases relating to the childcare benefits scandal, five of which resulted in a finding of indirect discrimination on the ground of racial or ethnic origin.<sup>269</sup> In 2025, there was a peak in this type of case, with the NIHR issuing 20 opinions. In these cases, the NIHR analysed the files provided by the Tax Agency/Benefits Office detailing the actions that had been taken with regard to the applicant to determine their entitlement to the benefits received and, where such entitlement was found to be lacking, to reclaim benefits previously granted. These analyses show that decision making by the Tax Agency/Benefits Office is a largely automated process, with civil servants using computer systems to process information from different sources (e.g. income tax data and information on childcare providers); notify changes relevant to a person's eligibility (e.g. a change in income or a reduction of the amount of childcare provided); and produce decisions on eligibility and the amount of benefits to be granted. In many cases, a presumption of indirect ethnic discrimination was found on the basis of statistical evidence showing that people with a migration background had a higher chance of being negatively affected by the controls and enforcement policies of the Tax Agency/Benefits Office regarding childcare benefits. After establishing a presumption of indirect discrimination, in most cases the NIHR found that at least some of the actions taken by the Tax Agency/Benefits Office in the process of reviewing the applicant's eligibility for benefits or the recovery of benefits for which no eligibility could be established had been unduly harsh and/or had gone beyond what was necessary to prevent fraud and ensure the lawful allocation of public resources. The NIHR's finding of indirect discrimination applies to individual cases. That said, the use of the previously mentioned statistical evidence implies the existence of structural discrimination, as was more or less already clear from the public acknowledgement of institutional discrimination. In two of the seven cases decided in 2024, the NIHR found that all the actions taken by the Benefits Office were objectively justified. In 2025, this happened in one case.<sup>270</sup> Contrary to previous years, the NIHR also found direct discrimination in one case.<sup>271</sup> In this case, direct

<sup>264</sup> Autoriteit Persoonsgegevens (2020), Belastingdienst/Toeslagen. De verwerking van de nationaliteit van aanvragers van kinderopvangtoeslag (Tax Office/benefits. The use of nationality when processing child benefit applications), July 2020, available at [https://autoriteitpersoonsgegevens.nl/sites/default/files/atoms/files/onderzoek\\_belastingdienst\\_kinderopvangtoeslag.pdf](https://autoriteitpersoonsgegevens.nl/sites/default/files/atoms/files/onderzoek_belastingdienst_kinderopvangtoeslag.pdf).

<sup>265</sup> Tweede Kamer 2020-2021, 35 510, No. 4, p. 13.

<sup>266</sup> NOS Nieuws (2022) 'Cabinet acknowledges institutional racism within part of Tax Agency: 'Many have been affected' (Kabinet erkent institutioneel racisme bij deel fiscus: 'Heeft velen pijn gedaan'), 30 May 2022, <https://nos.nl/artikel/2430805-kabinet-erkent-institutioneel-racisme-bij-deel-fiscus-heeft-velen-pijn-gedaan>.

<sup>267</sup> Tweede Kamer 2020-2021, 35 510, No. 4, pp. 14-15. For a detailed overview of the proposed measures see the European network of legal experts in gender equality and non-discrimination (2023) Country report 2022 on non-discrimination for the Netherlands, section 3.2.6.

<sup>268</sup> NIHR Opinions 2023-101, 2023-102 and 2023-103 of 2 October 2023. For further details see the case law section (12.2) at the end of this report and section 2.5.1 above on statistical evidence.

<sup>269</sup> NIHR Opinions 2024-51 of 12 June 2024; 2024-77 of 6 September 2024; 2024-80 of 23 September 2024; 2024-83 of 4 October 2024; 2024-84 of 17 October 2024; 2024-96 of 21 November 2024 and 2024-102 of 6 December 2024. The two cases where no discrimination was found are 2024-83 and 2024-96.

<sup>270</sup> NIHR Opinion 2025-30 of 25 March 2025.

<sup>271</sup> NIHR Opinion 2025-62 of 3 July 2025.

reference was made to the applicant's Turkish origin as a fraud indicator. Additionally, a 'residence status' (*verblijfsstatus*) code had been erroneously linked to the applicant's file, despite her Dutch nationality. These facts warranted the presumption that the applicant's origin was likely a factor in the checks and corrections applied to her case. The Benefits Office did not succeed in challenging this presumption and has therefore directly discriminated against the applicant.

#### Fraud detection in relation to study grants

In 2023, investigative journalists revealed that students with a migration background had a significantly higher chance of being targeted for fraud controls in relation to study grants for students who live away from home.<sup>272</sup> Two reports published in 2024 confirmed that bias against students with a 'non-European migration background' was indeed present in various stages of the fraud detection process.<sup>273</sup> One factor resulting in indirect discrimination was that use was made of an automated risk profile that targeted students enrolled in secondary vocational education (*middelbaar beroepsonderwijs*) as well as students whose address was relatively close to that of their parents. The bias was further reinforced by the fact that students with a 'non-European migration background' were more likely to be manually selected for control after their risk score was determined based on the risk profile.<sup>274</sup>

The author of this report is not aware of any cases in which the courts or the NIHR were asked to establish discrimination as a result of the fraud controls. This is probably due to the fact that the discriminatory effects of the controls were recognised and further investigated by the Ministry of Education, which subsequently pledged to review the decisions resulting from the controls and compensate affected students.<sup>275</sup> Still, in October 2024 (before the compensation was announced), the Overijssel district court overturned an administrative decision requiring a student to pay back her study grant following a fraud control. According to the court, the fact that it was established that the fraud detection process had been indirectly discriminatory meant that the findings of the control could not be used as evidence to support the decision to withdraw the study grant.<sup>276</sup> In 2025, the National Coordinator against Discrimination and Racism (*Nationaal Coördinator tegen Discriminatie en Racisme*, NCDR) acknowledged the steps which the Ministry and Education Executive Agency had taken (including stopping the discriminatory practices) to restore trust. At the same time, it called for vigilance and the need to follow up previous recommendations.<sup>277</sup>

#### Article 3(3) exception (Directive 2000/78)

Dutch law does not rely on the Article 3(3) exception. As mentioned, under Article 7a of the GETA, the extension to social protection is restricted to racial discrimination (with the exception of healthcare and social housing). The other grounds are only protected by the general constitutional and international prohibitions of discrimination, as mentioned above.

<sup>272</sup> See: <https://www.platform-investico.nl/onderzoeken/de-discriminerende-fraudecontroles-van-duo>.

<sup>273</sup> PriceWaterhouseCoopers (2024), Controls on abuse of study grants for students living away from home (Onderzoek misbruik uitwonendenbeurs) (study commissioned by the Ministry of Education), PWC 26 January 2024, published as Annex to Tweede Kamer 2023-2024, 24 724, No. 220; Algorithm Audit, Preventing prejudice. Addendum (Vooringenomenheid voorkomen. Addendum (study commissioned by the Executive Agency for Education (Dienst Uitvoering Onderwijs)), May 2024, published as Annex to Tweede Kamer 2023-2024, 24 724, No. 240.

<sup>274</sup> Algorithm Audit, Preventing prejudice. Addendum (Vooringenomenheid voorkomen. Addendum (study commissioned by the Executive Agency for Education (Dienst Uitvoering Onderwijs)), May 2024, published as an Annex to Tweede Kamer 2023-2024, 24 724, No. 240, p. 8.

<sup>275</sup> See <https://www.rijksoverheid.nl/actueel/nieuws/2024/11/11/gecontroleerde-oud-studenten-met-uitwonendenbeurs-krijgen-geld-terug>. The letter can be found at <https://open.overheid.nl/documenten/dpc-087045501c6d8fb9c5695a11da54b30b8dc8f795/pdf>.

<sup>276</sup> District court Overijssel 29 October 2024, ECLI:NL:RBOVE:2024:5627.

<sup>277</sup> See <https://www.bureauncdr.nl/actueel/nieuws/2025/03/27/duo-is-op-de-goede-weg-naar-herstel-vertrouwen>. The report of Amnesty International it refers to is available at <https://www.amnesty.nl/actueel/kabinet-moet-alle-risicoprofilering-stopzetten>.

### 3.2.6. Social advantages (Article 3(1)(f) Directive 2000/43)

In the Netherlands, national legislation prohibits discrimination in social advantages, as formulated in the Racial Equality Directive in Article 7a GETA. This explicit provision on social advantages is restricted to discrimination on the ground of racial or ethnic origin. However, protection on the other grounds can be derived from the more general, constitutional and international prohibitions of discrimination.<sup>278</sup> In addition, protection against discrimination on the grounds of religion or belief, sexual orientation and disability may be available under Article 7(1) GETA and Article 5b DDA where social advantages overlap with the provision of goods and services. This ties in with the Government's view that the notion of 'social advantages' refers to advantages of an economic and cultural nature, which may be granted by both public and private entities. These may include student grants, public transport reductions and reductions for cultural or other events. Advantages offered by private entities are, for example, reductions to entry prices for cinemas and theatres for certain categories of visitors.<sup>279</sup>

### 3.2.7. Education (Article 3(1)(g) Directive 2000/43)

In the Netherlands, national legislation prohibits discrimination in education, as formulated in the Racial Equality Directive, in Article 7 GETA. The GETA is integrally applicable to all aspects of education, including all types of schools. Article 7 applies to all grounds covered by the GETA, including racial or ethnic origin but also religion or belief, sex (which is also taken to refer to gender identity, gender expression and sex characteristics) and sexual orientation.

Article 5b DDA prohibits discrimination in the field of education on the ground of disability. As of June 2016, the DDA covers the entire field of education, including primary and secondary education.<sup>280</sup>

Article 5 ADA prohibits distinctions on the ground of age with regard to vocational education and training (see section 3.2.3 above).

In 2014, a law on special education for pupils and students with intellectual and physical disabilities, the Act on Tailored Education (*Wet Passend Onderwijs*), entered into force.<sup>281</sup> This act changed the way in which schools are compensated for the costs associated with teaching students with learning disabilities and includes severe austerity measures. As a result of the Act, more pupils with intellectual and physical disabilities applied for admission to mainstream schools. In 2015, the Children's Ombudsman (*Kinderombudsman*) published a report in which the new law was severely criticised.<sup>282</sup> Since then, a large-scale evaluation project was initiated to closely monitor developments and new policy initiatives.<sup>283</sup> Policy aims of recent years have included improving the connection between education and healthcare for pupils with disabilities and ensuring adequate care arrangements within schools as well as education-oriented care for children unable to

<sup>278</sup> See, for example, Court of Appeal of The Hague 25 September 2019, ECLI:NL:GHDHA:2019:2541 (age discrimination in relation to tax advantages).

<sup>279</sup> Explanatory Memorandum to the EC Implementation Act, Tweede Kamer 2002-2003, 28 770, No. 3, p. 15.

<sup>280</sup> Act to implement the Convention on the Rights of Persons with Disabilities (*Wet van 14 april 2016 tot uitvoering van het op 13 december 2006 te New York tot stand gekomen Verdrag inzake de rechten van personen met een handicap* (Trb. 2007, 169)), Staatsblad 2016, 215.

<sup>281</sup> Act of 11 October 2012 concerning the amendment of several acts regarding education (*Wet van 11 oktober 2012 tot wijziging van enkele onderwijswetten in verband met een herziening van de organisatie en financiering van de ondersteuning van leerlingen in het basisonderwijs, speciaal en voortgezet speciaal onderwijs, voortgezet onderwijs en beroepsonderwijs*), Staatsblad 2012, 533.

<sup>282</sup> The report is available at: [www.dekinderombudsman.nl/ul/cms/fck-uploaded/2015.KOM014.Werktpassendonderwijs.rapport.pdf](http://www.dekinderombudsman.nl/ul/cms/fck-uploaded/2015.KOM014.Werktpassendonderwijs.rapport.pdf).

<sup>283</sup> Dertiende voortgangsrapportage passend onderwijs (Thirteenth progress report on tailored education), Tweede Kamer 2018-2019, 31 497, No. 310; Derde meting monitor Passend Onderwijs in het MBO (Third monitor on tailored education in vocational education), published as Annex to Tweede Kamer 2018-2019, 31 497, No. 331.

attend school.<sup>284</sup> In 2020, the Minister of Education, Culture and Science proposed 25 measures to improve the situation.<sup>285</sup> Since then, the Ministry of Education, Culture and Science has conducted yearly evaluations of these measures.<sup>286</sup> In 2025, the NIHR observed that many children with a disability do not go to school because tailored education does not seem to be available.<sup>287</sup> It regularly receives complaints on this issue (see also section 12.2).

Another issue which deserves further attention is the intention of the Ministry of Education to make the procedure to advise primary school children about their secondary education more objective. Previous research has shown that there is a structural pattern of under-advising, which affects particular groups of children. Building on this research, a literature study commissioned by the ministry has approached this issue from an intersectional perspective. One of the results is that 'there is a lack of large-scale intersectional research into the relationship between students' various backgrounds and identity characteristics, as well as structural under-advising'.<sup>288</sup> Subsequent research could provide new insights.

#### a) Trends and patterns regarding Roma pupils

In the Netherlands, there are no clearly discernible patterns of segregation of Roma pupils, which is not to say that discrimination does not occur. According to a report from 2024, respondents from Roma and Sinti communities indicate that most children attend primary education, but are often harassed and do not feel safe, which is an important reason for them to be absent or not stay in school. Respondents from primary schools indicate that many Roma and Sinti pupils still start school with a deficit of linguistic and social skills, but that the situation is improving as a result of efforts made by parents and schools. As regards secondary education, Roma and Sinti pupils are gradually increasing their participation in more theoretically oriented ('higher level') education. Parents indicate that Roma and Sinti children face discrimination in the form of being advised to follow education below their capabilities.<sup>289</sup>

While case law is sparse, an older Opinion of the Equal Treatment Commission (currently the NIHR) concerned the board of an association of 14 (Christian) primary schools that used a quota of 15 % per institution for pupils who speak Dutch as a second language, in order to combat segregation (the measure was not explicitly targeting Roma and Travellers, but also children with a migration background). This admissions policy was deemed to be unlawful indirect discrimination against Roma and Sinti communities, on the ground of racial or ethnic origin.<sup>290</sup>

<sup>284</sup> Tweede Kamer 2019-2020, 31 497 and 31 839, No. 334.

<sup>285</sup> Letter of the Minister of Education on an evaluation and improvement approach to tailored education (*Kamerbrief Evaluatie en Verbeteraanpak passend onderwijs*) (2020), 4 November 2020, available at <https://www.rijksoverheid.nl/documenten/kamerstukken/2020/11/04/kamerbrief-evaluatie-en-verbeteraanpak-passend-onderwijs>.

<sup>286</sup> Ministry of Education, Science and Culture, 'Fourth progress report improvement approach to tailored education' (*Vierde voortgangsrapportage verbeteraanpak passend onderwijs*), April 2025, available at <https://open.overheid.nl/documenten/df933480-5d04-49f6-b02c-0d8a04f7e332/file>.

<sup>287</sup> See <https://www.mensenrechten.nl/actueel/nieuws/2025/10/07/recht-op-onderwijs-onderzoeksplicht-van-scholen>.

<sup>288</sup> Soeterik, I. et al (2025), 'Investigating the Unseen. An Exploratory Literature Review of Under-advising from an Intersectional Perspective' (*Onderzoeken wat we niet zien. Een verkennende literatuurstudie naar onderadvisering vanuit intersectioneel perspectief*), Verwey-Jonker Instituut, 17 April 2025, p. 5.

<sup>289</sup> Seidler, Y., Khajavi-Zijlstra, J., van Leeuwen, R., van der Schans, K., van Eerten, J.J. and Sam, N. (2024), Monitor on Social Inclusion (5th edition) (*Monitor Sociale Inclusie (meting 5)*), Risbo/Labyrinth March 2024, published as an Annex to Tweede Kamer 2023-2024, 32 824, No. 433.

<sup>290</sup> See ETC Opinion 2003-105.

### **3.2.8. Access to and supply of goods and services that are available to the public (Article 3(1)(h) Directive 2000/43)**

In the Netherlands, national legislation prohibits discrimination in access to and the supply of goods and services, as formulated in the Racial Equality Directive. This is covered in Article 7(1) GETA, which provides:

‘It is unlawful to make a distinction in offering goods or services, in concluding, implementing or terminating agreements thereon, and in providing educational or career guidance if such acts of making a distinction are committed:

- a. in the course of carrying on a business or practising a profession;
- b. by the public sector;
- c. by institutions which are active in the fields of housing, social services or welfare, healthcare, cultural affairs or education; or
- d. by private persons not engaged in carrying on a business or practising a profession, insofar as the offer is made publicly.’

This applies to all grounds covered by the GETA, including religion or belief, sex (which also can be taken to refer to gender identity, gender expression and sex characteristics) and sexual orientation. Article 7(1) GETA does not cover unilateral administrative decisions and acts.

Since June 2016, discrimination in access to and the supply of goods and services has also been prohibited in relation to disability. The relevant provision is Article 5b(1) DDA. Failure to adapt goods or a service to meet the needs of persons with disabilities is a form of discrimination under Article 5b(1) in connection with 2 DDA (see also section 2.6, under e), above).

Age discrimination in the field of access to and the supply of goods and services is not prohibited under Dutch equal treatment legislation. Claimants can rely on the general non-discrimination provisions in the Dutch Constitution and international treaties, notably Article 14 ECHR and Article 26 ICCPR.

The NIHR is regularly asked to give opinions on alleged discrimination in the field of goods and services, including on the ground of racial or ethnic origin.<sup>291</sup> In 2024, the NIHR issued several Opinions concerning (alleged) discrimination resulting from a bank’s policies to ensure compliance with international sanctions regimes.<sup>292</sup> In both cases, the bank had used an automated system to select transactions with a (relatively) high risk of being in breach of sanctions legislation. As a result, the applicants were asked to provide additional information and/or their transactions were blocked. The NIHR found in both cases that there had been indirect discrimination on the ground of racial or ethnic origin, because the criteria used to select suspect transactions – in particular (partial) overlap between the names of the persons involved in the transactions with the names of people included on sanctions lists – predominantly affected persons of non-Dutch origin. Several reports published in 2024 highlight the risks of discrimination by banks as a result of efforts to comply with sanctions regulations as well as anti-money laundering and financing of terrorism regulations, often with the help of automated systems/artificial intelligence. A follow-up report and some Opinions in 2025 show that this issue still occurs (see section 11.2 on other issues of concern).

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<sup>291</sup> E.g. NIHR Opinion 2021-105 of 29 July 2021 (supply of services, a client of a bike repair shop was denied a loan bike because of her skin colour) and NIHR Opinion 2021-107 of 2 August 2021 (supply of goods, a client of a construction store was harassed by a security guard because of his ethnic origin).

<sup>292</sup> NIHR Opinions 2024-62 and 2024-63 of 25 July 2024.

a) Distinction between goods and services available publicly or privately

In the Netherlands, national law distinguishes between goods and services available to the public (e.g. in shops, restaurants and banks) and those that are only available privately (e.g. those restricted to members of a private association).

Article 7(3) GETA stipulates that the prohibition of discrimination does not apply to goods and services provided in the course of carrying on a business or practising a profession or by private persons not engaged in carrying on a business or practising a profession, provided that the following conditions are met:

- a. the legal relationship between the provider and the person seeking access to the good or service is of a private nature;
- b. the distinction is based on a characteristics relating to religion or belief, political opinion, sex, nationality, hetero- or homosexual orientation or marital status; and
- c. the distinction is justified by a legitimate aim and the means to achieving that aim are appropriate and necessary.

The exception of Article 7(3) GETA results from a balancing of interests of the constitutional right to freedom of association and the right to equal treatment. It follows from Article 7(3)(b) that the exception does not apply to distinctions that are based on racial or ethnic origin.

A similar exception is not included in the DDA.

### 3.2.9. Housing (Article 3(1)(h) Directive 2000/43)

In the Netherlands, national legislation prohibits discrimination in the area of housing, as formulated in the Racial Equality Directive. Housing is covered under Article 7(1) GETA and also under Articles 5b(1) and 6a-c DDA. Thus it covers all grounds (i.e. race, religion and belief, political opinion, hetero- or homosexual orientation, sex,<sup>293</sup> nationality and marital status and disability) except age. The duty to make reasonable accommodation in relation to housing only exists in the case of disability discrimination. An exception to this duty applies if the accommodation would require building or reconstruction work in or around residential premises (Article 6c of the DDA).

The prohibition of discrimination applies to all aspects of housing. The Rotterdam Act (*Rotterdamwet*),<sup>294</sup> which grants local authorities the right to refuse to let subsidised houses in certain areas to low-income households in order to avoid the emergence of 'ghettos', has now been in place for several years and has not been found to be discriminatory.<sup>295</sup> A complaint regarding this type of policy was brought to the European Court of Human Rights, but the Grand Chamber ruled that the policy did not violate the ECHR.<sup>296</sup>

In 2018, situation testing initiated by a group of journalists brought to light a high prevalence of discrimination in housing against people with a migration background.<sup>297</sup> In 2019, the Government strengthened its efforts to combat discrimination in the housing market.<sup>298</sup> In 2020/2021 a large scale investigation, including 3 000 situation tests and

<sup>293</sup> In the GETA, 'sex' also covers gender identity, gender expression and sex characteristics.

<sup>294</sup> Act of 20 December 2005, Staatsblad 2005, 726.

<sup>295</sup> Although the ETC (now the NIHR) thought that it could amount to indirect discrimination on grounds of race as people of non-Dutch or more generally non-western origin would be particularly affected. See Advice 2005/03.

<sup>296</sup> ECtHR (GC) 6 November 2017, *Garib v. The Netherlands* (application No. 43494/09).

<sup>297</sup> Elibol, R. and Tielbeke, J. (2018) 'Onderzoek discriminatie woningmarkt. Rachid is ook gewoon een nette jongen' ('Investigation of discrimination in the housing market. Rachid is just an ordinary, decent man'), *Groene Amsterdammer* 28 March 2018: [www.groene.nl/artikel/rachid-is-ook-gewoon-een-nette-jongen](http://www.groene.nl/artikel/rachid-is-ook-gewoon-een-nette-jongen).

<sup>298</sup> Tweede Kamer 2019-2020, 32 847, No. 577.

mystery calls, was conducted at the request of the Government. This investigation showed that 8 % of men and 7 % of women with a foreign (Polish or Moroccan) surname experienced discrimination in the housing market because of their ethnic origin. The investigation also showed that 86 % of real estate agents were prepared to accept discriminatory requests by landlords.<sup>299</sup> Following the publication of these results, the Minister of the Interior announced that she would step up measures to raise awareness amongst landlords and real estate agents, and that situation tests and mystery calls would continue to be performed regularly to monitor the occurrence of discrimination and to deter discriminatory behaviour. The minister asked the State Commission against Discrimination and Racism, which was established in July 2022, to further investigate the occurrence of discrimination in the housing market and suggest possible policy measures.<sup>300</sup> The investigation of 2020/2021 has been conducted yearly since then, and the latest took place in 2024/2025 for the fourth time.<sup>301</sup> The monitor has used correspondence tests and mystery visits. One of the results of the monitor is that discrimination has decreased, while landlords' awareness of the discriminatory nature of certain requests has increased.

In March 2023, the Dutch legislator adopted the Act on good landlordship (*Wet Goed verhuurderschap*).<sup>302</sup> The act enables municipalities to require that landlords establish procedures to prevent discrimination. Through this instrument, landlords can thus be made aware of the risk of discrimination and be compelled to consider which practices or procedures result in discrimination. In this way, the Act can potentially contribute to eliminating root causes of structural discrimination. In addition to preventing discrimination the proposal aims to improve the housing situation of labour migrants. Before the Act was adopted the NIHR published a reaction to the legislative proposal that was overall positive, but also mentioned several recommendations to make the act more effective at combating discrimination.<sup>303</sup>

#### a) Trends and patterns regarding housing segregation for Roma

In the Netherlands, there are patterns of housing segregation and discrimination against the Roma. Roma and Traveller people tend to live in caravans or trailers that are situated in officially designated 'trailer parks' (*woonwagenkampen*). The lack of systematic data makes it difficult to give exact numbers on the housing situation of Roma and Travellers, but it has been observed that a shortage of caravan sites makes it impossible or very difficult for family members to live in the same encampment, something of paramount importance to Roma and Sinti.<sup>304</sup>

In 2018, following concerted efforts by, among others, the NIHR and the National Ombudsman,<sup>305</sup> the Minister of the Interior issued a new policy framework on housing for Roma, Sinti and Travellers.<sup>306</sup> The framework aims to prevent discrimination against Roma,

<sup>299</sup> Tweede Kamer 2020-2021, 32 847 and 30 950, No. 743.

<sup>300</sup> See: <https://www.staatscommissietegendiscriminatieenracisme.nl/over-ons>.

<sup>301</sup> Tweede Kamer 2024-2025, 309 50, Nr. 1391, Annex, 26 November 2025.

<sup>302</sup> See: Staatsblad 2023, 103.

<sup>303</sup> See: NIHR (2021) 'Advies over het wetsvoorstel Goed verhuurderschap' <https://publicaties.mensenrechten.nl/publicatie/6130e7d85d726f72c45f9cf0>.

<sup>304</sup> See the Social Inclusion Monitor of 2018, which also indicates that many differences also exist between Roma. Y. Seidler et al (2018) Monitor Sociale Inclusie: meting 3. Tweede vervolgmeting naar de woon- en leefomstandigheden van Roma en Sinti in Nederland (Social inclusion monitor: measurement 3. Second follow-up measurement of the housing and living situation of Roma and Sinti in the Netherlands) (report commissioned by the Ministry of Social Affairs and Employment), Rotterdam: Risbo BV/Erasmus Universiteit Rotterdam, available at [https://www.eerstekamer.nl/overig/20181116/monitor\\_sociale\\_inclusie\\_meting\\_3/meta](https://www.eerstekamer.nl/overig/20181116/monitor_sociale_inclusie_meting_3/meta).

<sup>305</sup> Nationale Ombudsman (2018), Woonwagenbewoner zoekt standplaats. Een onderzoek naar de betrouwbaarheid van de overheid voor woonwagenbewoners (Trailer resident seeks trailer site. An investigation into the reliability of the public authorities for trailer inhabitants): [www.nationaleombudsman.nl/system/files/bijlage/DEF%20Rapport%202017060%20Woonwagenbewoner%20zoekt%20standplaats.pdf](http://www.nationaleombudsman.nl/system/files/bijlage/DEF%20Rapport%202017060%20Woonwagenbewoner%20zoekt%20standplaats.pdf).

<sup>306</sup> Beleidskader Gemeentelijk woonwagen- en standplaatsenbeleid (Policy framework for municipal trailer and campsite policy): <https://vng.nl/publicaties/beleidskader-gemeentelijk-woonwagen-en-standplaatsenbeleid>.

ensure their cultural rights and provide legal security in the area of housing. It contains guidelines for municipal authorities, which are in charge of housing policies at the local level. More specifically, the policy framework requires municipalities to give Roma more space to live according to their own cultural identity and to ensure they have the opportunity to acquire a place to live in a trailer park within a reasonable timeframe. Most importantly, municipalities are no longer allowed to pursue policies aimed at the eventual disappearance of trailer parks (so-called 'extinction policies').

Although the adoption of the policy framework represented an important step forward, as of 2025, the issue of the shortage of caravan sites had not yet been resolved. A report commissioned by the National Coordinator against Discrimination and Racism found that the previous 'extinction policies' had been replaced by 'deferment policies' and that, over a five-year period, only 50 new caravan sites had been established, whereas at least 4 000 were needed.<sup>307</sup> According to the same report, over 40 % of Dutch municipalities had not inventoried the need for caravan sites within their borders, although this was prescribed in the 2018 policy framework.

Another problem observed in the report is that municipalities propose 'innovative' housing solutions for Roma, Sinti and Travellers, such as 'tiny houses' and stacked caravans, which the latter often perceive as insulting considering the historical context of forced adjustment to 'regular' housing. Finally, the report found that in many municipalities, inhabitants of caravans are not entitled to buy or rent their own caravan site, which in turn makes it difficult for them to obtain a mortgage to make the caravans more sustainable.

The report offers several recommendations, including a stronger role for the national Government; availability of funding to make caravans sustainable; and increasing knowledge of Roma, Sinti and Traveller culture among civil servants, as well as combating anti-Gypsyism. In April 2024, the Government submitted a legislative proposal to strengthen its grip on housing (*Wet versterking regie volkshuisvesting*) which, it stated, should also enable it to take a stronger steering role as regards the establishment of caravan sites.<sup>308</sup> At the cut-off date for this report, the bill is pending in the Senate, and is put on hold because of an amending bill.<sup>309</sup> Part of the Act is the obligation concerning regional agreements, which should strengthen travellers' position.

The duty to enable Roma and Travellers to live in accordance with their cultural traditions is also emphasised in case law and in the Opinions of the NIHR. In 2021, the District Court of the Central Netherlands found that a municipality had acted unlawfully (in breach of the prohibition of discrimination in Articles 8 and 14 ECHR) by concluding an agreement with a group of Traveller families that stipulated that the number of places on the site where they lived could never grow beyond the existing number.<sup>310</sup>

Before the adoption of the new policy framework, the NIHR had already found that local policies aiming to eventually put an end to 'trailer parks' amounted to discrimination on the ground of race.<sup>311</sup> To decide whether local authorities have made sufficient efforts to create enough caravan sites, the NIHR compares the waiting period for a caravan site in the municipality concerned to the waiting period for social housing.<sup>312</sup> If the waiting period

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<sup>307</sup> Teodorescu, D., de Vries, F. and van Kan, A. (2024), '*Van uitsterf- naar uitstelbeleid*' (From extinction to deferment policy – exploration and recommendation commissioned by the National Coordinator against Discrimination and Racism).

<sup>308</sup> Tweede Kamer 2023-2024, 30 950, No. 365.

<sup>309</sup> Tweede Kamer, file no. 36 512, No. J.

<sup>310</sup> District Court of the Central Netherlands 27 October 2021, ECLI:NL:RBMNE:2021:5210.

<sup>311</sup> E.g. NIHR Opinions 2014-165, 2014-166 and 2014-167; NIHR Opinion 2016-22, NIHR Opinion 2017-55 and NIHR Opinions 2017-136 and 2017-137.

<sup>312</sup> E.g. NIHR Opinion 2021-124 of 14 October 2021; NIHR Opinion 2023-129 of 7 December 2023; NIHR Opinion 2024-97 of 22 November 2024; NIHR Opinion 2024-109 of 19 December 2024. The NCDR has criticised this approach for failing to take the special status of travellers into consideration, and it has questioned whether this would be in line with ECHR case law, see Teodorescu, D., De Vries, F., Van Kan, A.

for a caravan site is 'substantially longer', the municipality will need to show that concrete actions are being taken to increase the availability of caravan sites. If no action plan exists or if such a plan is not being implemented this will result in a finding of discrimination.<sup>313</sup> In a case from 2024, the district court of The Hague followed the NIHR's approach when deciding that the municipality of The Hague had taken insufficient action to establish an adequate number of caravan sites. Interestingly, however, the court reasoned that the waiting period for caravan sites had to be compared with the waiting period for social housing at the ground level, as the amount of public space required for caravan sites is larger than for stacked housing.<sup>314</sup> The district court issued a declaration that the municipality was acting in contravention of the prohibition of discrimination and ordered it to establish, within five years, a waiting period for caravan sites comparable to that for social housing at the ground level.

Following the adoption of the policy framework, the NIHR continues to be asked on a regular basis to decide on complaints relating to the housing needs of Roma and Travellers. Besides the availability of caravan sites and the procedures for distributing such sites, the case law addresses aspects such as maintenance obligations for caravan sites,<sup>315</sup> and the possibility to obtain building insurance for a caravan<sup>316</sup> or a loan for its renovation.<sup>317</sup> In addition, the fact that a person is living in a caravan can in itself be a reason for discrimination. An NIHR Opinion from 2024 concerned a situation where a carpet shop required persons living in 'movable objects', including caravans, to pay the full price in advance whereas for other people a 50 % deposit was required.<sup>318</sup> The justification put forward by the shop owner in this case was to prevent the risk of clients not paying for their purchases; however, the owner did not provide any evidence to show that this risk was indeed higher for people living in caravans. The NIHR held that there existed no objective justification for the difference in treatment, which therefore amounted to discrimination.

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(2024), From Phase-Out to Deferral Policy. Travellers still searching for a site (*Van uitsterf- naar Uitstelbeleid Woonwagenbewoner zoekt nog steeds standplaats*), pp. 16-17.

<sup>313</sup> NIHR Opinion 2021-124 of 14 October 2021, para 6.10; NIHR Opinion 2023-63 of 8 June 2023; NIHR Opinion 2023-117 of 14 November 2023; NIHR Opinion 2024-97 of 22 November 2024; NIHR Opinion 2024-109 of 19 December 2024.

<sup>314</sup> District court of The Hague 29 May 2024, ECLI:NL:RBDHA:2024:7830.

<sup>315</sup> NIHR Opinion 2023-87 of 14 August 2023.

<sup>316</sup> NIHR Opinion 2022-152 of 15 December 2022; NIHR Opinion 2023-96 of 12 September 2023.

<sup>317</sup> E.g. NIHR Opinions 2022-147, 148 and 149 of 8 December 2022.

<sup>318</sup> NIHR Opinion 2024-45 of 6 June 2024.

## 4 EXCEPTIONS

### 4.1. Genuine and determining occupational requirements (Article 4 Directive 2000/43, Article 4(1) Directive 2000/78)

In the Netherlands, national legislation provides for an exception for genuine and determining occupational requirements. It is in compliance with CJEU case law regarding genuine and determining occupational requirements.

In the GETA, the exception for genuine occupational requirements ('GOR exception') only exists for the grounds of race and sex. As far as race is concerned, Article 2(4) GETA reads:

'The prohibition of making distinctions on the grounds of race as it is contained in this Act, shall not apply:

- a. in cases where a person's racial appearance is a determining factor, provided that the aim is legitimate and the requirement is proportionate to that aim;
- b. if the distinction concerns a person's racial appearance and constitutes, by reason of the nature of the particular occupational activity concerned, or of the context in which it is carried out, a genuine and determining occupational requirement, provided that the objective is legitimate and the requirement is proportionate to that objective.<sup>319</sup>

In contrast to Article 4 of Directive 2000/43/EC, which speaks of a characteristic related to racial or ethnic origin, the Dutch provision specifies that only outward racial appearances can constitute genuine occupational requirements.<sup>320</sup> This means that 'race' as such is not regarded as a permissible ground for a particular distinction.<sup>321</sup> Only physical features (skin colour, hair type, etc) may form the basis for a distinction, to the exclusion of sociological differences. The GETA does not, for example, allow a care institution which looks after the well-being of young offenders of Moroccan origin to express in a job advertisement a preference for a social worker of Moroccan origin.<sup>322</sup>

The Governmental Decree on Equal Treatment of 1994 exhaustively indicates which professional activities are covered by the exception of Article 2(4).<sup>323</sup> These are:

- a. The profession or activity of actor, dancer or artist insofar as the profession or activity relates to the performance of a certain role (elaboration of subsection b);
- b. Mannequins, models for photographers, artists, etc. insofar as requirements can reasonably be imposed on outward appearances (elaboration of subsection b).

The GOR exception is not included in the DDA. This is because the Dutch legislature could not envisage a scenario in which 'disability' would constitute a genuine occupational requirement.<sup>324</sup> An amendment submitted by a Member of Parliament in this respect was rejected.<sup>325</sup>

<sup>319</sup> Subsection b was inserted by the EC Implementation Act. With this amendment the Government intended to follow the wording of the directive more closely. See Explanatory Memorandum to the EC Implementation Act, Tweede Kamer 2002-2003, 28 770, No. 3, p. 10. However, prior to implementation the 'genuine occupational requirement exception' was also covered by the more general wording of subsection a of Article 2(4).

<sup>320</sup> Explanatory Memorandum to the EC Implementation Act, Tweede Kamer 2002-2003, 28 770, No. 3, p. 10.

<sup>321</sup> Gerards, J. H. and Heringa, A. W. (2003), *Wetgeving gelijke behandeling* (Equal treatment legislation), Deventer, Kluwer, p. 129.

<sup>322</sup> See ETC Opinion 1997-51.

<sup>323</sup> Governmental Decree on Equal Treatment (*Besluit Gelijke Behandeling*), *Staatsblad* 1994, 657, last amended in 2012, see *Staatsblad* 2012, 565.

<sup>324</sup> Explanatory Memorandum to the DDA, Tweede Kamer, 2001-2002, 28 169, No. 3, p. 35.

<sup>325</sup> Amendement Terpstra, Tweede Kamer, 2001-2002, 28 169, No. 11.

Since the ADA contains an objective justification exception for both direct and indirect age discrimination (Article 7(1)(c) ADA), the legislature considered it unnecessary to include the GOR exception.

#### **4.2. Employers with an ethos based on religion or belief (Article 4(2) Directive 2000/78)**

In the Netherlands, national law provides for an exception for employers with an ethos based on religion or belief.

Article 5(2) GETA allows institutions founded on religious or political principles or schools founded on the basis of religion to impose requirements in relation to the occupancy of a post which, in view of the organisation's purpose, are necessary to uphold its founding principles. When the GETA was adopted, this provision was not rationalised by the idea of 'genuine occupational requirements'. Instead, it was regarded as necessary in order to reconcile the constitutional right to equality with other constitutional rights, namely the freedom of religion and the freedom of education, as well as the freedom of political opinion. However, in 2015 Article 5(2) GETA was amended and the text is now closer to that of Article 4(1) Directive 2000/78/EC.<sup>326</sup> The current wording of the provision states that the institutions mentioned above may differentiate on the ground of religion or belief (or political opinion) if such characteristics amount to genuine, legitimate and justified occupational requirements, in view of the institution's religious or political principles, and the distinction does not go further than is necessary to ensure respect for those principles and does not result in differential treatment on any other ground mentioned in Article 1 GETA. Any distinction based on this exception needs to be closely linked to the nature and content of the job in this particular context (of an institution of a specific religious faith).<sup>327</sup> This means that only functions that are related to the 'mission' of the organisation can be exempted from the prohibition of discrimination (i.e. the exception is not applicable when it concerns a gardener for a church). It is also a requirement that the organisation applies a consistent policy in this respect.<sup>328</sup>

Article 5(2) GETA provides that the prohibition of discrimination on the grounds of religion or belief or political opinion in the field of employment does not apply to a) employers with an ethos based on religion or belief, b) faith-based schools and other educational institutions and c) institutions based on a political ideology, provided that several conditions are met. The exception only applies in cases where, by reason of the nature of the activities concerned or of the context in which they are carried out, the religion, belief or political opinion of the person who is subject to the difference in treatment constitutes a genuine, legitimate and justified occupational requirement, having regard to the ethos of the organisation. The difference in treatment must moreover not go beyond what is necessary to require individuals working for the organisations concerned to act in good faith and with loyalty to the organisation's ethos. Therefore, both branches of Article 4(2) of the directive recur in the transposed text. Finally, the difference in treatment may not result in unjustified discrimination on another ground.

It can be seen that, as regards distinctions on the grounds of religion or belief, Article 5(2) closely follows the wording of Article 4(2) Directive 2000/78, but is not exactly the same.

<sup>326</sup> Act of 21 May 2015 amending the General Equal Treatment Act to eliminate the 'sole-ground construction' in the General Equal Treatment Act (Wet van 21 mei 2015 tot wijziging van de Algemene wet gelijke behandeling in verband met het annuleren van de enkele-feitconstructie in de Algemene wet gelijke behandeling), Staatsblad 2015, 200.

<sup>327</sup> It may be useful to note that the exception thus does not apply to 'ordinary' private companies such as involved in the Achbita case; CJEU, 14 March 2017, Achbita v. G4S, C-157/15, ECLI:EU:C:2017:203, <https://curia.europa.eu/juris/document/document.jsf?text=&docid=188852&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=1935398>.

<sup>328</sup> These criteria were explained by the ETC in Opinion 1996-118.

Typical cases that have come before the ETC and NIHR concern schools and other organisations based on a Christian denomination that require their personnel to adhere to the specific tenets of the denomination concerned and act accordingly. Article 5(2) GETA is interpreted strictly by the NIHR. The organisation has to show that its identity is indeed manifested in its actual practice and is consistently upheld. It must also show that the requirements are necessary to fulfil the specific function held by the employee in the organisation. For example, the Salvation Army could refuse to employ a man as a salary administrator for not adhering to the Christian religion as the job also included external contacts and contacts with colleagues in which this was a functional requirement.<sup>329</sup>

Although formally not an exception to the prohibition of discrimination, it should be observed that the GETA does not apply to legal relationships within churches or other religious communities or associations of a spiritual nature and excludes the application of equal treatment norms to 'ministers of religion', as these are considered to be internal affairs (Article 3 GETA). The rationale for this restriction of the GETA's scope of application lies in the protection of the constitutional right of freedom of religion and in the division between church and state.

Article 3 GETA reads:

'This Act does not apply to:

- a. legal relations within religious communities, independent sections or associations thereof and within other associations of a spiritual nature;
- b. the office of minister of religion.'

Only purely internal affairs of religious organisations are covered by this exception. Thus, for example, the employment relationship between a gardener and a religious community is not exempted. The more the legal relationship is disconnected from the rationales of freedom of religion and the division between church and state, the less likely it is to be considered a purely internal affair.<sup>330</sup>

- Conflicts between rights of organisations with an ethos based on religion or belief and other rights to non-discrimination

In the Netherlands, there are specific provisions and case law relating to conflicts between the rights of organisations with an ethos based on religion or belief and other rights to non-discrimination in the context of employment. Specific provisions in this area are Articles 3 and 5(2) of the GETA, which have been discussed above.

In the Netherlands, the now abolished 'sole-ground construction' (*enkele-feitconstructie*), previously included in Article 5(2), played an important role with regard to the question of whether a Christian school may lawfully refuse to employ a cohabiting homosexual in a teaching position. While the 'sole ground' that a person is homosexual could not lead to the refusal to employ such a person or to dismiss them, the situation might be different if 'additional circumstances' were taken into account. This could be any 'behaviour' inside and/or outside the school from which it is apparent that the teacher does not subscribe to the particular religious belief or even contests this belief openly. The wording of Article 4(2) of Directive 2000/78/EC seemed not to permit that 'additional circumstances' play a material role *unless* such circumstances coincide with the organisation's religion or belief.

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<sup>329</sup> NIHR Opinion 2015-68; for a sample of older cases see e.g. ETC 2000-67, 2003-145, 2005-102, 2006-218, 2006-93, 2012-68, 2013-36.

<sup>330</sup> Gerards, J. H. and Heringa, A. W. (2003), *Wetgeving gelijke behandeling* (Equal treatment legislation), Deventer, Kluwer, p. 105.

As a reaction to the European Commission's infringement procedure against the Netherlands, where this issue was mentioned by the Commission,<sup>331</sup> and after several bills and advice from various NGOs, the Council of State and the ETC, the 'sole ground construction' was finally abolished in 2015.<sup>332</sup> The amended text of Article 5(2) GETA corresponds more closely to the wording of Article 4(2) of Directive 2000/78/EC. The NIHR applied the amended provision and held that the refusal of an employer to accept a person for an internship because they are homosexual constitutes direct discrimination for which no justification can be put forward under the GETA.<sup>333</sup>

#### **4.3. Armed forces and other specific occupations (Article 3(4) and Recitals 18 and 19, Directive 2000/78)**

In the Netherlands, national legislation does not provide for an exception for the armed forces in relation to age or disability discrimination. Article 17 of the ADA enshrined an exception (which was of a temporary kind): until 1 January 2008, the ADA did not apply to military service. There have never been any limitations to the scope of the DDA and the GETA concerning the armed forces. In the Netherlands, national legislation does not provide for an actual definition of 'armed forces' other than establishing that they can consist of voluntary servants and conscripts (Article 98 DC). The General Military Civil Service Regulations (*Algemeen militair ambtenarenreglement*) identify four branches: the Royal Navy (*Koninklijke marine*), the Royal Army (*Koninklijke landmacht*), the Royal Air Force (*Koninklijke luchtmacht*), and the Royal Military Constabulary (*Koninklijke marechaussee*).

#### **4.4. Nationality discrimination (Article 3(2))**

##### **a) Discrimination on the ground of nationality**

In the Netherlands, national law does not include exceptions relating to difference of treatment based on nationality. Article 1 of the Constitution provides that, 'all persons in the Netherlands shall be treated equally in equal circumstances'. Protection against discrimination offered by Article 1 of the Constitution, by criminal law, by civil law and under the equal treatment legislation is not tied to any nationality requirement.

In the Netherlands, nationality (as in citizenship) is explicitly mentioned as a protected ground in Article 1, first sentence and (b) and (c) GETA. The Act thus goes beyond the requirements stemming from the directives. The material scope of the prohibition of nationality discrimination is, in principle, the same as for the other grounds covered by the GETA (with the exception of race). However, Article 2(5) enshrines some exceptions: the prohibition on the grounds of nationality shall not apply if the distinction is based upon generally binding rules (i.e. legislation, including statutory acts as well as lower regulations) or on written or unwritten rules of international law.<sup>334</sup> Moreover, the prohibition does not apply in cases where nationality is a determining factor (e.g. nationality requirements imposed upon players for the national football team).<sup>335</sup> Nationality discrimination includes stateless status.

##### **b) Relationship between nationality and 'race or ethnic origin'**

In the GETA nationality and race (racial or ethnic origin) are mentioned as separate discrimination grounds. However, in practice, differential treatment on the ground of

<sup>331</sup> Letter dated 31 January 2008 (No. 2006-2444), with reference to the infringement procedure of 18 December 2006, infringement No. 2006/2444. Article 5(2) GETA was mentioned, however, in the end the Commission did not ask the Government to change this provision.

<sup>332</sup> Act of 21 May 2015, Staatsblad 2015, 200. For the parliamentary debate see Tweede Kamer 2010-2011/2013-2014, 32 476, Nos. 1-11.

<sup>333</sup> NIHR Opinion 2016-10 of 16 February 2016.

<sup>334</sup> See e.g. ETC 1997-13, 1998-81 and 2002-61.

<sup>335</sup> See e.g. ETC 1996-77.

nationality may often result in indirect discrimination on the ground of racial or ethnic origin. The legislative history of the GETA shows that the ground of nationality was included at the instigation of civil society organisations, notably the National Bureau for the Elimination of Racism (*Landelijk Bureau Racismebestrijding*), to ensure that nationality-based distinctions could not be used as a guise for racial discrimination.<sup>336</sup> Yet it was also considered that in some contexts distinctions based on nationality are legitimate. Therefore, in respect of direct nationality discrimination, more exceptions (or justifications) are allowed. In cases where indirect discrimination on the ground of racial or ethnic origin is suspected, the regular objective justification test applies.

There is an overlap between nationality and racial or ethnic origin in the context of indirect discrimination. Sometimes, a case of direct nationality discrimination can be qualified as a case of indirect racial discrimination. Because both grounds of discrimination are covered in the GETA, this does not cause great difficulties in the case law. However, for racial or ethnic origin, the scope of the prohibition of discrimination is wider as it also includes social protection (Article 7a GETA.) As discussed in section 3.2.5 above, case law in the fields of social security and social protection shows that courts do not always clarify whether they consider differences in treatment to be based (indirectly) on racial or ethnic origin; this includes some cases where the formal criterion for distinction is nationality.

The NIHR seems to equate the concepts of national origin and ethnic origin as well as those of ethnic origin and race.<sup>337</sup>

#### 4.5. Health and safety at work (Article 7(2) Directive 2000/78)

In the Netherlands there are exceptions in relation to disability and health and safety at work as allowed under Article 7(2) of the Employment Equality Directive. The exception is laid down in Article 3(1) DDA, which reads:

‘The prohibition of making a distinction shall not apply if:

- a. the distinction is necessary for the protection of safety and health;
- b. the distinction relates to a regulation, standard or practice which is aimed at creating or maintaining specific provisions and facilities for the benefit of persons with disabilities or chronic illness. [...]

Article 3(1)(a) DDA must be interpreted narrowly. It follows from the legislative history that a high threshold is set for successful reliance upon this exception. If an employer claims that a distinction on the ground of disability is necessary for reasons of health or safety, they must duly substantiate their claim.<sup>338</sup> If there is a possibility of removing the risk by means of an effective accommodation, the exception cannot be relied upon.<sup>339</sup> However, where the health or safety risk has been adequately substantiated and no effective accommodation is available the employer can successfully rely on the exception.<sup>340</sup>

Under the Working Conditions Act and under civil labour law, the employer has a duty to eliminate or reduce, as far as possible, any risk to the health and wellbeing of their employees. It is not fully clear whether this legislation allows an employer to exclude a person with disabilities on the ground that the work will pose a risk to that person’s own

<sup>336</sup> Notably Tweede Kamer 1990-1991, 22 014, No. 4 and Tweede Kamer 1992-1993, 22 014, No. 36.

<sup>337</sup> For two cases in which the (former) ETC concluded that a distinction on the ground of national origin amounted to direct discrimination on the ground of racial or ethnic origin, see Opinions 2011-97 and 2011-98.

<sup>338</sup> The NIHR applies a strict test, see e.g. Opinions 2016-9 of 11 February 2016 and 2020-116 of 15 December 2020. For a discussion of the application of the health and safety exception outside the field of employment see section 2.6.e).

<sup>339</sup> E.g. NIHR Opinion 2016-9 of 11 February 2016 and Opinion 2020-77 of 1 September 2020.

<sup>340</sup> E.g. NIHR Opinion 2023-34 of 16 March 2023.

health or safety (but not the health and safety of others). Neither is it clear whether persons with disabilities can decide for themselves that they wish to accept such a risk. Moreover, it is not clear whether the employer would be excluded from liability should the individual with disabilities suffer harm in such circumstances. Further judicial interpretation is therefore needed.

No exception regarding health and safety is included in the GETA. However, safety and security issues may come to the surface in the 'objective justification test' for indirect discrimination cases. For example, a prohibition of headscarves during gymnastics for reasons of health and safety can be objectively justified.<sup>341</sup>

There has been some debate in the past on whether the lack of a specific health and safety exception is a shortcoming of the GETA, in particular in relation to blood donations by men who have sex with men.<sup>342</sup> In the past, the NIHR held that this constituted indirect discrimination based on sexual orientation, which could be justified based on reasons of public health. In 2021, however, the NIHR overruled its own previous decisions and held expressly that the exclusion constituted direct discrimination based on sexual orientation.<sup>343</sup> It reasoned in that case that no request had been made to set aside the closed system of exceptions for compelling reasons of public health, meaning that the case concerned unacceptable direct discrimination. Nevertheless, as the need for a public health exception only surfaces sporadically, an amendment of the GETA has so far been deemed unnecessary by both the NIHR and the Government.<sup>344</sup>

#### **4.6. Exceptions related to discrimination on the ground of age (Article 6 Directive 2000/78)**

##### **4.6.1. Direct discrimination**

###### **a) Justification of direct discrimination on grounds of age**

In the Netherlands, national law allows for specific justifications for direct discrimination on the ground of age.

Section 3 of the ADA is entitled 'Exceptions to the prohibition of making distinctions'. Within this Section, Article 7 is entitled 'Objective justifications'. Article 7(1)(c) ADA provides that distinctions based on age may be objectively justified by a legitimate aim, provided the means used to achieve that aim are appropriate and necessary. Unlike Article 6(1) of Directive 2000/78, Article 7(1)(c) ADA does not explicitly list any potential legitimate aims.

Both the NIHR and the courts apply the test as prescribed in Article 7(1)(c) ADA.<sup>345</sup> Case law shows that there exists a variety of situations in which direct distinctions on the basis

<sup>341</sup> The ETC (now the NIHR) applies this exception (strictly) including in the context of religious discrimination, where sometimes it is argued that a prohibition of the Islamic headscarf must be allowed for reasons of safety. See e.g. ETC 2011-195.

<sup>342</sup> See ETC Opinions 2006-20 and 2007-85, in which the ETC deemed a measure which rejects homosexual blood donors to be legally justified, in spite of the lack of a legal provision to justify directly a distinction based on sexual orientation because of public health risks. In its third evaluation report, the ETC suggested the inclusion of a general exception on public health and security in the equal treatment legislation (ETC (2011) Third evaluation report (2004-2009), p. 8).

<sup>343</sup> See NIHR Opinion 2021-64 of 27 May 2021.

<sup>344</sup> See Evaluatie Wet College voor de rechten van de mens (Evaluation of the NIHR Act), Tweede Kamer 2017-2018, 34 338, No. 3, p. 11. In NIHR Opinion 2015-46, the NIHR moreover found that the protection of public health could no longer justify differential treatment of homosexual men in relation to blood donations (in doing so it seems to be stricter than Court of Justice of the European Union (CJEU) 12 June 2015, Léger, C-528/13, ECLI:EU:C:2015:288, <https://curia.europa.eu/juris/document/document.jsf?text=&docid=164021&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=1935545>).

<sup>345</sup> See, for example, NIHR 2020-84 and 2020-103. For case law from the courts see, for example, Central Appeals Tribunal, 18 July 2016, ECLI:NL:CRVB:2016:2614 and Supreme Court, 24 January 2020, ECLI:NL:HR:2020:114.

of age are considered objectively justified. For example, an employment agency was allowed to mediate exclusively for people who had reached the statutory pensionable age because the weak labour market position of the group concerned provided an objective justification.<sup>346</sup> Also allowed were a pension scheme that required older participants to pay higher contributions,<sup>347</sup> and a temporary Government scheme, introduced to support self-employed persons whose income had dropped as a result of the COVID-19 pandemic, that excluded claimants who had reached the state pension age on the ground that they could rely on a state pension.<sup>348</sup>

Finally, direct discrimination on the ground of age may be objectively justified when it aims to grant preferential treatment to a disadvantaged age group (see section 5 on positive action).

Article 7(1) ADA reads:

‘The prohibition of making a distinction shall not apply if the distinction:

- a. is based on employment or labour market policies to promote employment in certain age categories, provided such policies are laid down by or pursuant to an Act of Parliament;
- b. relates to the termination of an employment relationship with a civil servant because the person concerned has reached the pensionable age under the General Old Age Pensions Act (AOW), or a more advanced age laid down by or pursuant to an Act of Parliament or agreed between the parties;
- c. is otherwise objectively justified by a legitimate aim and the means used to achieve that aim are appropriate and necessary.’

For the purposes of this report, the provisions of Article 7(1)(a) and (b) are understood as exceptions, whereas Article 7(1)(c) is understood as a justification and will be discussed in the following subparagraph.

The exception in Article 7(1)(a) ADA corresponds to Article 6(1)(a) of the Directive. In the Netherlands, special benefits in the field of vocational education are available to people under 30 years of age with a view to promoting their position on the labour market. Such benefits are compatible with the justification ground in Article 7(1)(a) ADA, provided that they are based on a statutory act (see section 4.6.2).

The exceptions in Article 7(1)(a) and (b) ADA apply to direct as well as indirect distinctions on the ground of age. They do not apply with regard to harassment (Article 7(2) ADA).

#### b) Permitted differences in treatment based on age

In the Netherlands, national law permits differences in treatment based on age for any activities within the material scope of Directive 2000/78/EC. As mentioned above under section 4.6.1.a, Article 7(1)(a) and (b) of the ADA enshrines two exceptions that are deemed *a priori* to be ‘objectively justified’ because, according to the Government, they are closely linked to the justifications mentioned in the directive.

Subsection (a), which transposes Article 6(1) of the Directive, provides that the prohibition of age discrimination does not apply if the distinction is based on employment or labour market policies that are aimed at promoting labour market participation of certain age categories, provided that such policies have a legal basis in a statutory act.

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<sup>346</sup> NIHR Opinion 2018-107.

<sup>347</sup> District Court of Gelderland, 18 August 2021, ECLI:NL:RBGEL:2021:4492.

<sup>348</sup> District Court of East-Brabant, 14 October 2021, ECLI:NL:RBOBR:2021:5447 and District Court of Zeeland-West-Brabant, 24 May 2022, ECLI:NL:RBZWB:2022:2851. The scheme was known as *Tijdelijke overbruggingsregeling zelfstandige ondernemers*.

Subsection (b) provides that the prohibition of age discrimination does not apply if the distinction regards the termination of the employment relationship with a civil servant, by reason of having reached either the statutory pensionable age or a *higher* (not lower)<sup>349</sup> age, provided this higher age has a legal basis in a statutory act or has been mutually agreed by the parties involved.

c) Fixing of ages for admission to occupational pension schemes

In the Netherlands, national law allows occupational pension schemes to fix ages for admission to the scheme and entitlement to pension benefits, taking up the possibility provided for by Article 6(2). This possibility is laid down in Article 8 ADA, which provides as follows:

- ‘1. For the purpose of this provision a pension scheme is defined as: a pension scheme for the benefit of one or several persons, exclusively related to their activities conducted in an enterprise, branch of industry, professional branch or public service, additional to statutory social security schemes and, in case of a scheme for a single person, not established by that person.
2. The prohibition of making a distinction does not apply to fixed ages for admission to a pension scheme or to fixed ages for entitlement to pension benefits within a pension scheme, including the fixing of different ages for admission and entitlement for employees or for groups or categories of employees.
3. The prohibition of making a distinction does not apply to the use of age criteria in actuarial calculations in the context of pension schemes.’

The Directive states that the exception made by Article 6(2) may not lead to discrimination on the ground of sex. This clause has not been added to the Dutch ADA. However, this is regulated in the sex-discrimination legislation (see Article 12b and 12c ETA).

#### 4.6.2. Special conditions for younger or older workers

In the Netherlands, there are special conditions set by law for younger workers in order to promote their vocational integration. Article 7(1)(a) ADA enshrines an exception for policies that are aimed at the promotion of labour market participation by certain age categories (see section 4.6.1. above).

In the Netherlands special benefits in the field of vocational education are available to people under 30 years of age with a view to promoting their position in the labour market. These benefits include the possibility of deducting study costs from tax payments as well as the availability of study grants and facilities for students with disabilities. In the *De Lange* judgment (C-548/15) the CJEU considered that the Dutch tax advantages for students under 30 fell within the scope of Article 3(1)(b) Employment Directive (access to vocational training) and that such advantages were justified in view of the objective of ‘promoting the position of young people on the labour market’ and therefore compatible with the exception of Article 6(1)(a) of the Directive.<sup>350</sup> The same justification was accepted by the Dutch courts with regard to other facilities that are only available to people under 30, in particular study grants and the option to use publicly funded sign language interpreters.<sup>351</sup>

<sup>349</sup> It follows from the Explanatory Memorandum that subsection b does not apply to dismissals based on reaching a pensionable age which is lower than 65 years. See Explanatory Memorandum to the ADA, Tweede Kamer 2001-2002, 28 169, No. 3, p. 32.

<sup>350</sup> CJEU, judgment of 10 November 2016, *de Lange*, C-548/15, ECLI:EU:C:2016:850.

<sup>351</sup> District Court of Amsterdam 16 October 2017, ECLI:NL:RBAMS:2017:7691; Central Appeals Tribunal 8 September 2017, ECLI:NL:CRVB:2017:3229.

Under Article 31(5) of the Participation Act,<sup>352</sup> if a recipient of social assistance is younger than 27, any remuneration received for voluntary work will be deducted from their social assistance benefits. A young woman affected by this provision claimed that it amounted to age discrimination. However, the Central Appeals Tribunal considered that the distinction was objectively justified as a means to encourage people under 27 not to rely on social assistance. The Tribunal referred to the legislative debate where it was stated that people in this age category are not meant to 'stand on the sideline'.<sup>353</sup>

#### **4.6.3. Minimum and maximum age requirements**

In the Netherlands, there are no exceptions permitting minimum and/or maximum age requirements in relation to access to employment and training. However, this could be possible on the basis of a broad reading of the exception under Article 7(1)(a) or on the basis of Article 7(1)(c) ADA (general possibility of an objective justification).

#### **4.6.4. Retirement**

##### State pension age

In the Netherlands, there is a state pension age at which individuals must begin to collect their state pensions. The statutory pensionable age used to be 65, but has been raised gradually from 2013 onwards. According to Article 7a(1) of the General Pensions Act, the general pensionable age in 2022 was 66 years and seven months.<sup>354</sup> This was raised to 67 years in 2025 and in accordance with general increases in life expectancy as of 2026.<sup>355</sup>

If an individual wishes to work beyond the state pension age, the pension cannot be deferred. Every citizen receives a state pension on the basis of the General Pensions Act (*Algemene Ouderdomswet*) from the statutory pensionable age onwards.

An individual can collect a pension and still work, as the right to receive a state pension at the statutory pensionable age is independent of the question of whether the person has (or has had) a paid job. In 2015, the rules on working after reaching the pensionable age were simplified. The Ragetlie rule (Article 7:667(4) Civil Code) (which provides that a fixed-term contract replacing a permanent contract within six months with the same (or subsequent) employer does not end by operation of the law), no longer applies when the employment contract ends after the individual reaches the statutory pensionable age. This means that it is possible to agree upon a fixed-term contract for employees having reached the pensionable age, even if such an employment contract succeeds a permanent contract.

##### Occupational pension schemes

In the Netherlands, there is no standard age when people can begin to receive payments from occupational pension schemes and other employer-funded pension arrangements. The age at which benefits can be collected under these schemes depends on the conditions under which such schemes are contractually agreed.

If an individual wishes to work longer, payments from such occupational pension schemes can be deferred. Some schemes are more flexible than others as far as an individual's wish to work longer is concerned.

An individual can collect a pension and still work. It is possible for an individual to collect a pension under the occupational pension scheme and on top of that to have other income, e.g. from a paid job.

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<sup>352</sup> Participation Act (Participatiewet), Staatsblad 2003, 375.

<sup>353</sup> Central Appeals Tribunal 16 November 2021, ECLI:NL:CRVB:2021:2841.

<sup>354</sup> General Pensions Act (Algemene Ouderdomswet), Staatsblad 1956, 281.

<sup>355</sup> Pursuant to Article 7a, second paragraph, of the General Pensions Act.

## State imposed mandatory retirement ages

In the Netherlands, there is no state-imposed mandatory retirement age. However, Dutch labour law provides that an employer may validly terminate an employment contract when the employee reaches the state pension age, or any age limit provided in the employment contract (Article 7:669(4) Civil Code). For some professions age limits are laid down by statutory law (e.g. for judges) or by a professional organisation (e.g. the National Organisation of General Practitioners). While there is no specific legal provision requiring such age limits to be objectively justified, it is the author's assumption that the courts may be asked to decide on their compatibility with the prohibition of discrimination (including the general non-discrimination provisions of Article 1 Dutch Constitution and Article 1 Twelfth Protocol ECHR), in which case a justification will have to be provided by the respondent party.

## Retirement ages imposed by employers

In the Netherlands, national law permits employers to set retirement ages (or ages at which the termination of an employment contract is possible) by contract and collective bargaining.

Age limits are regularly included in collective labour agreements (*collectieve arbeidsovereenkomsten*). While there is no specific legal provision requiring such age limits to be objectively justified, it is the author's assumption that the courts may be asked to decide on their compatibility with the prohibition of discrimination (including the general non-discrimination provisions of Article 1 Dutch Constitution and Article 1 Twelfth Protocol ECHR), in which case a justification will have to be provided by the respondent party. In 2021, the Central Appeals Tribunal decided that the mandatory retirement age for judges (70) was objectively justified under Article 6(1) of the Employment Equality Directive.<sup>356</sup>

Many employment contracts contain an automatic dismissal clause, which stipulates that the contract ends automatically upon the employee reaching the statutory pensionable age. There have been many legal proceedings on the question of whether these dismissal clauses are valid, but in 2012 it was decided by the Dutch Supreme Court that they are, even in the case of a permanent employment contract.<sup>357</sup> Since 2015, Article 7:669(4) of the Civil Code specifies that employers may terminate the employment contract if the employee has reached the statutory pensionable age or a contractually agreed retirement age.

Article 7(1)(b) ADA, moreover, reads as follows:

'The prohibition on the making of a distinction shall not apply if the distinction:

(b) relates to the termination of an employment relationship because the person concerned has reached pensionable age under the General Old Age Pensions Act (AOW), or a more advanced age laid down by or pursuant to an Act of Parliament or agreed between the parties; (...).'

The Government holds the view that this exception is fully in compliance with the Directive. This view has not been contested in Parliament or in academic literature, as far as the author of this report is aware.

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<sup>356</sup> Central Appeals Tribunal 12 August 2021, ECLI:NL:CRVB:2021:1803. See European network of legal experts in gender equality and non-discrimination, flash report (Netherlands) 'Ruling by Central Appeals Tribunal of 12 August 2021', 15 September 2021, <https://www.equalitylaw.eu/downloads/5495-netherlands-ruling-by-central-appeals-tribunal-of-12-august-2021-ecli-nl-crvb-2021-1803-92-kb>.

<sup>357</sup> Supreme Court 13 July 2012, ECLI:NL:HR:2012:BW3367.

## Employment rights applicable to all workers irrespective of age

The law on protection against dismissal and other laws protecting employment rights apply to all workers irrespective of age, even if they remain in employment after attaining the pensionable age or any other age.<sup>358</sup> As long as someone is an employee with a permanent contract, they are protected by Dutch labour law and by the ADA, regardless of age. Employees with temporary contracts have no protection against dismissal when the contract ends. However, it is prohibited not to renew a temporary contract on discriminatory grounds, including age (Article 3(c) and (d) ADA). It should be noted that employers who allow people who have reached the statutory pensionable age to continue working for them do so mostly on the basis of a temporary contract.

## Compliance of national law with CJEU case law

In the Netherlands, national legislation is in line with the CJEU case law on age regarding mandatory retirement.

### 4.6.5. Redundancy

#### a) Age and seniority taken into account for redundancy selection

In the Netherlands, national law permits age or seniority to be taken into account in selecting workers for redundancy. The Explanatory Memorandum to the ADA explicitly mentions that the use of the 'last in, first out principle' (which works to the advantage of older workers) could be objectively justified under Article 7(1)(c) of the Act. This is, however, not the principle provided by Dutch labour law, which by default stipulates that the employer, in case of a collective dismissal, should select redundant employees on the basis of a balancing principle, the 'mirror image rule' (*afspiegelingsbeginnel*), requiring that account be taken of the age balance of the workforce.<sup>359</sup>

#### b) Age taken into account for redundancy compensation

In the Netherlands, national law provides compensation for redundancy. A major overhaul of Dutch labour law in 2015 introduced a system of 'transitional severance pay' (*transitievergoeding*).<sup>360</sup> In this system, the compensation is solely based on the employee's number of years of service. The system reduces inequalities between older and younger employees, although a difference remains.

A recurring issue in case law concerns clauses in social plans (drawn up after re-organisations) that exclude workers who have reached the (statutory or contractual) pensionable age from eligibility for redundancy compensation or whereby such compensation is capped at the income that the worker would have earned upon reaching the (statutory or contractual) pensionable age. In 2018, the Supreme Court held that exclusion of workers who have reached the statutory pensionable age from transition severance pay was objectively justified. The Court explicitly considered the issue in the light of Directive 2000/78/EC and assessed whether the exclusion served a legitimate aim and was appropriate and necessary to achieve that aim. To this end, the Supreme Court considered that transition severance pay is meant to support employees who depend on paid work to provide for themselves and that this does not apply to people who have reached the statutory pensionable age and become eligible for pension benefits.<sup>361</sup>

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<sup>358</sup> This is without prejudice to the fact that the employer may terminate the employment contract if the employee has reached the statutory pensionable age or a contractually agreed retirement age as mentioned above under section 4.6.4.d.

<sup>359</sup> Article 11 Dismissal Decree 2015 (Ontslagregeling 2015), Staatscourant 2015, 12685.

<sup>360</sup> Labour and Security Act (Wet Werk en Zekerheid), Staatsblad 2014, 216.

<sup>361</sup> Supreme Court 20 April 2018, ECLI:NL:HR:2018:651.

Some years later the Supreme Court refined the test to be applied.<sup>362</sup> While confirming that distinctions on the ground of age must have a legitimate aim and meet the requirements of appropriateness and necessity, the Supreme Court held that a certain level of deference is required regarding distinctions in social plans that are the result of negotiations and a balancing of interests by the social partners (employers and trade unions). In the case at hand the Supreme Court judged that the scrutiny performed by the Court of Appeal had been too intense. As regards the appropriateness of the distinction, the Court of Appeal should have limited itself to assessing if it was not 'manifestly unsuitable' to meet the aims pursued. Concerning necessity, the criterion to be applied is whether the disputed measure does not go further than is needed to meet the aims pursued and does not cause 'excessive disadvantage' to the persons concerned. The Supreme Court also held that, in assessing the appropriateness and the necessity of the measures at stake, the Court of Appeal should have taken account of each of the legitimate aims pursued by the social plan. In its decision the Court of Appeal had only looked at the aim of equal distribution of means in relation to the employees who were dismissed, while it had not taken into account the aims of limiting the financial consequences of the re-organisation for the company and its remaining employees and of limiting the financial disadvantage for employees who had lost their jobs. The test formulated by the Supreme Court has subsequently been followed by the lower courts.<sup>363</sup>

In 2022 the Central Appeals Tribunal and various lower courts decided cases in which age discrimination was claimed because redundancy pay schemes, other than the transition severance pay discussed above, ended when the recipients reached the age of 65. The applicants in these cases claimed that the redundancy pay schemes should be extended because the state pensionable age, which used to be 65 years, had been raised. In the case before the Central Appeals Tribunal it was held that there had been no age discrimination because the applicants, former pilots with the National Police force, all received the same amount of redundancy pay regardless of the age at which they were dismissed.<sup>364</sup> Meanwhile, the District Court of the Central Netherlands decided in another case (not concerning police pilots) that the age limit of 65 had been reasonably chosen by the employer when the redundancy pay scheme was set up, on the assumption that this was the age at which the applicant would become eligible for a state pension. It found that the 'pension gap' faced by the applicant did not result from the redundancy pay scheme but from the adjustment of the state pensionable age, for which the employer could not be held accountable.<sup>365</sup>

#### **4.7. Further exceptions necessary in a democratic society: Public security, public order, criminal offences, protection of health, protection of the rights and freedoms of others (Article 2(5) Directive 2000/78)**

In the Netherlands, national law does not include exceptions that seek to rely on Article 2(5) of the Employment Equality Directive.

Dutch equal treatment legislation does not include exceptions that are aimed at protecting any of the interests mentioned in Article 2(5) of the Employment Equality Directive (public security, public order, criminal offences, protection of health and protection of the rights and freedoms of others) and that were not already discussed in the previous sections.

Some of the exceptions previously discussed aim to protect interests that overlap with those mentioned in Article 2(5) of the Employment Equality Directive and could therefore be understood as implementing that provision as well. This is true of the exception laid

<sup>362</sup> Supreme Court 24 January 2020, ECLI:NL:HR:2020:114.

<sup>363</sup> Court of Appeal of Den Bosch 28 January 2020, ECLI:NL:GHSHE:2020:247; Court of Appeal of Arnhem-Leeuwarden 24 November 2020, ECLI:NL:GHARL:2020:9672; District Court of Amsterdam 26 July 2021, ECLI:NL:RBAMS:2021:3883; Court of Appeal of Amsterdam 13 June 2023, ECLI:NL:GHAMS:2023:1375.

<sup>364</sup> Central Appeals Tribunal 2 June 2022, ECLI:NL:CRVB:2022:1237. A similar decision was taken in District Court of North Holland 24 March 2022, ECLI:NL:RBNHO:2022:7577.

<sup>365</sup> District Court of the Central Netherlands 4 May 2022, ECLI:NL:RBMNE:2022:1920.

down in Article 3(1)(a) DDA (exception for health or safety measures, discussed in section 4.5) and the exceptions laid down in Articles 3 and 5(2) GETA (discussed in section 4.2) which were included to ensure respect for the fundamental right to freedom of religion and can therefore be understood as exceptions aimed at protecting the rights and freedoms of others. However, Articles 3(1)(a) DDA and Articles 3 and 5(2) GETA do not expressly state that exceptions to the prohibition of discrimination as meant by these provisions must be laid down by national law.

Finally, the measures to which Article 2(5) of the Employment Equality Directive refers will normally be covered by the general exceptions allowing for objective and reasonable justification in the case of indirect discrimination on the grounds mentioned in that Directive (as well as direct discrimination on the ground of age). See Articles 2(1) GETA, 3(2) DDA and 7(1)(c) ADA.

#### **4.8. Any other exceptions**

In the Netherlands, other exceptions to the prohibition of discrimination (on any ground covered by this report) provided in national law are the following:

1. Article 5(2a) GETA allows municipalities to make distinctions on the ground of religion or belief in the employment of civil servants working for the civil registry who make distinctions in the exercise of their function, unless the latter distinctions are based on generally binding legislation. This exception allows municipalities to refrain from employing civil registry servants who refuse to marry or register same-sex couples because of their religious or philosophical beliefs.
2. Article 5(3) GETA contains an exception for employment relationships that are of a private nature. This would include, for example, employment in private households. Insofar as it is relevant for this report, the exception states that the prohibition of discrimination in the field of employment does not apply to distinctions that are based on religion or belief, racial or ethnic origin or hetero- or homosexual orientation, provided that the characteristic concerned, by reason of the nature of the particular occupational activities concerned or of the context in which they are carried out, constitutes a genuine occupational requirement that moreover serves a legitimate aim and is proportionate to that aim.
3. Article 7(3) GETA, concerning the provision of goods and services, also contains an exception relating to the private nature of the legal relationship concerned (for example, a woman who rents out a room in her own house may lawfully require that the person who rents the room is a woman).<sup>366</sup> It is expressly stated that the exception may only be relied upon if the aim is legitimate and if the means are appropriate and necessary. The exception does not apply to the ground of racial or ethnic origin.<sup>367</sup>
4. Article 7(2) GETA grants faith-based educational institutions and educational institutions based on a philosophical belief (which are generally funded by the state on an equal basis with state schools) the freedom to refuse to admit pupils on the ground of their religious or philosophical convictions. This freedom is subject to strict requirements, to the effect that the differentiation must be essential for the educational institution to be able to maintain its faith-based or philosophical character. Educational institutions may not refuse to admit pupils because of their sexual orientation.

<sup>366</sup> This topic was discussed in great detail in the second evaluation report about the functioning of the GETA. See Hertogh, M.L.M. and Zoontjens, P.J.J. (eds.) (2006), *Gelijke behandeling: principes en praktijken*. Evaluatieonderzoek Algemene wet gelijke behandeling (Equal treatment: principles and practice. Evaluation report on the General Equal Treatment Act), Nijmegen, Wolf Legal Publishers, pp. 175-216.

<sup>367</sup> The current provisions were adopted in 2011 after an infringement procedure by the Commission. The former provisions included broader exceptions than EU law allows for.

5. The internal affairs of associations fall outside the scope of the GETA. This follows from the legislative history and is not explicitly provided for in the GETA.<sup>368</sup>

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<sup>368</sup> This topic was discussed in great detail in the second evaluation report about the functioning of the GETA, Hertogh, M.L.M. and Zoontjens, P.J.J. (eds.) (2006), *Gelijke behandeling: principes en praktijken*. Evaluatieonderzoek Algemene wet gelijke behandeling.

## 5 POSITIVE ACTION (Article 5 Directive 2000/43, Article 7 Directive 2000/78)

### a) Scope for positive action measures

In the Netherlands, positive action is permitted in national law in respect of sex, racial or ethnic origin and disability. The relevant provisions are Article 2(3) GETA and Article 3(1)(c) DDA. Positive action is not (expressly) permitted in respect of religion or belief, age or hetero- or homosexual orientation.

The Government defends limiting positive action measures to racial and ethnic origin and disability with the argument that these grounds relate to *structural disadvantages* in society. Structural disadvantage is defined as 'suffering disadvantages in several social fields at the same time, which are not temporary in nature'.<sup>369</sup> The Dutch transposition leaves limited room for positive action policies and programmes, because the Dutch legislature has opted only for measures that *remove* or *reduce* disadvantages. It has not transposed the option to allow measures that aim to *prevent* such disadvantages.<sup>370</sup>

Article 2(3) of the GETA reads as follows:

'The prohibition of discrimination, as laid down in this Act, does not apply to specific measures granting preferential treatment to women or to persons belonging to particular ethnic or cultural minority groups in order to reduce or eliminate actual disadvantages related to the grounds race or sex provided that the resulting distinction stands in a reasonable relationship to that aim.'<sup>371</sup> [author's translation]

Starting from this legal definition, the NIHR has developed a set of criteria that must be met for a positive action to be lawful. These criteria are the following:

- a. a legitimate aim;
- b. a demonstrable disadvantage;
- c. careful application – this entails that a candidate belonging to the target group may only be selected after the suitability of all candidates has been objectively assessed, including those not belonging to the target group;<sup>372</sup>
- d. proportionality;
- e. transparency/foreseeability – it must be clear from the job advertisement that positive action measures are taken and that all candidates may apply to the position concerned.<sup>373</sup>

Article 3(1)(c) DDA enshrines a positive action exception to the prohibition of discrimination on the ground of disability. The conditions are the same as under the GETA.

According to the ETC/NIHR standards, any policy by which a company or organisation strives for proportional representation of various ethnic groups in proportion to their presence in society is considered direct discrimination. When the aim of such a policy is simply achieving 'proportionality' or 'diversity' (i.e. when the aim is not to put people belonging to an under-represented or systematically disadvantaged group in a better position), the equality body will not apply the positive action exception, and the policy will

<sup>369</sup> See Tweede Kamer 2001-2002, 28 169, No. 5, p. 17.

<sup>370</sup> See Explanatory Memorandum to the EC Implementation Act, Tweede Kamer 2002-2003, 28 770, No. 3, p. 9.

<sup>371</sup> The concept of 'ethnic or cultural minority group' is not defined in Dutch law, but it is usually applied as 'being of non-western origin'.

<sup>372</sup> Positive action applies in all areas covered by the GETA. However, these criteria have so far been developed by the NIHR in the area of (access to) employment, because it is in these cases that the question of positive action has been addressed.

<sup>373</sup> The most recent opinion where these criteria have been applied is NIHR Opinion 2023-94 of 30 August 2023.

be considered unlawful.<sup>374</sup> However, other cases show that the equality body is not always as strict. In two cases where a city council asked explicitly for members of ethnic minorities to apply for jobs as social workers and excluded people of Dutch origin, it ruled that the preferential treatment of ethnic minorities was allowed.<sup>375</sup>

The NIHR accepts that an employer who seeks to rely on the positive action exception for racial or ethnic origin is not obliged to provide statistical data to substantiate the under-representation of particular groups in the workforce, taking into account that such data are not always available because Dutch law does not allow registration of racial or ethnic origin.<sup>376</sup> Moreover, where the positive action policy applies to a single vacancy, the existence of a disadvantage can also be demonstrated by means of more general facts.<sup>377</sup>

In its third evaluation report, published in 2011, the ETC concluded that the provisions concerning positive action in the GETA and DDA were adequate and did not require revision. The equality body defended its restrictive interpretation of the positive action exception with reference to CJEU case law, and maintained that, when overcoming structural disadvantages of certain groups is deemed necessary, general social policy measures should be developed to address these disadvantages effectively.<sup>378</sup> However, in December 2012, the NIHR applied a less strict criterion and accepted 'exceptional circumstances' in a sex discrimination case.<sup>379</sup> In the last evaluation report, the NIHR once again referred to CJEU case law, and at the same time pointed out two opinions in which it applied the CJEU criteria more leniently.<sup>380</sup>

As far as the DDA is concerned, in addition to the positive action measures set out in Article 7(1) of the Employment Equality Directive, there are also general supportive measures for persons with disabilities, as set out in Article 7(2) of the Directive. This provision has been transposed by Article 3(1)(b) DDA, which enshrines the possibility of supportive social policies for persons with disabilities. In contrast to 'positive action measures', these measures are not time-restricted. In recent years, the Government has introduced several supportive measures designed to promote the (re)integration of persons with disabilities into society.

The ADA does not contain a positive action exception clause as such.<sup>381</sup> However, although unequal treatment on the ground of age may be objectively justified in any case, the

<sup>374</sup> See ETC Opinions 1998-105 and 2012-50.

<sup>375</sup> ETC Opinions 1999-31 and 1999-32.

<sup>376</sup> NIHR Opinion 2022-40 of 28 April 2022. For further details, see the European network of legal experts in gender equality and non-discrimination (2023) Country report 2023 on non-discrimination for the Netherlands, section 5.a.

<sup>377</sup> NIHR Opinion 2023-94 of 30 August 2023. See also NIHR Opinion 2023-8 of 24 January 2023 (concerning sex discrimination).

<sup>378</sup> ETC (2011) Third evaluation report (2004-2009). On p. 71 the report mentions the relevant CJEU case law: CJEU, judgment of 17 October 1995, Kalanke v Freie Hansestadt Bremen, C-450/93, ECLI:EU:C:1995:322, <https://curia.europa.eu/juris/showPdf.jsf?text=&docid=99475&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=1935814>; CJEU, 11 November 1997, Marschall, C-409/95, ECLI:EU:C:1997:533, <https://curia.europa.eu/juris/showPdf.jsf?text=&docid=43455&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=1936287>; CJEU, 28 March 2000, Badeck, C-158/97, ECLI:EU:C:2000:163 <https://curia.europa.eu/juris/showPdf.jsf?text=&docid=45195&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=1936747>; CJEU, 19 March 2002, Lommers, C-476/99 ECLI:EU:C:2002:183, <https://curia.europa.eu/juris/showPdf.jsf?text=&docid=47197&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=1937192> and CJEU, 30 September 2004, Briheche, C-319/03, ECLI:EU:C:2004:574, <https://curia.europa.eu/juris/showPdf.jsf?text=&docid=49543&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=1937692>.

<sup>379</sup> NIHR Opinion 2012-189 of 12 December 2012.

<sup>380</sup> NIHR (2022), 'Evaluation of equal treatment legislation (2017-2022)', available at <https://open.overheid.nl/documenten/c39ad481-b65d-463b-943f-bdba14f5a6a6/file>, pp. 13-14.

<sup>381</sup> One might read a positive action exception into Article 7(1) of the ADA, which states: 'The prohibition of discrimination shall not apply if the discrimination: a) is based on employment or labour market policies to promote employment in certain age categories, provided such policies are laid down by or pursuant to an Act of Parliament.'

argument that the unequal treatment is in fact a positive action measure may be put forward and will be tested in the same way as described above.<sup>382</sup>

#### b) Quotas in employment for persons with disabilities

In the Netherlands, national law provides for quotas for the employment of persons with disabilities. In 2015, specific targets for job creation for this category of workers were set to encourage employers to hire persons with disabilities: the private sector is to create 100 000 additional jobs by 2026, the public sector 25 000.<sup>383</sup> These targets apply to employers with over 25 employees in both the public and private sectors. The target group of this legislation consists of people with 'employment disabilities' (*arbeidsbeperkten*). These are people who, because of an illness or disability, have trouble finding or keeping a job that would allow them to earn at least the minimum wage or who require support that regular employers are unable to offer.<sup>384</sup>

If employers do not meet these targets, a 'quota charge' (*quotumheffing*) may be levied. While the private sector has thus far succeeded in creating the required number of extra jobs, this has not been true for the public sector. As a consequence, the quota charge was introduced for this sector, taking effect as of 1 January 2018.<sup>385</sup> In April 2019, the Government and education sectors agreed to jointly step up their efforts to create more public sector jobs for persons with disabilities.<sup>386</sup>

An evaluation of the quota system conducted in 2019 confirmed that up to the end of 2018, the targets for job creation were met, largely on account of the private sector.<sup>387</sup> The positive results were partly ascribed to the favourable economic climate. It was observed that the setting of targets had also increased awareness of the need to make jobs available to persons with disabilities.<sup>388</sup> However, at an earlier stage, the Government had already announced that doubts existed, including among some of the social partners, as to the effectiveness of the quota charge as an instrument to stimulate the creation of additional jobs in the public sector.<sup>389</sup> A law was adopted to de-activate the quota charge until 1 January 2022.<sup>390</sup> This period was subsequently extended to 1 January 2026.<sup>391</sup>

Meanwhile, a simplification of the quota system legislation was announced for 2022. This proposal was adopted by Parliament, and the Act Simplifying the Agreement on Jobs and Quotas for Persons with Disabilities (partly) enters into force on 1 January 2026.<sup>392</sup> As of this date, the target group will be slightly expanded. Changes that will enter into force include one common target for private and public employers. The most important reason for this is to simplify procedures for both types of employers and to emphasise the need to offer jobs to persons with disabilities. To illustrate this, one of the barriers mentioned often concerned the question of which specific sector, government or market a job belonged to.

<sup>382</sup> See, for an example, NIHR Opinion 2023-94 of 30 August 2023.

<sup>383</sup> Act putting in place an agreement on jobs and quota for people with a disability in employment (*Wet banenafpraak en quotum arbeidsbeperkten*), Staatsblad 2015, 154.

<sup>384</sup> See <https://www.uvw.nl/particulieren/arbeidsbeperkt/index.aspx>. The target group is defined in Article 38b Act on the financing of social insurance schemes (*Wet financiering sociale verzekeringen*), Staatsblad 2005, 36.

<sup>385</sup> This is done by a ministerial decree (*ministeriële regeling*). The quota charge amounts to EUR 5 000 for each 'missing' job, see *Regeling activering quotumheffing*, Staatscourant 2017, 58942: <https://zoek.officielebekendmakingen.nl/stcrt-2017-58942.html>.

<sup>386</sup> Tweede Kamer 2018-2019, 34 352, No. 165.

<sup>387</sup> Eerste Kamer 2019-2020, 33 981, O. See also Tweede Kamer 2018-2019, 34 352, No. 166.

<sup>388</sup> Eerste Kamer 2019-2020, 33 981, O.

<sup>389</sup> Tweede Kamer 2017-2018, 34 956, No. 3.

<sup>390</sup> Act of 13 November 2019, Staatsblad 2019, 440.

<sup>391</sup> Art. IIIg of the Act on the implementation of a broad offensive (*Wet uitvoering breed offensief*), Staatsblad 2022, 499.

<sup>392</sup> Act simplifying the agreement on jobs and quota for people with a disability (*Wet van 23 april 2025, houdende vereenvoudiging van de banenafpraak en de quotumregeling voor mensen met een arbeidsbeperking*), see <https://zoek.officielebekendmakingen.nl/stb-2025-121.html>, Staatsblad 2025, 121.

Additionally, it is expected that applying one quota might reduce the expected administrative load.<sup>393</sup>

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<sup>393</sup> Tweede Kamer, 2023–2024, 36 449, no. 3, p. 3.

## 6 REMEDIES AND ENFORCEMENT

### 6.1 Judicial and/or administrative procedures (Article 7 Directive 2000/43, Article 9 Directive 2000/78)

#### a) Available procedures for enforcing the principle of equal treatment

In the Netherlands, the following procedures exist for enforcing the principle of equal treatment: judicial procedures (criminal, administrative and civil) and alternative dispute resolution, namely the procedure before the equality body, the NIHR. In principle, the procedures for employment in the public and private sectors are the same.

The principle of non-discrimination can be enforced in criminal law procedures. Prosecution under criminal law is only possible if the discriminatory behaviour falls under one of the provisions of the Criminal Code. These provisions mostly concern hate speech (see the introduction to this report), but they also cover discriminatory acts committed in the performance of someone's office, job or enterprise (Articles 137g and 429*quater* Criminal Code). The term 'office' was added in 1991 to include discrimination by public servants.<sup>394</sup>

For the purposes of criminal law, 'discrimination' is defined in Article 90*quater* (based on Article 1 CERD) as 'any distinction, exclusion, restriction or preference which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life'. Transgressions of the equal treatment legislation (GETA, ADA and DDA) cannot be prosecuted under criminal law.

The following paragraphs leave aside criminal law offences and concentrate on civil law equal treatment norms and their enforcement.

The GETA, DDA and ADA do not entail compulsory judicial procedures. Since the 2020 Standardisation of Civil Servants' Legal Status Act,<sup>395</sup> civil servants – except for some categories, such as judges – have in principle the same legal status in employment as private employees. Therefore, if discrimination occurs, civil (labour) law procedures apply. The civil courts also have competence in cases in which discriminatory contractual agreements (goods and services supplied by private parties or the Government) are concerned. Outside the area of contract law, an instance of discrimination (e.g. harassment) can be considered as tort and be dealt with in a civil law court procedure. The administrative courts have competence with respect to public employment contracts (civil servants) and administrative decisions.<sup>396</sup> Government actions can also be considered as tort (*onrechtmatige overheidsdaad*) in which case a civil court is competent to hear the case.<sup>397</sup>

In addition to this, the equal treatment legislation provides for a special (non-compulsory) procedure before the NIHR, which has a section that deals with complaints about discrimination. The NIHR is a quasi-judicial body that issues non-binding opinions. After it has issued an opinion, a complaint may still be lodged before a conventional civil/administrative court if the applicant wishes to obtain a binding judgment. The NIHR is a low-threshold body, where no legal fee or legal representation is required.

<sup>394</sup> Staatsblad 1991, 623.

<sup>395</sup> Act of 9 March 2017 amending the Civil Servants Act and certain other acts to align the legal status of civil servants with that of employees with an employment contract under civil law (Act on the Normalisation of the Legal Status of Civil Servants, Bulletin of Acts and Decrees 2017, 123) (*Wet van 9 maart 2017 tot wijziging van de Ambtenarenwet en enige andere wetten in verband met het in overeenstemming brengen van de rechtspositie van ambtenaren met die van werknemers met een arbeidsovereenkomst naar burgerlijk recht* (Wet normalisering rechtspositie ambtenaren, Staatsblad 2017, 123).

<sup>396</sup> However, it should be borne in mind that, in principle, 'unitary legislative acts' (*eenzijdig overheidshandelen*) are not covered by the equal treatment legislation, see section 3.2.1.

<sup>397</sup> Such cases are based on Article 6:162 of the Civil Code.

## Barriers and other deterrents faced by litigants seeking redress

Costs

The costs facing litigants seeking redress are limited, as it is not mandatory to instruct a lawyer for proceedings in civil law, administrative law or with the NIHR. For civil law and administrative law court procedures there is a system of (almost) free legal aid for people on low incomes, who only have to pay their own income-related contribution. It should be noted, however, that this system has been under pressure from economic cutbacks for years now. A survey of 'social lawyers' (*sociaal advocaten*), published in 2020, showed that many of them are struggling to make ends meet and an increasing number of social lawyers have quitted their role or are considering doing so.<sup>398</sup> This trend has persisted in recent years, as can be seen from the figures registered by the Legal Aid Council.<sup>399</sup> Commission Van der Meer II, the successor to Commission Van der Meer I,<sup>400</sup> presented its findings and recommendations on 3 March 2025.<sup>401</sup> It has adjusted the amount of legal aid and additions, while signalling that this adjustment is not enough to counter the expected shortage of public interest lawyers.

When legal aid is not granted, litigation about this refusal still takes place, at times going as far as the highest courts.<sup>402</sup> However, the 2022 district ruling included in earlier country reports, remains unique in its express considerations, including that it should not be assumed that citizens were able to come up against discrimination by Government entities without legal assistance.<sup>403</sup>

The procedure before the NIHR is free of charge. In contrast, fees to gain access to court procedures have increased in recent years. Many commentators fear that this will raise the threshold for victims, including those of discrimination, seeking redress in court.

Time limits

Administrative law procedures: Article 6:7 of the General Act on Administrative Law (*Algemene wet bestuursrecht*) provides that, in principle, an appeal must be lodged within six weeks of the day after the day on which the contested decision was delivered.

Civil law procedures: in case of a discriminatory dismissal or dismissal related to victimisation, proceedings before the civil court (*kantonrechter*) must be initiated within two months of the termination of the employment contract (Article 7:686a(4)(a) with 7:681(1)(c) Civil Code). A procedure based on tort law must be initiated before the general five-year limitation period under Article 3:310 of the Civil Code has expired.

NIHR procedures: Article 12(1)(c) of the NIHR Act only stipulates that the NIHR is precluded from assessing a complaint when so much time has elapsed that such an assessment can no longer reasonably take place.

<sup>398</sup> Vereniging Sociale Advocatuur Nederland (Netherlands Association of Social Lawyers) (2020), 'VSAN-enquete aanleiding tot opstellen Zwartboek', [www.vsanadvocaten.nl](http://www.vsanadvocaten.nl), 27 November 2020.

<sup>399</sup> See <https://www.raadvoorrechtsbijstand.org/cijfers-trends/aanbod/dashboard-aanbod/>. Additionally, <https://www.advocatenorde.nl/sites/default/files/2026-03/Factsheet%20tekort%20sociaal%20advocaten%20def.pdf> and the answer of the Minister for Justice and Security at Parliamentary questions, 9 December 2025, available at <https://www.rijksoverheid.nl/documenten/kamerstukken/2025/12/09/antwoorden-kamervragen-over-de-huidige-staat-en-de-toekomst-van-de-sociaal-advocatuur>.

<sup>400</sup> Commission Van der Meer, 'Changing Times. Evaluation of the points allocation system in state-funded legal aid' (Andere tijden. Evaluatie puntentoekenning in het stelsel van gesubsidieerde rechtsbijstand), available at [https://www.tweedekamer.nl/kamerstukken/brieven\\_regering/detail?id=2017Z14216&did=2017D29998](https://www.tweedekamer.nl/kamerstukken/brieven_regering/detail?id=2017Z14216&did=2017D29998).

<sup>401</sup> Legal Aid Council, 3 March 2025, see <https://www.rvr.org/zoeken/@18729/rapport-vdmeer-gepresenteerd-2025/>.

<sup>402</sup> See, for instance, the Council of State, 16 July 2025, ECLI:NL:RVS:2025:3159.

<sup>403</sup> District court of Amsterdam, 23 September 2022, ECLI:NL:RBAMS:2022:6985.

### Accessibility

There are no specific legal rules requiring courts or the NIHR premises to be physically accessible to persons with disabilities; general accessibility rules apply to these buildings. Neither is it specified anywhere that information must be provided in Braille. However, the information about the legal system that is provided on the internet and in special brochures conforms to standards set by blind people's organisations. No special procedures exist for dealing with individuals with a learning disability. There is no legal obligation to provide sign language interpreting. However, in 2021, legislation was adopted stating that the competent minister is obliged to conduct a policy to stimulate the use of sign language interpreting in relation to public speeches made by members of the cabinet and in administrative and judicial communication.<sup>404</sup>

People who feel that they have been discriminated against may submit a complaint to the NIHR in writing (Article 10 NIHR Act). For non-Dutch speakers, this is not always an easy task. It is therefore possible to lodge the complaint during an interview at the NIHR office. By analogy, special measures could be taken for people with a disability.

#### Number of discrimination cases brought to justice

In the Netherlands, statistics on the number of court cases related to discrimination brought to justice are available. However, this only applies to cases that are brought under criminal law. Discrimination cases that are brought before the civil and administrative courts are not registered as such (see also under d) below).

The National Expertise Centre on Discrimination (*Landelijk Expertise Centrum Discriminatie*, LECD), which forms part of the Public Prosecution Service (*Openbaar Ministerie*), publishes statistics on criminal discrimination cases, including both discrimination offences (hate speech, hate crime and unequal treatment) and regular offences committed with a discriminatory motive. At the time of writing this report, figures for 2025 were not yet available. In 2024, the total number of offences related to discrimination was higher than in 2023 – namely 683 compared to 535. These offences consisted of 160 discrimination offences and of 523 offences with a discriminatory motive.<sup>405</sup>

The high rate of antisemitic offences (48 %) registered in 2023 decreased to 37 %. Discrimination on the ground of racial or ethnic origin still represented the majority of discrimination offences (39 %), followed by sexual orientation (33 %). Most offences were committed on the internet (34 %). The LECD reports also include information on the nature of offences, numbers of offences per region and characteristics of the perpetrators. For 2024, the LECD highlights three developments: i) discrimination offences related to the situation between Israel and Hamas since 7 October 2023, ii) discrimination offences committed after a soccer match between Ajax and Maccabi Tel Aviv, and iii) the (increased) number of discrimination offences on the Internet, a third of which are related to very far right ideology.<sup>406</sup>

The LECD report over 2024 further mentions 84 court judgments in that year in cases involving discrimination offences.<sup>407</sup> This number is comparable to that of previous years. No mention is made of the number of court judgments involving regular offences with a discriminatory motive.

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<sup>404</sup> Act of 16 March 2021, Staatsblad 2021, 165, <https://zoek.officielebekendmakingen.nl/stb-2021-165.html>.

<sup>405</sup> Openbaar Ministerie (2025), 'Criminal discrimination in focus 2024, Overview of discrimination figures from the Public Prosecution Service', available at <https://www.om.nl/documenten/discriminatie/lecd/strafbare-discriminatie-in-beeld/strafbare-discriminatie-in-beeld>, p. 4.

<sup>406</sup> Openbaar Ministerie (2024), pp. 7-8.

<sup>407</sup> Openbaar Ministerie (2024), p. 19.

## Registration of national court decisions on discrimination

In the Netherlands, court decisions on discrimination are not registered as such.

### **6.2 Legal standing and associations (Article 7(2) Directive 2000/43, Article 9(2) Directive 2000/78)**

#### a) Engaging in proceedings on behalf of victims of discrimination (representing them)

In the Netherlands, associations, organisations and trade unions are entitled to act on behalf of victims of discrimination. Under Article 3:305a of the Civil Code interest groups in the form of an 'association or foundation' with full legal powers can take legal action in court on behalf of people whose (similar)<sup>408</sup> interests have been damaged; i.e. also on behalf of victims of discrimination. Article 3:305a Civil Code applies to associations and foundations under private law. Organisations seeking to take legal action on the basis of Article 3:305a Civil Code must be represented by an attorney.

#### *Public law organisations*

Besides private foundations and associations, *public* law organisations such as the state, local councils or public bodies like the Bar Association are entitled under Article 3:305b of the Civil Code to act on behalf of victims of discrimination. The article does not mention 'in support' of victims, only 'on behalf' of them, but entitles public bodies to act on behalf of victims, 'insofar as these interests are entrusted to the particular organisation'. Protection against discrimination can be seen as an important general task of most public bodies. However, the author of this report is not familiar with any such body taking specific legal action against discrimination.

Before an organisation can act, two conditions must be met. First, the organisation must represent 'similar interests'. This means that the interests represented must be similar to the interests of the organisation. Secondly, the organisation must (before taking the case to court) have tried to obtain satisfactory compensation or rebuttal from the perpetrator or otherwise have tried to come to an agreement (see Article 3:305a(3)(c) and Article 3:305b(2) of the Civil Code).

There are no associations or public bodies that have a specified legal duty to take legal action against discrimination or to act on behalf of victims of discrimination. There are some organisations (such as Art.1, a national expert centre in this area and local Anti-Discrimination Services (ADVs)) which receive a subsidy from central or local government, provided that they fulfil the function of assisting victims of discrimination. However, it certainly cannot be regarded as a legal duty to initiate legal action on behalf of victims.

#### b) Engaging in proceedings in support of victims of discrimination (joining in existing proceedings)

In the Netherlands, associations, organisations and trade unions are entitled to act in support of victims of discrimination, on the basis of Article 3:305a of the Civil Code. They do, however, need authorisation from the victim(s) to do so. The same conditions as described above under a) apply.

#### c) Submitting observations, e.g. *amicus curiae* briefs/letters

In the Netherlands, associations, organisations and trade unions are not generally entitled to submit observations such as *amicus curiae* briefs to courts or other adjudicating bodies in discrimination cases. However, this is not laid down in discrimination law, but there are

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<sup>408</sup> That is, similar to the organisation.

ways for third parties to participate or provide input in legal procedures. An indirect avenue can be envisaged through civil procedural law, namely Article 217 of the Code of Civil Procedure, which enables 'anyone who has an interest in a pending case between other parties to demand [to join or] intervene in it'. To the author's knowledge, this avenue has not been used in discrimination cases. Furthermore, joinder or intervention is used by parties with a more direct legal interest than when submitting observations to advise the court. In contrast, the highest administrative law courts can give persons other than the parties the opportunity to submit written observations.<sup>409</sup> It is the court that decides to use this opportunity, and it can open up this opportunity to everyone, including groups of persons or organisations.<sup>410</sup> Specifically for the NIHR, Directive 2024/1499 actually envisages an *amicus curiae* role in Article 10(2). While it is anticipated that little to no new legislation is necessary to transpose the Directive,<sup>411</sup> it is questionable whether this role is currently sufficiently laid down. The NIHR Act only includes the competence to initiate legal proceedings, which is different from submitting observations to courts.

#### d) Actio popularis

In the Netherlands, national law allows associations, organisations and trade unions to act in the public interest on their own behalf, without a specific victim to support or represent (*actio popularis*).

These cases are called 'general interest actions' (*algemeen belangacties*). Even if no victims have come forward or if victims are not known, this action is possible if it is in the public interest. This procedure is allowed under Articles 3:305a(1) and 3:305b(1) of the Civil Code (discussed above) and Article 1:2(3) of the General Act on Administrative Law. The law speaks of 'bringing legal action to protect similar interests of other persons'. The interest giving rise to an *actio popularis* may be quite diffuse (e.g. 'combating racial stereotypes'). Case law shows that in practice, it is difficult to meet the admissibility criteria for this type of action. Courts seem to be reluctant to grant admissibility without a specific victim being involved in the proceedings.<sup>412</sup>

An *actio popularis* claim may be initiated by the same types of organisations (associations and foundations) as mentioned above (under a). They may use the court procedures (excluding criminal procedures), as described above and may seek the same remedies (i.e. injunctions, legal declarations (*verklaring voor recht*) or pecuniary damages, if the conditions are met). The burden of proof is also the same as in any other discrimination case. These organisations also have the right to ask the NIHR to initiate an investigation into (alleged) discriminatory practices. Again, the organisation must have full legal powers and it must follow from its statutes that it represents the interests of those whose protection is the objective of the statutory equality acts (Article 10(2)(e) of the NIHR Act). However, if the claim mentions specific individuals who are believed to have suffered discrimination, the case can only be investigated by the NIHR if those individuals agree to it (Article 10(3) NIHR Act).

A law that was adopted in 2019 has significantly increased the requirements to be met by foundations or associations seeking to engage in strategic litigation, including *actio popularis*.<sup>413</sup> This act has made it possible for such foundations or associations to claim

<sup>409</sup> Article 8:12b (1) of the General Administrative Law Act (*Algemene Wet bestuursrecht*), further elaborated in the Rules of Procedure for Administrative Law Tribunals (*Procesregeling bestuursrechtelijke colleges*) in 2014.

<sup>410</sup> Borman, T.C. Text and commentary to the GELA, Article 8:12 GELA.

<sup>411</sup> Tweede Kamer, 2025–2026, 30 950, No. 513, p. 12.

<sup>412</sup> For a brief overview of relevant case law see: Strategic Interest Litigation Project (PILP) (2015) De ontvankelijkheid van belangengroepen bij rechtszaken ('The admissibility of interest groups in legal proceedings'): <https://pilpnjcm.nl/wp-content/uploads/2015/10/De-ontvankelijkheid-belangengroepen-bij-rechtszaken-26102015.pdf> (only available in Dutch).

<sup>413</sup> Act on the settlement of damages in collective action cases (Wet afwikkeling massaschade in collectieve actie), Staatsblad 2019, 130. The Act entered into force on 1 January 2020.

pecuniary damages on behalf of victims, whereas previously damages could only be claimed by the victims themselves. However, foundations and associations engaging in collective action on the basis of Article 3:305a of the Civil Code now have to meet a series of conditions, including procedures for the representation of the persons on whose behalf they are acting, and a generally accessible website providing information about the foundation or association itself, the proceedings it is engaged in and the possibilities for membership.<sup>414</sup> Additional requirements have also been introduced as to the admissibility of collective action claims, including the requirement that the claim must be sufficiently connected with the Dutch legal order.<sup>415</sup>

Courts may accept collective action claims made by foundations or associations that do not meet the newly imposed requirements if the claim is of an idealistic (non-commercial) nature and the financial interests involved are very limited. In that case, however, no pecuniary damages may be sought.<sup>416</sup>

e) Class action

In the Netherlands, national law allows associations, organisations and trade unions to act in the interest of more than one individual victim (class action) for claims arising from the same event.

This is called a 'group action' (*groepsactie*). This kind of legal action is possible if a group of people suffers as a result of the same rules, events or acts and if a foundation or association brings one case on behalf of all of them (without specifying the names of the victims). Group actions may overlap with *actiones populares* and both are covered by the general provisions on collective actions (Article 3:305a Civil Code and Article 1:2(3) General Act on Administrative Law), both of which have been discussed above. The law speaks of 'bringing legal action to protect similar interests of other persons'.

The same types of organisations (associations and foundations) as described above have this possibility. They may use the court procedures (excluding criminal procedures) as described above and may seek the same remedies. The burden of proof is also the same as in any other discrimination case.

A report from 2024 confirms that the 2019 amendments to Article 3:305a Civil Code (see under c) have made it more difficult for NGOs and trade unions to engage in strategic litigation (both *actio popularis* and class actions).<sup>417</sup> The following difficulties are mentioned:

- the additional admissibility requirements imposed by Article 3:305a Civil Code for NGOs/trade unions to be able to claim pecuniary damages impose too high a threshold for several public interest groups. Moreover, they are sometimes also applied in cases in which no pecuniary damages are sought;
- the requirement that the organisation must be sufficiently representative of the group whose interests they are defending is proving to be a barrier to legal standing. While the requirement was included by the legislator in order to keep out commercial claims, its effect is to (also) exclude groups that act in the public interest. This is attributed to the quantitative nature of the requirements; although clear guidelines

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<sup>414</sup> Article 3:305a(2) Civil Code.

<sup>415</sup> Article 3:305a (3) Civil Code. Article 3:305a (3)(b) specifies that the requirement of a sufficient connection with the Dutch legal order is met if the majority of the persons in whose interest the claim is made are usually resident in the Netherlands, or the person against whom the claim is made is usually resident in the Netherlands and additional circumstances indicate a sufficient connection with the Dutch legal order, or the claim concerns an event or events that have taken place within the Netherlands.

<sup>416</sup> Article 3:305a (6) Civil Code.

<sup>417</sup> The report is available here (in Dutch): <https://clara-wichmann.nl/wp-content/uploads/2024/10/De-Obstakels-van-de-WAMCA-voor-Ideele-Acties-BCW-PILP-Rapport-2024.pdf>.

- are lacking, some courts require applicants to provide lists of signatures or declarations of adhesion to vouch for their representative character;
- a lack of clarity concerning the legal interpretation of the admissibility requirements laid down in Article 3:305a Civil Code;
- since 2019, the judgment in a collective action claim is legally binding on persons who belong to the group that is represented, unless they have expressly opted out. However, where a claim is brought in the general interest this group is not always easy to define. For individuals who did not opt out, the binding nature of the judgment may form an obstacle to bringing another, individualised case if the collective action is not successful;
- where a claim is brought by an NGO and one or more individual claimants together, the individual claimants are often considered inadmissible because they are presumed not to have an autonomous interest in winning the case. Such a declaration of inadmissibility can prove an obstacle if the case is continued before a human rights court (notably the ECtHR), because there the NGO is not admissible, but the individual will be considered as not having exhausted national remedies;
- overall, the report finds that the 2019 amendments have made it more burdensome for NGOs to engage in public interest litigation. The procedural requirements are complicated and sometimes opaque, which means that the NGOs have to invest more time and expertise in dealing with procedural aspects, to the detriment of addressing substantive legal issues.

### **6.3 Burden of proof (Article 8 Directive 2000/43, Article 10 Directive 2000/78)**

In the Netherlands, national law requires a shift of the burden of proof from the complainant to the respondent.

Article 10(1) GETA reads as follows:

‘If a person who considers themselves to have been wronged through “distinction” as referred to in this Act establishes before a court facts from which it may be presumed that distinction has taken place, it shall be for the respondent to prove that the contested act was not in contravention of this Act.’

The equivalent Articles in the DDA and ADA are Articles 10(1) and (2) and 12(1) respectively. Subsequent subsections of these three articles provide that the reversed burden of proof also applies in collective actions and general interest actions under Article 3:305a of the Civil Code and Article 1:2(3) of the General Act on Administrative Law. These rules apply for all forms of discrimination, including harassment and instruction to discriminate. However, these rules do not apply in the case of victimisation (see the next section of this report).

### **6.4 Victimisation (Article 9 Directive 2000/43, Article 11 Directive 2000/78)**

In the Netherlands, there are legal measures of protection against victimisation. All three equal treatment acts (GETA, DDA and ADA) protect against dismissal related to victimisation and other forms of disadvantage as a result of the fact that a person has invoked a statutory equality act or has otherwise assisted in proceedings under these acts, for example, by means of a testimony. See Articles 8 and 8a GETA, Articles 9 and 9a DDA and Articles 10 and 11 ADA.

Article 8 GETA reads as follows:

‘If an employer terminates an employee’s contract of employment in contravention of Section 5, or on the ground that the employee has invoked Section 5, either in a court procedure or otherwise, or has assisted others in this respect, Article 681 of Book 7 of the Civil Code applies.’

The latter provision renders the termination voidable.<sup>418</sup>

Article 8a(1) GETA reads as follows:

‘It is unlawful to disadvantage persons because they have invoked this Act, either in or out of court, or have assisted others in this respect.’

The provision means that people who assist a victim of discrimination are also protected by Articles 8 and 8a GETA, not just the victims (the same applies in the context of the ADA and DDA). The prohibition of victimisation is absolute, i.e. no (objective) justification may be put forward.<sup>419</sup>

The shifting of the burden of proof does not apply to victimisation, the applicable provisions are the general rules on the burden of proof as laid down in Articles 150-155 of the Code of Civil Procedure (*Wetboek van Burgerlijke Rechtsvordering*).<sup>420</sup> According to Monika Ambrus, the ETC offered two ways for the claimant to prove that victimisation took place. First, the claimant may prove that the complaint about discrimination led to a chain of events that eventually resulted in disruption of the labour relationship or even termination of the employment contract; secondly, the claimant may prove that the complaint was the only reason for the dismissal.<sup>421</sup>

In its 2011 evaluation report, the ETC stated that, in practice, the burden of proof is not too arduous for the complainant. It therefore made no recommendations to change the law on this point. Since 2022, the number of Opinions issued on victimisation appears to have remained relatively stable. In 2022, nine cases on the grounds covered in this report dealt with victimisation: seven in relation to race and two in relation to religion.<sup>422</sup> In three cases the victimisation claim was successful. In 2023 the NIHR decided eleven claims of victimisation in relation to the grounds covered in this report, three of which were successful.<sup>423</sup> Of the six cases in 2024, none of the complaints resulted in a finding of victimisation. In 2025, no more than five cases in general dealt with victimisation, two of which concerned the grounds covered in this report. Only one case was successful on the ground of victimisation. In the absence of any further (qualitative) analysis, these figures suggest that the burden of proof could present a (limited) obstacle to findings of victimisation.

In 2008-2009, a study of the issue of victimisation was conducted on behalf of the ETC.<sup>424</sup> It was the first large-scale research into this topic in the Netherlands. Previous smaller studies had shown that complaining about discrimination often led to serious negative consequences, but also that many victims did not make official complaints for fear of

<sup>418</sup> The term ‘voidable’ (vernietigbaar) means that it is not automatically void but that this may be established during a court procedure.

<sup>419</sup> Ambrus mentions ETC Opinion 2006, 34, para. 3.19. See, cited in Ambrus, M. (2011) ‘The concept of victimisation in the racial equality directive and in the Netherlands: a means for effective enforcement of the right to equal treatment’ in *Nederlands tijdschrift voor de mensenrechten/NJCM-bulletin*, 2011 (1), pp. 9-23, at p. 20.

<sup>420</sup> See also Ambrus, M. (2011) ‘The concept of victimisation in the racial equality directive and in the Netherlands: a means for effective enforcement of the right to equal treatment’ in *Nederlands tijdschrift voor de mensenrechten/NJCM-bulletin*, 2011 (1), pp. 9-23, at p. 20.

<sup>421</sup> Ambrus, M. (2011) ‘The concept of victimisation in the racial equality directive and in the Netherlands: a means for effective enforcement of the right to equal treatment’ in *Nederlands tijdschrift voor de mensenrechten/NJCM-bulletin*, 2011 (1), p. 21.

<sup>422</sup> NIHR Opinion 2022-158 of 22 December 2022; NIHR Opinion 2022-128 of 17 November 2022; NIHR Opinion 2022-121 of 25 October 2022; NIHR Opinion 2022-89 of 9 August 2022; NIHR Opinion 2022-64 of 13 June 2022; NIHR Opinion 2022-50 of 12 May 2022; NIHR Opinion 2022-36 of 14 April 2022; NIHR Opinion 2022-12 of 22 February 2022; NIHR Opinion 2022/5 of 27 January 2022.

<sup>423</sup> A search was conducted in the NIHR database for the year 2023 with the keyword ‘victimisation’. Opinions concerning discrimination on the ground of sex or sexual harassment have not been included.

<sup>424</sup> See Van Genugten, M. and Svensson, J. (2010), *Dubbel de dupe? Een studie naar de benadeling van werknemers die gelijke behandeling aan de orde stellen (Victim twice over? A study of disadvantages experienced by employees who raise the issue of equal treatment)*, University of Twente/ETC.

victimisation. These findings were confirmed. The researchers found that serious forms of victimisation occurred most often in cases of discrimination on the grounds of race, sex or disability, where they concerned discriminatory treatment in the workplace by colleagues and direct supervisors and where the claimant was in an isolated position at work. The report shows that it is certainly not enough to have established a prohibition of victimisation, but that much more needs to be done in terms of having in place an informal complaints procedure, having counsellors in the workplace who can deal with complaints confidentially, and giving training to people working for personnel departments and managers.<sup>425</sup> In 2019 a guideline was developed, at the request of the state secretary for Social Affairs and Employment, on the positioning and functioning of confidential counsellors to address undesirable behaviour within the workplace.<sup>426</sup> In a 2025 Opinion, the NIHR recommended that the employer actively guarantee a discrimination-free and safe work environment by *inter alia* immediately and carefully examining and documenting discrimination complaints and developing clear internal procedures and communication channels.<sup>427</sup>

A rather narrow interpretation of the prohibition of victimisation was given by the District Court of Amsterdam in the case of a young Muslim woman whose traineeship was not continued after she refused to stop wearing a khimar (long headscarf). The employer had told the woman that she had 'crossed a line' by reporting her situation to a local Anti-Discrimination Service (see on this equality body section 7.1 below) and that it would not continue the employment relationship because of this. In an otherwise carefully argued judgment, the court considered that, despite this statement, the employer had given the woman 'a last chance to adjust to a more neutral clothing style' after she had reported her case to the equality body. From this, the court deduced that the reporting had not been the reason for not continuing the employment relationship and therefore the employer's reaction to the reporting did not constitute 'seriously negligent behaviour' (the court did find that the employer had been seriously negligent in failing to continue the employment relationship on discriminatory grounds – see also section 3.2.3 above).<sup>428</sup>

## **6.5 Sanctions and remedies (Article 15 Directive 2000/43, Article 17 Directive 2000/78)**

Applicable sanctions in cases of discrimination – in law and in practice

### *NIHR*

The NIHR issues non-binding Opinions in which it declares if the disputed act is in breach of equal treatment legislation. It cannot impose fines or damages to be paid to the victim.

Articles 11(2), 11(3) and 13 of the NIHR Act mention some additional measures to be applied by the NIHR. Under Article 11(2), the NIHR may, in its Opinions, make recommendations to the party found to have made an unlawful distinction. Under Article 11(3) the NIHR may also forward its findings to the ministers concerned, and to organisations of employers, employees, professionals and public servants, to consumers of goods and services and to relevant consultative bodies. Under Article 13(1), the NIHR may bring legal action with a view to obtaining a court ruling that a particular conduct contrary to the relevant equal treatment legislation is unlawful, requesting that such conduct be prohibited or eliciting an order that the consequences of such conduct be

<sup>425</sup> In 2018 the NIHR dealt with three victimisation complaints, only one of which concerned a ground covered in this report. Victimisation was not considered to have been present (NIHR Opinion 2018-99).

<sup>426</sup> Leidraad voor het positioneren en functioneren van vertrouwenspersonen ongewenste omgangsvormen op het werk, published as Annex to Tweede Kamer 2019-2020, 25 883, No. 365.

<sup>427</sup> NIHR Opinion 2025-103 of 16 October 2025.

<sup>428</sup> District Court of Amsterdam 10 January 2020, ECLI:NL:RBAMS:2020:575.

rectified.<sup>429</sup> This power must be regarded in light of the fact that the NIHR's Opinions are not binding (see further section 7.8). If a case is brought by an interest group, the sanctions under the GETA are similar. The measures that can be taken by the NIHR are the same for all discrimination grounds.

### *Courts*

Any other sanctions in discrimination cases must be imposed by a court. In case of criminal offences, fines and sentences may be imposed by a criminal court. While it is not common in the Netherlands for situations of unequal treatment to be addressed through criminal law (as opposed to hate crime or hate speech, for which criminal law is the primary avenue) this does happen occasionally. In 2014, for example, an employer was sentenced to a community sentence and fined after mistakenly having sent a discriminatory email to a job applicant,<sup>430</sup> and in 2022 an employer was made to pay a fine of EUR 175 for having refused to hire a woman because of her headscarf. In the latter case, the employer also had to pay EUR 317.48 to compensate for the victim's travel costs to the job interview and non-material damages.<sup>431</sup>

In civil lawsuits, the main remedies to be granted by the courts are a declaration of law (Article 3:302 Civil Code), an injunction to comply with existing legal obligations (Article 3:296 Civil Code) and the award of pecuniary damages (Article 3:310 Civil Code). Some specific remedies also exist depending on the legal relationship concerned, for example in employment cases an employer may be held accountable to pay pecuniary damages, to take preventive measures or to reinstate an employee who was unlawfully dismissed (Article 7:681 Civil Code). In case of tort, an injunction may be imposed, as well as pecuniary sanctions. In case of collective actions, the courts may decide that the judgment is to be made public (Articles 3:305a(4) and 3:305b(2) Civil Code).

In administrative procedures, the courts can annul administrative decisions found to be contrary to the law (Article 8:72(1) General Administrative Law Act) and award pecuniary damages in respect of unlawful administrative decisions or other unlawful conduct by administrative bodies (Article 8:88(1) General Administrative Law Act).

In addition to the aforementioned sanctions, the following sanctions (to be applied by the courts) are specifically mentioned in the equal treatment legislation. According to Article 8 GETA, Article 11 ADA and Article 9 DDA, discriminatory dismissals and dismissals related to victimisation are 'voidable'. This applies to both public and private employment. The employee can ask the court to invalidate the termination of the contract and can thereupon claim wages. They can also request to be reinstated in the job or claim compensation for pecuniary damages under the sanctions of general administrative/ (labour) contract law or tort law. Contractual provisions which are in conflict with the GETA, the ADA and the DDA will be considered null and void. This follows from Article 9, Article 13 and Article 11 of these acts respectively.

As follows from the foregoing, the applicable sanctions depend on the legislative provisions on which the claim is based and on the court before which the action is brought. No differentiation occurs depending on the discrimination ground at stake.

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<sup>429</sup> This applies, unless the person affected by the alleged discriminatory conduct has imposed conditions (Article 13(2) of the NIHR Act). In theory this could amount to a court order, e.g. to make a desegregation plan for schools; however, the Dutch courts are very careful not to interfere with what they call the discretionary powers of the administration and the Government.

<sup>430</sup> District Court of Gelderland 27 August 2014, ECLI:NL:RBGEL:2014:5457.

<sup>431</sup> District Court of Rotterdam 15 July 2022, ECLI:NL:RBROT:2022:6178.

- i) National legislation provides for preventive and socio-preventive sanctions, in particular injunctions or structural injunctions.

As mentioned above, one of the remedies that can be claimed before the civil courts is an injunction to comply with existing legal obligations (Article 3:296 Civil Code). This is a general civil law remedy, not specific to the field of equal treatment law. If the court establishes that a particular measure or practice violates the prohibition of discrimination, it can issue an injunction to the respondent party to comply with non-discrimination law and hence put an end to the measure or practice. This could be understood as a (partly) preventive sanction. The content of an injunction is not limited to negative duties, if it is established that compliance with existing legal obligations requires the respondent party state to act then this can also be ordered by the court.<sup>432</sup> An example of an injunction granted in a discrimination case was an injunction given by the Court of Appeal of The Hague to the Royal Border Police (*Koninklijke Marechaussee*) to stop using racial or ethnic criteria as risk indicators when selecting people for border checks.<sup>433</sup>

The NIHR sometimes uses recommendations (see above) to propose measures or actions that could be taken by the respondent party to prevent further discrimination. As an example, in its first Opinions concerning the childcare benefits scandal (see section 3.2.5) the NIHR issued a recommendation to the Tax Agency/Benefits Office to periodically assess the procedures and criteria used to control recipients' entitlement to benefits in order to detect potential discriminatory effects.<sup>434</sup> Specifically, the NIHR recommended that the Impact Assessment Human Rights and Algorithms<sup>435</sup> be used to assess risks of discrimination stemming from the use of algorithms. These recommendations can help to combat future discrimination; however, it should be recalled that, like the NIHR's Opinions, they are non-binding.

- ii) There are sanctions specific for cases of collective redress (*actio popularis* or class actions).

As mentioned above, in collective actions the courts may decide that the judgment is to be made public (Articles 3:305a(4) and 3:305b(2) Civil Code). Pecuniary damages may be awarded in collective actions, but only if the applicant organisation(s) meet rather stringent requirement concerning *inter alia* their governance structure. Otherwise, there are no sanctions specific for cases of collective redress.

- iii) There are no sanctions in place to deal with cases of mass discrimination, particularly as a result of the use of AI or automated systems.

The most apt remedy in such a case would appear to be a collective claim for damages on the basis of Article 3:305a Civil Code (see section 6.2).

#### Pecuniary sanctions – maximum and average amounts

In civil court cases, there is no ceiling for the amount of damages or compensation that may be awarded. Compensation for both material and non-material damages can be requested. The maximum amount of damages to be claimed before an administrative court is EUR 25 000, if the claim exceeds this amount the case will fall under the competence of the civil courts.<sup>436</sup> In criminal procedures, the Public Prosecutor is bound to the level of the

<sup>432</sup> Supreme Court 20 December 2019, ECLI:NL:HR:2019:2006 (Urgenda).

<sup>433</sup> Court of Appeal of The Hague 14 February 2023, ECLI:NL:GHDHA:2023:173.

<sup>434</sup> NIHR Opinions 2023-101, 2023-102 and 2023-103 of 2 October 2023.

<sup>435</sup> See <https://www.rijksoverheid.nl/documenten/rapporten/2021/02/25/impact-assessment-mensenrechten-en-algoritmes>. On this tool see the Country report 2022 on non-discrimination for the Netherlands, p. 12.

<sup>436</sup> Article 8:89(2) General Administrative Law Act (Algemene wet bestuursrecht), Staatsblad 1992, 315, entered into force 1 January 1994. This is the case, unless the administrative decision concerned falls within the exclusive or final competence of the Central Appeals Tribunal or the Supreme Court, Article 8:89(1) General Administrative Law Act.

finances set out in the criminal law provisions concerning discrimination. The maximum fine to be imposed for discrimination committed in one's office, profession or enterprise (Art. 429*quater* Criminal Code) is EUR 10 300 (Art. 23(4) Criminal Code).

The sanctions mentioned in the equal treatment legislation are not in terms of pecuniary damages but offer other 'remedies' (see above).

#### Assessment of the sanctions

It is rare for cases of unequal treatment to be addressed by means of criminal law. Criminal sanctions are therefore not often imposed. Although the Criminal Code does allow for prison sentences to be imposed in discrimination cases, the author is not aware of any cases in which this has occurred.

In civil cases, pecuniary damages are not granted very often. This mainly occurs when, for example, a court agrees with a dismissal because the employment relationship has become unworkable and, in that case, a relatively high sum can be set to compensate for the termination of the contract. The threshold for the award of non-material damages is high; a finding that an applicant has experienced racial discrimination is in itself insufficient to award such damages.<sup>437</sup>

No information can be given on the topic of sanctions without an extensive examination of the case law of the district courts. Generally, such cases are not published in official law journals. In addition, the registration of cases within the court system is not done systematically on the basis of the legal provisions at stake. Thus, it might very well be that many cases are registered under the heading of a general provision like 'breach of labour contract' (with no specification about the reasons for this) or tort. Very generally speaking, it can be noted that Dutch courts are restrictive in granting damages that are not strictly material damages (e.g. unpaid wages). Non-material damages (e.g. hurt feelings) will only be compensated for minimally.

On the question of whether the available sanctions have shown to be – or are likely to be – effective, proportionate and dissuasive, as required by the directives, it can be observed that the sanctions do not seem to be very dissuasive. Neither the equality body, nor any other institution has ever properly investigated whether they are effective and proportionate.

#### Enforcement and monitoring of the implementation of sanctions

##### i) Courts and adjudicating bodies' mechanisms to monitor or enforce their decisions

If a fine imposed by a criminal court is not paid, a person can be detained as a last resort remedy (Article 24c Criminal Code).

If a respondent party fails to comply with a sanction imposed under civil law, detention (*lijfsdwang*) is also possible as an ultimate remedy provided that the respondent party is a natural person. The detention can be ordered by a court at the claimant's request (Article 585(a) Code of Civil Procedure). Alternatively, in the case of non-compliance, the claimant can ask the court to impose a penalty payment (Article 611a(a) Code of Civil Procedure). Penalty payments can also be ordered against legal persons.

The Opinions (and recommendations) of the NIHR are non-binding and therefore not subject to enforcement. It is worth noting that the majority of discrimination cases in the Netherlands are brought before the NIHR instead of the courts. For this reason,

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<sup>437</sup> Court of Appeal of Den Bosch 11 June 2024, ECLI:NL:GHSHE:2024:1892. For details on this case see the case law overview at the end of this report.

enforcement of sanctions in relation to discrimination is not a very prominent topic in Dutch law.

- ii) Possibility for courts and other adjudicating bodies to retain jurisdiction after sanctions have been imposed

In criminal cases, the verdict imposing the fine also states that detention will be imposed if the fine is not paid (Art. 24c Criminal Code). In civil cases, the initial court order provides the basis for execution of the sanction (the injunction or award of damages).

- iii) Further steps/measures courts or adjudicating bodies can take in case of non-compliance with the sanction

If the court order is not complied with and the claimant seeks enforcement by means of a penalty payment or even detention (see above under ii), a new court order must be requested.

- iv) The burden of enforcing sanctions

In criminal law, sanctions are enforced through the criminal justice system. Hence, the burden is on the State. In civil law, if the initial court order is not complied with, it is ultimately up to the claimant to request a penalty payment or that the respondent party be detained.

## 7 BODIES FOR THE PROMOTION OF EQUAL TREATMENT (Article 13 Directive 2000/43)<sup>438</sup>

To implement Directive 2024/1499, little to no transposition legislation is expected, because Dutch law on equality bodies already complies with the minimum norms.<sup>439</sup>

### 7.1 National equality bodies

#### a) General 'architecture' of equality bodies

In the Netherlands, two types of equality body have been designated as equality bodies under Article 13 Racial Equality Directive: at the national level, there is the NIHR,<sup>440</sup> and at the local level, there are the ADVs, which have a legal basis in the Act on Local Anti-Discrimination Services (*Wet gemeentelijke antidiscrimatievoorzieningen*).<sup>441</sup>

Besides these equality bodies, there are the National Coordinator against Discrimination and Racism (NCDR), the National Coordinator against Antisemitism (NCA) and the State Commission against Discrimination and Racism. The coordinators were appointed in 2021 and the state commission in 2022, all in an effort to step up the battle against discrimination, racism and antisemitism in the Netherlands. For further details on these bodies and their activities and competences, see section 9.1 of this report.

#### b) Designated bodies for the promotion of equal treatment irrespective of racial/ethnic origin according to Article 13 of the Racial Equality Directive

#### NIHR

In addition to its general function of promoting and protecting human rights in the Netherlands (including the right of non-discrimination), the NIHR serves as a quasi-judicial body in the field of equal treatment. As of 1 January 2026, it will also have the competence to assess complaints from Bonaire, Sint Eustatius and Saba, for which two members have been appointed. The material scope of the NIHR mandate covers all areas covered by the General Equal Treatment Act (GETA), the Disability Discrimination Act (DDA) and the Age Discrimination Act (ADA), that is *grosso modo* employment and goods and services. In 2012, the NIHR assumed the tasks of the former Equal Treatment Commission (ETC) (*Commissie Gelijke Behandeling*), which served as the first officially designated body through which the Government implemented Article 13 of the Racial Equality Directive.<sup>442</sup> For the NIHR, its status as an equality body follows from the tasks assigned to it in Articles 9-13 NIHR Act. Other equal treatment acts also assign these tasks to the NIHR (see Article 12 DDA and Article 14 ADA).

The Dutch Government established the NIHR after long discussions about the best way to implement the Paris Principles.<sup>443</sup> The role of the former ETC regarding the examination of

<sup>438</sup> Assessments and views concerning compliance with EU law throughout Section 7, notably for Directive 2024/1499 (whose transposition deadline is 19 June 2026, and therefore after the cut off date for this report), reflect the author's opinion.

<sup>439</sup> Tweede Kamer, 2025–2026, 30 950, No. 513, p. 12.

<sup>440</sup> Act of 24 November 2011 containing the establishment of the Netherlands Institute for Human Rights (*Wet van 24 november 2011, houdende de oprichting van het College voor de rechten van de mens*); *Staatsblad* 2011, 573. The Act entered into force on 1 October 2012.

<sup>441</sup> Act on Local Anti-Discrimination Services (*Wet gemeentelijke antidiscrimatievoorzieningen*), *Staatsblad* 2009, 313. On the basis of this law, a Decree was adopted in which more detailed regulation of the local ADVs is laid down. It contains provisions concerning their independence, competence and procedures to be followed when the ADVs provide information and assist victims of discrimination (see *Besluit gemeentelijke antidiscrimatievoorzieningen*, *Staatsblad* 2009, 373).

<sup>442</sup> The provisions of the GETA in which the former ETC was regulated were repealed in the NIHR Act. Instead, these provisions are now included in a chapter of the NIHR Act: 'Chapter 2: Investigations and findings relating to equal treatment' (Articles 9-13).

<sup>443</sup> Principles relating to the Status of National Institutions Adopted by UN General Assembly resolution 48/134 of 20 December 1993.

discrimination complaints was fully integrated into the NIHR and as such has not been changed. The role of assisting victims was never part of the ETC's work and is not part of the work of the NIHR, because it is deemed to be incompatible with the role of independently issuing legal opinions about discrimination complaints. The NIHR refers victims to the anti-discrimination services (see below) for such assistance.

The complaints procedure before the NIHR is a low-threshold procedure that is accessible for all. Information on how to lodge a complaint is readily available on the NIHR website or can be obtained by contacting the NIHR's front office by phone.<sup>444</sup> The procedure requires complainants to fill out an online form, after which they are contacted by an NIHR staff member to collect further information. People who are unwilling or unable to make use of the online form can contact the NIHR by phone to discuss alternative options. Both parties are normally invited to an oral hearing before the NIHR decides on the complaint. The procedure is free, and legal representation is not required. However, free representation is available from the ADVs.

The NIHR building is accessible to persons with disabilities. Anyone who is unable, for medical or other substantive reasons, to attend a hearing at the NIHR building may make a request to attend via a video link.<sup>445</sup> Parties must make their submissions in Dutch (or, exceptionally, in English) but if a party requires the assistance of an interpreter in order to attend the hearing, the NIHR will provide one.<sup>446</sup> The rules of procedure do not indicate whether this includes sign language interpreters, nor do they contain a general provision on reasonable accommodation for persons with disabilities.

The NIHR is centrally located (in the city of Utrecht) and can be reached from almost any place in the Netherlands within three hours of travel. Its visibility is primarily guaranteed through the website ([www.mensenrechten.nl](http://www.mensenrechten.nl)). In terms of accessibility, the website meets the requirements of the Temporary Decree on digital accessibility of public bodies.<sup>447</sup>

### *Local Anti-Discrimination Services*

In addition to the NIHR, there are the local anti-discrimination services (ADV)s.<sup>448</sup> According to the legislative history, the ADVs are equality bodies in the sense of Article 13 Directive 2000/43/EC.<sup>449</sup> All 342 municipalities are obliged to ensure that their inhabitants have access to an ADV. In practice many (smaller) municipalities do not have their own ADV but are served by a larger, regional ADV. Probably the largest ADV is RADAR, which serves 51 municipalities in the Rotterdam region with a total of 3.2 million inhabitants.<sup>450</sup> The ADVs have two legal tasks: to assist people with discrimination complaints and to record all such claims and bring them to the attention of the Minister of the Interior and Kingdom Relations.<sup>451</sup> The ADVs and the NIHR thus fulfil tasks that are closely related but not overlapping.

<sup>444</sup> See: [www.mensenrechten.nl](http://www.mensenrechten.nl). There is a 'Report discrimination' ('Meld discriminatie') button on the website's homepage. People who click the button are then given a choice between reporting an incident of discrimination ('Misstand melden'), which can also be done anonymously, or requesting an opinion from the NIHR ('Oordeel aanvragen').

<sup>445</sup> NIHR Rules of procedure (Procesreglement), Art. 11(d).

<sup>446</sup> NIHR Rules of procedure (Procesreglement), Art. 5.

<sup>447</sup> Temporary Decree on digital accessibility of public authorities (Tijdelijk besluit digitale toegankelijkheid overheid), Staatsblad 2018, 141. See <https://www.mensenrechten.nl/toegankelijkheid>.

<sup>448</sup> Act on Local Anti-Discrimination Services (Wet gemeentelijke antidiscriminatievoorzieningen), Staatsblad 2009, 313. On the basis of this law, a Decree was adopted in which more detailed regulation of the local ADVs is laid down. It contains provisions concerning their independence, competence and procedures to be followed when the ADVs provide information and assist victims of discrimination (see Besluit gemeentelijke antidiscriminatievoorzieningen, Staatsblad 2009, 373).

<sup>449</sup> See: Tweede Kamer 2007-2008, 31 439, No. 3, p. 7.

<sup>450</sup> See <https://radar.nl/over-radar/werkgebied-radar/>. For an overview of ADVs see: [www.discriminatie.nl/antidiscriminatiebureaus](http://www.discriminatie.nl/antidiscriminatiebureaus), last visited on 28 March 2023. It is not clear whether the list on this website is complete.

<sup>451</sup> Article 2(1) Act on Local Anti-Discrimination Services.

As stated above, every municipality is obliged by law to grant its inhabitants access to an ADV, which means that everyone in the Netherlands can report an incident of discrimination and obtain assistance at the local level. Such assistance is provided free of charge. The Decree on local anti-discrimination services determines that the accessibility of ADVs must be guaranteed, but this is not further specified.<sup>452</sup> Article 7 of the Decree does provide that ADVs must offer the options of reporting incidents of discrimination by mail, electronically, by phone or in person. Because the ADVs exist at the municipal level, the procedures for reporting discrimination and requesting assistance may differ per ADV, within the limits set by national legislation.<sup>453</sup> The same applies to their accessibility and visibility.

A report from February 2023 flagged a number of problems regarding the functioning of the ADVs, including problems regarding their overall visibility and accessibility.<sup>454</sup> The report showed that many people in the Netherlands were not aware of the fact that they can report discrimination, or did not know where to report it. Issues regarding accessibility notably concern accessibility for people with limited Dutch proficiency. Apart from these issues, it was noted that the ADVs are not formally tasked with implementing activities aimed at prevention and awareness raising and that they are not equipped to address structural discrimination.<sup>455</sup> In response to the report, the Minister of the Interior announced that the ADV structure would be revised and centralised in order to make the ADVs more effective. This should result in better visibility and accessibility of ADVs and fewer barriers to reporting discrimination.<sup>456</sup> According to the most recent timeline proposed by the Government, legislation to amend the ADV structure would be proposed in autumn 2024 and the new structure would be implemented by 1 January 2027 at the latest.<sup>457</sup> As of 1 January 2024, the ADVs did start working under a common name: 'Discriminatie.nl'. As of the same date, all ADVs can be found via a single website: [www.discriminatie.nl](http://www.discriminatie.nl).<sup>458</sup> On 13 November 2025, the Minister of the Interior informed Parliament that a legislative proposal had been drafted and would soon be made available for consultation.<sup>459</sup> Once the central legal entity has been established, it will also be designated as an equality body within the meaning of Article 2(1) of Directive 2024/2499.<sup>460</sup>

## 7.2 Political, economic and social context of the designated bodies

Overall there is political support for the NIHR, which is not to say that all political parties have a positive attitude to it. Right-wing and populist parties are overall (much) less positive than parties at the other end of the political spectrum. This is particularly the case

<sup>452</sup> Decree on Local Anti-Discrimination Services (Besluit gemeentelijke antidiscriminatievoorzieningen), Staatsblad 2009, 373, Art. 3.

<sup>453</sup> Art. 2(2) Act on Local Anti-Discrimination Services provides that it is for the municipal councils to lay down rules on the organisation of ADVs and the way in which they fulfil their task of providing assistance to victims of discrimination.

<sup>454</sup> Van Beijnhem, R. et al (2023), Structure, tasks and financing of ADVs. An investigation into the local approach to discrimination in the Netherlands (Inrichting, takenpakket en financiering ADV's. Een onderzoek naar de lokale aanpak van discriminatie in Nederland) (report commissioned by the Ministry of the Interior and Kingdom Relations), Berenschot 20 February 2023, published as Annex to Tweede Kamer 2022-2023, 30 950, No. 335.

<sup>455</sup> Van Beijnhem et al (2023), Structure, tasks and financing of ADVs.

<sup>456</sup> Tweede Kamer 2023-2024, 30 950, No. 354.

<sup>457</sup> Tweede Kamer 2023-2024, 30 950, No. 365.

<sup>458</sup> The website lists all ADVs that are members of Discriminatie.nl, the national umbrella organisation of ADVs. The Minister of the Interior announced that he would urge all ADVs to become members of the umbrella organisation, see Tweede Kamer 2023-2024, 30 950, No. 354, p. 3.

<sup>459</sup> Tweede Kamer, 2025-2026, 30 950, No. 503. In March 2026, the Minister was asked to approve the draft and to open it up for consultation, see <https://www.rijksoverheid.nl/onderwerpen/discriminatie-en-racisme/aanpak-discriminatie-en-racisme/plannen-kabinet-nieuw-stelsel-voor-aanpak-discriminatie/tijdelijk-wetsvoorstel-wet-bijstand-bij-discriminatie>.

<sup>460</sup> Tweede Kamer, 2025-2026, 30 950, No. 513, p. 28.

where the NIHR gives opinions in controversial discrimination cases that support the complainant.<sup>461</sup>

The most recent evaluation of the NIHR Act, conducted by the NIHR itself, was positive. Of particular relevance for this report is the conclusion that the equality body is able to effectively fulfil its quasi-judicial role, with its Opinions being generally perceived as authoritative.<sup>462</sup> In 2025, an external study into the NIHR's functioning (covering the years 2017–2022) was finalised and presented conclusions and recommendations. The independence of the NIHR is sufficiently guaranteed. Although the quasi-judicial function could be carried out more efficiently, it is exercised carefully and contributes to guaranteeing human rights. The quality of the surveys and reports is positive. The recommendation to take a stronger stance and to clearly define the purpose and audience of reports has already been taken on by the NIHR itself.<sup>463</sup>

After the transition period throughout 2024, the Institute was led by a president *ad interim* and functioned with only three members rather than the minimum of nine stipulated in the NIHR Act (see section 7.4 below). Additional substitute members (see again section 7.4 below) were appointed to enable the NIHR to continue its quasi-judicial function. In 2025, a new president was appointed, together with a vice-president and two members.

As indicated above (section 7.1, under b), the functioning of the ADVs has been found lacking and the ADV structure is in the process of being revised.

### 7.3 Institutional architecture

In the Netherlands, the designated body (NIHR) forms part of a body with multiple mandates. In addition to serving as the national equality body, the NIHR is the national human rights institute and is mandated to report on the implementation by the Netherlands of the CRPD. A full overview of the NIHR's mandate is provided below.<sup>464</sup>

1. Opinions: giving opinions in cases relating to discrimination on the basis of equality legislation.
2. Reporting: reporting and making recommendations about the protection of human rights, including the annual report on the human rights situation in the Netherlands to the Government and Parliament.
3. Advice: advising the Government, Parliament or administrative bodies about laws and regulations which relate directly or indirectly to human rights, either in response to a written request or proactively.
4. Education: stimulating and coordinating education about human rights.
5. Research: (stimulating) research into the protection of human rights.
6. Collaboration: structural collaboration with social organisations and national, European and other international institutions working in the field of fundamental rights.
7. Encouragement: encouraging the Government to ratify, implement and comply with international human rights treaties and to remove reservations in such conventions, as well as encouraging the implementation of and compliance with binding decisions

<sup>461</sup> See, for example, the newspaper article, AD (2017) 'College voor de Rechten van de Mens ligt steeds weer onder vuur' ('The NIHR comes under attack time and again'), 26 November 2017, [www.ad.nl/politiek/college-voor-de-rechten-van-de-mens-ligt-steeds-weer-onder-vuur~aabb31cd/](http://www.ad.nl/politiek/college-voor-de-rechten-van-de-mens-ligt-steeds-weer-onder-vuur~aabb31cd/).

<sup>462</sup> Netherlands Institute for Human Rights (2022), 'Evaluation of the NIHR Act over the past ten years' (*Wetsevaluatie Tien jaar College voor de Rechten van de Mens*), Utrecht.

<sup>463</sup> Van Dijk, P., Dijkzeul, A. and De Baaij, B. (2025), 'Evaluation of Netherlands Institute for Human Rights' (*Evaluatie College Rechten van de Mens*), 9 May 2025, at [https://www.eerstekamer.nl/brief\\_in/20250926/reactie\\_op\\_evaluaties\\_college\\_voor/f=/vmr8l01h80x1.pdf](https://www.eerstekamer.nl/brief_in/20250926/reactie_op_evaluaties_college_voor/f=/vmr8l01h80x1.pdf), p. 50.

<sup>464</sup> The listing reflects the mandate of the NIHR laid down in Article 3 NIHR Act. The task in relation to the CRPD is explained in more detail at <https://www.mensenrechten.nl/themas/rechten-van-mensen-met-een-beperking>.

by organisations under international law about human rights and encouraging compliance with European or international recommendations about human rights.

8. Monitoring the implementation of the CRPD.

To deal efficiently with the large number of discrimination complaints, the NIHR's non-discrimination mandate is executed by a specific department under the responsibility of one of the two vice presidents.<sup>465</sup> The NIHR's substitute members (see below) are exclusively tasked with the non-discrimination mandate and do not participate in the other tasks of the Institute. The budget does not set aside a specified percentage of resources and budget for the equality mandate.

The integration of the non-discrimination mandate of the former ETC into the much broader human rights mandate of the NIHR has inevitably led to a relative reduction in attention to this mandate in the work of the NIHR, but the evaluation of the NIHR that became available in 2018 concluded that the NIHR found 'a good balance' between both mandates.<sup>466</sup> A positive consequence of the broader mandate regards the improved possibilities of linking non-discrimination to other human rights issues and thus addressing the wider context in which discriminatory attitudes and practices occur. Since 2016, the NIHR has devoted specific attention to its non-discrimination mandate through the 'Discrimination cases monitor', which is exclusively dedicated to its work as the national equality body.<sup>467</sup>

As far as the ADVs are concerned, there is no legal provision that stands in the way of the ADV function being combined with other mandates. While the institutional architecture may vary, it appears that the larger ADVs such as *RADAR* and *Meldpunt Discriminatie Regio Amsterdam* focus exclusively on the non-discrimination mandate. However, evaluations from 2017 and 2023 found that in some municipalities the ADV tasks are performed by civil servants working under the responsibility of the local government.<sup>468</sup> The potentially negative consequences of this arrangement for the impartiality of the bodies are discussed in the section below.

## 7.4 Status of the designated bodies – general independence and resources

Status of the bodies

### NIHR

– *Separate or other legal status or personality*

In terms of Dutch administrative law, the NIHR qualifies as an 'independent administrative body' (*zelfstandig bestuursorgaan*). Such bodies are part of the central Government (in this case, more specifically, the Ministry of Justice and Security) but their independent character stems from the fact that they are not hierarchically subordinate to the Government (on the independence of the NIHR, see under section 7.4.b below). The NIHR does not have legal personality but forms part of the legal person that is 'the State'.

Article 14(1) of the NIHR Act prescribes that the NIHR has a minimum of nine and a maximum of 12 members, including a president and two vice-presidents. In addition, substitute members may be appointed. The NIHR Act further stipulates the existence of an

<sup>465</sup> The NIHR consists of three departments: Front office & opinions, Studies, recommendations and communications and the Operations staff department.

<sup>466</sup> Evaluatie Wet College voor de rechten van de mens (Evaluation of the National Institute of Human Rights Act), Tweede Kamer 2017-2018, 34 338 No. 3, p. 3.

<sup>467</sup> See section 7.10 below.

<sup>468</sup> Smit, W. et al (2017), *Onderzoek naar de werking van ADV's in de praktijk* (Report on the functioning of the ADVs in practice), Amsterdam: Regioplan, available at: <https://www.regioplan.nl/wp-content/uploads/2018/10/16146-Eindrapport-Onderzoek-naar-de-werking-van-de-adv's-in-de-praktijk-Regioplan-29mrt17-BV.pdf>, p. 47; Van Beijnhem et al (2023), *Structure, tasks and financing of ADVs*, p. 15.

advisory council, which advises the NIHR on its strategic planning. The advisory council consists (*qualitate qua*) of the National Ombudsman, the chair of the Data Protection Agency, the chair of the Council for the Judiciary and a minimum of four and a maximum of eight members from civil society organisations concerned with the protection of one or more human rights, from organisations of employers and employees and from the academic world.<sup>469</sup>

– *Selection of governing body*

The NIHR members together form its governing body. They are appointed by the Government following a proposal by the Minister for Justice and Security.<sup>470</sup> Before making a proposal, the minister is advised on suitable candidates by the advisory council acting together with the NIHR. The advice must take account of the need for the NIHR to be an expert and independent body with a diverse composition. Article 16(3) of the NIHR Act stipulates that vacancies for (substitute) members of the NIHR must be made public and brought to the attention of civil society organisations concerned with the protection of one or more human rights. Members (and substitute members) are appointed for a maximum term of six years, which is renewable (Article 17(2) NIHR Act).

– *Sources of funding*

The NIHR is fully funded by the central Government, primarily the Ministry of Justice and Security. It can independently allocate its resources to the various tasks imposed on it in the NIHR Act.<sup>471</sup>

– *Powers to recruit and manage staff*

The NIHR is supported by a staff bureau and is responsible for entering into and terminating employment contracts with civil servants working for the bureau (Article 18 NIHR Act). Employment conditions are similar to those of (other) civil servants in national and local government.

– *Accountability*

Provisions on the accountability of independent administrative bodies are laid down in the Framework act on independent administrative bodies. A primary mechanism of accountability is the publication of an annual report, which is to be sent to the minister of Justice and Security and to Parliament.<sup>472</sup> Article 21 of the NIHR Act adds that the annual report must include information on the investigations conducted by the NIHR, the advisory opinions it has issued as well as any other activities undertaken by it. It also stipulates that the annual report must be published and sent to the National Ombudsman, the Data Protection Authority, civil society organisations concerned with the protection of one or more human rights and other advisory bodies concerned. Independent administrative bodies are further obliged, upon request, to provide information to the responsible minister where this is necessary for the latter to fulfil their function.<sup>473</sup> This obligation also applies to the NIHR, however Article 20(2) of the NIHR Act specifies that there is no obligation to provide information on ongoing investigations, including investigations into individual complaints of discrimination (requests for an opinion). Finally, Article 22 of the NIHR Act provides that the NIHR must report every five years to the Minister of the Interior and Kingdom Relations on the functioning of the NIHR Act and the equal treatment legislation

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<sup>469</sup> Article 15(1) and (2) NIHR Act. The appointment of advisory council members is regulated in Article 15(3) NIHR Act.

<sup>470</sup> The appointment procedure is laid down in Article 16 NIHR Act.

<sup>471</sup> See: <https://www.mensenrechten.nl/over-ons/organisatie>, last visited on 28 March 2023.

<sup>472</sup> Framework act on independent administrative bodies (Kaderwet zelfstandige bestuursorganen), Staatsblad 2006, 587, Article 18.

<sup>473</sup> Article 20(1) Framework act on independent administrative bodies.

(the GETA, ETA and Article 7:646 Civil Code).<sup>474</sup> The minister subsequently reports to Parliament (Article 23 NIHR Act).

### ADVs

#### – *Separate or other legal status or personality*

The Act on local anti-discrimination services (ADV Act) does not offer much in terms of legal standards or conditions that must be met by the ADVs. As explained in the previous subsections, the legal form of the ADVs can and does vary across municipalities. ADVs often take the form of non-governmental organisations or private law foundations (with legal personality under private law), which are subsidised by local authorities to perform the ADV function. However, as mentioned in section 7.3, it is also possible for the ADV function to be performed by civil servants working at the level of local government. As previously mentioned, the lack of uniformity of ADVs has been found to hamper their visibility and the ADV structure is currently in the process of being revised. As of 1 January 2024, all ADVs are working together in one umbrella organisation (Discriminatie.nl) (see section 7.1.b above).

#### – *Selection of governing body*

At present there are no dedicated rules as to how the governing body of each of the ADVs is selected; this is left to the various non-governmental organisations or private law foundations.

#### – *Sources of funding*

The ADVs are funded by the municipalities, which in turn receive financial support from the national Government. According to the 2023 report on the functioning of the ADVs,<sup>475</sup> the current means of funding the ADVs constitutes the largest obstacle to their effective functioning. The contributions received by municipalities from the central Government are not earmarked and therefore the ADV budgets differ depending on the priority accorded to anti-discrimination policy (and the role of ADVs therein) in different municipalities. This has been criticised,<sup>476</sup> but remains the policy. In 2019, the Minister of the Interior, responsible for the ADVs, declared that earmarking the contributions for ADVs would be contrary to the principle of local autonomy.<sup>477</sup> In addition to the disparities between municipalities caused by the existing funding mechanism, ADVs indicate that they spend a lot of time applying for funding.<sup>478</sup> A solution proposed by the authors of the 2023 report, and endorsed by the Minister of the Interior, would be to no longer fund the ADVs via the municipalities but for the national Government to fund them directly.<sup>479</sup>

#### – *Powers to recruit and manage staff*

<sup>474</sup> Article 22 NIHR Act specifically mentions the GETA, ETA and Article 7:646 Civil Code. Articles 12 DDA and 14 ADA extend the obligation to the functioning of the DDA and ADA.

<sup>475</sup> Van Beijnhem et al (2023), Structure, tasks and financing of ADVs, p. 16.

<sup>476</sup> Smit, W. et al (2017), Onderzoek naar de werking van ADV's in de praktijk (Report on the functioning of the ADVs in practice), Amsterdam: Regioplan March 2017, p. v. The report is available at: <https://www.regioplan.nl/wp-content/uploads/2018/10/16146-Eindrapport-Onderzoek-naar-de-werking-van-de-advs-in-de-praktijk-Regioplan-29mrt17-BV.pdf>.

<sup>477</sup> Tweede Kamer 2019-2020, 30 590, No. 179, p. 3. For the present situation, see e.g. Huisman, C. (2023) 'Antidiscriminatiebureaus zoeken meer bekendheid en meer geld: "Gek dat zo'n groot thema zo onzichtbaar wordt afgehandeld"' (ADV's are looking for more exposure and more money: 'Odd that such a big issue is dealt with so invisibly'), De Volkskrant 21 March 2023, via: <https://www.volkskrant.nl/nieuws-achtergrond/antidiscriminatiebureaus-zoeken-meer-bekendheid-en-meer-geld-gek-dat-zo-n-groot-thema-zo-onzichtbaar-wordt-afgehandeld~b89fdadb/>.

<sup>478</sup> Van Beijnhem et al (2023), Structure, tasks and financing of ADVs, p. 16.

<sup>479</sup> Tweede Kamer 2023-2024, 30 950, No. 354.

ADV's cannot rely on a specific legal competence to recruit and manage staff. Where the ADV is a private law foundation, its powers to recruit and manage staff stem from the general provisions of civil law governing foundations (Article 2:285 and further of the Civil Code). Where the ADV function is performed by civil servants, the decision of the municipality (more specifically, the college of mayor and aldermen) to assign the ADV function to a particular person or department within the municipal administration may be seen as the equivalent of a recruitment decision. Article 3 of the Decree on Local Anti-Discrimination Services does specify that ADV's must be organised in such a way that the expertise of so-called 'complaint managers' (*klachtbehandelaren* – ADV staff members tasked with providing assistance to people who complain about discrimination) is guaranteed. The Decree also contains several provisions on the independence of ADV's which are discussed under section 7.4.b below.

– *Accountability*

In terms of accountability, Article 3(1) ADV Act provides that the college of mayor and aldermen (the 'municipal government') must report annually to the Minister of the Interior and Kingdom Relations on complaints registered by the ADV in their municipality.<sup>480</sup>

Independence of the bodies

NIHR

Article 4 of the NIHR Act explicitly stipulates that 'The Institute is independent in the performance of its duties'. The NIHR Act contains various provisions to guarantee this independence. The personal independence of the NIHR members and substitute members is largely regulated in Articles 17 and 17a. Amongst other things, these provisions stipulate that (substitute) members are appointed for a (renewable) maximum term of six years and that civil servants working under the responsibility of Government ministers are not eligible to be appointed. Regarding disciplinary measures (including dismissals) the provisions of the Act on the legal status of members of the judiciary (*Wet rechtspositie rechterlijke ambtenaren*) are made to apply to the (substitute) members of the NIHR as well.

In terms of functional independence, Article 5 NIHR Act provides that the NIHR advise the Dutch Government, Parliament and relevant administrative bodies on (proposed) legislation not only on request but also of its own accord. Article 8(2) of the NIHR Act states that Government ministers must make themselves available to engage in discussion with the NIHR regarding investigations, reports, recommendations and advisory opinions by the NIHR that concern them. Article 20(1) of the NIHR Act stipulates that the Minister of Justice and Security has no competence to issue guidelines concerning the exercise by the NIHR of its functions. It was already mentioned under section 7.4.a above that there is no obligation for the NIHR to provide information to the Government on ongoing investigations, including investigations into individual complaints of discrimination (requests for an opinion). Finally, Article 20(3) of the NIHR Act ensures that opinions or other decisions issued by the NIHR in the exercise of its quasi-judicial function may not be quashed by the Government.

It follows that rather strong legal guarantees exist regarding the independence of the NIHR, including in the exercise of its quasi-judicial function. It is the impression of the author of this report that the NIHR is also independent in practice.

ADV's

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<sup>480</sup> Article 13 of the Decree on local anti-discrimination services specifies the elements that must be included in the report, including the grounds of discrimination concerned, the fields in which the discrimination took place and how the complaints were dealt with.

The ADV Act provides in Article 2(1)(a) that it is the task of the ADVs to provide independent assistance to victims of discrimination. Article 2 of the Decree on local anti-discrimination services sets out guarantees to ensure that complaint managers (*klachtbehandelaren*) are independent of the municipality serviced by the ADV for which they work. Thus, a complaint manager may not simultaneously be a member of the college of mayor and aldermen of that municipality or be hierarchically inferior to the college in any other way. The latter provision was inserted in 2019 after an evaluation found that the requirement of independence was not always met, as in some municipalities the ADV function was performed by civil servants working for the same municipality.<sup>481</sup> However, the 2023 report on the functioning of the ADVs (see section 7.1 above) signalled that the problem persists. In addition, ADVs experience a lack of independence *vis-à-vis* municipalities due to the fact that they receive their funding via the municipalities (see section 7.4.a above).<sup>482</sup>

## Resources

### NIHR

#### – *Annual budget*

After an initial increase in budget and staff for the NIHR compared to the resources allocated to the former ETC, in 2015, the budget for the NIHR was back to the level that was allocated to the former ETC, due to overall budget cuts during the economic crisis.<sup>483</sup> The NIHR has received additional funding to monitor the implementation of the CRPD since it was given this task in 2016. The NIHR year plans include the budget for its entire mandate. For 2025, the NIHR was granted a budget of EUR 11 915 163, which covers monitoring implementation of the CRPD and acting as National Prevention Mechanism.<sup>484</sup>

#### – *Share of annual budget dedicated to the equality body mandate*

No information is available in the annual plans and annual reports of the NIHR about the share of the annual budget and the available full-time equivalent staff dedicated to the equality body mandate.

It is the impression of the author of this report that the staff and budget available to the NIHR allow it to fulfil the tasks assigned to it, including the equality body mandate. However, expansion of its budget and/or staff would enable the Institute to conduct more in-depth investigations into the prevalence of complex or hidden forms of discrimination, including algorithmic discrimination.

#### – *Total number of staff*

In 2024, the NIHR had a staff of 84.6 full-time equivalent (FTE) for the Institute as a whole (not only the equality body mandate).<sup>485</sup> Information for 2025 was not available at the time of writing this report.

<sup>481</sup> Smit, W. et al (2017), *Onderzoek naar de werking van ADV's in de praktijk* (Report on the functioning of the ADVs in practice), Amsterdam: Regioplan, p. 47. The report is available at: [https://www.regioplan.nl/wp-content/uploads/2018/10/16146-Eindrapport-Onderzoek-naar-de-adv's-in-de-praktijk-Regioplan-29mrt17-BV.pdf](https://www.regioplan.nl/wp-content/uploads/2018/10/16146-Eindrapport-Onderzoek-naar-de-werking-van-de-adv's-in-de-praktijk-Regioplan-29mrt17-BV.pdf).

<sup>482</sup> Van Beijnhem et al (2023), *Structure, tasks and financing of ADVs*, pp. 15-16.

<sup>483</sup> See the financial evaluation of the NIHR of November 2015, published as Annex to Tweede Kamer 2015-2016, 34 338, No. 1.

<sup>484</sup> NIHR (2024), *2025 Year Plan (Jaarplan 2025)*, available at: <https://publicaties.mensenrechten.nl/publicatie/9a803b69-caf6-4249-82a6-a2d62f5ed5dc>, p. 31.

<sup>485</sup> NIHR (2024), *2024 Year Report (Jaarverslag 2024)*, available at <https://publicaties.mensenrechten.nl/publicatie/220a1327-641e-4ab2-9111-8bfbdf87d31a>, p. 39:.

- *Number of staff dedicated to the equality body mandate*

Unknown.

## ADVs

- *Annual budget*

An evaluation report published in 2017 stated that the financial support received by the municipalities for the ADVs did not match the increasing costs of the core ADV tasks (assisting victims and registering discrimination complaints). The report also found that differences in the functioning of ADVs, in particular the extent to which they are active in preventing discrimination, were linked to varying levels of financial support. The 2023 report on the functioning of the ADVs states that, in 2021, the 'indicative budget' for ADVs was raised from EUR 0.37 to EUR 0.77 per inhabitant served by the ADV. However, as explained under section 7.4.a, the contributions received by municipalities for the ADVs are not earmarked and there is no requirement for municipalities to spend any particular amount on the ADVs. As a result, some municipalities dedicate the indicated amount of EUR 0.77 per inhabitant to the ADVs, whereas for other municipalities the amount is less or even nothing at all.<sup>486</sup> In 2023, the Government pledged an additional EUR 2.5 million per year to strengthen the activities of the ADVs aimed at preventing discrimination.<sup>487</sup> Accordingly, EUR 2.5 million has since been earmarked for this task.<sup>488</sup> It has appeared that municipalities do not give the ADVS all of the budget allocated to them. With the newly envisaged centralised structure, the Minister of the Interior hopes to address this point.<sup>489</sup>

- *Number of staff*

Aggregated information about the exact number of staff members of the ADVs is not available.

## **7.5 Grounds and fields covered by the designated bodies**

### NIHR

Under its non-discrimination mandate, the NIHR deals with all discrimination grounds mentioned in the GETA, DDA, ADA and Civil Code. Thus it covers racial or ethnic origin, religion or belief, political opinion, hetero- or homosexual orientation, sex,<sup>490</sup> nationality, civil status, disability, age, 'working time' and 'type of labour contract'. In the selection of its (substitute) members and supporting staff, the NIHR strives for sufficient diversity to ensure that relevant expertise regarding all grounds is present.

The NIHR mandate covers the fields employment, education and goods and services (including housing and healthcare) for all the grounds mentioned in the GETA (racial or ethnic origin, religion or belief, political opinion, hetero- or homosexual orientation, sex,<sup>491</sup> nationality and civil status) as well as for disability. It covers the field of social protection only in relation to the ground racial or ethnic origin. Age discrimination is covered only in the field of employment (including vocational education).<sup>492</sup>

In its multi-annual strategic programmes, the NIHR indicates focus areas that may relate to specific discrimination grounds. For the period 2025 to 2027, the NIHR's strategic programme comprises three thematic priorities: i) the rule of law ii) livelihood security and

<sup>486</sup> Van Beijnhem et al (2023), Structure, tasks and financing of ADVs, p. 16.

<sup>487</sup> Tweede Kamer 2023-2024, 30 950, No. 354, p. 3.

<sup>488</sup> This budget uplift was confirmed in Tweede Kamer, 2023-2024, 30 950, No. 365, p. 2.

<sup>489</sup> See Tweede Kamer, 2023-2024, 30 950, No. 410, p. 13.

<sup>490</sup> In GETA, this includes sex characteristics, gender identity and gender expression.

<sup>491</sup> In GETA, this includes sex characteristics, gender identity and gender expression.

<sup>492</sup> Art. 10(1) NIHR Act, Art. 12 DDA and Art. 14 ADA.

human rights and non-discrimination.<sup>493</sup> The first priority serves as a lens through which to approach several other themes. The last two priorities are central to special programmes. As regards non-discrimination, the NIHR will pay attention to structural and institutional discrimination. As far as the NIHR's quasi-judicial function is concerned, the level of attention that is given to the different discrimination grounds is determined by the complaints received. As can be seen in section 7.10 below, the NIHR usually receives a relatively large number of complaints relating to the grounds of sex, racial or ethnic origin, age and disability.

It is the impression of the author of this report that the attention paid by the NIHR to the different grounds of discrimination included in its mandate is balanced and reasonably reflects the prevalence of different forms of discrimination in Dutch society. Disability discrimination is receiving considerably more attention than before, in view of the NIHR's mandate to monitor the implementation of the CRPD. Although strictly speaking, this task is separate from the non-discrimination mandate, it can be assumed that the NIHR's mandate concerning the CRPD has resulted in an increase in both awareness and expertise in the field of disability discrimination.

### ADVs

The mandate of the ADVs covers the same grounds and fields as that of the NIHR.<sup>494</sup> For both ADV tasks, i.e. the registration of discrimination reports and assistance to victims, the level of attention that is given to each of the discrimination grounds is determined by the reports/complaints received.

## **7.6 Competences of the designated bodies – and their independent and effective exercise**

### Independent assistance to victims

In the Netherlands, the NIHR does not have the competence to provide independent assistance to victims. The role of assisting victims is seen as conflicting with the role of independently investigating individual complaints and giving an authoritative opinion on them. However, the local ADVs do fulfil this function.<sup>495</sup> The role of these organisations is mainly to assist victims of discrimination and to monitor developments with respect to discrimination in society. They bring many cases of discrimination to the attention of the NIHR and the courts, including in the form of public interest actions or collective actions. They also set up situation testing processes, in order to bring systemic discrimination to light, especially in the area of cafés and nightclubs (see section 6.2 of this report).<sup>496</sup>

It is the impression of the author of this report that, in general, the 'assistance to victims' competence is exercised by the ADVs in an effective and independent manner. Local variations do, however, exist, whereby generally speaking larger ADVs tend to have more expertise and are able to function more effectively than smaller ones.

Of course, victims of discrimination may also seek assistance from third parties, notably law firms, but there is no specific competence or arrangement for this. Large law firms occasionally engage in projects to provide *pro bono* assistance in discrimination

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<sup>493</sup> NIHR (2025), 'Human Rights: the foundation of our rule of law' (*Mensenrechten: het fundament van onze rechtsstaat*), May 2025, p. 12. *Strategie en meerjarenplan 2025–2027*.

<sup>494</sup> Article 2(1)(a) Act on Local Anti-Discrimination Services.

<sup>495</sup> Article 2(1)(a) Act on Local Anti-Discrimination Services.

<sup>496</sup> The national expert centre Art.1 ([www.art1.nl](http://www.art1.nl)) supports the work of the local ADVs by, for example, offering training to ADV staff. Art.1 mainly has a role in monitoring developments in society with regard to (non-) discrimination and bringing instances of (structural) discrimination to the attention of the general public and politicians. The grounds covered are religion and belief, political opinion, hetero- or homosexual orientation, sex, nationality and civil (or marital) status, disability and age.

procedures.<sup>497</sup> Also worth mentioning is PILP (the Public Interest Litigation Project), a collective of lawyers engaging in strategic litigation in the field of human rights, including discrimination.<sup>498</sup> Although PILP's focus is on strategic litigation and not on assistance to individual victims, the two are not always mutually exclusive. For example, in a case on ethnic profiling against the Dutch Border Police (*Koninklijke Marechaussee*), the claimants, who were legally supported by PILP, were both NGOs acting in the public interest and individuals who had been subjected to ethnic profiling.<sup>499</sup>

### Independent surveys and reports

In the Netherlands, the NIHR has the competence to conduct independent surveys and publish independent reports.<sup>500</sup> The NIHR makes extensive use of this competence. In 2021, for instance, it issued reports on the use of algorithms by municipalities and online job-advertising platforms and policy briefs on ethnic profiling and institutional racism. In 2025, it developed a risk profiling assessment framework. In the report explaining this framework, the NIHR outlines the run-up to this framework, referring *inter alia* to ethnic profiling by the Dutch border police.<sup>501</sup> The framework contains an assessment scheme with specific questions to assess whether risk profiling is discriminatory.<sup>502</sup> Furthermore, it elaborates on specific duties to prevent discrimination.<sup>503</sup> Another example of research activity concerned discrimination in general practitioners' practices, for which the NIHR opened up an online reporting point for patients and general practitioners, for example.<sup>504</sup>

The NIHR engages in strategic planning by means of multi-annual programmes. For the period 2025-2027, its focus is on three themes (see above).<sup>505</sup> Surveys and reports are published on the website of the NIHR and are often referred to in policy documents.<sup>506</sup> The NIHR also reports on the human rights situation in the Netherlands to UN human rights treaty bodies in the context of treaty monitoring procedures.

As far as the reporting function is concerned, no clear separation exists between the NIHR's non-discrimination mandate and its mandate as the national human rights institute. While most reports are not linked to specific complaints and are therefore best understood as falling under the NIHR's general human rights mandate, this is not always the case. A clear example is the report that was published in 2022 in the context of the childcare benefits affair (see section 3.2.6 above) and that was presented by the NIHR as the result of a 'pre-investigation' in relation to several individual complaints received by the equality body concerning potential discrimination in the allocation of childcare benefits. In the report the NIHR established that childcare recipients with a migration background were more likely to have been subjected to fraud controls and enforcement by the Tax Agency/Benefits Department and concluded that these findings could serve to establish a presumption of

<sup>497</sup> One example is a cooperation between law firm Allen & Overy and Meldpunt Discriminatie Regio Amsterdam, the ADV for the region of Amsterdam, that was started in 2020, see: <https://mdra.nl/samenwerking-met-allen-overly/>.

<sup>498</sup> See: <https://pilpnjcm.nl/en/about-pilp/>.

<sup>499</sup> See Flash report Netherlands (2021) 'Ruling by District Court of The Hague', 14 October 2021, European network of legal experts in gender equality and non-discrimination, see: <https://www.equalitylaw.eu/downloads/5526-netherlands-ruling-by-district-court-the-hague-of-22-september-2021-ecli-nl-rbdha-2021-10283-95-kb>.

<sup>500</sup> Articles 3(a) and (b) and 4 NIHR Act.

<sup>501</sup> NIHR (2025), 'Risk profiling assessment framework. Norms against discrimination on grounds of race and nationality' (*Toetsingskader risicoprofilering. Normen tegen discriminatie op grond van ras en nationaliteit*), at <https://publicaties.mensenrechten.nl/publicatie/4093c026-ae41-4c1d-aa78-4ce0e205b5de>, p. 8.

<sup>502</sup> NIHR (2025), p. 19.

<sup>503</sup> NIHR (2025), p. 32 ff.

<sup>504</sup> NIHR (2025), 'New reporting point for discrimination in general practitioners' care launched' (*Nieuw meldpunt voor discriminatie in de huisartsenzorg gelanceerd*), 1 December 2026, at <https://www.mensenrechten.nl/actueel/nieuws/2025/12/1/nieuw-meldpunt-voor-discriminatie-in-de-huisartsenzorg-gelanceerd>.

<sup>505</sup> NIHR (2025), 'Human Rights: the foundation of our rule of law. Strategy and Multi-Year Plan 2025–2027' (*Mensenrechten: het fundament van onze rechtsstaat. Strategie en meerjarenplan 2025–2027.*), May 2025, p. 12.

<sup>506</sup> See: [www.mensenrechten.nl/nl/publicaties](http://www.mensenrechten.nl/nl/publicaties).

discrimination in individual procedures.<sup>507</sup> One of the recommendations in 2025 was to examine how the synergy between the quasi-judicial and other tasks of the NIHR can be strengthened.<sup>508</sup>

The ADV Act does not provide ADVs with a legal competence to conduct independent surveys and publish reports.

Other organisations also report on the prevalence and causes of discrimination. The main (publicly funded) research institution in this regard is the Netherlands Institute for Social Research (*Sociaal Cultureel Planbureau*, SCP). In 2013, an SCP study revealed that harassment at work is one of the greatest problems encountered by lesbian, gay and bisexual people,<sup>509</sup> followed in 2015 by a report on labour market discrimination in The Hague.<sup>510</sup> The SCP also reports on experiences of discrimination.<sup>511</sup>

## Recommendations

In the Netherlands, the NIHR has the competence to make recommendations in the field of human rights, which includes discrimination issues. The NIHR Act distinguishes between the following tasks:

- making recommendations regarding the human rights situation in the Netherlands (including the right to non-discrimination) (Article 3(b) NIHR Act);
- providing advice to the Government, Parliament and other relevant administrative bodies on (proposed) legislation and policy in the field of human rights. This includes statutory acts and other types of legislation (e.g. Government decrees and municipal regulations), the NIHR can also advise the Dutch Parliament and other relevant administrative bodies on proposals for binding decisions to be taken at the level of the EU or other international organisations (Articles 3(c) and 5 NIHR Act);
- promoting the ratification and implementation of and compliance with international human rights treaties and the removal of reservations to such treaties (Article 3(g) NIHR Act);
- promoting the implementation of and compliance with binding decisions on human rights by international governmental organisations (Article 3(h) NIHR Act); and
- promoting compliance with European and international recommendations regarding human rights (Article 3(i) NIHR Act).

It is the impression of the author of this report that the NIHR effectively fulfils its recommendation function in an independent manner.

The ADV Act does not provide a power to issue recommendations.

## Prevention, promotion and awareness-raising

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<sup>507</sup> See: NIHR (2022) Preliminary investigation into alleged discriminatory effects of the working methods of the Tax and Customs Administration, <https://publicaties.mensenrechten.nl/publicatie/a356efac-8752-4843-a86c-665bb0a98667>.

<sup>508</sup> Van Dijk, P., Dijkzeul, A. and De Baaij, B. (2025), 'Netherlands Institute for Human Rights Evaluation' (*Evaluatie College Rechten van de Mens*), 9 May 2025, p. 50.

<sup>509</sup> See the SCP (2014), *Seksuele oriëntatie en werk. Ervaren van lesbische, homoseksuele, biseksuele en heteroseksuele werknemers* (Sexual orientation and work. Experiences of lesbian, gay, bisexual and heterosexual employees). In December 2013, the Minister of Education, Culture and Science sent a letter to Parliament on the topic of discrimination against LGBT employees, see Tweede Kamer 2013-2014, 30 420, No. 204.

<sup>510</sup> SCP (2015), *Op Afkomst Afgewezen* (Rejected due to origin): <https://www.scp.nl/publicaties/publicaties/2015/06/17/op-afkomst-afgewezen>.

<sup>511</sup> For the latest report see SCP (2020), *Ervaren Discriminatie in Nederland* (Experiences of discrimination in the Netherlands), available at: <https://www.scp.nl/publicaties/publicaties/2020/04/02/ervaren-discriminatie-in-nederland-ij>.

The NIHR has the competence to engage in prevention, promotion and awareness-raising in the field of human rights, including equal treatment and non-discrimination. The NIHR Act distinguishes between the following tasks:

- providing training/education (*voorlichting*) and stimulating and coordinating education in the field of human rights (Article 3(d) NIHR Act);
- stimulating research into human rights protection (Article 3(e) NIHR Act); and
- working together, on a structural basis, with civil society organisations and with national, European and international institutions concerned with human rights protection, including by organising activities together with civil society organisations (Article 3(f) NIHR Act).

It is the impression of the author of this report that the NIHR effectively fulfils these functions in an independent manner; indeed, its independence does not seem to be disputed.

One example of its activities in relation to prevention, promotion and awareness-raising is the strategic programme 'Getting past stereotypes' (*Vooroordelen voorbij*) that was launched in 2022 and ran until 2024. The programme combined training and education on the functioning of stereotypes and aimed to prevent discrimination by public bodies tasked with the implementation of Government policies (*uitvoeringsorganen*).<sup>512</sup>

The NIHR's annual programmes (*jaarplannen*) indicate that NIHR members regularly participate in activities organised by stakeholders, including civil society organisations, in particular where such activities relate to the focus areas established in the multi-annual programme in force. The author of this report is not in a position to assess the quality of the cooperation between the NIHR and civil society organisations.

The ADV Act does not provide a power to engage in prevention, promotion and awareness-raising. Nevertheless, several (especially larger) ADVs do undertake activities in this field. For example, RADAR offers training and workshops to employers on how to prevent discrimination and promote diversity and inclusion. It also supports civil society organisations, such as the Rotterdam platform against employment discrimination (010inclusief).<sup>513</sup> In the 2023 report on the functioning of ADVs (see section 7.1) the lack of a legal obligation to engage in prevention and awareness raising was mentioned as a significant obstacle to the effective functioning of the ADVs in combating discrimination.<sup>514</sup>

#### Other competences

Besides the competences discussed above, the NIHR acts as a quasi-judicial body in relation to discrimination complaints (see section 7.8 below). Moreover, the NIHR is also responsible for monitoring implementation of the CRPD. It is also the National Prevention Mechanism,<sup>515</sup> and the Fundamental Rights Authority for Artificial Intelligence.

In addition to providing legal assistance to victims, the ADVs are responsible for registering and reporting on complaints of discrimination (Article 2(1)(b) ADV Act).

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<sup>512</sup> See: NIHR (2023) Beyond prejudices: multi-year plan 2022-2024, <https://publicaties.mensenrechten.nl/publicatie/1d451eba-0c9f-4dec-90a3-2b0fad9ddb1d>.

<sup>513</sup> See: RADAR website: 'Job market discrimination reports', <https://radar.nl/themas-discriminatie/discriminatie-op-de-arbeidsmarkt/>.

<sup>514</sup> Van Beijnhem et al (2023), Structure, tasks and financing of ADVs.

<sup>515</sup> Pursuant to Article 3 of the Optional Protocol to the Convention Against Torture, on 27 September 2023 the Minister of Justice considered that this task could already be considered to fall within the competences of the NIHR. See letter at <https://www.rijksoverheid.nl/documenten/kamerstukken/2023/09/27/tk-nationaal-preventie-mechanisme>.

## 7.7 Legal standing of the designated bodies

In the Netherlands, the NIHR has legal standing to bring discrimination complaints on behalf of identified victim(s) and *ex officio* to court (Article 13 NIHR Act). The NIHR can make three types of claims: a declaration that the allegedly discriminatory act was unlawful; a prohibition on engaging in such an act; or an order to undo the consequences of an allegedly discriminatory act. A claim can only be made if the person affected by the disputed act does not object (Article 13(2) NIHR). To date, the NIHR has not used its competence to bring discrimination cases before the courts.

In 2016, the NIHR intervened for the first time as a third party in proceedings at the European Court of Human Rights through an *amicus curiae* submission, but these proceedings did not concern non-discrimination, but rather pre-trial detention.<sup>516</sup>

The ADVs, at least to the extent that they are foundations with legal personality under private law (see section 7.4 above), can bring claims to court within the framework of the general rules of Dutch civil law concerning actions on behalf of victims and public interest actions or collective actions (see section 6.2 above). For example, the ADV RADAR was one of the claimants in the case against the Dutch Border Police on ethnic profiling (see section 7.6.a above). However, no overall data on such actions are available.

## 7.8 Dispute resolution

### a) Quasi-judicial functions

In the Netherlands, the NIHR is a quasi-judicial institution (Articles 3(a) and 10 NIHR Act). It cannot issue binding, enforceable decisions. It can issue non-binding opinions.

In the Netherlands, there is no separate quasi-judicial body/institution, other than the NIHR, competent to decide on discrimination cases. The ADVs are not considered (quasi-) judicial institutions; for that reason, they are not discussed in this subsection.

### i) Power to impose sanctions

The NIHR does not have the power to impose sanctions.

NIHR opinions indicate whether or not the defendant has acted in compliance with the Dutch equal treatment legislation. In addition, the NIHR may issue a recommendation to the defendant party (Article 11(2) NIHR Act) - although it does not have to. The NIHR occasionally makes use of this competence, for example by indicating to the defendant party what measures could be taken to prevent future discrimination. The NIHR also has the option of bringing its opinions to the attention of relevant Government ministers and organisations, including employer's organisations, organisations of civil servants and consumer organisations (Article 11(3) NIHR Act).

### ii) Possibility to appeal

No appeal is possible in relation to the opinions of the NIHR, but the fact that a case has been decided by the NIHR does not prevent the complainant from introducing a claim before a court in order to obtain a binding judgment.

### iii) Implementation of non-binding opinions

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<sup>516</sup> ECtHR, *Maassen v. the Netherlands*, 9 February 2021, Application No. 10982/15; ECtHR, *Zohlandt v. the Netherlands*, 9 February 2021, Application No. 69491/16 and ECtHR, *Hasselbaink v. the Netherlands*, 9 February 2021, Application No. 73329/16. These three cases were similar in that they concerned the question of whether the applicants had been sufficiently informed of the reasons for their arrest.

The Opinions of the NIHR are well respected. The NIHR keeps track of the follow-up to its Opinions in its annual 'Discrimination cases monitor' (see section 7.10 below). According to this monitor, when the NIHR issues an Opinion in around four out of five cases this results in a measure being taken by the defendant company or institution. This may be an individual measure (applicable only to the complainant, for example an apology), a structural measure (such as an adjustment of existing procedures) or a combination of both. The most recent available figures, for 2025, show that a follow-up measure was taken in 77 % of cases.<sup>517</sup>

#### b) Amicable settlements

There are no legal provisions, in the NIHR Act or implementing legislation, establishing a competence for the NIHR to offer the parties to a discrimination complaint the possibility of seeking an amicable resolution. This does not mean that the NIHR cannot suggest that the parties seek an amicable settlement, for example where this has been offered by the respondent and the NIHR believes that a settlement could be in the interests of the complainant. However, no established procedure exists for this purpose. Article 7 of Directive 2024/1499 offers the option for equality bodies to provide amicable settlement.

The ADVs are tasked with providing assistance to victims of discrimination. Such assistance can consist of mediating between the complainant and the person or institution that allegedly committed a discriminatory act. This possibility is expressly provided for in Article 4(2)(c) of the Decree on local anti-discrimination services. Mediation by an ADV requires the consent of both the complainant and the defendant party and takes place after both parties have been given the opportunity to present their views (Article 11 Decree on local anti-discrimination services). No legal provisions exist regarding the coincidence of procedures before the NIHR and the ADVs. However, it is understood that (attempts at) mediation by an ADV will normally take place before a complaint is submitted to the NIHR and that the introduction of such a complaint can be a next step in the event that the mediation is not successful.

### 7.9 Procedural safeguards

In the Netherlands, the tasks of providing assistance to persons who experienced discrimination, and of deciding on complaints of discrimination are allocated to different bodies (the ADVs and the NIHR). Therefore, there is no need for safeguards separating the exercise of these functions within one and the same body.

Procedural safeguards concerning the exercise by the NIHR of its quasi-judicial function are laid down in the Decree on the procedure for the investigation of discrimination complaints (*Besluit werkwijze onderzoek gelijke behandeling*).<sup>518</sup> The Decree contains, amongst other things, guarantees for the impartiality of NIHR members deciding on discrimination complaints and provisions ensuring 'equality of arms'. In particular, the Decree mentions possibilities of recusal and challenge in case of any prior involvement in the matter that could affect (objective) impartiality of the Chamber sitting in the case.<sup>519</sup> Article 18 of the Decree stipulates that hearings held by the NIHR are public, unless weighty reasons exist to the contrary.

The Decree on local anti-discrimination services provides that the ADVs must be impartial in the fulfilment of their tasks and that they must ensure that complaints of discrimination are not handled by staff members who have a personal interest in the case.<sup>520</sup>

<sup>517</sup> 'Monitor for discrimination cases. Measures in 2025' (*Monitor discriminatiezaken. Maatregelen in 2025*), available at <https://www.mensenrechten.nl/monitor-discriminatiezaken-2025/maatregelen-in-2025>.

<sup>518</sup> Decree on the procedure for the investigation of discrimination complaints (*Besluit werkwijze onderzoek gelijke behandeling*), Staatsblad 2012, 394.

<sup>519</sup> Decree on the procedure for the investigation of discrimination complaints, Article 3.

<sup>520</sup> Articles 2(5) and (6) Decree on local anti-discrimination services.

## 7.10 Data collection by the designated bodies

### a) Registration of complaints and decisions

Since 2016, data regarding reports of discrimination to various bodies are published together in a single annual report entitled 'Discrimination data in [year]' (*Discriminatiecijfers in [jaar]*). This publication includes reports of discrimination made to the police, the anti-discrimination services (ADVs), the reporting point for internet discrimination (MiND in Dutch) and the NIHR. Since 2020, the report also includes reports of discrimination received by the National Ombudsman and the Children's Ombudsman. This integrated reporting qualifies as a strong practice of Dutch anti-discrimination policy, as bringing together information from different actors provides better insight into the occurrence of discrimination in the Netherlands.

Details on the number of complaints reported to the NIHR and the ADVs and the number of decisions taken by the NIHR are mentioned below. Generally, the total number of discrimination complaints continues to increase, gradually regarding police reports, and greatly regarding reports with the ADVs.<sup>521</sup> Additionally, the most recently available combined report ('Discrimination data in 2024') mentions that, for almost all of the bodies included, racial or ethnic origin is among the top three discrimination grounds.<sup>522</sup> Strikingly, this year, disability features as the top most reported discrimination ground by the NIHR. However, 29 % of the reports made to the police related to sexual orientation, and 21 % of the reports to the discrimination online reporting point related to religion.<sup>523</sup> What stood out in 2024 were so-called clusters of discrimination reports that came about because of a single incident, ranging from a public statement on television to a political motion to collect data about religious and cultural norms of inhabitants with a migration background.<sup>524</sup> Additional striking developments are the increase in number of reports with ADVs on the basis of other grounds than those protected by national law (such as appearance or being vaccinated or not vaccinated) (from 8 % to 22 %), a large portion of which are an after-effect of the COVID pandemic, and an increase in reports on the ground of religion (from 6 % to 9 %).

In 2023, police received 386 reports of discrimination based on religion, of which 91 % concerned anti-Muslim discrimination.<sup>525</sup> Discrimination reported to the police and the ADVs mostly (65 %) took the form of a statement.<sup>526</sup>

### NIHR

In the Netherlands, the NIHR registers the number of complaints of discrimination made and the decisions (by ground, field, type of discrimination, etc.). These data are available to the public. The NIHR publishes a 'Discrimination cases monitor' (*Monitor discriminatiezaken*) that contains data on the number of questions and reports of discrimination it received, requests for opinions, opinions issued and follow-up measures

<sup>521</sup> The number of complaints with the ADVs doubled, which can be partly explained by the new name and website, see Netherlands Government (2025), 'Discrimination Data in 2024' (*Discriminatiecijfers in 2024*), p. 16, available at: <https://www.rijksoverheid.nl/documenten/rapporten/2025/04/02/rapport-discriminatiecijfers-in-2024>.

<sup>522</sup> Netherlands Government (2025), 'Discrimination Data in 2024' (*Discriminatiecijfers in 2024*), p. 5, available at: <https://www.rijksoverheid.nl/documenten/rapporten/2025/04/02/rapport-discriminatiecijfers-in-2024>.

<sup>523</sup> Netherlands Government (2025), 'Discrimination Data in 2024' (*Discriminatiecijfers in 2024*), p. 5, available at: <https://www.rijksoverheid.nl/documenten/rapporten/2025/04/02/rapport-discriminatiecijfers-in-2024>.

<sup>524</sup> Netherlands Government (2025), 'Discrimination Data in 2024' (*Discriminatiecijfers in 2024*), pp. 17-18, available at: <https://www.rijksoverheid.nl/documenten/rapporten/2025/04/02/rapport-discriminatiecijfers-in-2024>.

<sup>525</sup> Netherlands Government (2025), 'Discrimination Data in 2024' (*Discriminatiecijfers in 2024*), p. 25, available at: <https://www.rijksoverheid.nl/documenten/rapporten/2025/04/02/rapport-discriminatiecijfers-in-2024>.

<sup>526</sup> Netherlands Government (2025), 'Discrimination Data in 2024' (*Discriminatiecijfers in 2024*), p. 28, available at: <https://www.rijksoverheid.nl/documenten/rapporten/2025/04/02/rapport-discriminatiecijfers-in-2024>.

taken by respondent parties. The monitor includes tables with data which are disaggregated by discrimination ground, field and the outcome of the complaints procedure (e.g. opinion, settlement, complaint withdrawn). As of 2024, the 'Discrimination cases monitor' is an online dashboard<sup>527</sup> which is updated twice per year (previously this was once per year). The NIHR website also includes a database which allows searches for opinions by year, ground and/or field.<sup>528</sup>

The tables below show the number of requests for ETC/NIHR opinions and the number of opinions issued.

| <b>Number of requests for an ETC/NIHR Opinion</b> <sup>529</sup> |                            |
|------------------------------------------------------------------|----------------------------|
| <i>Year:</i>                                                     | <i>Number of requests:</i> |
| 2020                                                             | 638                        |
| 2021                                                             | 739                        |
| 2022                                                             | 670                        |
| 2023                                                             | 580                        |
| 2024                                                             | 621                        |
| 2025                                                             | 853                        |

In 2025, the majority of requests related to discrimination on grounds of disability and chronic illness (214), followed by sex (184 requests) and race (129 requests). Thirteen requests were made for an opinion related to sexual orientation, 43 requests were made regarding the ground religion or belief and 42 relating to age. Many requests do not result in an opinion; they may be declared inadmissible, closed or withdrawn by the claimant (sometimes after an agreement has been reached).

| <b>Number of opinions per ground (one opinion may cover multiple grounds)</b> <sup>530</sup> |            |    |            |    |            |    |            |            |            |
|----------------------------------------------------------------------------------------------|------------|----|------------|----|------------|----|------------|------------|------------|
|                                                                                              | 2020       |    | 2021       |    | 2022       |    | 2023       | 2024       | 2025       |
|                                                                                              | N          | %  | N          | %  | N          | %  | N          | N          | N          |
| Sex                                                                                          | 35         | 28 | 39         | 25 | 38         | 24 | 33         | 38         | 36         |
| Race                                                                                         | 21         | 17 | 34         | 22 | 38         | 24 | 35         | 21         | 43         |
| Nationality                                                                                  | 11         | 9  | 10         | 6  | 14         | 9  | 8          | 12         | 9          |
| Religion                                                                                     | 9          | 7  | 10         | 6  | 12         | 8  | 6          | 2          | 4          |
| Sexual orientation                                                                           | 0          | 0  | 5          | 3  | 1          | 1  | 0          | 1          | 1          |
| Civil status                                                                                 | 4          | 3  | 0          | 0  | 2          | 1  | 0          | 0          | 1          |
| Political opinion                                                                            | 1          | 1  | 0          | 0  | 1          | 1  | 3          | 2          | 1          |
| Belief                                                                                       | 1          | 1  | 0          | 0  | 2          | 1  | 0          | 0          | 0          |
| Part-time / full-time                                                                        | 1          | 1  | 3          | 2  | 2          | 1  | 2          | 0          | 0          |
| Temp/perm. Employment                                                                        | 0          | 0  | 6          | 4  | 0          | 4  | 6          | 0          | 0          |
| Disability / chronic illness                                                                 | 42         | 34 | 53         | 34 | 40         | 25 | 35         | 32         | 37         |
| Age                                                                                          | 12         | 10 | 14         | 9  | 10         | 6  | 11         | 1          | 7          |
| <b>Total number of opinions:</b>                                                             | <b>124</b> |    | <b>156</b> |    | <b>160</b> |    | <b>141</b> | <b>110</b> | <b>139</b> |

<sup>527</sup> See <https://www.mensenrechten.nl/monitor-discriminatiezaken-2025>.

<sup>528</sup> See the search page: <https://oordelen.mensenrechten.nl/oordelen>.

<sup>529</sup> The data concerning requests for opinions are taken from Monitor Discriminatiezaken 2024 | College voor de Rechten van de Mens, visited on 1 April 2025.

<sup>530</sup> The data in the table are taken from <https://www.mensenrechten.nl/monitor-discriminatiezaken-2024/oordelen-2024>. As of 2023, the Monitor only indicates the absolute number of opinions that were given.

## ADVs

The most recent report ('Discrimination data in 2024') shows that the number of reports of discrimination made to the ADVs practically doubled compared to 2023 (from 6 351 to 14 796 reports).<sup>531</sup> The distribution of reports according to discrimination grounds is different from 2023. The largest share of reports made to the ADVs still concerned racial or ethnic origin (45 %), while sex remained the same (10 %). Reports on the ground of religion increased from 6 % to 9 %, of which 91 % are anti-Muslim, while 2 % of the total number of reports made to the ADVs concerned antisemitism.<sup>532</sup> Lastly, for 1 136 reports, more than one discrimination ground was registered. The most reported combinations of grounds include racial/ethnic origin + religion, racial/ethnic origin + sex, racial/ethnic origin + disability, racial/ethnic origin + sexual orientation and sex + sexual orientation.<sup>533</sup>

### b) Equality data collection

In the Netherlands, the NIHR and ADVs do not collect general equality data.

Article 6 of the NIHR Act enables the NIHR to require any information or documents that it reasonably requires to fulfil its tasks and stipulates a general obligation (on 'everyone') to provide such information and documents, subject to limited exceptions (notably in the interest of national safety or where providing such information would breach the requirements of professional secrecy). The information referred to in this provision includes equality data collected by other bodies, such as Statistics Netherlands (*Centraal Bureau voor de Statistiek*) and the Netherlands Institute for Social Research (*Sociaal en Cultureel Planbureau*).

## **7.11 Roma and Travellers**

The NIHR does not treat Roma and Travellers as a specific priority issue. A possible explanation could be that the social situation of Roma and Travellers in the Netherlands may not be so precarious (compared to other European countries) that it demands priority treatment. This is not to say Roma are not on the agenda of the NIHR. In recent years, some successful complaints have been brought to the NIHR, especially in the field of housing. In its opinions, the NIHR has consistently held that the 'extinction policy' pursued by many municipalities constitutes discrimination on grounds of race and violates the GETA. In 2018, the NIHR issued advice to the Minister of the Interior and Kingdom Relations concerning trailer facilities for Travellers.<sup>534</sup> Since the formal departure from the extinction policy, the NIHR has still dealt with discrimination complaints (see above, section 3.2.9).

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<sup>531</sup> Netherlands Government (2025) Discrimination data in 2024 (Discriminatiecijfers in 2024), p. 3, available at: <https://www.rijksoverheid.nl/documenten/rapporten/2025/04/02/rapport-discriminatiecijfers-in-2024>.

<sup>532</sup> Netherlands Government (2025) Discrimination data in 2024 (Discriminatiecijfers in 2024), p. 20, available at: <https://www.rijksoverheid.nl/documenten/rapporten/2025/04/02/rapport-discriminatiecijfers-in-2024>.

<sup>533</sup> Netherlands Government (2025) Discrimination data in 2024 (Discriminatiecijfers in 2024), p. 26, available at: <https://www.rijksoverheid.nl/documenten/rapporten/2025/04/02/rapport-discriminatiecijfers-in-2024>.

<sup>534</sup> NIHR (2018) Advies aan minister van Binnenlandse Zaken en Koninkrijksrelaties inzake Woonwagen- en standplaatsenbeleid, 28 March 2018, available at: <https://mensenrechten.nl/nl/publicatie/5b46fcdf748c2212a54517da>.

## 8 IMPLEMENTATION ISSUES

### 8.1 Dissemination of information, dialogue with NGOs and between social partners

- a) Dissemination of information about legal protection against discrimination (Article 10 Directive 2000/43 and Article 12 Directive 2000/78)

The equality bodies described in section 7 (the ADVs and the NIHR) play a core role in the dissemination of information about legal protection against discrimination. Information can primarily be found on the NIHR website (see also section 7.1 above) and on the collective ADV website ([www.discriminatie.nl](http://www.discriminatie.nl)).

The annual programme (*jaarplan*) of the NIHR mentions several intended activities concerning dissemination of information about legal protection against discrimination. This includes information about the standards set by the Dutch equal treatment legislation. The activities include the publication of 'thematic files' on selected discrimination issues on the NIHR website, presentations and training for legal professionals and publication of news items on the NIHR website and via social media channels, including on Opinions issued by the NIHR in relation to individual complaints.

In 2025, the NIHR launched the 'non-discrimination' strategic programme, which aims to contribute to combating discrimination in all its shapes and forms, and to ensure everyone's equal enjoyment of human rights.<sup>535</sup> It also continued the second strategic programme, 'Livelihood security and human rights', initiated in 2024, and including various plans such as publishing its findings on rights to housing and a reasonable standard of living.<sup>536</sup> Apart from disseminating relevant information through its website, the NIHR provides information through workshops, guest lectures and contributions to symposia.<sup>537</sup> As of 2025, the NIHR has also begun a podcast about its Opinions.<sup>538</sup>

- b) Measures to encourage dialogue with NGOs with a view to promoting the principle of equal treatment (Article 12 Directive 2000/43 and Article 14 Directive 2000/78)

The Ministry of the Interior and Kingdom Relations coordinates all activities in the area of equal treatment/non-discrimination. In this capacity and in cooperation with other ministries, it often draws on the work and activities of NGOs. The NIHR also plays an important role in encouraging dialogue with NGOs with a view to promoting the principle of equal treatment. In the NIHR annual programme for 2025 these activities are mentioned in a rather general manner, e.g. 'maintaining close contacts with various human rights organisations, interest groups other civil society organisations' and 'fulfilling a platform function for parties within its network'.<sup>539</sup>

- c) Measures to promote dialogue between social partners to give effect to the principle of equal treatment within workplace practices, codes of practice and workforce monitoring (Article 11 Directive 2000/43 and Article 13 Directive 2000/78)

The Ministry of Social Affairs and Employment is responsible for activities to enhance compliance with the equal treatment legislation in the workplace. In 2022, it launched a

<sup>535</sup> NIHR (2025), 'Annual plan for 2025' (*Jaarplan 2025*), p. 15, available at <https://publicaties.mensenrechten.nl/publicatie/9a803b69-caf6-4249-82a6-a2d62f5ed5dc>.

<sup>536</sup> NIHR (2025), 'Annual plan for 2025' (*Jaarplan 2025*), p. 16.

<sup>537</sup> NIHR (2025), 'Annual plan for 2025' (*Jaarplan 2025*), p. 10 and 17.

<sup>538</sup> NIHR (2025) podcast, 'The Opinion' (*het oordeel*), available at <https://www.mensenrechten.nl/voorlichting/campagne/podcast-het-oordeel>.

<sup>539</sup> NIHR (2025), 'Annual plan for 2025' (*Jaarplan 2025*), p. 12.

new action plan against employment discrimination, to be implemented in 2022-2025.<sup>540</sup> The action plan includes various measures to inform social partners (employers and employees) about existing legal standards in the field of equal treatment and to stimulate their involvement in the implementation of legal non-discrimination norms. Although these measures are not directly aimed at promoting dialogue *between* social partners, they are likely to enhance such dialogue. In 2025, a progress report mentioned *inter alia* that a common agenda had in fact been developed in dialogue with social partners, that bills had been prepared in that dialogue and that there had been structural exchanges with various stakeholders, with the aim of sharing knowledge and experience.<sup>541</sup>

In the Netherlands, dialogue between social partners is institutionally organised within the Social and Economic Council (*Sociaal-Economische Raad*, SER).<sup>542</sup> The themes addressed by the Council include 'Diversity and inclusion' (*Diversiteit en inclusie*).<sup>543</sup> Amongst other things, the SER provides advice and examples of good practice for employers on how to make their organisations more diverse and inclusive.

#### d) Addressing the situation of Roma and Travellers

No official body or agency exists that is specifically appointed to address Roma and Traveller issues at the national level. However, in 2009-2010 the Government initiated a mechanism for co-ordination, mutual support and exchange of information between municipalities with a substantial number of Roma inhabitants.<sup>544</sup> A set of policy measures was drafted by the Dutch Government in 2011 to foster the social inclusion of Roma and Sinti people, as requested by the European Commission. In addition, the Dutch Government developed a qualitative monitoring instrument to measure the social inclusion of Roma and Sinti in the Netherlands: the Social Inclusion Monitor Roma and Sinti (*Monitor Sociale Inclusie Roma en Sinti*). This instrument includes indicators such as education, employment, healthcare, housing and dialogue with local authorities. This monitor is updated every few years. From the latest report it appears that Roma and Sinti still face much inequality in the Netherlands.<sup>545</sup> On 2 October 2025, Parliament adopted a motion to recognise the Roma, Sinti and Travellers as a national minority.<sup>546</sup>

## 8.2 Measures to ensure compliance with the principle of equal treatment (Article 14 Directive 2000/43, Article 16 Directive 2000/78)

#### a) Compliance of national legislation (Articles 14(a) and 16(a))

To the author's knowledge, there are no laws, regulations or administrative provisions in the Netherlands that are contrary to the principle of equal treatment, although this cannot be said with certainty where (potential) indirect discrimination is concerned.

No specific measures have been taken to implement Article 14(a) Directive 2000/43/EC and Article 16(a) 2000/78/EC. However, any regulations or administrative provisions that

<sup>540</sup> Action Plan against Employment Discrimination 2022-2025 (Actieplan Arbeidsmarktdiscriminatie 2022-2025), available at: <https://open.overheid.nl/documenten/ronl-f19d4284a21931ba972d8cc2458998bfa4f53146/pdf>.

<sup>541</sup> Netherlands Government, 'Second Progress Report Action Plan Discrimination in Employment' (*Tweede Voortgangsrapportage Actieplan Arbeidsmarktdiscriminatie 2022-2025*), available at <https://www.rijksoverheid.nl/documenten/rapporten/2025/03/12/tweede-voortgangsrapportage-actieplan-arbeidsmarktdiscriminatie-2022-2025>.

<sup>542</sup> See the Act on the Social and Economic Council (Wet op de Sociaal-Economische Raad), Staatsblad 1950, K22.

<sup>543</sup> See: Social and Economic Council, 'Diversity and inclusion', <https://www.ser.nl/nl/thema/diversiteit-en-inclusie>, last visited on 30 March 2023.

<sup>544</sup> See Tweede Kamer 2008-2009, 31 700 XVIII, No. 90.

<sup>545</sup> Seidler, Y., Khajavi-Zijlstra, J., van Leeuwen, R., van der Schans, K., van Eerten, J.J. and Sam, N. (2023), p. 106 ff, available at <https://www.rijksoverheid.nl/documenten/rapporten/2024/03/01/monitor-sociale-inclusie-roma-en-sinti-2023>.

<sup>546</sup> Tweede Kamer, 2025-2026, 30 950, No. 447, after postponement, this was adopted on 2 October 2025.

are contrary to the norms in equal treatment legislation can be declared invalid by the courts, because they are incompatible with statutory law.<sup>547</sup> If a provision contrary to the principle of equal treatment is laid down in a statutory act, it can be declared invalid if the courts find that the act is incompatible with the provisions of the equality directives or with non-discrimination provisions in international law (e.g. Article 14 ECHR or Article 26 ICCPR).

b) Compliance of other rules/clauses (Articles 14(b) and 16(b))

Article 9 GETA, Article 13 ADA and Article 11 DDA stipulate that 'agreements' (*bedingen*) that are in contravention of the equal treatment legislation are null and void. This also concerns collective agreements. The author of this report is not aware of any cases where agreements have been challenged on this ground.

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<sup>547</sup> Dutch administrative law does not allow judicial review of legislation, however, the validity of a legislative act can be assessed in the course of administrative proceedings directed against administrative decisions based on that act.

## 9 COORDINATION AT NATIONAL LEVEL

### 9.1 Coordination at the governmental level

The Ministry of the Interior and Kingdom Relations has a coordinating role regarding Dutch anti-discrimination policies because it is responsible for the implementation of the Constitution, which in Article 1 contains a general non-discrimination provision. Additionally, many other ministries are involved in developing legislation and policies to combat discrimination. The division of tasks is organised in the following way:

1. Constitution, General Equal Treatment Act, local anti-discrimination services (ADVs), general coordination of anti-discrimination policies: Ministry of the Interior and Kingdom Relations.
2. Equal treatment in employment: Ministry of Social Affairs and Employment.
3. Age discrimination in employment: Ministry of Social Affairs and Employment.
4. Disability discrimination: Ministry of Health, Wellbeing and Sport.
5. Criminal law provisions regarding discrimination, anti-discrimination policies for the police/public prosecution: Ministry of Justice and Security.
6. Discrimination in education, education for children with a disability, equal opportunities for women and LGBTIQ people: Ministry of Education, Culture and Science.<sup>548</sup>

In recent years, several new institutional arrangements have been introduced, reflecting the increased sense of urgency in Dutch public and political debate regarding the need to eliminate racism and discrimination. These include the previously mentioned NCDR (National Coordinator against Discrimination and Racism), whose primary task is to propose, in cooperation with the various ministries and other stakeholders, a multi-annual action plan against discrimination and racism to be adopted by the Government (see section 9.2 below). Information on the NCDR's activities is available at <http://www.bureauncdr.nl>. An evaluation of the NCDR of October 2024 mentioned a number of possible improvements to the functioning of the NCDR, but found that virtually all stakeholders consider the NCDR to be of added value and support the extension of its mandate.<sup>549</sup> The NCDR was initially instituted for a period of three years, ending in October 2024, when a decision was to be taken on the continuation of this institution. After extending its mandate until 31 December 2025,<sup>550</sup> the Minister of the Interior decided to further extend its mandate until 2029.<sup>551</sup>

The Government also appointed a National Coordinator for Antisemitism (NCA). This position was initially established for one year, but the Government later announced that it would be structurally embedded within the Ministry of Justice and Security.<sup>552</sup> The NCA acts as an independent advisor to the Minister of Justice and Security on the issue of tackling discrimination, threats and intimidation against the Jewish community. A work

<sup>548</sup> Emancipation is not defined, but in recent periods emphasis has been placed on promoting the norms and values of gender equality and LGBTIQ rights, including for women a focus on economic independence, 'women to the top' and a socially safe environment, and for LGBTIQ people social acceptance, in particular in bicultural and religious communities. See Minister of Education, Culture and Science (2017), *Opbrengsten Emancipatiebeleid 2013-2017* (Results of emancipation policy 2013-2017), 20 January 2017, <http://www.vrouwenbelangen.nl/cms/wp-content/uploads/2013/01/kamerbrief-over-opbrengsten-emancipatiebeleid-2013-2017-1.pdf>.

<sup>549</sup> Mack, A., Tijl, M., Veenstra, M. and Scholten, T. (2024), *'Evaluation of the National Coordinator against Discrimination and Racism' (Evaluatie Nationaal Coördinator tegen Discriminatie en Racisme)*, Amsterdam: Regioplan 2024, published as Annex to Tweede Kamer, 2024–2025, 30 950, No. 425.

<sup>550</sup> Tweede Kamer, 2023–2024, 30 950, No. 409.

<sup>551</sup> See Tweede Kamer, 2024–2025, 30 950, No. 455, available at <https://www.rijksoverheid.nl/documenten/kamerstukken/2025/04/25/kamerbrief-over-verlenging-nationaal-coordinator-tegen-discriminatie-en-racisme>.

<sup>552</sup> Tweede Kamer 2022-2023, 30 950, No. 317.

plan for the period 2022-2025 was adopted in October 2022 (see section 9.2 below).<sup>553</sup> Information on the NCA's activities is available at [www.ncab.nl](http://www.ncab.nl).

Lastly, a State Commission against Discrimination and Racism (*Staatscommissie tegen Discriminatie en Racisme*, SCDR) was established in 2022.<sup>554</sup> It is the task of the State Commission to instigate long-term, fundamental research into discrimination and racism and to provide Dutch anti-discrimination policy with scientific insights. Information on the Commission's activities is available on its website: [www.staatscommissietegendiscriminatieenracisme.nl](http://www.staatscommissietegendiscriminatieenracisme.nl). In 2025, the SCDR issued multiple publications including three progress reports. In the last one of these reports, the SCDR calls for a public sector duty, inspired by similar statutory duties in other countries such as the United Kingdom and Ireland.<sup>555</sup> Such a duty would oblige public bodies to (pro)actively take equality into account. The SCDR proposes three possible models for the Netherlands, ranging from a basic model to a comprehensive one. Additionally, it has advised the Government and Parliament to explore a fundamental renewal of Dutch non-discrimination law along three pillars.<sup>556</sup>

## 9.2 National Strategies and action plans

A national action programme against discrimination was in place between 2016 and 2022.<sup>557</sup> This action programme brought together under a single umbrella various existing programmes and plans to combat discrimination and exclusion. Although this is not stated anywhere explicitly, it appears that the National programme against discrimination and racism, presented by the National Coordinator against Discrimination and Racism (see above), was introduced to replace the national action programme in 2022.<sup>558</sup> The first edition of this National programme was published in 2022, followed by an updated second edition in 2023.<sup>559</sup> Like the previous programme, the National programme against discrimination and racism brings together existing and new measures to combat discrimination. The most recent programme includes different chapters focusing on measures to prevent discrimination, measures to support and assist people who experienced discrimination and measures to combat and punish discrimination. The measures cover various fields (including education, the labour market, housing and healthcare) as well as various forms of discrimination relating to different discrimination grounds (e.g. anti-black racism, anti-Muslim discrimination, discrimination against LGBTIQ people, etc). The programme also covers discrimination against Roma (anti-Gypsyism), which is not covered in a separate action plan. The programme does not (expressly) take an intersectional approach.

<sup>553</sup> Published as Annex to Tweede Kamer 2022-2023, 30 950, No. 317.

<sup>554</sup> Tweede Kamer 2021-2022, 30 950, No. 286. This development was previously signalled in the EELN's 2022 flash report 'New institutional arrangements to tackle discrimination', <https://www.equalitylaw.eu/downloads/5685-netherlands-new-institutional-arrangements-to-tackle-discrimination-93-kb>.

<sup>555</sup> SCDR (2025), 'Progress report – Public Sector Equality Duty (GPS). Towards a legal anchoring of a proactive approach to discrimination by the Government' (*Voortgangsrapportage - Gelijkheidsplicht Publieke Sector. Naar wettelijke verankering van een proactieve aanpak van discriminatie door de overheid*), 4 September 2025, at <https://www.staatscommissietegendiscriminatieenracisme.nl/documenten/2025/09/04/voortgangsrapportage---gelijkheidsplicht-publieke-sector>. In follow-up on an earlier letter to Parliament on 20 May 2025 at <https://www.staatscommissietegendiscriminatieenracisme.nl/documenten/2025/5/19/briefadvies---gelijkheidsplicht-publieke-sector>.

<sup>556</sup> SCDR (2025), 'Pre-advisory papers – Together for equality: A vision for the future of Dutch non-discrimination law' (*Preadviezen - Samen voor gelijkheid. Een toekomstvisie op het non-discriminatierecht*), 10 December 2025, at <https://www.staatscommissietegendiscriminatieenracisme.nl/documenten/2025/12/10/toekomstvisie---samen-voor-gelijkheid.-een-toekomstvisie-op-het-non-discriminatierecht>.

<sup>557</sup> Nationaal Actieprogramma tegen discriminatie (National action programme against discrimination), Tweede Kamer 2015-2016, 30 950, No. 84.

<sup>558</sup> Tweede Kamer 2021-2022, 30 950, No. 316.

<sup>559</sup> The 2023 programme is available at <https://www.bureauncdr.nl/nationaal-programma-2023>.

The NCDR has indicated that he considers the National programme to be a 'living instrument' (*groeimodel*).<sup>560</sup> In 2023, 29 new measures or 'reinforcements' (*versterkingen*) were added to the programme. No new measures were added in 2024 and 2025.

The National programme against discrimination and racism is drafted by the NCDR with the input of civil society organisations as well as professional experts and individuals who are directly affected by discrimination. Much of this input is gathered through 'town hall sessions' held throughout the country. In addition, in 2023, the NCDR set up the Civil Society Inspirational Council (*Maatschappelijke Inspiratie Raad*) to channel the input from civil society organisations.<sup>561</sup>

In 2023, the NCDR supplemented the National programme with ten additional recommendations on which no agreement (*bestuurlijke overeenstemming*) could be reached with or within the responsible ministries, but which the NCDR himself considered necessary to effectively counter discrimination and racism in Dutch society.<sup>562</sup> These recommendations included the introduction of public sector equality duties, comparable to those existing in the United Kingdom and Ireland; the creation of a reporting point for students who experience discrimination in the search for an internship; countering discrimination in healthcare, in particular by addressing ethnic and cultural stereotypes in guidelines for medical practitioners and strengthening enforcement of the obligation for employers to reduce the work-related mental pressure on employees by preventing discrimination in the workplace.

In addition to the National programme against discrimination and racism, the following policies and strategies on anti-discrimination were in place in 2025:

- the Work Plan of the National Coordinator on Antisemitism for the period 2022-2025;<sup>563</sup>
- the Strategy for Combating Antisemitism 2024-2030 of the National Coordinator on Antisemitism for the period 2022-2025;<sup>564</sup>
- the Action plan against employment discrimination for the period 2022-2025 (see section 8.1.c above);
- the Agenda against racism and discrimination of the Ministry of Education, Culture and Science (*OCW-agenda tegen racisme en discriminatie*);<sup>565</sup>
- the Memorandum on Emancipation 2022-2025 (*Emancipatienota 2022-2025*) of the Ministry of Education, Culture and Science.<sup>566</sup>

The Work Plan of the National Coordinator on Antisemitism for 2022-2025 consists of three pillars: 'monitoring and follow up'; 'education and prevention' and 'remembering and celebrating'. Projects within these different pillars focus on training police officers and local authorities to recognise and combat antisemitism; an inventory of educational projects and materials, including on Holocaust education; protection of Jewish institutions and buildings against physical violence and the promotion of Jewish cultural heritage. The Work Plan states that the NCA consults 'on a regular basis' with various stakeholders, including representatives of the Jewish community and civil society organisations.<sup>567</sup> At the end of 2024, the Work Plan was complemented with a Strategy for Combating Antisemitism 2024-2030. This Strategy encompasses the same three pillars as the Work Plan, with the

<sup>560</sup> Tweede Kamer 2021-2022, 30 950, No. 316.

<sup>561</sup> NCDR (2023) National Programme against Discrimination and Racism 2023, p. 29. Annex I lists all town hall sessions, expert meetings, roundtables and other meetings and seminars organised by the NCDR to gain input from stakeholders. Almost 50 such meetings were held in 2023.

<sup>562</sup> NCDR (2023) National Programme against Discrimination and Racism 2023, p. 27. The recommendations are listed on pp. 6-10.

<sup>563</sup> Published as Annex to Tweede Kamer 2022-2023, 30 950, No. 317.

<sup>564</sup> Published as Annex to Tweede Kamer 2024-2025, 30 950, 429.

<sup>565</sup> Tweede Kamer 2022-2023, 30 950, No. 318.

<sup>566</sup> Tweede Kamer 2023-2024, 30 420, No. 386.

<sup>567</sup> NCA (2022) Work Plan of the National Coordinator on Antisemitism for 2022-2025, p. 6.

difference that the first pillar was renamed 'protection, monitoring and follow up'. The Strategy was adopted in the context of increased tensions, especially between Muslim and Jewish population groups, following riots in Amsterdam in November 2024, involving supporters of Israeli football club Maccabi Tel Aviv.<sup>568</sup> Earlier in 2024, these tensions already built up around several pro-Palestine demonstrations, including on university campuses, and a protest against the presence of Israeli President Herzog during the opening of the National Holocaust Museum. The newly adopted Strategy aims to enhance existing measures against antisemitism, including through the creation of a Taskforce for Combating Antisemitism and an additional budget of EUR 4.5 million per year.

The new government now has the task of drafting a new national programme. On 12 December 2025, a report on various 'strands of thought' (*denkrichtingen*) was sent to Parliament.<sup>569</sup> The report identifies four priorities: society, public sector, private sector and Bonaire, Sint Eustatius and Saba. For each of these priorities, it has also formulated specific areas for improvement. At the time of writing this report, plans for appointing a programme leader for the National Approach to Muslim Discrimination have been announced.<sup>570</sup>

Regarding discrimination against persons with disabilities, a programme called Unlimited Participation! (*Programma Onbeperkt Meedoen!*) was in place from 2018 until 2021. As of 2022, measures to tackle discrimination against persons with disabilities are included in the National programme against discrimination and racism. Specific measures to address discrimination against persons with disabilities in the fields of employment and education are included in the above-mentioned action plan against employment discrimination for 2022-2025 and in the agenda against racism and discrimination of the Ministry of Education, Culture and Science.

In January 2024, the Dutch Government adopted the National strategy for implementation of the CRPD.<sup>571</sup> The strategy presents a number of objectives to increase general accessibility and make Dutch society more inclusive for persons with a disability by 2040 and is meant to serve as a 'compass' for existing policies and actions. It is noteworthy that the NIHR is critical of the Government's choice to focus on implementation of the CRPD in specific domains, which means that several treaty provisions are not addressed. The NIHR also observed that the CRPD is still insufficiently integrated in the development of legislation and government policies.<sup>572</sup> The National strategy does not take an overall intersectional approach, although in the focus area 'safety and legal protection' legal protection against violence and abuse is mentioned as an objective specifically in relation to people with a disability belonging to specific groups (women, children and LGBTIQ people).

A national plan on LGBTIQ equality was in place between 2019 and 2022 in the form of the 'Action Plan on Safety for LGBTI people' (*Actieplan Veiligheid LHBTI's*).<sup>573</sup> Since then, measures to tackle discrimination against LGBTIQ people have been included in the National programme against discrimination and racism, as well as in the agenda against racism and discrimination and the *Memorandum on Emancipation* of the Ministry of Education, Culture and Science. The Government has announced a new action plan which, contrary to the announcement, has not yet been shared.<sup>574</sup>

<sup>568</sup> See <https://edition.cnn.com/2024/11/15/europe/amsterdam-violence-antisemitism-racism-xenophobia-intl/index.html>.

<sup>569</sup> Tweede Kamer, 2024–2025, 30905, No. 504, available at: <https://open.overheid.nl/details/oep-4577338a311b9cd5d38e6b6e6051257ec5566445>.

<sup>570</sup> See <https://www.bureauondr.nl/actueel/nieuws/2026/03/15/ncdr-komt-met-nationale-aanpak-tegen-moslimdiscriminatie>.

<sup>571</sup> Published as Annex to Tweede Kamer 2023–2024, 24 170, No. 309.

<sup>572</sup> Netherlands Institute for Human Rights (2024), 'Additional report to the UN CRPD' (*Aanvullend rapport aan het VN-Comité inzake de rechten van personen met een handicap*), Utrecht.

<sup>573</sup> Tweede Kamer 2018–2019, 30 420, No. 303.

<sup>574</sup> See letter of the Minister of Education, Culture and Science, <https://open.overheid.nl/documenten/9c640d99-6822-4b00-988f-00326495402d/file>, p. 6. There are action

The NIHR commonly provides input on the implementation of the Government's anti-discrimination policies. Such input is provided, for example, in the form of position papers or input for parliamentary debates.<sup>575</sup>

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plans for other areas too, for example a local plan of the municipality of Leiden, see [https://samenleiden.nl/app/uploads/sites/3/2025/02/B\\_19\\_Bijlage\\_1\\_Actieplan\\_welzijn\\_en\\_veiligheid\\_LHB\\_TIQ\\_personen.pdf](https://samenleiden.nl/app/uploads/sites/3/2025/02/B_19_Bijlage_1_Actieplan_welzijn_en_veiligheid_LHB_TIQ_personen.pdf), or the plan of the Transgender Network, <https://www.transgendernetwerk.nl/wp-content/uploads/2023/07/Actieplan-voor-Grapperhaus.pdf>.

<sup>575</sup> See, e.g. the letter of the NIHR to the Parliamentary Committee on Social Affairs and Employment providing input for a debate on employment discrimination (including the action plan against employment discrimination), available at: <https://publicaties.mensenrechten.nl/publicatie/a46d88a7-08a3-49e8-a43b-a995f8442bca> and the NIHR (2022) 'Position paper for the roundtable conversation of the Parliamentary Committee of the Interior on the National Programme against Discrimination and Racism', held on 14 December 2022, available at: <https://publicaties.mensenrechten.nl/publicatie/bbab664b-3bc2-4e6f-8e8e-bf04ede13e01>.

## 10 CURRENT BEST PRACTICES

- In 2025, the Government further acted on previously reported recommendations to expand the scope of the GETA to cover so-called unilateral Government acts (*eenzijdig overheidshandelen*). The 2024 country report included these recommendations of the NIHR, the National Coordinator against Discrimination and Racism and the State Commission against Discrimination and Racism. At present, such acts are only covered in the field of social protection and in relation to the discrimination ground of racial or ethnic origin. The proposed expansion would make it easier for individuals to obtain legal protection against discrimination resulting from, for example, ethnic profiling and other law enforcement practices, and to combat institutional discrimination. Following up on these recommendations, the Minister of the Interior further investigated the possibility of expanding the GETA.<sup>576</sup> In 2025, the Minister confirmed the added value of such an expansion.<sup>577</sup> Efforts will therefore move focus from *whether* to expand, to *how* to expand the GETA;<sup>578</sup>
- In 2025, the State Commission against Discrimination and Racism produced multiple reports, including one calling for a public sector equality duty. Such a duty would require public bodies to be more proactive in integrating equality into their legislation, policies and acts. It could contribute to combating structural discrimination more effectively. The Minister of the Interior has indicated that he will study the report in depth to determine the legal implications;<sup>579</sup>
- The newly established Directorate for Coordination of Algorithms of the Dutch Data Protection Authority (*Directoraat Coördinatie Algoritmes van de Autoriteit Persoonsgegevens*) issued the report 'AI & Algorithms in the Netherlands' in 2025. In the 2025 report, the Directorate identifies the discrimination risks of algorithms.<sup>580</sup> According to the report, Dutch people are very aware of these risks, but also of human bias. The report points out the importance of carefully identifying the interaction between algorithms and humans;<sup>581</sup>
- The 2023 decision of the Dutch Government to ratify the Optional Protocol to the CRPD and thus accept the right of individual petition<sup>582</sup> has been followed up. The Government has signed the Optional Protocol, and the ratification process is pending at the time of writing this report.

<sup>576</sup> Tweede Kamer, 2023–2024, 30 950, No. 365, p. 6. On 4 March 2025, hence after the cut-off date for this report, the Minister of the Interior announced that she expected to submit a legislative proposal for consultation at the beginning of 2026, see Tweede Kamer, 2024–2025, 30 950, No. 436, p. 4.

<sup>577</sup> Tweede Kamer, 2024–2025, 30 950, No. 455, p. 2.

<sup>578</sup> Tweede Kamer, 2025–2026, 30 950, No. 502, p. 35.

<sup>579</sup> Tweede Kamer, 2025–2026, 30 950, No. 502, p. 32.

<sup>580</sup> Directorate for Coordination of Algorithms (2025), 'Report on AI & Algorithms in the Netherlands' (*Rapportage AI & Algoritmes*), July 2025, at <https://www.autoriteitpersoonsgegevens.nl/en/documents/report-ai-algorithms-netherlands-ran-july-2025>, p. 17 ff.

<sup>581</sup> Directorate for Coordination of Algorithms (2025), p. 17.

<sup>582</sup> Tweede Kamer, 2022–2023, 24 170, No. 284.

## 11 SENSITIVE OR CONTROVERSIAL ISSUES<sup>583</sup>

### 11.1 Potential breaches of the directives at the national level

- The accumulative conditions in the 'harassment' definition may be considered to fall short of the Directives' non-regression clause (see section 2.4 of the report);
- Arguably, the Dutch Government interprets the prohibition of an 'instruction to make a distinction' unduly narrowly, including in relation to the scope of liability for this type of discrimination (see section 2.5 of the report);
- The use of risk profiles which include the criterion of 'non-Dutch origin' could be in contravention of Directive 2000/43/EC (see section 3.2.5 of the report);
- Case law from the Dutch courts on residence requirements for social security show that the courts do not always establish whether the use of such requirements amounts to indirect discrimination on the ground of racial or ethnic origin before proceeding to the question of justification. By failing to establish whether the residence requirements put persons of a racial or ethnic origin at a particular disadvantage, the courts do not give full effect to the Racial Equality Directive (RED) (see section 3.2.5);
- It is doubtful whether the sanctions imposed by Dutch courts in discrimination cases, in particular the high threshold for awarding non-material damages, meet the requirements of being 'effective', 'dissuasive' and 'proportionate' as required by EU law (see Section 6.5 of the report);
- The implementation of Directive 2024/1499 raises the question of whether the current legislation is sufficient to comply with the Directive. Specifically, Article 13(1) of the NIHR Act seems too limited to qualify as the *amicus curiae* role envisaged in Article 10(2) of the Directive.

### 11.2 Other issues of concern

The following key issues are of concern in the Dutch context, regarding the implementation and transposition of the directives.

- Overall, Dutch legislation and policies in the field of anti-discrimination are of a high standard. Since 2020, several developments, including the Black Lives Matter protests and the childcare benefits scandal (see section 3.2.6), have, moreover, fostered awareness of structural and institutional discrimination and led to an increased sense of urgency at the political level regarding the need to fight discrimination. Nevertheless, there is ample evidence that (structural) discrimination continues to be prevalent in the Netherlands. The National Coordinator stated that 2025 had made clear how multifaceted and deeply rooted discrimination remains in Dutch society.<sup>584</sup>
- The following studies and reports published in 2025<sup>585</sup> concerning discrimination are notable. The third progress report of the State Commission against Discrimination and Racism showed *inter alia* that people of Turkish or North African origin experienced discrimination on multiple fronts, and relatively often. Moreover, such

<sup>583</sup> The assessments and views expressed in both sections 11.1 and 11.2 reflect the author's opinion.

<sup>584</sup> Original text: *Daarnaast werd duidelijk hoe veelzijdig en diepgeworteld discriminatie in de Nederlandse samenleving blijft*, National Coordinator against Discrimination and Racism (2025), *De wake-up call van 2025 en de opdracht voor 2026*, 4 December 2025, available at <https://www.bureauncdr.nl/actueel/nieuws/2025/12/3/de-wake-up-call-van-2025-en-de-opdracht-voor-2026>. Cases dealt with by the judiciary and the NIHR are not – primarily – framed as cases of institutional discrimination, even though there are indications of such discrimination underlying these cases, see for example Van Eijken, H., Mink, J. and Senden, L. (2025), 'Why the Law Fails to Address Institutional Discrimination on the Grounds of Religion. From Individual Cases to Institutional Awareness in Legislation, Jurisprudence, and Policy' (*Waarom het recht geen grip krijgt op institutionele discriminatie op grond van godsdienst. Van individuele casuïstiek naar institutioneel bewustzijn in wetgeving, rechtspraak en beleid*), in *Tijdschrift voor Religie en Beleid* 2025 (16) 2, doi: 10.5553/TvRRB/187977842025016002002.

<sup>585</sup> The following is a non-exhaustive overview of studies and reports concerning discrimination on the grounds and in the fields covered by this report.

cumulative discrimination occurred more often in the Netherlands when compared with other European countries.<sup>586</sup> Results of another report showed significant discrimination against Muslims in education, employment, housing and healthcare.<sup>587</sup> A report monitoring the anti-discrimination policy in municipalities signalled multiple points where local policies against discrimination fall short.<sup>588</sup> For instance, many small municipalities have no policy against discrimination in place. Additionally, most measures are aimed at education and employment, but less at online discrimination. One in ten students on the vocational learning track in senior secondary vocational education have experienced discrimination regarding an internship.<sup>589</sup>

- The increased support for political parties on the extreme right/populist far right side of the political spectrum (notably the Partij voor de Vrijheid (PVV), Forum voor Democratie (FvD) and JA21) has not abated, despite their non-participation in the current Government. While the PVV lost seats during the latest general election, the total block for the far-right in Parliament remains consolidated, with 42 seats;
- As already noted by the National Coordinator against Discrimination and Racism (NCDR) in 2023, the support for this and other far-right parties attests to the increasing normalisation of racist and xenophobic attitudes in the Netherlands.<sup>590</sup> The consolidation of the number of seats of far-right parties, as well as politicians' public statements,<sup>591</sup> indicate the persistence of this normalisation;
- An overwhelming majority of people who experience discrimination in the Netherlands do not report it. A study commissioned by the Ministry of the Interior and Kingdom Relations, conducted in 2024–2025,<sup>592</sup> shows two main trends. Firstly, one in four people experience discrimination. Secondly, only 3 % of people experiencing discrimination report it formally, such as to a local anti-discrimination service. This is about 20 % when you include 'informal' reporting, such as to teachers or confidential advisers. Scepticism about the use of reporting is an important factor in not doing so;
- As of yet, there is still no positive duty for employers and intermediary agencies to develop policies for non-discriminatory recruitment and selection procedures. While there has been no progress in the reporting period, a legislative proposal<sup>593</sup> has been resubmitted and is under consideration;
- The 2024 report showing that approximately one out of every ten people in the Netherlands experiences discrimination in their dealings with banks or other financial

<sup>586</sup> State Commission against Discrimination and Racism (2025), 'Progress report – Time and again. Insights into cumulative experiences of discrimination in the Netherlands and Europe' (*Voortgangsrapportage - Keer op keer. Inzichten in gestapelde discriminatie-ervaringen in Nederland en Europa*), 21 March 2025, available at

<https://www.staatscommissietegendiscriminatieenracisme.nl/documenten/2025/3/21/voortgangsrapportage---keer-op-keer-inzichten-in-gestapelde-discriminatie-ervaringen-in-nederland-en-europa>.

<sup>587</sup> Regioplan and Utrecht University European Research Centre on Migration and Ethnic Relations (2025), 'National Study on Muslim Discrimination' (*Nationaal onderzoek moslimdiscriminatie*), Tweede Kamer, 2024–2025, 30 950, No. 450, Annex, p. 65.

<sup>588</sup> Movisie (2025), 'Monitor local policy against discrimination 2025' (*Monitor Lokaal antidiscriminatiebeleid 2025*), available at <https://www.movisie.nl/publicatie/monitor-lokaal-antidiscriminatiebeleid-2025>.

<sup>589</sup> Statistics Netherlands (2025), '1 in 10 students on the vocational learning track in senior secondary vocational education have experienced discrimination with their internship' (*1 op de 10 mbo-bol-studenten ervaart discriminatie bij stage*), 19 December 2025, available at 1 op de 10 mbo-bol-studenten ervaart discriminatie bij stage | CBS.

<sup>590</sup> National Coordinator against Discrimination and Racism (2023), 'National Programme against Discrimination and Racism 2023', available at <https://www.bureauondr.nl/nationaal-programma-2023/documenten/nationale-programmas/2023/12/12/nationaal-programma-2023>, p. 21.

<sup>591</sup> See, for instance, Discrimination Data in 2024 (*Discriminatiecijfers in 2024*), p. 12, available at: <https://www.rijksoverheid.nl/documenten/rapporten/2025/04/02/rapport-discriminatiecijfers-in-2024> which refers to multiple discriminatory statements made by politicians.

<sup>592</sup> Gedragsbureau Duwtje (2025), 'From experiencing to reporting: motivations and barriers in reporting discrimination' (*Van ervaren tot melden: motivaties en barrières bij discriminatie melden*), available at: <https://open.overheid.nl/documenten/58974c12-1630-4bdb-8c92-3cf6d1859446/file-%3E%20eindrapportage-meldingjectisbereidheid-discriminatie.pdf>.

<sup>593</sup> Bill on Supervision of Equal Opportunities in Recruitment and Selection, House of Representatives, Parliamentary Year 2025–2026, 36 908, No. 2 (*Wetsvoorstel toezicht gelijke kansen bij werving en selectie Tweede Kamer, vergaderjaar 2025–2026, 36 908, No. 2*).

institutions,<sup>594</sup> has led to closer monitoring. A follow-up report commissioned by the Ministry of Finance<sup>595</sup> shows that people still experience discrimination, albeit less so than in 2024. Specifically, approximately one in every thirteen people. Additionally, discrimination was mostly experienced because of migration background and age. Both younger people (18–34) and older people (< 65) reported being discriminated against. The discrimination is still mostly experienced in the form of excessive controls during contact with the bank, following from institutional policies to prevent money laundering and financing of terrorism. More generally, the complaints concerned people's experience of the bank's service. The continuing discrimination experienced with banks seems to be reflected in the 52 complaints lodged with the NIHR in 2025.<sup>596</sup> At the same time, the issue continues to be given attention. For instance, the Dutch Bank has issued eight recommendations to payment service providers,<sup>597</sup> and the ING has offered public apologies;

- Online discrimination is increasing. The percentage of people who have experienced online discrimination doubled from 2 % of the population older than 15 in 2022 to 4 % in 2024.<sup>598</sup> More than half of the population (54 %) indicated having seen or read online content which they considered to be discriminatory, insulting or offensive to a person or a group of persons;
- In its most recent evaluation of the Dutch equal treatment legislation, the NIHR expressed its concern about the fragmented nature of this legislation.<sup>599</sup> Although the GETA provides a relatively uniform regime for discrimination on the grounds of (*inter alia*) racial or ethnic origin, religion or belief and sexual orientation, the discrimination grounds disability and age are covered by separate acts. In addition, several other acts and provisions form part of Dutch equal treatment law covering, *inter alia*, discrimination between part-time and full-time workers and workers with a temporary or permanent contract. The NIHR speaks of a 'patchwork' of legal provisions, which renders Dutch equal treatment law less accessible both for people who experience discrimination and for actors who may be liable for discrimination. Furthermore, the 'patchwork' results in legal complexity as the scope of each act cannot always be readily determined and legal exceptions and possibilities for objective justification of differential treatment may differ per ground.
- It is submitted that this problem is somewhat less acute where the discrimination grounds covered by the Racial Equality Directive and Employment Equality Directive are concerned, as the legal frameworks laid down in the GETA, DDA and ADA are largely similar. However, the NIHR observes that integrating the existing acts and provisions into a single equal treatment law would also provide an opportunity to include legal developments, at the Dutch and EU levels, that occurred after the current legislation was adopted. In this respect the NIHR mentions, *inter alia*, a clarification of the concept of 'reasonable accommodation' to take into account the

<sup>594</sup> KPMG (2024), 'Investigation into experiences of discrimination of citizens in relation to services provided by banks and financial institutions' (*Onderzoek naar ervaren discriminatie van burgers bij de dienstverlening door banken en betaalinstellingen*), 19 April 2024, published as an Annex to Tweede Kamer, 2023–2024, 32 013, No. 289.

<sup>595</sup> Ipsos (2025), 'Investigation into experiences of discrimination of citizens in relation to services provided by banks and financial institutions' (*Ervaren discriminatie bij dienstverlening door banken en betaalinstellingen*), July 2025, available at <https://open.overheid.nl/documenten/4533b868-ed29-4b1b-bb7b-6589e41d6340/file>.

<sup>596</sup> NIHR (2025), 'Discrimination monitor 2024: discrimination by banks in focus' (*Discriminatiemonitor 2024: discriminatie door banken in beeld*), 30 January 2025, available at <https://www.mensenrechten.nl/actueel/nieuws/2025/01/29/discriminatiemonitor-2024-discriminatie-door-banken-in-beeld>.

<sup>597</sup> Dutch Bank (2025), 'Proactively Combating Discrimination: Managing the Risk of Discrimination in Compliance with the Wwft and Sw' (*Discriminatie Bewust Tegengaan. De beheersing van het risico op discriminatie bij de naleving van de Wwft en de Sw*), at <https://www.dnb.nl/nieuws-voor-de-sector/toezicht-2025/q3/vervolgonderzoek-aanpak-discriminatie-banken/>, 29 September 2025. 17.

<sup>598</sup> Arends, J., Derksen, E. and Morren, M. (2025), 'Online Security and Criminality 2024' (*Online Veiligheid en Criminaliteit 2024*), 15 April 2025, available at <https://www.cbs.nl/nl-nl/longread/rapportages/2025/online-veiligheid-en-criminaliteit-2024>.

<sup>599</sup> Netherlands Institute for Human Rights (2023), 'Evaluation of the equal treatment legislation 2017–2022' (*Evaluatie gelijkebehandelingswetgeving 2017–2022*), Utrecht.

ECJ's judgment in *HR Rail SA* (C-485/20), a clarification of the terms 'employment' and 'profession' and codification of NIHR jurisprudence regarding the duty to prevent discrimination at the workplace and the duty to effectively treat complaints of discrimination;<sup>600</sup>

- In the same evaluation, the NIHR points out that it is, in principle, well-equipped to address processes of institutional discrimination, including algorithmic discrimination, because its investigative competences extend beyond individual cases (see further section 7.6). The added value of these competences was clearly illustrated in relation to the childcare benefits scandal (see section 3.2.5), where a statistical report prepared by the NIHR itself was used to establish a presumption of indirect discrimination in several individual cases. However, the Institute indicates that it currently lacks the capacity to conduct such investigations on a regular basis;<sup>601</sup>
- The Netherlands does not have a legal or policy framework for the collection of (disaggregated) equality data, which makes it more difficult to monitor the prevalence of discrimination and formulate adequate anti-discrimination policies.

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<sup>600</sup> Netherlands Institute for Human Rights (2023), 'Evaluation of the equal treatment legislation 2017–2022' (*Evaluatie gelijkebehandelingswetgeving 2017-2022*), Utrecht, pp. 5-6.

<sup>601</sup> Netherlands Institute for Human Rights (2023), 'Evaluation of the equal treatment legislation 2017–2022' (*Evaluatie gelijkebehandelingswetgeving 2017-2022*), Utrecht, pp. 10-11.

## 12 LATEST DEVELOPMENTS IN 2025

### 12.1 Legislative amendments

- On 7 October 2025, the Senate agreed to the adoption of the Act on Protection against Discrimination against Bonaire, Sint Eustatius and Saba.<sup>602</sup> This Act allows inhabitants of these parts of the Kingdom to rely on the equal treatment law when they experience discrimination, as of 1 January 2026;
- The Dutch measures emanating from the Act on Accessibility Requirements for Products and Services (*Implementatiewet toegankelijkheidsvoorschriften producten en diensten*), implementing Directive 2019/882, entered into force on 28 June 2025;
- A motion presented in 2022 requested that the Government consider drafting a bill adding 'educational level' as an explicit ground of discrimination to Article 1 of the GETA. On request, the NIHR has advised on this request. It advised against adding such a ground but did advise exploring the possibility for a separate act. The Minister of Education, Science and Culture acknowledged the importance of preventing discrimination on this ground but did not see the added value of a separate act, in light of the Constitution and international treaties.<sup>603</sup>

### 12.2. Case law

#### COURT CASES<sup>604</sup>

##### *Racial or ethnic origin*

**Relevant discrimination ground(s):** race or ethnic origin

**Name of the court:** Supreme Court

**Date of decision:** 24 April 2025

**Name of the parties:** N/A

**Reference number:** N/A

**ECLI reference:** ECLI:NL:HR:2025:518

**Link:** <https://deeplink.rechtspraak.nl/uitspraak?id=ECLI:NL:HR:2025:518>

**Brief summary:** The appellant is a lawyer practising in Bonaire who was denied admission to the Dutch bar, as a lawyer who is qualified to appear before the Supreme Court (a cassation lawyer). The appellant argues that the distinction between lawyers in Bonaire and those in the European part of the Netherlands for admission to the Supreme Court is unlawful. The Supreme Court acknowledges the unequal treatment, since lawyers in Bonaire, unlike their counterparts in the European Netherlands, cannot readily become cassation lawyers in civil cases. However, the Supreme Court rules that this unequal treatment is, for the time being, objectively and reasonably justified. The justification stems from the 'fundamentally different administration of justice', including fundamental differences in the organisation of the legal profession and the judiciary, as well as societal distinctions between the Caribbean Netherlands and the European Netherlands. Specifically, the European-Dutch system requires multi-year professional training, ongoing education, and mandatory membership of a public-law bar association with regulatory powers; things which are not available in the Caribbean Netherlands. The Supreme Court rejected the appeal.

**Relevant discrimination ground(s):** race or ethnic origin (albeit not explicitly invoked)

**Name of the court:** District Court of Overijssel

**Date of decision:** ECLI:NL:RBOVE:2025:7275

**Name of the parties:** N/A

**Reference number:** N/A

**ECLI reference:** ECLI:NL:HR:2025:518

<sup>602</sup> Staatsblad 2025, 389.

<sup>603</sup> Tweede Kamer, 2025–2026, 28 481, No. 24, p. 4.

<sup>604</sup> The judgments included are final, unless stated otherwise.

**Link:** <https://deeplink.rechtspraak.nl/uitspraak?id=ECLI:NL:RBOVE:2025:7275>

**Brief summary:** The applicant is a landlord who lodged a claim against the respondent, who is a tenant of a caravan pitch. The applicant seeks the removal of a second caravan, which is used for informal caregiving (*mantelzorgwoning*), and an outbuilding placed on the pitch by the respondent, as these structures violate local planning regulations and the tenancy agreement. The municipality has imposed a penalty on the applicant if the structures are not removed.

The respondent argues that she, as a caravan resident, is being discriminated against, asserting that informal care dwellings are permitted with ground-bound homes. However, the district court rejected this claim of discrimination. The court ruled that it could only assess the discrimination claim within the legal relationship between the applicant and the respondent. It found no evidence that the applicant, as a landlord, differentiated between rental homes and mobile home pitches regarding informal care dwellings. For both types of properties, tenants must act as good tenants and seek the landlord's permission for such structures. The court concluded that the respondent failed to substantiate her claim that the applicant acted in breach of the prohibition of discrimination. Consequently, the court ordered the respondent to remove the structures.

### *Religion*

**Relevant discrimination ground(s):** Religion

**Name of the court:** District Court of Gelderland

**Date of decision:** 2 January 2025

**Name of the parties:**

**Reference number:** N/A

**ECLI reference:** ECLI:NL:RBGEL:2025:212

**Link:** <https://deeplink.rechtspraak.nl/uitspraak?id=ECLI:NL:RBGEL:2025:212>

**Brief summary:** The applicant is an institution for disability care with a reformist Christian foundation that requested that the court dissolve the employment contract of a support worker. The support worker, the respondent in the procedure, has gradually changed his beliefs regarding the Christian view on baptism, rejecting infant baptism in favour of adult baptism, and thus could no longer fully endorse parts of the applicant's foundational creeds. The applicant argued that this prevented the respondent from fully performing his duties without conscientious objection and has led to a permanently disrupted employment relationship.

The court primarily focused on the discrimination aspect under the GETA. While the GETA generally prohibits discrimination on religion or belief in employment termination, Article 5(2) provides an exception for institutions with a religious or philosophical foundation. Such institutions may make distinctions based on religion or belief, if these characteristics constitute a genuine, legitimate and justified occupational requirement due to the nature of the specific professional activity or its context, given the institution's foundation. The distinction must also be proportionate to the required good faith and loyalty to the institution's foundation.

The court found that the applicant was indisputably a religious institution where faith is deeply intertwined with its identity and daily work. It has successfully demonstrated that fully endorsing and embodying its foundation, including its specific views on baptism, is a genuine occupational requirement for its permanent employees. The court accepted the applicant's explanation for allowing temporary staff with different beliefs (necessity of care provision) and found no evidence of exceptions for permanent staff. Since the respondent could no longer fully endorse the foundation, the court concluded that the employment relationship was permanently disrupted and dissolved the contract, awarding severance pay of EUR 10 000.00 (gross).

**Relevant discrimination ground(s):** Religion

**Name of the court:** District Court of Noord-Holland

**Date of decision:** 26 September 2025

**Name of the parties:** N/A

**Reference number:** N/A

**ECLI reference:** ECLI:NL:RBNHO:2025:11085

**Link:** <https://deeplink.rechtspraak.nl/uitspraak?id=ECLI:NL:RBNHO:2025:11085>

**Brief summary:** A service technician had been dismissed during his probationary period by a fire safety body (Brand Preventie Groep B.V., BPG). The court found that this dismissal constituted direct discrimination based on religion. BPG's termination letter explicitly cited the employee's desire to pray once or twice daily in a separate space, and his refusal to work near pigs due to his faith. The court ruled that these reasons, directly linked to his religious expression, violated the prohibition on discrimination under the GETA and Article 7:681(1)(c) of the Civil Code. It is evident from both parties' arguments that potential accommodations had also been discussed. On the employer's part, this was the option for the employee to pray in his van; it is uncontested that this option is not reasonable because the employee needs to be able to pray on the floor. The employee had offered to pray in the parking lot, which the employer did not deem reasonable because of its neutrality. For the direct discrimination assessment, these arguments were dismissed because they were irrelevant to the question of whether a legal exception was applicable. For the indirect discrimination assessment, the employer's arguments of a 'mismatch' or neutrality policy were rejected as insufficient to rebut the presumption of discrimination or some form of objective justification when the respondent – erroneously – intended to argue this. The court awarded the employee fixed damages of EUR 3898.67 (gross, increased by statutory interest), transition compensation of EUR 81.60 (gross, plus statutory interest), and equitable remuneration of EUR 15 000 (gross, plus statutory interest).

**Relevant discrimination ground(s):** Religion

**Name of the court:** District Court of The Hague

**Date of decision:** 28 October 2025

**Name of the parties:** N/A

**Reference number:** N/A

**ECLI reference:** ECLI:NL:RBDHA:2025:19487

**Link:** <https://deeplink.rechtspraak.nl/uitspraak?id=ECLI:NL:RBDHA:2025:19487>

**Brief summary:** An IT service desk employee was dismissed during the probationary period after refusing to shake a female colleague's hand due to his religious beliefs. The court found the employer had failed to rebut the presumption that the dismissal was linked to this refusal. The requirement to shake hands, especially for a largely remote role, lacks objective justification. The court awarded equitable remuneration of EUR 34 000 (gross, plus statutory interest) for the unjust and discriminatory dismissal.

### *Disability*

**Relevant discrimination ground(s):** Disability

**Name of the court:** Court of Appeal of 's-Arnhem/Leeuwarden

**Date of decision:** 27 January 2025

**Name of the parties:** N/A

**Reference number:** N/A

**ECLI reference:** ECLI:NL:GHARL:2025:363

**Link:** <https://deeplink.rechtspraak.nl/uitspraak?id=ECLI:NL:GHARL:2025:363>

**Brief summary:** A healthcare psychologist appealed the dissolution of her employment contract by the district court and the denial of equitable remuneration and immaterial damages. The appellant, who works for Indigo Midden-Nederland B.V., had suffered physical symptoms. Additionally, she had disagreements with her employer about being provided work aids, specifically an EMDR-kit (Eye Movement Desensitisation and Reprocessing kit) to help her cope with her symptoms), and her caseload. After two years of illness, Indigo sought to dissolve the contract due to a disrupted employment relationship. The appellant argued that Indigo had failed in its reintegration obligations,

had neglected working conditions, and had engaged in discrimination based on disability or chronic illness, leading to her illness and the termination.

The Court of Appeal primarily upheld the district court's decision, finding that the employment contract was rightly dissolved due to a seriously and permanently disrupted employment relationship. This pre-dated the EMDR-kit discussions and involved more than just the work aids. No equitable remuneration was due on grounds of wrongful dissolution. Regarding the discrimination argument, the Court of Appeal considered that the requested EMDR-kit was not a necessary accommodation, given the availability of online EMDRs as a suitable alternative. This consideration differs from an earlier finding of the NIHR regarding this appellant, namely that Indigo had made a prohibited distinction based on chronic illness by not providing an EMDR-kit. The Court of Appeal dismissed the appeal.

**Relevant discrimination ground(s):** Disability

**Name of the court:** Court of Appeal of 's-Hertogenbosch

**Date of decision:** 27 February 2025

**Name of the parties:** N/A

**Reference number:** N/A

**ECLI reference:** ECLI:NL:GHARL:2025:363

**Link:** <https://deeplink.rechtspraak.nl/uitspraak?id=ECLI:NL:GHSHE:2025:564>

**Brief summary:** The Court of Appeal upheld the district court's decision, denying the appellant's request for reinstatement of his employment contract with the respondent, the Tax and Customs Administration. The appellant, an employee with a chronic eye condition, argued that the termination due to long-term disability constituted discrimination under the DDA.

The Court of Appeal acknowledged the appellant's condition as a disability but found that the required adaptations to his role as an objection handler (*bezwaarhandelaar*) were disproportionate and could not reasonably be demanded from the employer. These adaptations included adjustments to the tasks, the number of working hours and breaks in between, and aids/adaptations such as a magnifier, magnification software, optimal lighting, and speech functions. The Court concluded that the appellant could not perform the essential tasks of the adapted function without placing an unreasonable burden on the respondent, thus rejecting the claim of discrimination and the request for equitable compensation.

**Relevant discrimination ground(s):** Disability

**Name of the court:** Court of Appeal of 's-Hertogenbosch

**Date of decision:** 20 March 2025

**Name of the parties:** N/A

**Reference number:** N/A

**ECLI reference:** ECLI:NL:GHSHE:2025:747

**Link:** <https://deeplink.rechtspraak.nl/uitspraak?id=ECLI:NL:GHDHA:2024:2373>

**Brief summary:** This case concerns the dissolution of an employment contract and alleged discrimination. The appellant, who is diagnosed with ADHD and likely PTSD, challenged the district court judgment that dissolved his employment contract. The district court previously rejected his claim of discrimination under the DDA on the grounds of disability or chronic illness.

The Court of Appeal qualified the appellant's ADHD and PTSD as a disability or chronic illness as defined by the DDA. The Court of Appeal emphasised that the respondent, a municipality, failed to conduct proper research into the nature of the appellant's condition and its impact on his work, and did not implement adequate accommodations. The Court of Appeal concluded that the respondent's request to dissolve the employment contract was based on indirect discrimination, which is prohibited when terminating an employment relationship. Consequently, the Court of Appeal overturned the district court's decision and reinstated the employment contract retroactively as of 1 March 2024. Furthermore, the Court of Appeal ordered the respondent to pay the salary, including benefits (gross, plus a 10 % statutory increment and statutory interest).

**Relevant discrimination ground(s):** Disability

**Name of the court:** Court of Appeal of Arnhem/Leeuwarden

**Date of decision:** 3 April 2025

**Name of the parties:** N/A

**Reference number:** N/A

**ECLI reference:** ECLI:NL:GHARL:2025:1987

**Link:** <https://deeplink.rechtspraak.nl/uitspraak?id=ECLI:NL:GHARL:2025:1987>

**Brief summary:** The Court of Appeal examined the discriminatory nature of a study cost repayment clause. The respondent, Staalman Verhuizingen B.V., was seeking repayment from the appellant for driving licence training. The employment agreement stipulated full repayment if the appellant left employment within three years or reached 104 weeks of sick leave within that period.

The core legal question was whether this clause constituted unlawful discrimination. Both the district court and the Court of Appeal confirmed its discriminatory character. Generally, the court found that such a provision created an unlawful distinction between chronically ill and healthy employees, contravening Article 1(b) of the DDA. Article 4(e) of this Act specifically prohibits such distinctions in employment conditions.

This general finding directly applies to the appellant. The respondent's attempt to enforce the repayment clause against the appellant was therefore unlawful because it was discriminatory. Consequently, the Court of Appeal upheld the rejection of the respondent's claim against the appellant to repay the study costs.

**Relevant discrimination ground(s):** Disability

**Name of the court:** Court of Appeal of The Hague

**Date of decision:** 15 April 2025

**Name of the parties:** N/A

**Reference number:** N/A

**ECLI reference:** ECLI:NL:GHSHE:2025:747

**Link:** <https://deeplink.rechtspraak.nl/uitspraak?id=ECLI:NL:GHSHE:2025:747>

**Brief summary:** This case concerned the question of whether a chronically ill job applicant must disclose their medical situation during a job application process. The state of the Netherlands, as the appellant, sought to terminate the employment contract of the respondent, a civil servant, alleging that he had failed to disclose his chronic psychological complaints and prior unsuitability for work during his application for a security and services position at a district court.

The district court rejected the appellant's request for termination. The Court of Appeal upheld this in ruling that the respondent was not obligated to disclose his chronic medical condition or prior unsuitability for work during the application process because his medical situation did not prevent him from fulfilling the specific job requirements.

The Court of Appeal emphasised that a different interpretation would effectively make it impossible for chronically ill individuals to secure new employment. It explicitly stated that such a requirement would contravene the protection afforded to chronically ill employees by the DDA and the underlying European Directive 2000/78/EC. Additionally, it found no causal link between the respondent's chronic illness and his ability to perform the specific functions of the new role. Therefore, the Court of Appeal concluded that the respondent did not act culpably, and the employment contract could not be terminated.

**Relevant discrimination ground(s):** Disability

**Name of the court:** Court of Appeal of The Hague

**Date of decision:** 15 April 2025

**Name of the parties:** N/A

**Reference number:** N/A

**ECLI reference:** ECLI:NL:GHDHA:2025:654

**Link:** <https://deeplink.rechtspraak.nl/uitspraak?id=ECLI:NL:GHDHA:2025:654>

**Brief summary:** The appellant, an employee, sought equitable remuneration from the respondent, the Foundation for Mental Healthcare, Western North Brabant (Stichting Geestelijke Gezondheidszorg Westelijk Noord-Brabant GGZ), following the termination of

his employment contract after two years of incapacity for work. The appellant contended that the termination was linked to discriminatory treatment and seriously culpable conduct by the respondent.

The district court previously rejected the appellant's claim for equitable remuneration. On appeal, the appellant argued that the respondent had made an unlawful distinction based on disability or chronic illness, citing a prior ruling by the NIHR which found discrimination in the initial offer, the extension of the employment contract and general treatment. While this ruling concerned the same case, the passage of time entails new facts. The Court of Appeal upheld the district court's decision. It acknowledged the NIHR's findings regarding earlier discriminatory acts but concluded there was no causal link between these acts and the termination of the employment contract (which took place after the NIHR opinion). The termination was based on the statutory ground of two years of incapacity for work for which the respondent had obtained a dismissal permit from the Employee Insurance Agency (UWV). The Court of Appeal also found no evidence of seriously culpable conduct by the respondent that would warrant equitable remuneration. Consequently, the appeal was dismissed.

**Relevant discrimination ground(s):** Disability

**Name of the court:** District Court of Overijssel

**Date of decision:** 2 December 2025

**Name of the parties:** N/A

**Reference number:** N/A

**ECLI reference:** ECLI:NL:RBOVE:2025:7271

**Link:** <https://deeplink.rechtspraak.nl/uitspraak?id=ECLI:NL:RBOVE:2025:7271>

**Brief summary:** The applicant had lodged a claim against his former employer, Securitas Security (Securitas Beveiliging B.V.), concerning the termination of his employment contract during the probationary period. The applicant alleged that his chronic illness had played a role in the respondent's decision to terminate his contract, constituting unlawful discrimination under the DDA.

In an interlocutory order, the court found sufficient grounds to suspect that the applicant's chronic illness had influenced the termination decision. Consequently, the burden of proof shifted to the respondent to demonstrate that it had not acted in contravention of the DDA. Securitas argued that the termination was due to the claimant's failure to complete security clearance and his concealment of this fact, rather than his illness.

However, the district court ruled that Securitas had failed to prove that the applicant's chronic illness had played no role in terminating his contract. The court noted that the illness was discussed at the outset of the termination meeting, and Securitas did not sufficiently substantiate its alternative reasons for dismissal. Therefore, the court concluded that Securitas had made an unlawful distinction based on disability or chronic illness, in violation of Article 10 of the DDA. The court awarded the applicant equitable remuneration of EUR 7 500 (gross, plus statutory interest).

**Relevant discrimination ground(s):** Disability

**Name of the court:** District Court of Midden-Nederland

**Date of decision:** 31 December 2025

**Name of the parties:** N/A

**Reference number:** N/A

**ECLI reference:** ECLI:NL:GHARL:2025:7624

**Link:** <https://deeplink.rechtspraak.nl/uitspraak?id=ECLI:NL:GHARL:2025:7624>

**Brief summary:** An employee appealed the judgment of the district court of Midden-Nederland. The central question was whether the appellant was entitled to a termination payment under a Social Plan from his former employer, TN Europe B.V. The Social Plan was established following the closure of a factory unit and provided for a termination payment, but explicitly excluded employees whose contracts are terminated after two years of incapacity for work.

The appellant contended that the respondent had made an unlawful distinction based on disability or chronic illness, contrary to the DDA. He argued that if he had not become

permanently incapacitated due to a brain haemorrhage, his employment would have been terminated due to the factory closure, entitling him to the Social Plan payment, similar to his able-bodied colleagues. He asserts that his exclusion from this payment was solely due to his disability.

However, the Court of Appeal rejected the appellant's claim of discrimination. It ruled that the Social Plan's objective was to assist redundant employees in transitioning to new employment and to provide financial compensation for this transition. An employee who is fully and permanently incapacitated for work, such as the appellant, is not in a comparable situation to an able-bodied employee in light of this specific objective. Consequently, the Court of Appeal found that the appellant did not fall within the Social Plan's target group, which makes the cases incomparable. Therefore, the relevant provision in the Social Plan is not inherently discriminatory. The appeal on this ground was dismissed.

**Relevant discrimination ground(s):** Disability

**Name of the court:** District Court of Midden-Nederland

**Date of decision:** 31 December 2025

**Name of the parties:** N/A

**Reference number:** N/A

**ECLI reference:** ECLI:NL:RBMNE:2025:7351

**Link:** <https://deeplink.rechtspraak.nl/uitspraak?id=ECLI:NL:RBMNE:2025:7351>

**Brief summary:** The district court considered the appellants' claim of indirect discrimination. The appellants were former employees of a company in which the respondent was the sole shareholder. They contended that the respondent indirectly discriminated against them by withholding a bonus. This bonus was exclusively granted to employees with an active employment contract on a specific date, thereby excluding the appellants who had a dormant employment contract due to long-term incapacity for work. The appellants based their claim on Article 4 of the DDA. The district court rejected their claim in ruling that the respondent's actions did not fall within the scope of the DDA. According to the court, the respondent, as a former shareholder, was not the employer and did not exercise authority over the appellants. Furthermore, the court considered the bonus to be a gift, not an employment condition within the meaning of the Act. The court also noted that the NIHR had previously declared itself incompetent to rule on appellants' earlier complaint against the respondent for the same reasons. Consequently, the district court dismissed the appellants' claims.

### *Sexual orientation*

**Relevant discrimination ground(s):** Sexual orientation

**Name of the court:** District Court of The Hague

**Date of decision:** 13 August 2025

**Name of the parties:** N/A

**Reference number:** N/A

**ECLI reference:** ECLI:NL:RBDHA:2025:13667

**Link:** <https://deeplink.rechtspraak.nl/uitspraak?id=ECLI:NL:RBDHA:2025:13667>

**Brief summary:** The applicant lodged a claim against the respondent, Shell Pension Fund Foundation (Stichting Shell Pensioenfonds SSPF). He was the surviving partner of a deceased participant and had been denied a pension as they were not married, a requirement under the applicable pension regulations (*Reglement III*). The applicant argued that this constituted indirect discrimination based on sexual orientation, as he could not marry his partner in 1993, and also indirect discrimination between men and women, contrary to GETA.

The district court rejected these arguments. It ruled that the exclusion of unmarried individuals from a partner's pension did not constitute unlawful direct discrimination. The court emphasised that Article 5(6) of the GETA explicitly permits distinctions based on marital status in pension provisions, specifically for survivors' pensions. This statutory exception means that a pension scheme is not obligated to provide survivors' pensions for unmarried individuals. The court further found that this exception also precluded a review

for indirect discrimination based on sexual orientation, as the distinction is rooted in marital status, which the GETA allows. The claim of indirect discrimination between men and women is also dismissed. Consequently, the district court dismissed all claims of discrimination.

#### *Age*

**Relevant discrimination ground(s):** Age

**Name of the court:** District Court of Limburg

**Date of decision:** 13 August 2025

**Name of the parties:** N/A

**Reference number:** N/A

**ECLI reference:** ECLI:NL:RBLIM:2025:7951

**Link:** <https://deeplink.rechtspraak.nl/uitspraak?id=ECLI:NL:RBLIM:2025:7951>

**Brief summary:** The applicants, two former VDL Nedcar employees, challenged their severance payments under a social plan, alleging age discrimination. Facing production cessation, VDL Nedcar's social plan included an 'older workers' scheme' for employees within four years of their AOW (state pension) age. This scheme calculated severance to supplement their income to 100 % of their last salary until AOW age, factoring in unemployment benefits. The applicants argued that this would result in lower severance compared to younger colleagues, constituting unlawful age discrimination.

The district court acknowledged that the scheme created an age-based distinction, as only older employees may see a reduction in severance if the standard calculation yields more. However, the court assessed whether this distinction was objectively justified under the ADA.

The court found the age distinction to be objectively justified. Its legitimate aim was to protect older employees, who are often more vulnerable in the labour market, from income loss until their pension age. The scheme ensures that these employees would maintain 100 % of their income. If the standard calculations used for younger colleagues were to be applied to older employees, they would have earned significantly more than if they had remained employed. There is no reasonable argument for this, and therefore the older workers' scheme is justified. Concluding that the scheme is appropriate and necessary, the court rejected the employees' claims, finding no prohibited age discrimination.

#### NIHR OPINIONS<sup>605</sup>

##### *Racial or ethnic origin*

**Relevant discrimination ground(s):** Racial or ethnic origin

**Name of the court:** Netherlands Institute for Human Rights

**Date of decision:** 3 July 2025

**Name of the parties:** N/A

**Reference number:** NIHR Opinion 2025-62

**ECLI reference:** N/A

**Link:** <https://oordelen.mensenrechten.nl/oordeel/2025-62>

**Brief summary:** The Netherlands Institute for Human Rights (NIHR) found that the Benefits Office (*Dienst Toeslagen*) had engaged in direct discrimination on the ground of race against the applicant. Discrimination based on race, including national origin or skin colour, is prohibited in social protection, which encompasses government benefits (*toeslagen*). The NIHR determined that the applicant, of Turkish origin, had been treated differently to others in comparable situations. It referred to a report in the Benefits Office file that repeatedly used Turkish origin as a possible fraud indicator for childcare benefits

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<sup>605</sup> Pursuant to Article 11 (2) of the NIHR Act, the NIHR can issue recommendations. In most Opinions, the NIHR does not use that competence and, when it is not explicitly stated in this overview, no recommendations have been issued. Additionally, the Opinions cannot be appealed, and they are therefore final.

(*kinderopvangtoeslag*). Furthermore, the Benefits Office incorrectly linked a 'residence status' (*verblijfsstatus*) code to the applicant's file, despite her Dutch nationality, which, coupled with the report, corroborated the presumption that the applicant's origin played a role in the checks and corrections applied to her case. The Benefits Office had failed to rebut this presumption and had directly discriminated against the applicant.

**Relevant discrimination ground(s):** Racial or ethnic origin (and nationality)

**Name of the court:** Netherlands Institute for Human Rights

**Date of decision:** 18 August 2025

**Name of the parties:** N/A

**Reference number:** NIHR Opinions 2025-74 and 2025-75

**ECLI reference:** N/A

**Link:** <https://oordelen.mensenrechten.nl/oordeel/2025-75/> and <https://oordelen.mensenrechten.nl/oordeel/2025-75><sup>606</sup>

**Brief summary:** Two cases involving seafarers working on Dutch-flagged vessels who earned significantly less (around 50 % less, potentially more with overtime) than their European colleagues for comparable work. The shipping companies invoked the 'country of residence principle' (*woonlandbeginsel*) in collective agreements, paying seafarers from countries like the Philippines or Indonesia according to their home country's price level.

The NIHR found that this principle constituted discrimination based on nationality and, for the Filipino seafarer, also based on race. It stated that the country of residence was not a justification for structurally lower wages for equivalent work. In the Indonesian seafarer's case, his lower wage was directly linked to his Indonesian nationality, which the NIHR deemed direct discrimination. For the Filipino seafarer, while the country of residence criterion appeared neutral, it disproportionately disadvantaged individuals from countries from Southeast Asia. The College ruled this to be indirect discrimination, as the shipping companies failed to convincingly justify this wage structure as necessary for competitiveness or demonstrate efforts to find alternative solutions.

This ruling reconsidered a 1997 ETC decision which had allowed such wage differences. The NIHR concluded that circumstances had changed, with increased awareness of inequality, and the exception for customary international law was inapplicable (due to the absence of *opinion juris*). The NIHR did not consider the indirect discrimination to be objectively justified.

**Relevant discrimination ground(s):** Racial or ethnic origin

**Name of the court:** Netherlands Institute for Human Rights

**Date of decision:** 18 August 2025

**Name of the parties:** N/A

**Reference number:** NIHR Opinion 2025-97

**ECLI reference:** N/A

**Link:** <https://oordelen.mensenrechten.nl/oordeel/2025-97>

**Brief summary:** The applicant, a student of Kurdish origin, arranged a lunch meeting at the respondent's institution, The Hague University of Applied Sciences, to discuss her experiences in the Netherlands. The respondent's event manager cancelled the event, citing concerns about the 'sensitivity of Kurdistan'. The applicant alleged direct discrimination based on race. The respondent denied discrimination, claiming the event had been postponed and her origin was irrelevant. The NIHR determined that the cancellation, linked to the applicant's origin despite the event's non-political nature, constituted direct discrimination on grounds of race. The NIHR held that safety concerns, while valid, do not legally justify discrimination under the GETA. The respondent failed to rebut the presumption of discrimination.

In this case, the NIHR also recommended that the respondent establish written policies – such as guidelines or a code of conduct – regarding the organisation of meetings and events in relation to safety at the respondent's institution. In doing so, no assumptions

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<sup>606</sup> Both opinions are exceptionally extensive. For the purposes of this report, the brief summary evidently does not mention all nuances of these opinions. Reference can be made to the English translation, which is available through the NIHR database of opinions.

should be made based on the name, origin or background of a speaker. Decisions about whether or not to hold a meeting or event must be clearly and entirely based on content and context.

### *Religion*

**Relevant discrimination ground(s):** Religion

**Name of the court:** Netherlands Institute for Human Rights

**Date of decision:** 15 May 2025

**Name of the parties:** N/A

**Reference number:** NIHR Opinion 2025-45

**ECLI reference:** N/A

**Link:** <https://oordelen.mensenrechten.nl/oordeel/2025-45>

**Brief summary:** The applicant, an anti-discrimination service (in Dutch: ADV, see section 7.1) named Antidiscriminatievoorziening Vizierlodged a complaint against the respondent, Hotel Reehorst B.V., regarding alleged discrimination (solely) on grounds of religion. The applicant did so on behalf of three women. The NIHR determined that wearing a headscarf for religious reasons falls under the concept of religion. The respondent discriminated by not hiring, or by terminating the employment of, individuals who wished to wear a headscarf during work hours. Furthermore, the NIHR found that the respondent engaged in discriminatory treatment in the workplace by repeatedly questioning employees about their headscarves, implying that it was preferable not to wear one. Given the power dynamic, these questions are deemed negative and coercive. The NIHR concluded that the respondent had made unlawful direct discrimination based on religion.

**Relevant discrimination ground(s):** Race, religion and political conviction

**Name of the court:** Netherlands Institute for Human Rights

**Date of decision:** 15 May 2025

**Name of the parties:** N/A

**Reference number:** NIHR Opinion 2025-110

**ECLI reference:** N/A

**Link:** <https://oordelen.mensenrechten.nl/oordeel/2025-110>

**Brief summary:** The applicant, a Jewish employee of the Dutch Council for Refugees (*Stichting VluchtelingenWerk Nederland, VWN*), expressed political views on social media and in newspapers, leading to a dispute with the respondent, who was seeking political neutrality. The applicant alleged discrimination based on religion, race and political conviction, claiming unequal treatment compared to colleagues.

The NIHR found no discrimination based on religion or race, as the respondent's actions were not linked to the applicant's Jewish identity. However, the NIHR concluded that the respondent had discriminated against the applicant on the ground of political conviction. The respondent treated the applicant differently by requesting that he hide his affiliation on LinkedIn and seek prior approval for sensitive political expressions, and by issuing an official warning, while colleagues in comparable situations did not receive such measures.

### *Disability*

**Relevant discrimination ground(s):** Disability

**Name of the court:** Netherlands Institute for Human Rights

**Date of decision:** 12 June 2025

**Name of the parties:** N/A

**Reference number:** NIHR Opinion 2025-54

**ECLI reference:** N/A

**Link:** <https://oordelen.mensenrechten.nl/oordeel/2025-54>

**Brief summary:** The applicant had undergone a mastectomy due to breast cancer, and therefore experienced pain when wearing tight or wet clothing. For this reason, she wished to swim without the upper part of a swimsuit at two public swimming pools in 2023 and 2024. Initially granted, this permission was revoked for areas outside the water after other

visitors complained about her visible scars, finding them distressing or provocative. The applicant claimed discrimination based on disability/chronic illness.

The NIHR acknowledged the intersectionality of sex and disability/chronic illness but focused its assessment on disability. It considers that preventing discrimination based on disability in service provision includes the obligation of reasonable accommodation, unless disproportionately burdensome. The NIHR found that the swimming pools should have fully accommodated the woman's request to keep her upper body bare, both in and out of the water. It prioritises the autonomy of individuals with disabilities, stating that complaints from other visitors about visible disabilities did not constitute a weighty interest justifying restrictions. The NIHR concluded that both swimming pools unlawfully discriminated against the woman based on disability/chronic illness.

#### *Sexual orientation*

**Relevant discrimination ground(s):** sexual orientation

**Name of the court:** Netherlands Institute for Human Rights

**Date of decision:** 22 April 2025

**Name of the parties:** N/A

**Reference number:** NIHR Opinion 2025-42

**ECLI reference:** N/A

**Link:** <https://oordelen.mensenrechten.nl/oordeel/2025-42>

**Brief summary:** The applicant was interested in working as a volunteer at a care centre of the respondent, which is a welfare organisation with a Christian foundation. The respondent indicated on its website that it is always looking for volunteers. During an in-person visit, the applicant let the centre know that he wanted to work as a volunteer. The applicant had also mentioned his sexual orientation.

The employee he had spoken with had responded positively to his application and also to his follow-up email. She replied to him that she would forward his information to the volunteers coordinator and that he was free to contact the respondent. After the applicant later asked for contact with the volunteer coordinator, the respondent informed him via email that there were no volunteer positions. Later on, the respondent justified its rejection by stating that there is 'a lack of mutual suitability'.

The NIHR first assessed whether the applicant had adduced facts that may give rise to a presumption of discrimination (pursuant to Article 10(1) of the GETA). If so, it is then up to the respondent to prove that they have not acted in violation of the GETA. The NIHR considered that the respondent's inconsistent responses and reasons for rejecting the applicant as a volunteer had created confusion. The argument of a lack of mutual suitability is in light of its changed attitude towards the applicant was called into question by the NIHR. The respondent had not clearly and substantively substantiated its decision to reject him. The NIHR noted that the applicant's openness about his sexual orientation had been experienced as problematic. In the opinion of the NIHR, the respondent had therefore not proven that the applicant's sexual orientation did not play any role in the rejection. There was therefore unlawful direct discrimination.

#### *Age*

**Relevant discrimination ground(s):** Age

**Name of the court:** Netherlands Institute for Human Rights

**Date of decision:** 19 August 2025

**Name of the parties:** N/A

**Reference number:** NIHR Opinion 2025-76

**ECLI reference:** N/A

**Link:** <https://oordelen.mensenrechten.nl/oordeel/2025-76>

**Brief summary:** The applicant, a man born in 1958, seeks to purchase pension insurance and a survivor's pension from the respondent, Allianz Benelux B.V., for himself and his partner (born in 1977). He observed that a larger age difference between partners results in a lower monthly payment, alleging discrimination based on age and sex. The respondent

denied sex discrimination due to a lack of evidence and justified age-based differentiation by the need to maintain a financially sound pension system. The NIHR dismissed the sex discrimination claim, as the applicant had provided insufficient evidence. However, the NIHR found direct age discrimination, as changing a partner's age directly alters the payment. The respondent's justification, based on financial viability, was deemed to not be a legitimate social policy goal under European law. Therefore, the NIHR concluded that Allianz Benelux B.V. had discriminated against the applicant on grounds of age, but not sex.

**Relevant discrimination ground(s):** Age

**Name of the court:** Netherlands Institute for Human Rights

**Date of decision:** 19 September 2025

**Name of the parties:** N/A

**Reference number:** NIHR Opinion 2025-91

**ECLI reference:** N/A

**Link:** <https://oordelen.mensenrechten.nl/oordeel/2025-91>

**Brief summary:** The applicant, an employee in salary band 4 at HCL Technologies B.V. (the respondent), alleged age discrimination. In 2024, only employees in salary bands 1-3 initially received a salary increase, although those in bands 4-6 received it later, retroactively. For 2025, the applicant claimed that the respondent had again excluded higher salary bands from increases, disproportionately affecting older employees.

The NIHR declared the applicant inadmissible for 2024, due to a lack of sustained personal detriment which he had suffered for 2025 (for which year the claim is thus admissible). The NIHR determined that, while there is no direct age discrimination, a significant correlation (for which the NIHR applied the so-called chi-square test and an odds ratio calculation using data of the employee base) exists between older employees and higher salary bands, constituting indirect age discrimination. The respondent's justification of serving business interests and supporting lower-paid employees is deemed insufficiently substantiated and therefore not a legitimate objective. Consequently, the NIHR ruled that there is no objective justification for the indirect discrimination and that the respondent had engaged in unlawful age discrimination for 2025.

**ANNEX 1: TABLE OF INTERNATIONAL INSTRUMENTS****Country: The Netherlands****Date: 1 January 2026**

| <b>Instrument</b>                                                   | <b>Date of signature</b> | <b>Date of ratification</b> | <b>Derogations/ reservations relevant to equality and non-discrimination</b> | <b>Right of individual petition accepted?</b>                        | <b>Can this instrument be directly relied upon in domestic courts by individuals?</b> |
|---------------------------------------------------------------------|--------------------------|-----------------------------|------------------------------------------------------------------------------|----------------------------------------------------------------------|---------------------------------------------------------------------------------------|
| European Convention on Human Rights (ECHR)                          | 04.11.1950               | 31.08.1954                  | No                                                                           | Yes                                                                  | Yes                                                                                   |
| Protocol 12, ECHR                                                   | 04.11.2000               | 28.07.2004                  | No                                                                           | Yes                                                                  | Yes                                                                                   |
| Revised European Social Charter                                     | 23.01.2004               | 03.05.2006                  | No                                                                           | Yes<br>Also ratified the collective complaints protocol (03.05.2006) | Yes                                                                                   |
| International Covenant on Civil and Political Rights                | 25.06.1969               | 11.12.1978                  | No                                                                           | Yes                                                                  | Yes                                                                                   |
| Framework Convention for the Protection of National Minorities      | 01.02.1995               | 16.02.2005                  | No                                                                           | NA                                                                   | Yes                                                                                   |
| International Covenant on Economic, Social and Cultural Rights      | 25.06.1969               | 11.12.1978                  | No                                                                           | No                                                                   | Yes                                                                                   |
| Convention on the Elimination of All Forms of Racial Discrimination | 24.10.1966               | 10.12.1971                  | No                                                                           | Yes                                                                  | Yes                                                                                   |
| ILO Convention No. 111 on                                           | unknown                  | 15.03.1973                  | No                                                                           | NA                                                                   | Yes                                                                                   |

| <b>Instrument</b>                                     | <b>Date of signature</b> | <b>Date of ratification</b> | <b>Derogations/ reservations relevant to equality and non-discrimination</b> | <b>Right of individual petition accepted?</b> | <b>Can this instrument be directly relied upon in domestic courts by individuals?</b> |
|-------------------------------------------------------|--------------------------|-----------------------------|------------------------------------------------------------------------------|-----------------------------------------------|---------------------------------------------------------------------------------------|
| Discrimination                                        |                          |                             |                                                                              |                                               |                                                                                       |
| Convention on the Rights of the Child                 | 26.01.1990               | 06.02.1995                  | No                                                                           | No                                            | Yes                                                                                   |
| Convention on the Rights of Persons with Disabilities | 30.03.2007               | 14.06.2016                  | No                                                                           | No <sup>607</sup>                             | Yes                                                                                   |

<sup>607</sup> The Dutch Government announced its intention to ratify the Optional Protocol in May 2023, see Tweede Kamer 2022-2023, 24 170, no. 284. The Netherlands signed it on 27 January 2026, just after the reporting period. The ratification process is pending at the time of writing the report.

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