

The State of Our Democracy 2006

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Contents

Introduction	7
Part I Citizenship and the Constitutional State	9
1. Nationality and Public Spirit	9
1.1 To what extent does everyone living in the territory of the Netherlands belong to the political community? To what extent can everyone acquire official citizenship?	9
1.2 To what extent are cultural differences acknowledged and minorities protected?	11
1.3 To what extent is there a consensus on the state borders and the Constitution?	15
1.4 To what extent do the structure of the political institutions and the Constitution contribute to a moderation of and reconciliation between major social contrasts in society?	15
1.6 Are measures taken to counter defined problems in these areas and do they enjoy political priority and public support?	17
1.7 Summary	18
2. The Constitutional State	19
2.1 To what extent are the principles of the constitutional state applicable to the whole territory?	19
2.2 To what degree are public incumbents and civil servants subjected to the requirements of the constitutional state and to transparent rules in the exercising of their functions?	21
2.3 How independent is the judicial authority of the executing authority? How independent is the jurisprudence of various forms of interference?	21
2.4 To what degree is it ensured that citizens have access to justice, that that access is on an equal footing? And to what degree do they have a right to a fair trial and enjoy legal protection?	21
2.6 How much trust do the citizens have in the fairness and effectiveness of the judicial?	25
2.7 Which measures, if any, are taken to solve publicly identified problems in this area? What degree of political priority and public support is devoted to this?	28
2.8 Summary	29
3. Fundamental Rights	30
3.1 To what degree are citizens protected from physical violence or the threat of violence?	30
3.2 To what degree does equal and effective protection of the freedom of movement and residence within the territory, the freedom of speech and the freedom of assembly and association exist?	32
3.3 To what degree is everyone assured of the freedom to practice religion, use one's own language or expand one's culture?	36
3.4 How free are individuals and groups that promote human rights of intimidation, threats and violence?	38
3.5 Which measures, if any, are taken to solve publicly identified problems in this area? What degree of political priority and public support is devoted to this?	39
3.6 Summary	40
4. Economic and Social Rights	41
4.1 To what extent is access to employment or social security available to all, without distinction?	41
4.2 How effectively are the primary basic needs guaranteed, including an adequate provision of food, shelter and clean water?	44

4.3	To what extent is the health of the citizens at all stages of life protected?	45
4.4	How comprehensive and inclusive is the right to education, including education on the rights and obligations of state citizenship?	46
4.5	How free are trade unions and other work-related associations to coordinate and represent the interests of their members?.....	47
4.6	How difficult are the requirements to fulfil and how transparent are the rules for proper corporate governance? How effectively are public interest companies regulated?	51
4.7	Which measures, if any, are taken to solve publicly identified problems in this area? What degree of political priority and public support is devoted to this?	52
4.8	Summary	52

Part II. Political Representation and Public Accountability 54

5. Free and Fair Elections.....54

5.1	To what extent are administrative or legislative functions filled through free and general elections? How frequently do elections lead to a change in the composition of the administration?	54
5.2	How accessible, and on an equal footing for all citizens, are electoral registrations and voting procedures? How independent are they from state supervision and party control? To what extent are they safeguarded against intimidation and abuse?	57
5.3	How fair are the procedures for the registration of candidates and parties for elections? To what extent is there fair access for candidates and parties to the media and other means of communication with the voters?	59
5.4	To what degree does the system of elections and of political parties offer the voter a free choice? To what degree does every vote count equally? To what degree is the composition of the legislative and executive authority determined on the basis of the voters' choice?.....	60
5.5	To what extent does the legislative authority reflect the social composition of the electorate?	61
5.6	What is the turnout for elections? To what extent are the results of the election accepted by all political rulers at home and abroad?.....	61
5.7	Which measures, if any, are taken to solve publicly identified problems in this area? What degree of political priority and public support is devoted to this?	63
5.8	Summary	65

6. The Democratic Role of Political Parties66

6.1	How free are parties to form, to solicit members, to get involved in the public debate and to campaign?.....	66
6.2	How effective is the party system in the formation of and maintaining of the cabinet?.....	68
6.3	How free are opposition and non-governing parties to organize themselves within the legislative authority? How effective is their contribution to the responsibility of the cabinet?	68
6.4	How fair and effective are the rules that determine the party discipline in the legislative authority? ..	71
6.5	To what extent are parties effective member organisations? To what extent are members able to influence the policy of the party and candidate-selection?.....	73
6.6	To what extent does the system of party funding prevent parties being subjected to specific interests?	74
6.7	To what extent do political parties bridge the ethnic, religious or linguist dividing lines in society? ...	76
6.8	Which measures, if any, are taken to solve publicly identified problems in this area? What degree of political priority and public support is devoted to this?	77
6.9	Summary	78

7. Effectiveness and Public Accountability by the Executive Authority.....	80
7.1 To what degree is the elected government able to influence or control issues that are of importance to its citizens? How well informed, organised and equipped is it for this?	80
7.2 How great is the public confidence in the effectiveness of the executive authority and the political leadership?.....	82
7.3 How effective and open to accountability are the administrative options of elected politicians and ministers with respect to civil servants and executive services?.....	83
7.4 How effective and far-reaching are the competencies of the parliament to initiate, amend and review legislation?	85
7.5 How effective and far-reaching are the competencies of the representatives to control and call to account the executive authority?.....	86
7.6 How serious are the procedures for supervision and approval of the levying of taxes and public expenditure?.....	86
7.7 How extensive and effective is the legislation with respect to the right of citizens to information from the government?	90
7.8 Which measures, if any, are taken to solve publicly identified problems in this area? What degree of political priority and public support is devoted to this?	91
7.9 Summary	91
8. Civilian control of the military, police and security services.....	93
8.1 How effective is civilian control of the armed forces? To what extent is politics free of military influence?.....	93
8.2 To what extent should police and security services be publicly accountable for their actions?	96
8.3 To what extent is the composition of the military, the police and the security services a reflection of the social make-up of the society as a whole?.....	100
8.4 To what extent is the Netherlands safeguarded against paramilitary operations, warlords, private armies and organised crime?	103
8.5 Which measures, if any, are taken to solve publicly identified problems in this area? What degree of political priority and public support is devoted to this?	103
8.6 Summary	105
9. The Eradication of Corruption	106
9.1 How independent is the public administration (elected and appointed) with respect to party political favouritism and the private interests of the public incumbents?.....	106
9.2 How effective is the protection of political incumbents, civil servants and the public from involvement in bribery?	109
9.3 To what extent do the rules and procedures for funding elections prevent candidates and elected representatives from falling under the influence of sectoral concerns?	109
9.4 To that extent is the influence of powerful companies and the interests of trade and industry in public affairs under control? How free of involvement are they in corruption both at home and abroad?	110
9.5 To what extent do citizens have confidence in the integrity of political incumbents, civil servants and public services?.....	112
9.6 Which measures, if any, are taken to solve publicly identified problems in this area? What degree of political priority and public support is devoted to this?	112
9.7 Summary	113
Part III. Civil Society and Participation	114

10. The Media in a Democratic Society	114
10.2 To what extent does the media represent divergent political convictions? How accessible is the media for diverse groups in the society?	118
10.3 How effective are the media and other independent organisations in investigating the government and powerful businesses?.....	121
10.4 To what extent are journalists safeguarded against restrictive legislation, interference and intimidation?	121
10.5 To what extent are individual citizens safeguarded against intimidation and invasions of their privacy by the media?.....	120
10.6 Which measures, if any, are taken to solve publicly identified problems in this area? What degree of political priority and public support is devoted to this?	124
10.7 Summary	124
11. Public Participation.....	126
11.1 How wide is the reach of voluntary organisations, private organisations, social movements, etc? How independent are they from the government?	126
11.2 How extensively do citizens participate in voluntary organisations, independent authorities and other voluntary public activities?	127
11.3 To what degree do women participate at all levels in the political and public administration?.....	130
11.4 How equal is the access for all social groups to the public administration? How proportionate is their representation therein?.....	131
11.5 Which measures, if any, are taken to solve publicly identified problems in this area? What degree of political priority and public support is devoted to this?	136
11.6 Summary	137
12. Responsive Government.....	138
12.1 How open and systematic are the procedures for public consultation on government and legislation? To what degree do relevant interests have access on an equal footing to the government?	135
12.2 How accessible are elected delegates to their constituents?.....	140
12.3 How accessible and reliable is public service for those who need it? How systematically are the consumers consulted on the service?.....	141
12.4 How much confidence do the citizens have in the chances of the government to solve the key problems in society and in their own chances of influencing government policy?	141
12.5 Which measures, if any, are taken to solve publicly identified problems in this area? What degree of political priority and public support is devoted to this?	144
12.6 Summary	145
13. Decentralisation	143
13.1 How independent is the decentralised government administration with respect to the central government? To what extent do they have the necessary authority and means for executing their tasks?	146
13.2 To what extent is the decentralised government administration subjected to free and fair elections, as well as to the criteria of openness, public accountability and responsiveness, in its functioning?....	149
13.3 How comprehensive is the collaboration between the government on the local level with relevant partners, associations and communities in the formation and execution of policy, as well as in the rendering of services?.....	152

13.4	Which measures, if any, are taken to solve publicly identified problems in this area? What degree of political priority and public support is devoted to this?	153
13.5	Summary	155

Part IV Democracy after the Nation-state 157

14. The International Dimension of Democracy 157

14.1	To what extent is the Dutch administration subjected to external economic, cultural or political institutions?	154
14.2	To what extent are relationships with international organisations based on cooperation and transparency?	162
14.3	To what extent does the government support the UN human rights treaties and does it respect international law?	164
14.4	To what extent does the government respect international obligations in dealing with refugees and other asylum-seekers? To what extent is the immigration policy safeguarded against arbitrary discrimination?	165
14.5	How consistent is the government in its support of human rights and democracy in other nations?	166
14.6	Which measures, if any, are taken to solve publicly identified problems in this area? What degree of political priority and public support is devoted to this?	167
14.7	Summary	167

Appendices 170

I.	List of abbreviations used	170
II.	List of tables and graphs	171
III	Sources	172

Introduction

Motivation

During the (politically) turbulent year of 2002, a probing public debate arose on the functioning of the government, our (parliamentary) democracy and on fundamental rights in a plural society. People spoke of a declining democracy, a 'pinball democracy', a wandering country, drifting political parties, a show democracy, a democracy based on emotions and apocalyptic democracy doom mongering.¹

The so-called Balkenende I cabinet started with a debate on the norms and values and fundamental rights in a plural society. Balkenende II started with the programme *Andere overheid* (Modernising Government) and with administrative and democratic renewal.

The still on-going² political and public debate on the functioning of our democracy and our fundamental democratic values was one of the motivations for the release of this trend report, wherein it has been endeavoured to provide a broad overview of the state of democracy in our country.

Nature and character of this report

This report is primarily a record. Statutory regulations, dry statistics, expert opinions and conclusions, based on publicly available information, are collated. The goal of this report is to provide further structure to the debate on the state of our democracy and the necessity or desirability of measures, changes or reforms. This report aims at contributing to an interconnected package of measures to guarantee, reinforce and - where necessary - renew democracy, together with the results of the Citizen's Forum (*Burgerforum*) and the National Convention (*Nationale Conventie*)³, amongst others.

This report can furthermore serve as a baseline measurement. On the basis of similar inquiries, changes to the democratic quality of Dutch society must in the future become perceptible. This must provide insight into the effects of implemented reforms and deployed initiatives as well as making them measurable. This report also serves as a warning. By sketching a more-or-less all-inclusive overview of the level of democracy in the Netherlands, this report can point out those developments where vigilance is required, further investigation is needed or where measures must be taken.

¹ Descriptions derived in part from Anchrit Wille in: Kamervragen en de dagelijkse drang van politieke controle. Bestuurswetenschappen 59, Oct. 2005, pg 406-430. See also the sources stated in note 6.

² Recently, for example, on the relationship between the democratic constitutional state and Sharia, the manifesto of Manifest van Eddy Terstall, Hans Teeuwen en Diederik Ebbinge on freedom of expression, see also the debate in the general views in the House of Representatives on 27 and 28 September 2006, see also Kamerstukken II 2006/207, 30 800, no 9 motie-Bos et al.

³ On 5 October 2006 the National Convention made proposals for the establishment of a national political system that could contribute to the restoration of confidence between the citizen and politics and also serve as a constitution for the 21st Century.

The broad intention of this report offers, more than ever before, the possibility of creating connections between various developments, naming horizontal issues and setting relative priorities in the tackling of the observed problems. It can thus contribute to the formation of the future cabinet's agenda on democracy.

Intention and methodology

This report was composed according to the guidelines of the International Institute for Democracy and Electoral Assistance (IDEA)⁴. The guidelines were developed by the IDEA on the basis of a concept developed and applied previously in the United Kingdom. The framework of these guidelines has been both scientifically tested as well as in practice and today is applied in a large number of Western and non-Western democracies.

In accordance with these guidelines - the methodology of "democracy assessment" - 56 angles of approach are dealt with respect to their content. The answers to every sub-question are formulated, as far as possible, on four different levels - these successively deal with: the existing legislation, the actual implementation, positive and negative indicators (statistics) and - where possible - opinions.

This report is a - for our country - new way of looking at the functioning of democracy. It is a different view of our democracy from a large number - yet still connected whole - of perspectives. This whole, for that matter, does not result in a simple exam mark or an unambiguous comparison with other nations. The various democratic base values may be in conflict with each other and require a complex consideration of the individual positive indicators, which cannot all score the maximum simultaneously. An assessment on the basis of this report can consequently not be the sum of the scores in the various sections. It is rather a basis for debate and a qualitative judgement.⁵

Consultation and debate

A component of IDEA's method is external consultation. To this end, the Minister of Administrative Reform and Kingdom Relations, A. Nicolai, Esq. has, on behalf of the Minister of the Interior and Kingdom Relations, J.W. Remkes, notified involved external organisations of this report, with the request to get the public debate on the relevant sections going or to deliberate internally on it and to report back on the results thereof. In addition, as of the start of October 2006, citizens can contribute (interactively) through the website www.onzedemocratie.nl.

⁴ Beetham, D., Bracking, S., Kearton, I. *Handbook on democracy assessment* Kluwer Law International: The Hague, 2002

⁵ Ozias Tungwarara. *IDEA's state of democracy assessment methodology: what we have contributed and what we have learnt*. Paper prepared for: 20th IPSA World Congress, Fukuoka, 10-13 July, 2006. See http://democratic.audit.anu.edu.au/papers/20060619_ipsa_ozias.pdf

Part I Citizenship and the Constitutional State

Although the legislation considers residents of Aruba and the Netherlands Antilles as Dutch citizens too, this report concentrates upon the Netherlands. The key reason for this lies in the specific political relationships within the Kingdom. Additionally, the democratic processes and institutions and the social and political situations in the separate constituent parts of the Kingdom differ dramatically. For that reason the state of democracy in the Netherlands is the central issue in this report, and not that of the entire Kingdom of the Netherlands.

1. Nationality and Public Spirit

The extent to which a country is able to unite potential tensions between demands of equal citizenship and the range of divergent communities on the one hand, and between internal inclusiveness and external exclusivity on the other, is an important indicator for the quality of the democracy. This democracy is however not just a political system alone. It is also an organisational form of social and inter-human relationships and a fundamental attitude and the resultant practices of people.⁶ The public spirit addresses this.

1.1 To what extent does everyone living in the territory of the Netherlands belong to the political community? To what extent can everyone acquire official citizenship?

The goal of the first sub-question is to determine to what extent inhabitants of the Netherlands fall outside of society or are excluded from participating in democratic processes. The importance of this question arises from the fundamental assumption that in a democracy the power is in the hands of the people. In order to interpret this, it must first be clear who those people are. So here we are dealing with everyone who is in possession of Dutch citizenship. Further, democracy requires that everyone can exercise his rights effectively and on the basis of equality. Do all Dutch nationals have the same rights and obligations? The distinction that is thereafter drawn with the political community is intended to identify the presence of a disparity in the exercising of influence upon common policy. Are there groups of Dutch nationals who only have limited political rights?

In answering these questions, it is beneficial to distinguish beforehand between this and Dutch asylum and immigration policy as it is dealt with in chapter fourteen. For the sake of clarity, with this question this report addresses the people who are already residing legally in the Netherlands. People who are currently embroiled in the naturalisation process are here also left out of consideration. Of course, they will be examined comprehensively in section 14.3.

⁶ Jeroen Bron. *Een basis voor burgerschap. Een inhoudelijke verkenning voor het funderend onderwijs*, (Enschede, 2006) pg25

1.1.1 Legislation

In the first section of article 2 of the Constitution it is recorded that the law stipulates who is a Dutch national. These statutory regulations are the Netherlands Nationality Act [*Rijkswet op het Nederlanderschap –RWN*], amended in 2003) and the regulations thereupon based. From this it results that "everyone who has at least one parent who is a Dutch national" is Dutch. Everyone who is born on Dutch territory and has not acquired foreign nationality after five years is also considered to be Dutch.

Foreigners who want to become Dutch and are in possession of a valid residence permit have two choices: option or naturalisation. The option procedure is the simplest and is applicable when someone is either born in the Netherlands, was raised for an extended period by a Dutch person, or is the legal partner of a Dutch person. The naturalisation procedure takes approximately one year and is applicable to foreigners in possession of a long-term residence permit, who have been a legal resident of the Netherlands for a minimum of five years, are sufficiently integrated (*ingeburgerd*) and are prepared to renounce their old nationality. Furthermore, there may be no objections raised to their residence (art. 6 and 7 RWN). Both procedures do not draw any distinction between land of origin, race or gender. Regulations can differ per country only in the case of multiple nationalities.

When another nationality is voluntarily acquired or a declaration of renunciation is given, Dutch citizenship is lost. Dutch citizenship can be withdrawn in the case of fraud within twelve years of acquiring citizenship and it can always be withdrawn when the person is convicted of war crimes, genocide or torture. Dutch citizenship is likewise lost when a person voluntarily enters the military service of a state involved in hostilities directed against the Kingdom or its allies.

The distinction that is made in the question between nationality and political community in the Netherlands is relevant to the extent that, subject to suffrage, the opportunities of exercising influence upon politics are the same for everyone. Non-citizens are also freely able to organise, to demonstrate and to employ freedom of speech. The legislation only draws a distinction as to origin when it comes to the exercising of an active or passive right to vote. This will be gone into in further detail in section 5.2.

1.1.2 Implementation

The Immigration and Naturalisation Service [*Immigratie- en Naturalisatie Dienst- IND*] is responsible for the execution of immigration policy in the Netherlands, not for the policy itself. That means that the IND assesses all applications by foreigners who want to reside in the Netherlands or who want to become Dutch. This assessment is tied to a number of conditions, such as origin, duration of residence, income, age and reason for arrival. The IND strives to get through this process in a speedy and meticulous manner.

1.1.3 Indicators

The amendment of the RWN in 2003 led to a sharp decrease in the number of people awarded Dutch citizenship. While in 1996 there were 8 100 people who obtained Dutch nationality, in 1999 the number had already decreased by 2000 and in 2004 there were no more than around 2 700 naturalisations.⁷ The number of applications decreased significantly after 2003 too. Hereby one must however take into account the amount of time needed for processing an application.

1.2 To what extent are cultural differences acknowledged and minorities protected?

Tolerance with respect to dissenters is a necessity for a well-functioning democracy. Dialogue is the manner in which differences (of opinion) must be channelled. Considering that in a democracy, the majority ultimately decides, the results of this dialogue could be detrimental to the principles and convictions of minorities. To prevent such a tyranny of the majority, it is important that the constitution and society guarantee the rights of minorities. Both the constitution as well as society must be able to accept diversity and to leave room for other opinions in the public debate.

1.2.1 Legislation

The Netherlands has signed and ratified the International Covenant on Civil and Political Rights. Article 27 of this Covenant guarantees ethnic, religious and linguistic minorities the right to enjoy their own culture, profess to and practice their own religion and to make use of their own language. Moreover, in 1995 the Netherlands signed the Framework Convention for the Protection of National Minorities. It obligates the government to create or promote circumstances that are essential for people who are members of national minority in order to protect their religion, language, traditions and cultural heritage.⁸ The Framework Convention was only adopted by the Senate in 2004. The reason for this lay in the discord around the allotment of the term national minority to, amongst others, citizens of Moroccan, Turkish, Surinamer and Antillean descent. Ultimately it appeared that only the Frisians could, as a national minority, count on sufficient support in the Senate. In contrast to the surrounding nations, the Roma and Sinti were not included as national minorities either. The rest of this question will nevertheless concentrate upon the 'unofficial' ethnic minorities and homosexuals. The acknowledgement and protection of the Frisians seems, in this context, to be of less relevance.

The Netherlands has become more tolerant in the last few decades with respect to homosexuality. Examples of this are permitting same-sex civil marriages as well as the opportunity for them to adopt. In addition, there is extensive statutory protection against discrimination in the Netherlands. This

⁷ figures from the CBS

⁸ Senate, <http://www.eerstekamer.nl/9324000/1f/j9vvgh5ihkk7kof/vgvvrkwoxz0>

legislation is also applicable to ethnic, cultural and political minorities. This legislation is, in general, considered as adequate.

1.1.2 Implementation

Integration policy

Although the social position of the minorities has improved in the last ten years, the social-economic and cultural position of ethnic minorities continues to arouse tensions. Because the integration of the ethnic minorities in the Dutch society is additionally not a matter of course and does not occur of its own accord, the cabinet has pursued an integration policy. The goal of this policy is the creation of a fully-fledged and participatory citizenship for minorities and indigenous Dutch peopleⁱ. This is supposed to come into being through an interlinked strategy geared towards the stimulating of the social equipment of the minorities, the reinforcement of the rapprochement between minorities and the native inhabitants and increasing accessibility to the institutions and facilities of the society. Within the framework of the Broad Initiative on Social Cohesion [*Breed Initiatief Maatschappelijke Binding*] the cabinet is additionally dedicating itself to collaborating with all sorts of social organisations to promote the cohesion in our society. In conclusion, the anti-discrimination policy and the anti-racism policy are also a part of the integration policy.

The Equal Treatment Commission

Everyone who feels they have been discriminated against can submit a request for a judgement to the Equal Treatment Commission [*Commissie Gelijke Behandeling – CGB*]. The CGB then judges whether the equal treatment legislation has been transgressed. In addition, the CGB is also occupied with advising the government, the undertaking of its own research and the providing of training programmes and presentations. The CGB is also a special interest group. When someone submits a request for a judgement, it does not mean that that person is automatically found for. Further applicable is that the judgements of the Commission, while they are in many cases acted upon, are not legally binding.

Although the Netherlands has a pioneering role in the world, the cabinet still does not regard the emancipation of homosexuals as completed. In the Homosexual Emancipation Policy Letter 2005-2007, the cabinet proposed three goals that are intended to improve the position of homosexuals and to further disengage the topic from its previous taboo label.

- * The stimulation of the social acceptance of homosexuals in the Netherlands.
- * A strong social cohesion and improved integration for a few vulnerable gay groups. This is especially applicable to solitary groups, those who cannot participate or are threatened with exclusion, such as gays who are members of an ethnic minority, young gays and elderly care-dependent gays.
- * Focus on the safety of homosexuals and combating discrimination against homosexuals.⁹

1.2.3 Indicators

⁹ Ministry of Public Health, Welfare and Sport, http://www.minvws.nl/images/brief-homoemancipatiebeleid_tcm10-67320.pdf

At present approximately 1.7 million non-Western members of ethnic minorities are living in the Netherlands. Of these, the people of Turkish (350,000), Surinamer (330,000), Moroccan (315,000) and Antillean (130,000) origin make up the largest part.¹⁰ Further, there are just short of one million homosexuals and some 5,000 Roma and Sinti in the Netherlands.¹¹

Of the four largest ethnic minorities, an average of 37.5 percent see themselves primarily as a member of their own group, while 22 percent feel Dutch. Approximately 40 percent say they feel equally a member of their own group and Dutch (table 1.2). Of the ethnic minorities, however, less than 30 percent feels that most members of ethnic minorities are already integrated or will quickly become integrated. Moreover, almost half of the people of Dutch origin are of the opinion that ethnic minorities should not hang on to their own culture and customs too steadfastly. (table 1.2)

Table 1.1 Feelings of nationality amongst Dutch ethnic minorities (in percentages)

	Primarily feels like a member of their own group	Equally a member of own group and Dutch	Feels primarily Dutch
Turks	49	40	11
Moroccans	40	43	17
Surinamers	25	46	29
Antilleans	36	34	30

Source SCP (LAS '04/'05) weighted

Table 1.2 Opinions per ethnic group on the integration of ethnic minorities, urban population of 15-65 years (in percentages 'agree')

	Turks	Moroccans	Surinamers	Antilleans	People of Dutch origin
Members of ethnic minorities must learn Dutch	97	95	97	97	99
Members of ethnic minorities must not hang on to their own culture and customs too steadfastly	20	21	47	49	45
Most members of ethnic minorities are already quite integrated or will quickly become integrated	46	56	32	30	29

Source SCP (LAS '04/'05) weighted

With respect to homosexuals, the Dutch population appears to be much more tolerant. This is apparent from, amongst other things, an investigation into the general acceptance of same-sex marriages. Herein, 74 percent of the Dutch population indicated that they thought that gays and lesbians should be able to get married in the Netherlands. At the same time it appears the Netherlands' reputation abroad for being tolerant of homosexuality has been decreasing of late. The most significant reason for that is most probably a number of incidents whereby a number of gays were ill-treated on the grounds of their disposition.¹² It is evident from the SCP publication 'Act Normally'.

¹⁰ Central Bureau for Statistics, *Jaarrapport integratie 2005* (Den Haag, 2005) pg14

¹¹ <http://www.minvws.nl/dossiers/homo-emancipatie/default.asp> & http://www.lbr.nl/nprd/factsheets/roma_en_sinti.pdf

¹² Amsterdam wil imago homo-hoofdstad terug', *Elsevier* (5-8-2005)

Acceptance of homosexuality in the Netherlands' [*Gewoon Doen. Acceptatie van homoseksualiteit in Nederland*] that the Netherlands, when compared to other countries, is the most tolerant of homosexuals. Almost the entire Dutch population is of the opinion that homosexuals should be able to live their lives as they want to. The attitude of the Dutch youth to homosexuality has not been investigated in a manner comparable to the investigations into the attitude of the population, which prevents a statement being made on a possible difference. What is clear however is that the attitude of the youth is pretty negative, but that it decreases with age. Further it is evident that men, the low-skilled and religious Dutch people are more negative with respect to homosexuality than women, the highly skilled and non-religious people. Ethnicity also plays a role in attitude with respect to homosexuality. Turks, Moroccans and Antilleans are to a larger degree negative with respect to homosexuality than people of Dutch origin are. The first generation of immigrants of these ethnic groups are especially negative about homosexuality.¹³

Table 1.3 Opinion on same-sex marriages from voting behaviour (parliamentary elections 2003)

(percentaged vertically)	Total	Now votes							
		Wilders	LPF	VVD	CDA	D66	PvdA	SP	GL
For	74	50	72	78	49	91	95	89	100
Against	20	43	17	18	40	0	3	8	0
Don't know	6	7	11	4	12	9	2	3	0
Total	100								

Source peil.nl

In 2005 the number of submitted requests for a judgment by the CGB amounted to 621. That is an increase with respect to the preceding year of 45% (according to the CGB 2005 annual report). In 2005 the CGB issued 245 judgments (2004, 186) and six recommendations. The increase in judgements is more specifically evident in the 'age' category, which was to be expected considering the recent introduction of this as discriminatory grounds (May 2004). The large number of requests was one of the things that led to the CGB issuing four recommendations on the grounds of age at the end of 2005 and beginning of 2006. For the rest, there was a slight increase with almost all discriminatory grounds. On the grounds of 'sexual orientation', however, the number of requests and judgements lagged behind. Looking at the effects of the CGB's judgments, in 73% of the cases wherein a follow-up was possible, the judgement was indeed followed up on. Here the trend of the last few years carried on.¹⁴ What is striking is the relatively large number of requests with regard to the non-discriminatory grounds recently included in the legislation for working hours and people with handicaps. It is possible that that large portion in the total number of requests is incidental.

Table 1.4 CGB discriminatory grounds

	1995	1997	1999	2001	2003	2005		
Gender	87	72	42	70	86	53		
Race/Nationality	7	48	40	69	45	37		
Religion	4	13	12	13	15	17		
Sexual orientation			5	7	7	4	6	2
Marital status			6	16	6	4	7	11
Political conviction			0	3	0	0	0	1
Philosophy			0	1	0	0	0	2
Working hours			n/a	n/a	n/a	n/a	1	22
Employment contract			n/a	n/a	n/a	n/a	n/a	9
Handicap			n/a	n/a	n/a	n/a	n/a	36
Age			n/a	n/a	n/a	n/a	n/a	100
Totals			109	171	118	171	178	290

Source CGB¹⁵

1.3 To what extent is there a consensus on the state borders and the Constitution?

The Kingdom of the Netherlands is a political relationship between the Netherlands, the Netherlands Antilles and Aruba. The latter has had a separate status since 1985. There is a relatively broad demand for (further) autonomy in the Netherlands Antilles. In a referendum on the political future of the Antilles held in April 2005, 68 percent of the population of Curacao indicated they would prefer a more autonomous status within the Kingdom.¹⁶ In the Netherlands there are no sizeable separatist movements. The support for the groups that are striving for an independent Friesland or a great Dutch-speaking state is negligible. There is no discussion about the existing borders in the countries bordering the Netherlands either.

When we regard the constitution as the codification of the principles of the Dutch democratic constitutional state, then the appreciation of the democracy by the Dutch people may help to somewhat clarify the degree to which it corresponds to the Constitution. It appears that 68 percent of Dutch people are satisfied with the functioning of democracy in the Netherlands.¹⁷ Furthermore, three-quarters of the population is of the opinion that democracy is the best form of government in existence.¹⁸ The monarchy can also count on a great deal of support from the population. Although 40 percent of the Dutch think that the queen should not have any statutory influence, only 12 percent are advocates of a republic.¹⁹

1.4 To what extent do the structure of the political institutions and the Constitution contribute to a moderation of and reconciliation between major social contrasts in society?

Polder model

¹⁵ [http://www.cgb.nl/media/downloadables/Fact%20sheet%201994%202005%20\(NL\).pdf](http://www.cgb.nl/media/downloadables/Fact%20sheet%201994%202005%20(NL).pdf)

¹⁶ http://www.nrc.nl/dossiers/nederlandse_antillen/interne_politiek/article91_772.ece

¹⁷ Social and Cultural Planning Office, *De sociale staat van Nederland 2004*

¹⁸ Twee Vandaag, Top-X Opiniepanel;

¹⁹ 'De toekomst van de monarchie', www.peil.nl, (28-9-2005)

For many years the Netherlands has been famous for its consensus democracy. Since the time of the Republic, important decisions are only made through much adjusting and readjusting between the autonomous political units. In the last two decades this consultation economy has come to be known as the polder model. Central to this is the consultation and pursuit of consensus between all sorts of public organisations and between these public organisations and the government. In addition, planning offices and all sorts of advisory bodies also play a role. After the 90's, when the polder model garnered international praise, criticism of the consultation economy began to grow.

- * Is it democratically sound to allot a great deal of weight to the voices of social partners, all the more because it is unclear as to whom exactly they represent?
- * The social partners are generally supposed to represent the traditional worker's interests and take little account of women, members of ethnic minorities and pensioners.
- * The consultation culture and the pursuit of consensus mean that it is difficult to take rapid-action measures. There was also talk of adopting a more pro-active approach.
- * There had been all sorts of price and market sharing agreements in the Netherlands for many years. As a result the Netherlands was designated as a cartel-paradise.²⁰

Social and Economic Council

The establishment of the advisory body, the Social and Economic Council ([*Sociaal-Economische Raad – SER*], 1950) was one of the consequences of the endeavour to involve social partners in the social and economic policy. Although the influence of the SER has diminished since the first so-called 'purple cabinet' (which governed from 1994 to 1998), its recommendations are still considered to be of great importance. Aside from its advisory role, the SER also fulfils other tasks such as administrative and supervisory tasks with respect to commodities and industrial boards, execution of a few rules for establishing a business and tasks in the framework of the Works Council's Act [*Wet op de Ondernemingsraad*]. In addition the SER supervises the fulfilment of the rules covering mergers and acquisitions. The SER also stimulates consultation between consumer and inter-branch organisations with respect to general conditions.

Freedom of Education

Article 23 of the Constitution covers the freedom of education. Education is, in principle, free, but the government supervises it and imposes requirements upon those who provide education. What is of importance to minorities is that respect of religion and philosophy in education and the associated guarantees are safeguarded. While it is evident that this stipulation did not go undisputed, in 2004 the cabinet informed the House of Representatives by letter that this right would be retained without restrictions. The cabinet believed that a prohibition on the foundation of Islamic schools would be counterproductive.²¹

1.5 To what extent are the procedures for the amendment of the Constitution impartial and accessible?

1.5.1 Legislation

²⁰ Parlement en Politiek, <http://www.parlement.com/9291000/modules/ggefwp9>

²¹ Ministry of Education, Culture and Welfare, <http://www.minocw.nl/persberichten/4453>

Since its introduction in 1815, the Dutch Constitution has been amended a number of times. After a proclamation by law of the intention to amend the Constitution, the House of Representatives [*Tweede Kamer*] must be dissolved (art. 137 Constitution). In practice, proposals for amendments are consequently submitted in the final year of a cabinet's existence. Then the obligatory dissolution coincides with the periodical resignation of the House of Representatives. At the same time as the parliamentary elections, the population is also (implicitly) requested to pronounce on the amendments. Both Houses must finally approve the unamended proposal by a qualified majority.

1.5.2 Indicators

Because in practice the referendum on the constitutional amendment coincides with the parliamentary elections, the former becomes less important. Both the politicians as well as the electorate appear to be more occupied with political events surrounding parliamentary elections than with the Constitution.²²

1.6 Are measures taken to counter defined problems in these areas and do they enjoy political priority and public support?

Further revision of the Netherlands Nationality Act

One can refer to the initiative launched by the Minister for Immigration Affairs and Integration in December 2004 for further amendments to the Netherlands Nationality Act. Currently there is a discussion ongoing on occasion of a possible amendment to limit multiple-nationality and to implement the withdrawal of Dutch citizenship for the inflicting of serious damage to the essential interests of the Kingdom or of one or more of its territories. The intention of the first amendment is to stimulate integration. The underlying thought is that opting for Dutch citizenship is an expression of solidarity with Dutch society, and a renunciation of another nationality is a logical consequence of that.²³ This requirement is moreover not applicable to refugees and others entitled to asylum.

The second proposed amendment is aimed at contributing to the 'war on terror'. The Minister is able, in exceptional cases, to withdraw Dutch citizenship from persons who have been convicted of a criminal offence whereby serious damage has been inflicted upon the interests of the Kingdom. Not only the execution but also the preparation of a terrorist act or a crime against the security of the state can be regarded as such. The European Convention on Nationality however states that a person cannot lose their nationality if that leaves them stateless. In practice that means that only persons in possession of dual-nationality can lose their Dutch citizenship.

Citizenship Code

²² Berg, J.Th.J. van den, *Inleiding Staatskunde* (Deventer, 1995) pg 271

²³ Memorie van Toelichting bij het wijzigingsvoorstel, dossier 30 166 (R 1795)

The Minister of Immigration Affairs and Integration launched a plan in January 2006, in imitation of Rotterdam, to introduce a citizenship code for the Netherlands. With this, she wanted to stimulate new Dutch citizens to behave as a Dutch person and not as a foreigner. The most striking section of this code - the code is not a law, but a supposed agreement - concerns the rule that henceforth only Dutch will be spoken in public. The intention of this was to pull migrants and their children out of their isolation and to stimulate integration.

Stimulating active citizenship and social integration at schools

As of 1 February 2006, a statutory obligation was introduced for schools to stimulate active citizenship (and social integration). The objective is to, amongst other things, make citizens aware from a young age of the rights and obligations that are a part of citizenship. Active citizenship, in the sense of this legislation, is of concern to the ability and willingness to participate in society.

Schools are to a large degree autonomous in the formation of the content and process of education. Starting with the school year 2006/2007, the regular education supervision will also inspect the manner in which schools are implementing the law pursuant to active citizenship and social integration.

1.7 Summary

Everyone who has at least one parent who is a Dutch national or who is born on Dutch territory and has not acquired foreign nationality after five years is considered to be Dutch in the eyes of the law. The same social and political fundamental rights are applicable to all Dutch citizens. Dutch nationality can only be withdrawn in the case of a serious transgression of the law, humanity or the state. The number of (applications for) naturalisation decreased dramatically after the amendment of the Netherlands Nationality Act in 2003.

Research points out that over two-thirds of the Dutch population are satisfied with the functioning of democracy in the Netherlands. Furthermore, three-quarters of the population is of the opinion that democracy is the best form of government in existence.

Of the Dutch people with a non-Dutch background (a member of an ethnic minority), only a small percentage states that they feel primarily Dutch. On the other hand, over 40 percent say that they feel just as much a part of Dutch society as they do of the society from which they originate.

Changing the possibility to retain one's original nationality when being naturalised is currently the subject of political debate. It is argued that the possession of dual-nationality could lead to having a limited loyalty to the principles of the Dutch democratic constitutional state and/or a restricted identification with Dutch citizenship. In this manner a dual-nationality could be an obstacle to the integration of ethnic minorities in the Netherlands and consequently could better be abolished.

Alleged cases of discrimination can be brought before the Equal Treatment Commission [*Commissie Gelijke Behandeling*]. Of these cases, age-discrimination is the most common category.

2.The Constitutional State

Are government and society subjected to the law?

The constitutional state precedes democracy. Democracy presupposes the constitutional state and they are inextricably linked. The constitutional state and the rule of law provide citizens with the opportunity to amicably resolve disputes amongst each other and with the government in accordance with legal rules, and if necessary, the intervention of an independent judge.

2.1 To what extent are the principles of the constitutional state applicable to the whole territory?

2.1.1 Legislation

The Netherlands is a constitutional state. The Dutch Constitution and the legislation based thereupon are applicable to the whole territory. The Dutch court has jurisdiction throughout the territory and the government is bound to the law in the whole territory.

The status of diplomats and diplomatic representatives in the Netherlands, as well as international organisations such as the International Court of Justice, the International Criminal Tribunal for the former Yugoslavia (ICTY) and the International Criminal Court is of such a specificity that it is not considered in this report. It will suffice to state that the status of these persons and judicial institutions for international law is laid down and as such is constitutionally embedded in the Dutch constitutional system.

2.1.2 Implementation

In the Netherlands there is talk of a policy of tolerance [*gedoogbeleid*]. '*Gedoogbeleid*' is deliberately allowing conduct that is contrary to the law. Under Dutch criminal law, this policy has been devised through the so-called expediency principle [*opportuniteitsbeginsel*ⁱⁱ]. This means that the Public Prosecutor's Office can neglect to prosecute punishable actions when a greater general social interest is thereby served. With respect to the policy of tolerance concerning drug-use, this higher general concern is, for example, a more effective protection of public health and public order. Priorities have been recorded in the directives of the Public Prosecutor's Office for the tracking down and prosecution of transgressors of the Opium Act. Thus, high priority is allocated to the large-scale production of and dealing in drugs, while the possession of drugs for personal use has a lower priority. The 'coffee-shop policy' (with reference to the sale and consumption of soft drugs in coffee shops) covers tolerance of punishable acts. If coffee shops stick to certain criteria, the sale of a maximum of 5 grams of hash or marijuana per transaction is not directly investigated.

In addition, tolerance can also mean that - on the basis of politico-administrative convictions - action is not taken against companies who are not in possession of the correct licence or who trade contrary to their license.

2.1.3 Indicators

There are no indicators other than news reports on incidents; structured registration of incidents does not occur. With respect to the application of the principles of the constitutional state, the following *examples* can be provided.

'Autonomous zones'

In the last few years much attention has been paid to cases of a 'serious enforcement deficit', often labelled as 'autonomous zones' in the media. Recently, the government has started to intervene. Thus, in April 2004, the police raided the Vinkenslag mobile home community in Maastricht after various incidentsⁱⁱⁱ. A few years beforehand, the government investigated businesses on the Wallen in Amsterdam in order to regain control of the area. The Dutch authorities (municipality, police, revenue service or other services) intend to restore legal authority where it is absent through these interventions. Consequently, the authorities have in the meantime intervened in these location-specific 'autonomous zones'. There is, for that matter, still concern about the (socially) exclusive character of mobile-home communities.

Hells Angels

There is a suspicion that the international biker's club, Hells Angels, systematically commit acts of violence, threats, extortion and possession of and dealing in arms as well as dealing in soft and hard drugs. The biker's club, which has various branches in the Netherlands, has been much in the news of late. In January 2004 three members of De Nomads from Oirsbeek were murdered following internal disputes. On the night of 16/17 October 2005, police and justice officers arrested 45 Hells Angels in coordinated raids. When the clubhouses were searched a large number of weapons were confiscated. Members of the Hells Angels have voiced numerous threats against members of the media who report them in a negative light. In addition, there was, for example, disquiet about the fact that Hells Angels could ride around without a helmet and whilst intoxicated without fear of punishment. No solution has yet been found in the Netherlands with respect to the multiple problems surrounding Hells Angels.²⁴

No-go areas

The no-go areas phenomenon was put on the agenda in 2002 by Pim Fortuyn, who stated that in his hometown of Rotterdam there were areas and neighbourhoods where he did not dare to go out for fear of being beaten up. In 2003 a number of supermarket chains and individual companies stated that they would no longer operate shops in 30 neighbourhoods in the Netherlands due to the fact that they were too dangerous for both shopkeepers and customers. The retail trade and the government collaborated to combat criminal behaviour in shops - shopkeepers agreed to install more closed-circuit cameras and protect products invisibly. In the last few years' measures have been taken in a number of cities to improve the social climate in problem-neighbourhoods at local level.

²⁴ http://www.om.nl/dossier/hells_angels

2.2 To what degree are public incumbents and civil servants subjected to the requirements of the constitutional state and to transparent rules in the exercising of their functions?

The requirements of the constitutional state, particularly the principle of legality, applies to the government as a whole and the administration is, in all its forms and capacities, subjected to judicial controls. The requirements of the constitutional state are thus applicable in full to the head of state, ministers, the civil servants and the public authorities. Specific rules pertain to the various sectors of the government and the various categories of incumbents, all of which concern the exercising of their functions. General rules are in part codified in the General Administrative Law Act (*Algemene wet bestuursrecht*). Specific rules for civil servants with respect to their integrity have been imposed pursuant to the Civil Servants Act (*Ambtenarenwet*). More expansive coverage of these matters is provided in chapter 9.

2.3 How independent is the judicial authority of the executing authority? How independent is the jurisprudence of various forms of interference?

Articles 116 and 117 of the Constitution contain a number of regulations regarding the organisation of judicial authority, the appointing of members of the judiciary who are tasked with jurisprudence and the supervision of the holding of their office by the officials. A very important basis for the independence of the judicial authority can be found in the stipulation that both the members of the judiciary who are tasked with jurisprudence and the attorney general of the Supreme Court are appointed for life. They can only be dismissed on their own request, when they have reached a certain age or, in the cases determined by law, by a court appointed by law and that is part of the judicial authority.

The legal system of the administration of justice in the Netherlands has been drastically revised as of 1 January 2002. With the institution of a Council for the Judiciary, the independent position of the judicial authority with respect to the legislature (parliament) and the government has been reinforced. The Minister of Justice remains responsible under this amended system for general policy with respect to the system of administration of justice and for the issuing of financial resources to the (Council for the) Judiciary. The Council for the Judiciary is in turn accountable to the Minister for the legitimate and appropriate expenditure of these resources. The Minister's responsibility also includes the rules with respect to the administration of justice. With regard to employment conditions and personnel policy of the judicial authority, the Minister is once again the responsible party.

2.4 To what degree is it ensured that citizens have access to justice, that that access is on an equal footing? And to what degree do they have a right to a fair trial and enjoy legal protection?

One of the guarantees of a well-functioning constitutional state is that citizens with problems have sufficient access or recourse to the law. The access to and the use of legal assistance are the subject of a variety of discussions. Questions concerned include: is the access to the

law sufficiently guaranteed or is it actually too accessible, and do people resort to it too rapidly? Is the quality of the services offered sufficient? How can the pressure upon the judiciary be decreased and what opportunities do alternative methods offer for the settlement of disputes? The ministry of Justice develops numerous policy steps to improve the functioning of legal assistance and the administration of justice.

2.4.1. Legislation

In chapter 6 of the Constitution, the outlines of the tasks and organisation of the judiciary are recorded, as well as safeguards to guarantee the interests of the citizens. In addition the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) contains a number of guarantees for access to justice. According to the permanent jurisprudence of the European Court for Human Rights, the right to access to justice, as guaranteed in article 6 of the ECHR, is not an absolute right. Limitations are possible. A limitation is not consistent with article 6 of the ECHR when the core of the right to access to justice is attacked, the limitation does not serve a legitimate purpose or no reasonable relation exists between the end pursued and the means employed.

The amount of the costs that must be covered in order to obtain access to justice can, for certain groups of people seeking legal action, have an influence upon the gaining of that access. Herewith it is given that the amount of the costs of court could be a violation of article 6 of the ECHR. The current system for costs of court (as of 1 January 2004) recognises a difference between commercial categories and natural and legal persons.²⁵ The system takes the position of less well-off into account. Higher laws are imposed in matters where on the one hand the interest in taking legal action is generally greater, but where on the other hand the choice of alternatives such as arbitration or mediation exist. Moreover, for citizens below a certain income level, the possibility of appealing to the system for legal aid or for a 'debit system' (a regulation for a discount on the costs of court) still exists.

On 11 May 2006 the cabinet announced a proposal for the revision of the court fees system. The purpose of this revision is so that there will be, instead of the current partial exemption regulation, a fixed low tariff of €60 for all civil matters in first instance for persons earning a low income who must appeal to subsidised legal aid in order to take legal action. In that way, according to the cabinet, access to justice for this group remains guaranteed through this new system. In order to determine the amount, the tariffs in the administrative law that are generally regarded as reasonable and that do not form an obstacle to access to justice, in particular for people who are financially less well-off, are considered. The new system is expected to be implemented on 1 January 2008.

2.4.2 Implementation

The cabinet is presently working on measures that must result in a more decisive administration of justice, including the streamlining of legal proceedings, the modernising of the judiciary, the stimulating of the use of modern technology, the simplification of litigation for citizens,

²⁵ http://www.justitie.nl/publicaties/brochures_en_factsheets/factsheets/griffierecht.asp

and the stimulating of extra-judicial resolutions to disputes. The final category of steps provides for the stimulation of mediation, the increase of consumer-sovereignty of *justiciables* and the expansion of consumer disputes commissions. It appears, after all that it can be difficult for citizens to find the right legal assistance or counsel. Councils for legal assistance have thereby started the project 'The path to extra-judicial dispute resolution.'

In the last few years a number of lurid criminal cases have taken place, such as the Schiedammer Park murder, the Putten murder case and the Deventer murder case, whereby the guilt of the convicted person was doubted afterwards. On occasion of the evaluation of the Schiedammer Park murder, a package of measures was adopted. As a result the ministry established a commission for the review of closed criminal cases.

With respect to criminal cases, the Council for the Judiciary drafted an improvement programme in May 2006 titled "In the interests of a good judiciary." The steps in the programme can be summarised as follows:

- * Expertise is furthered by giving judges and other personnel more time to update their specialist knowledge and to gain permanent education. The available knowledge in the forensic and behavioural provinces will be increased substantially.
- * The opportunities of have cases heard by a full bench division (by a tribunal of judges) rather than by a single bench session will be extended.
- * The preparation and position of the examining magistrate must be reinforced. The judicial authority has partial control of the above, but for the rest the legislation will have to be amended.
- * The motivation for the sentencing will be structurally improved.

2.4.3. Indicators

As far as access (on an equal footing) to justice is concerned, reference is made to the investigation "Dispute Resolution Delta 2003" ["Geschildbeslechtigingsdelta 2003"].²⁶ It was evident from the investigation that people solve many legal problems themselves. It is not always the case by a long shot that an appeal is made for legal assistance and only a relatively small proportion of problems are submitted to a judicial institution. The number of alternative dispute resolution methods (binding advice, mediation) is also limited. The investigation did not contain any indications that the offer of legal assistance in the Netherlands was deficient in general or that the quality thereof was inadequate. There is a wide range of advisory and supporting institutions that citizens utilise, and citizens are predominantly satisfied with the services on offer.

It is further evident from the afore-mentioned investigation that the working, highly skilled and people between the ages of 25 and 45 years have both more problems and more frequent problems with legal implications than pensioners, the low skilled and people of other age groups. There are however certain groups

²⁶ Publication no. 219 in the series *Onderzoek en beleid van het Wetenschappelijk Onderzoek- en Documentatiecentrum: Geschildbeslechtigingsdelta 2003. Over verloop en afloop van (potentieel) juridische problemen van burgers.*

who, it is assumed, will not readily enter into legal proceedings, while they actually have many problems. Thus, divorced citizens and those entitled to benefits have, on average, more problems than married persons and salaried citizens.

Of the citizens who have had one or a number of problems of a legal nature, approximately 10% indicate that they remain passive and undertake no action in the sense that they do not attempt to contact that opposing party and do not engage professional help. If we were to attempt to explain the choice of passivity using the characteristics of the respondent's social background, the nature of the opposing party and the type of problem, then it is evident that only education, income and the possession of family liability insurance from a legal expenses insurance policy play, to a limited extent, a role. The low skilled appear in their own defence slightly less, owners of legal expenses insurance and higher-income groups, a little more often. On the one hand, the lack of socio-psychological skills (amongst the least-educated) can form an obstacle to the engaging of legal assistance, and on the other the need for support also decreases when one, to a large extent, has socio-psychological resources at one's disposal (the highly-skilled).

In general, according to the investigation, citizens have a favourable opinion of the legal facilities that they have utilised. On average, they found the recommendations or assistance provided by experts highly usable and were satisfied with the course of events during the official proceedings.

2.5 To what extents is the criminal justice system subjected to rules of fair and impartial treatment?

2.5.1. Legislation

Dutch criminal law is constitutionally anchored in the Constitution. In addition, the boundaries of criminal law are also determined by the human rights conventions of the UN and the Council of Europe. Article 6 of the ECHR is of particular importance.

The Constitution determines that court appearances must in principle be in public and that judgments must be motivated (article 121 Constitution). The Constitution allows for no exceptions when it comes to the principle that judicial pronouncements must be made in public. The fairness and impartiality of the criminal justice system is principally set down in the Criminal Procedure Code. At present work is being undertaken to modernise the Criminal Procedure Code. The revised code should - according to the cabinet - amongst other things, ensure that criminal procedures are proper and fair.

2.5.2. Implementation

The right to a fair trial is a fundamental principle of the Dutch (criminal) justice system. The implementation thereof by the police, justice and other state institutions is, in the first instance, supervised by the judicial authority, or by the European Court of Human Rights (ECHR). Moreover, with respect to specific areas, UN committees can also exercise supervision. Within the Netherlands, supervision of the observance of the principles of fair and impartial treatment also takes place via peer-review (within the legal discipline) and by the relevant civil society.

2.5.3 Indicators

Combating terrorism

Indicators for the development of the right to fair and impartial treatment are the number of cases against the Netherlands in the ECHR, the observations by UN committees and the extent to which public debate and legal discourse on that subject exist. With respect to this, one can see a dramatic growth over the last five years in the debate on the restriction of the rights of citizens within the framework of combating terrorism.

Quality of the courts

With respect to the quality of the judiciary, 26 courts were recently paid a visitation. The committee, under the leadership of Professor M.H. Meijerink, examined subjects such as impartiality and integrity, expertise, treatment, legal unity (uniform application of law), speed and timeliness. The manner in which the judiciary is occupied with external orientation and the development of the quality system were also covered by the visitation. The most significant conclusion of the committee was that the courts have upped their concern for quality. Taking account of the great deal of vitality that the visitation committee encountered, there is every reason for expecting the furthering of the developments that have been launched. The committee continued: "Still, in every court the tension between the quantity and the quality is palpable. The general feeling is that too much emphasis is still placed on the quantitative goals. The boundary is slowly being reached and quality must once again be succinctly considered. There is a strong notion of integrity in the courts; cautiously dealing with questions of integrity and questions of immunity are, as it were, in the employee's blood. Courts undertake many activities to further expertise, but a clear structure is insufficiently developed in most courts. Much is being done in the courts with respect to customer care in the form of treating parties and their lawyers well. In the areas of feedback and the involvement of employees in quality care, there is still room for improvement."

2.6 How much trust do the citizens have in the fairness and effectiveness of the judicial?

Over the last few decades, and more recently too, research has been undertaken into the confidence of citizens in the judicial. In the Netherlands it appears to lie systematically, with a downturn in 1999, at a stable and high level. Structurally, around 60-65% of Dutch people have a great deal to a fair deal of confidence in the judicial system. One can find an explanation for the downturn in 1999 in the conflict (a crisis of authority and a crisis of confidence) between the Minister of Justice Sorgdrager and the chairman of the Attorney General's Office, Docters van Leeuwen. The affair occurred over the period 1997-1998 (Lancee-Steenhuis/Bakkenist affair).

The investigation by peil.nl in 2006 pointed out that confidence had returned to the level reported in the European Values Studies (EVS) of 1981 and 1990. In the light of the above-mentioned publicity affairs

of cases like the Schiedammer Park murder or the Putten murder case, wherein it has been alleged and proved that the Public Prosecutor's Office made a number of major errors, this high level of confidence in the Dutch judicial system can be regarded as striking.²⁷

Table 2.1 Confidence in the Dutch judicial system

	1981*	1990*	1999*	2006 (21-4)
Great deal of confidence	12%	10%	5%	5%
Fair deal of confidence	53%	53%	43%	55%
Not much confidence	31%	31%	43%	33%
No confidence at all	5%	6%	8%	6%
Don't know/no answer	0%	0%	0%	1%
Total	100%	100%	100%	100%

Source: *peil.nl* *based on data from EVS 1981, 1990 and 1999

The confidence in the judicial authority is even at a structurally higher level: around 70% of Dutch people have a great deal to a fair deal of confidence in judges. The tendency has even climbed slightly.

Table 2.2 Confidence in Dutch judges

	1998*	2002*	2003*
Great deal of confidence	11%	15%	15%
Fair deal of confidence	60%	55%	56%
Not much confidence	24%	25%	25%
No confidence at all	5%	5%	4%
Don't know/no answer	1%	1%	1%
	100%	100%	100%

Source: *peil.nl* *based on data from National Voter Research 1998, 2002 and 2003

With regard to the question of whether Dutch people, with respect to citizens of other European countries, have a large degree of confidence in the judicial system, the EVS 1999/2000 can serve as a yardstick. It must be noted that research into the confidence in the judicial system can be problematic due to the ambiguity and charged nature of these concepts.

Table 2.3 Confidence in the judicial system, EVS 1999

	High	Quite high	Not very high	None at all	N
Belgium	5.6	30.8	40.1	23.6	1884
Denmark	16.2	62.2	19.2	2.3	980
Germany	10.0	51.1	32.7	5.9	1081
France	5.3	40.5	34.7	19.5	1588
United Kingdom	9.9	39.2	36.5	14.3	969

²⁷ See also table 7.2 wherein the very restricted response options and less clear picture of the confidence in the "judicial/legal system" emerges. The higher frequency of opinions provides for a more dramatic fluctuation.

Italy	6.0	25.5	49.4	19.1	1946
The Netherlands	5.0	43.2	43.6	8.1	983
Russia	6.8	29.4	35.5	28.3	2411
Spain	10.2	32.1	42.8	15.0	1162
Czech Republic	5.9	17.4	57.2	19.5	1857
Ukraine	5.1	27.2	39.5	28.3	1132
Sweden	7.8	53.2	34.2	4.8	980
Europe total	8.3	36.5	39.1	16.1	38085

It is evident from the Dispute Resolution Delta 2003 that the citizen has, by and large, confidence in being fairly treated if he appears before the courts, considers the court an important aid for the enforcing of rights and considers judges to be reliable and fair. It is striking, though, that a relatively high number of citizens (42%) are of the opinion that the judiciary is not the same for the poor and the rich. With respect to the legal profession, the opinion is less favourable than when it comes to the judiciary. Lawyers are mostly considered to be less reliable than judges and additionally, the costs of a lawyer are considered to be too high. It is well known that citizens, when they are asked for an opinion on the work of judges, will in the first instance think of criminal cases. But the explanation could also lie in a widely shared opinion that the appeal to the legal profession and the path to the courts are an expensive affair, and that the costs form a substantial barrier for lower-income groups. As a result, people with bulging wallets would be more able to have their interests validated.

Table 2.4 Opinions of respondents on legal facilities (% , N= 3516)

Proposition	Couldn't say	Completely disagree	Disagree	Neither agree nor disagree	Agree	Completely agree	Ave.*
Fair treatment by the courts	5,5	1,6	7,0	26,9	45,5	13,4	3,7
Courts are an important resource	3,8	1,0	4,8	21,6	55,1	13,7	3,8
Judicial system is equal for all	4,6	11,6	30,8	24,7	21,8	6,4	2,8
Judges are fair and reliable	10,4	1,4	6,3	33,2	41,1	7,6	3,5
Lawyers demand too much money	12,5	0,3	2,2	16,5	38,2	30,3	4,1
Lawyers are fair and reliable	12,0	4,7	18,3	46,6	17,2	1,1	2,9

* The average is calculated on a scale of 1 (Completely disagree) to 5 (completely agree) Source: *Dispute Resolution Delta 2003*, pg 173

The figures for the confidence in the judicial system correspond with the results from other population studies, according to a study by the SCP.²⁸ The opinion on the judicial system also appears to be closely connected to the confidence in other institutions and in fellow humans (social confidence) and to the opinion on acting against criminality and punishing crimes. People who

²⁸ Vertrouwen in de rechtspraak, Social and Cultural Planning Office the Hague, March 2004.

have little confidence in the judicial system mostly believe that the government acts too softly against crime and hands down punishments that are too light.

**2.7 Which measures, if any, are taken to solve publicly identified problems in this area?
What degree of political priority and public support is devoted to this?**

Criminal law reforms

Various factions have argued for the reformation of criminal law. The so-called 'democratisation of criminal law' has received particular political attention. Proposals vary from the introduction of the opportunity to start, as a citizen, a prosecution yourself to the introduction of lay-judges in the criminal proceedings.²⁹ The introduction of lay-judges is a relatively commonly occurring phenomenon in Europe. Now that various factions in the Netherlands are fervently pleading in favour of the introduction of lay-judges, further study is advised.³⁰ It is striking that these proposals for reforms do not appear to be explicitly linked to concrete problems with respect to the realising of the constitutional state.

On occasion of the review of the Schiedammer Park murder, the commission for the review of closed criminal cases was instituted. The objective of this commission was to check whether, in the tracing of punishable facts and/or dealing with criminal cases resulting from them, serious shortcomings were demonstrated that obstructed the courts from reaching a well-balanced judgement of the facts. The commission reports to the official superior, the Attorney General's Office. A permanent admittance commission was formed within the commission, which decides whether cases will or won't be investigated. In order to safeguard the independence of the commission, it was decided to place the chairmanship in the hands of a professor in criminal law. The commission, the admittance commission and the chairman thereof are appointed by the Attorney General's Office. In the period up to 1 July, twelve people approached the commission with a total of 15 petitions for further investigation. The admittance commission has in the mean time provided recommendations on thirteen cases to the Attorney General and all recommendations were adopted.

TBS system^{iv}

With respect to the problems of the insufficient ability of the TBS system (in its current form) to protect society from people whom, after treatment, again commit serious crimes, a parliamentary inquiry was - on occasion of a number of incidents - undertaken. The Parliamentary Temporary Commission Inquiry into the TBS System [*Tijdelijke Commissie Onderzoek Tbs-stelsel*] published a report on that on 16 May 2006 containing recommendations for the improvement of the system.

²⁹ See visiedocument Veiligheid by the VVD, May 2006. See also Bijdrage in steekwoorden by A.H. van Delden, Esq. Chairman of the Council for the Judiciary with respect to the hearing on the Lay Judiciary by the permanent commission for Justice on 19 June 2006 (consulted at www.rechtspraak.nl)

³⁰ De Rechtspraak internationaal bezien: Nederland & Denemarken vergeleken. In: *Rechtstreeks*, 2005 - no 1, pg 60

2.8 Summary

The principles of the constitutional state are also safeguarded by Dutch law. Nevertheless there are occasional incidents of non-application of the law by rulers, or not upholding or not prosecuting transgressors by the government. There has been recent indignation about the structurally uneven application of the law for certain groups of people (mobile home residents, Hells Angels) or the non-punishment of transgressions of the law (policy of tolerance with respect to drug use). Recent cabinets have advocated a stricter policy, under the conviction that tolerance or legal inequality are detrimental to the confidence in the working of the constitutional state.

Government proceedings are bound by the law. There is no indication that government organisations have either structurally or frequently broken the law.

The independent position of the judiciary with respect to the legislative authority is safeguarded under the law and the Constitution. One of the tasks of the Council for the Judiciary, established in 2002, is to protect the independent position of the judicial authority with regard to the legislature and government.

Adequate access to legal remedies and legal protection for the citizen are sufficiently guaranteed. Although access to legal remedies are in practice not equally distributed across all strata of the population, there is still a broadly positive opinion in society about the availability of legal facilities and the quality of the judicial apparatus.

The working method and results of the Public Prosecutor's Office are under pressure due to developments in a few recent and sensational cases. The Meijerink visitation committee, however, concluded that the courts had made a jump forward in their care for the quality and the impartiality, and integrity, expertise, treatment and legal unity are guaranteed. There is however an increasing tension between the quality and the quantity of the legal settlements.

3. Fundamental Rights

Are fundamental rights guaranteed to an equal degree for everyone?

In a democracy, fundamental rights form the basis of the civil existence of the citizens, but are also an essential safeguard against the 'tyranny of the (democratic) majority'. Fundamental rights also serve to primarily protect the rights of (political, ethical, religious) minorities and offer all citizens the space to participate politically.

3.1 To what degree are citizens protected from physical violence or the threat of violence?

3.1.1 Legislation

Dutch criminal law contains charges of crimes against the public order or against morals, the crime of abandoning those in need of care, crimes against personal freedom, crimes aimed against life and abuse. There are a multitude of penalties. By way of illustration:

- Unlawful entry (art. 138 Criminal Law)
- Rape (art. 242, 246 Criminal Law)
- Vice (art. 247, 249 Criminal Law)
- Inducement to commit vice/prostitution (art. 250/250a Criminal Law)
- Abandonment of those in need of care (art. 255 Criminal Law)
- Forcible deprivation of freedom (art. 282 Criminal Law)
- Threatening (art. 285 Criminal Law)
- Stalking (art. 285b Criminal Law)
- Murder and homicide (art. 287-291, Criminal Law)
- Physical abuse and chronic physical abuse (art. 300-303 Criminal Law)

Certain attempted crimes (such as attempted homicide) are also punishable. In a number of other specific legal stipulations the human life and physical integrity of the citizen is, either directly or indirectly, protected (e.g. road traffic legislation). Hereby the Dutch judicial system contains wide statutory safeguards against physical violence and threats of violence against its citizens.

The so-called monopoly on violence is held by the government. This means that only the government can legitimately apply violence against its citizens. In combination with the principles of legality, violence can only be applied in accordance or on the strength of rules imposed by the law. This is recorded in article 11 of the Constitution and, more specifically, standardised by the relevant stipulations in the ECHR and other conventions.

3.1.2 Implementation

It would be going too far to describe here the task of the government in guaranteeing the safety of its citizens. It is sufficient to refer to the action programme *Towards a Safer Society*³¹ launched by the Cabinet.

3.1.3 Indicators

The question is, to what degree is the government successful in protecting citizens from physical violence or the threat of violence? It is evident from the seventh progress report on the execution of the Safety Programme that, during the 2002-2005 period, a decrease in property crime by 9.3% and a decrease in violent crime by 10.8% was realised. Over the same period the percentage of citizens that occasionally felt unsafe decreased from 30.8% to 24%, while the scales for nuisance crimes and corruption also improved.³²

3.2 To what degree does equal and effective protection of the freedom of movement and residence within the territory, the freedom of speech and the freedom of assembly and association exist?

Freedom of movement and freedom of assembly and association are of great importance for political participation. The freedom of speech is, in addition, essential to the undertaking of a fully-fledged public debate on questions of general concern, without which a democratic, plural and open society is inconceivable. Due to this essential role, this right does not only provide protection when ideas are received with assent, but also if they are shocking, offensive or injurious. This is also applicable to the publishing of cultural and artistic expressions.

3.2.1 Legislation

The freedom of movement within the territory and freedom of residence have, as such, no explicit constitutional or statutory basis. This freedom can also be supposed without such a constitutional or statutory recognition. As far as freedom to remain within the country is concerned, the law posits rules on the admission and expulsion of aliens (Aliens Act 2000). In addition, extradition only occurs on the strength of treaties or in the form of deliverance on the strength of a European arrest warrant. In addition, the constitutional principle that everyone has the right to leave the country, subject to cases determined by law, is applicable.

The freedom of speech is constitutionally grounded in article 17 of the Constitution, as well as in article 10 of the ECHR and article 19 of the International Covenant for Civil and Political Rights. The point of departure of the Dutch Constitution is that preventative censorship is unacceptable. In retrospect, the freedom of speech can be restricted if the expression thereof incites hate or violence or if the expression thereof is needlessly injurious. With respect to this, a tort lawsuit can be initiated before a civil judge.

³¹ http://www.minbzk.nl/contents/pages/3450/veiliger_samenleving_10_02.pdf

³² Letter from the Ministers of Justice and of the Interior and Kingdom Relations to the House of Representatives on 22 May 2006. Kamerstukken II 2005/2006, 28 684, no 85.

Article 8 of the Constitution protects the right of association. It contains the option of this right being limited by law in the interests of public order. The statutory regulation of the right to association is stipulated in Book 2 of the Civil Code. The right to demonstrate is stipulated in article 9 of the Constitution, together with the right to assembly. The right to demonstrate and the right to assembly in public are tied to restrictive regulations. These are set down in the Public Assemblies Act [*Wet Openbare Manifestaties*].

3.2.1 Implementation

Right of residence

With respect to the protection of the freedom of movement within the territory and the freedom to reside there, the most important authority (in the execution of the Aliens Act 2000) for non-EU subjects is the Immigration and Naturalisation Service (*IND*). The execution of the Aliens Act 2000 is regularly, using periodical reports by Cabinet, debated in the House of Representatives. Attention is also paid in the debate to criticism of the policy by independent bodies such as Human Rights Watch, Amnesty International as well as points for attention and recommendations by independent advisory bodies, the Dutch court of Audit and National Ombudsman and the Council of Europe.³³ Concerning the application by the Netherlands of international norms in this respect, please refer to section 14.4 of this report.

The freedom of speech

With respect to charging a perpetrator, the Dutch criminal legislator made a choice between the expressions that are indecent yet not punishable and expressions unacceptable and thereby punishable. An indecent expression can thus sometimes, however injurious, not fall under criminal law. The dividing line between indecent and unacceptable expressions are not always sharply definable. Frequently nuances - sometimes tied to the spirit of the age - are decisive in the criminal judgement of an expression. With respect to unacceptable expressions, one can refer to, amongst others, the articles 137c and 137d of the Criminal Code.

Up till now, Dutch judges have been very reticent about pronouncing sentences in cases of profanity or blasphemy. That is due to the importance of freedom of speech in the public debate the discouraging effect of punishment. In cases of offensiveness, Dutch jurisprudence offers a specific handle for the judgement of the meaning of the freedom of religion and freedom of speech. It is evident from jurisprudence that it is of great significance whether the expression is intended as a contribution to the public debate. If that is the case then there is relatively little chance of a criminal conviction.

Freedom of assembly and association

There are few statutory limitations to the freedom of assembly and association. These are primarily geared towards combating criminality. They include the prohibition on participation in a terrorist or in any other sense criminal organisation and the possibility of the dissolution of Dutch legal entities, the activities of which clash with the public order. In addition, with respect to the EU, steps have been engaged to freeze the accounts and other financial assets and economic resources of terrorist organisations (groups, entities).

³³ Kamerstukken II 19637.

3.2.3 Indicators

With respect to the freedom to move within the territory and to freely reside there, no relevant data is kept that provides insight into the positive or negative developments. Over the last few years, asylum policy has been geared towards efficiency in asylum procedures and the discouraging of apparently ungrounded asylum applications. This has resulted in a dramatic decrease of the number of asylum applications, while the percentage of the applications that have been dealt with through the accelerated procedure has increased.

With respect to freedom of speech, no quantitative investigation has been undertaken. But reference can be made to an extensive number of incidents over the last few years, publicised by various media, whereby the exercising of the freedom of speech was hindered or limited through violence or the threat of violence. These incidents mostly took place within a religious or political context.

Box 3.1 Illustrative overview of violence or the threat of violence with respect to expression

2000	Opera Aisha	The cancellation of the show Aisha by the <i>Onafhankelijk Toneel</i> in 2001 after aggrieve Muslims threatened the Moroccan lead actors ³⁴
2002	Murder of Pim Fortuyn	Murder of Pim Fortuyn (2002)
2003	Commencement of threats, MP Geert Wilders	Especially after his split from the WD parliamentary faction, threats were sent to the address of MP Wilders.
2004	Murder of Theo van Gogh	Murder of Theo van Gogh due to his part in the film Submission (2004)
2004	MP Ayaan Hirsi Ali	Threats against MP Ayaan Hirsi Ali (2002-2006) by Theo van Gogh's murderer and others, whereby she was not able to properly fulfil her position as member of House of Representatives of the <i>Parliament</i> ³⁵
2004	Flikkers play	Cancellation of the play 'Het zijn allemaal flikkers bij de tv' ('They're all faggots on TV')
	Paul Cliteur	Resignation of Paul Cliteur as columnist due to fear of threats and violence.
	Spunk.nl	Hasna el Maroudi, columnist for the website Spunk.nl, ceased writing her column on 2 October because she no longer dared to write what she wanted to. She wrote about the feud between Berbers and Arabs in Morocco. There were numerous reactions to the column, including many threats. Hasna was harassed on the street, spat at and a car with tinted windows attempted to hit her. ³⁶

³⁴ <http://www.elsevier.nl/nieuws/nederland/nieuwsbericht/asp/artnr/14247/zoeken/ja/index.html>

³⁵ <http://www.om.nl/>

³⁶ <http://www.vpro.nl/programma/buitenhof/afleveringen/24069549/items/24398558/>

2005	Cobra Museum	Rachid ben Ali has been threatened on the internet since his work has hung in the Amstelveen Cobra Museum. He is also harassed on the street. He even feels so worried for his security that he no longer goes out in public without protection. He stays in a hotel or sleeps at friend's houses. (2005) ³⁷
2006	Ebru Umar	Followed on street and violence perpetrated against columnist Ebru Umar (2006)
2006	Waarheidszeggers Goeree-Overflakkee	Columns by 'Abel den Denker' in the knock-and-drop sheet Regio Venster in Goeree-Overflakkee and the threatening letters by "Christian letter-writers" calling themselves 'the truth-tellers'.
2006	Departure speech, University of Utrecht	Professor Pieter W. van der Horst scraps, under protest, passages on the contemporary Islamic anti-Semitism from his departure speech on 16 June 2006. ³⁸
2006	Rotterdam Summer Carnival	Lamya M'Haidra, one of the candidates for the Queen of the Summer Carnival in Rotterdam was threatened via a sponsor "because it would be inappropriate for a Moroccan to stand on a float". ³⁹

What is striking in the above overview is that the threats do not appear to have decreased, one could sooner observe an increase.

Bovenkerk et al. have done research into threats in the Netherlands. To the question whether we might be dealing with a media-hype, a number of respondents pointed out the apparent increase in threats as a result of the great deal of attention that the media paid to them. The investigation however does not provide a decisive answer to the question whether there is a growing wave of violence (or a threat of violence) or if there is simply development in the registration and publication of this phenomenon. The observed increase of threats via email can just as well be attributed to an increased use of this medium as it can to the increase of the phenomenon of threats.⁴⁰ What is a relatively new phenomenon are the safety measures that politicians must employ and the safety measures used at political gatherings.

Professor Van den Brink reports that the right to freedom of opinion for non-religious citizens is acknowledged by 75 percent of the Dutch indigenous youth and by (only) 17 percent of the Turkish youth and 7 percent of the Moroccan youth.⁴¹ Other research provides a varied picture. To the question "if human rights are violated, what comes to mind?" the following answers were provided.

³⁷ http://www.elsevier.nl/nieuws/cultuur_en_televisie/nieuwsbericht/asp/artnr/23354/index.html

³⁸ Source: Trouw 17-06-2006.

³⁹ <http://www.rijnmond.nl/Homepage/Regionieuws/Nieuws?itemid=37839>

⁴⁰ Bedreigingen in Nederland. Verkenning in opdracht van Politie en Wetenschap Frank Bovenkerk en anderen. Willem Pompe Instituut Universiteit Utrecht. August 2005.

⁴¹ Figures from the Social and Cultural Planning Office stated by Gabriël van den Brink, Tekst, traditie of terreur?, Utrecht, 2004, pg 52. Quoted by Jos de Beus in De spoedeisendheid van een liberaal verstand, <http://www.vvd.nl/index.aspx?ChapterID=1703&ContentID=4949>

Table 3.2 Associations with violations of human rights

Nature of violation	Percentage	N
Discrimination	5	49
Violation of freedom of speech	7.3	72
Violence	25.6	251
Other violations UDHR	10.3	101
Restriction of moral principles UDHR	12.5	123
War/political situation abroad	17.8	175
Oppression	6.3	62
Injustice	4.6	45
Other	0.8	8
No answer/don't know	9.8	96
Total	100	982

Source: IBT Investigation/UvA ⁴²

Moreover it is evident from the National Freedom Study 2006 that the Dutch population consider the right to free speech as more important than the prohibition of discrimination. The freedom of speech is evidently considered to be the most important right: 70% say it is the most important, with social rights far behind (such as sufficient employment, distribution of welfare, sufficient homes) at 51% and equal treatment in equal situations at 46%. Respondents found the right to vote and the right to protect your home to be less important fundamental rights. The freedom of speech was also considered the most important right during the last poll. The right to privacy and freedom of religion or philosophy are now mentioned more frequently than during the last poll, but the right to vote and the right to protect your home now have a lower score than in 2005.⁴³

With respect to indicators for the exercising of the freedom to assemble and associate, one can point out the rich club and association life in Dutch society. There are no negative indicators that indicate an increased restriction on the exercising of this freedom.

3.3 To what degree is everyone assured of the freedom to practice religion, use one's own language or expand one's culture?

3.3.1 Legislation

The freedom of religion and the fundamental right to cultural development are set down in numerous international treaties as well as the Dutch Constitution. Dutch legislation contains an expansive protection against discrimination on the grounds of religion or philosophy.

⁴² League of Human Rights « Mensenrechten in Nederland »

⁴³ Nationaal Vrijheidsonderzoek (2006) *Een onderzoek naar opinie, kennis en draagvlak ten aanzien van 4 en 5 mei* Verhue, D., Verzijden, D., en A. Nienhuis

3.3.2 Implementation and indicators

No specific monitoring data is available on the degree to which people in the Netherlands are free to profess their own religion, use their own language or develop their own culture. When it comes to religion, data is available. So, church (Christian) denominations and the attendance thereof have decreased slightly in the 1997-2003 period, from 61% to 58% and 24% to 21% of the population. This can be seen as a continuation of the secularisation process in the Netherlands. No indications are known that members of a specific Christian trend are restricted in practicing their freedom of religion.

The 2004 Development Monitor of the United Nations Development Programme (UNDP) suggests that there is a growing need worldwide for "inclusion in society" - more inclusion instead of exclusion. According to the UNDP, countries should, aside from stimulating democracy and economic growth, also pay attention to the development of "multicultural policies that recognize differences, champion diversity and promote cultural freedoms, so that all people can choose to speak their language, practice their religion, and participate in shaping their culture." In the NRC Handelsblad of 17 July 2004, the director of the SCP Paul Schnabel said that the plea of the UNDP for multicultural strategies was a naïve approach. "A bit like what we used to come across in the Netherlands twenty years ago." According to Schnabel, respect for the newcomers' culture is necessary, "but they cannot turn their backs on us either. The fact that three-quarters of the second and third generation Turks and Moroccans find their partners in their countries of origin can be regarded as a rejection of Dutch society."

The total number of Islamic persons, as a percentage of the Dutch population, has increased from 3.7% in 1993 to 5.8% in 2004.⁴⁴ As far as the position of Islam in the Netherlands is concerned, we can refer to the opinion of Hacı Karacaer, former director of the Turkish Association Milli Görüş in the Netherlands. At his farewell as director of the movement, he stated: "The freedom of religion, as we could observe, is in better hands in a secular democracy than in any Islamic country in the world. If you look at the content of the constitutional state, with its healthcare, freedom of education, freedom of opinion and of religion, and with its social facilities, then in reality the Netherlands is a more Islamic country than Turkey in which many of our members were born."⁴⁵

According to the annual review of the Centre for Information and Documentation on Israel (CIDI), the number of anti-Semitic incidents that occurred in the Netherlands in 2004 was lower than in 2003, from 334 incidents to 326 incidents, 26 of which were serious. Under those fall the categories physical violence, threats of violence and desecration of monuments and synagogues. This can be considered a high figure. Although in the first half of 2006 the decrease continued dramatically, in part due to good cooperation with Moslem organisations, the number of anti-Semitic incidents have, on occasion of the Lebanese-Israeli conflict, recently increased (dramatically) once more. Latent anti-Semitic sentiments are apparently evoked when the state of Israel is covered negatively in the news.⁴⁶ As opposed to what is assumed, there is in no sense an exclusive perpetration by members of ethnic minorities when it comes to anti-Semitic violence. Anti-Semitic manifestations have in the last few years appeared frequently on both large Moslem web-forums and extreme-rightwing web-forums. Thanks to rigid moderating, anti-Semitic manifestations on Moslem forums have been increasingly stopped. However, when it comes to extreme rightwing web-forums - especially Stormfront and Polinco - the situation of late is sooner worse than better.⁴⁷ According to the AIVD, the situation on extreme rightwing web-forums has not improved, but has not gotten worse either.⁴⁸

⁴⁴ Source: Statline CBS.

⁴⁵ NRC 19 May 2006.

⁴⁶ see also www.cidj.nl

⁴⁷ Monitor racism en extreem-rechts. Sixth report / Jaap van Donselaar, Peter R. Rodrigues Amsterdam: Anne Frank Stichting, Leiden: Department of Public Administration, Univesity of Leiden, pg 161-162.

⁴⁸ Chapter 4.3 of the AIVD's 2005 Annual Report.

According to the Racial Discrimination Monitor 2005 [*Monitor Rassendiscriminatie 2005*]⁴⁹, many people are more inclined to go to the police with a complaint about discrimination than to the Anti-Discrimination Bureau. The registration of racist incidents by the police and justice department is however lagging behind the actual situation and contains serious gaps. Of the respondents who were victims of racist threats, almost 90 percent did not report these threats. Of those who experienced physical violence, approximately half of them reported the incidents to the police. In terms of violence perpetrated against businesses, this was approximately 40 percent. A striking result of the monitor concerns the experiences of discrimination suffered by people of Dutch origin: about 2 percent of the people of Dutch origin (from the age of 16) had experienced discrimination.

With respect to the question of to what extent people are free in the Netherlands to practice their own religion, employ their own language or develop their own culture, a debate has arisen in the Netherlands in the last few years, whereby the issue is not the question of whether this freedom is guaranteed to a sufficient degree, but whether that freedom is not too great, as a result of which segregation comes into being and social inequality on cultural and religious grounds only increases in our society.⁵⁰

With regard to the above-mentioned incidents (in box 3.1 in the previous section), we are not dealing with the religious intolerance of the majority, but with the unacceptable violence or threat of violence (religiously) inspired by a minority religion in the Netherlands.

3.4 How free are individuals and groups that promote human rights of intimidation, threats and violence?

3.4.1. Legislation

There is no specific legislation or policy aimed at groups and intended to promote human rights.

3.4.2. Implementation

In the Netherlands, various organisations and institutions deal with human rights, such as the Data Protection Authority [*College Bescherming Persoonsgegevens*], the Equal Treatment Commission [*Commissie Gelijke Behandeling*], the National Ombudsman, the Human Rights Study and Information Centre [*Studie- en Informatiecentrum Mensenrechten*], the Dutch Committee of Jurists for Human Rights [*Juristen Comité voor de Mensenrechten*] and the Dutch Helsinki Committee. An inventory has been compiled of their activities and qualifications. From this it was evident that the cooperation and harmonisation of the Dutch organisations can be improved. This led to an initiative to institute a coordinating collaboration (a national human rights institute).⁵¹

Aside from the aforementioned institutions, there are many individuals and private institutions involved in the promotion of human rights, sometimes with the explicit support of the government, sometimes purely on private grounds.

3.4.3 Indicators

⁴⁹ Monitor Rassendiscriminatie 2005: study conducted on behalf of the Ministry of Justice by the Anne Frank Organisation, the National Bureau against Racial Discrimination (LBR), the National Federation of Anti Discrimination Bureaus and University of Leiden.

⁵⁰ See Paul Scheffer. Het multiculturele drama. NRC Handelsblad 23 August 2006. <http://www.nrc.nl/opinie/article427705.ece>

⁵¹ Kamerstukken II 2005/2006, 30 300 VII, no. 58 and 72.

As far as is known, no all-inclusive study has been done in the Netherlands on intimidation, threats or violence perpetrated against individuals or groups who aim to promote human rights. It is assumed that the private institutions and individuals with and without government support in the Netherlands are - in general - protected from intimidation, threats or violence (aside from those incidents mentioned in Box 3.1 which were concerned with the freedom of speech in religious context).

3.5 Which measures, if any, are taken to solve publicly identified problems in this area? What degree of political priority and public support is devoted to this?

Safety of citizens

Dozens of concrete measures in the Cabinet's action programme 'Towards a Safer Society' are intended to lead to Dutch population feeling safer. Thus, criminality and harassment in public and in public buildings must decrease by 20 to 25%. This must be completed by 2008-2010.

Free speech

With respect to the restrictions on the exercising of freedom of speech due to violence or the threat of violence, the following steps or reactions are conceivable:

- a. Keep silent and ignore
- b. Confront directly to show that intimidation, violence or the threat of violence won't work
- c. Personal protection
- d. Report an offence
- e. Withdraw from the public debate
- f. Self-censorship

With regard to the phenomenon that columnists, artists, film-makers and theatre producers are withdrawing from the debate as a result of threats, ceasing to work as columnists or not holding exhibitions or shows, the cabinet has taken the following standpoint:⁵² "The free practicing of the arts and the continuation of the free debate in the Netherlands are crucial to our own free and plural society, also or even especially when controversial subjects are tackled. This does not mean that the freedom of speech detracts from the responsibility with respect to others. Self-reflection and a comprehension of the effect that words and actions can invoke are also a part of participating in the public debate. That aside, it is a very grave development indeed if columnists, artists, filmmakers and theatre-producers withdraw from the debate as a result of threats."⁵³

The freedom of speech means that it is not up to the government to have an opinion about the content of the public debate. But what the government does have, is an exceptional responsibility to protect the public debate. This means that the government has a reason to act if it is evident that certain manifestations are being systematically suppressed due to a lack of access to the media or threats of violence. The new system of security and safety by the central government plays an important role in this. The functioning of this system was evaluated and improved in the autumn of 2005. An important new measure that was adopted in the new system is that the National Safety and Security Coordinator can now systematically consider whether there is a reason to nominate threatened persons who do not fall under the responsibility of the central government to the "Evaluation Triangle"⁵⁴ for temporary inclusion on the so-called limitative list.⁵⁴

⁵² Letter from Minister of Justice 19 June 2006.

⁵³ see Kamerstukken II, 2003.04, 29 200 VII, no 53 and also see response to questions 2, 3 and 4 of the parliamentary questions on the film Submission by members Van der Ham and Van der Laan, noted as 2040507380, Aanhangsel Handelingen, no 1184 session 2004-2005

⁵⁴ Kamerstukken II, 2005-06, 28 974, no 5

No measures, which can count on sufficient political and societal support, have yet been proposed for dealing with the problem of religious intolerance.

Moreover, it is of concern to the freedom of speech that citizens have a sufficient knowledge and comprehension of their fundamental rights. The cabinet is undertaking a plan of action for promoting this knowledge and comprehension. This year 'Citizenship and integration' was introduced as a core goal in education, and educational material is being developed to aid teachers. Furthermore, within the framework of the prevention of radicalisation, various measures will be employed to increase the democratic consciousness and the open debate on the dangers of radicalisation, especially amongst the youth.⁵⁵

Fundamental rights in a plural society

In 2004 the central government issued the memorandum *Fundamental Rights in a Plural Society* [*Grondrechten in een pluriforme samenleving*]⁵⁶, which contained reactions to discussions on, amongst other things, utterances by imams, female circumcision and the wearing of headscarves. It is stated in the memorandum that the relative relationship between the fundamental rights offers sufficient space for tackling the problems of a plural society. The Balkenende II Cabinet was then also not in favour of the suggestion to make the fundamental rights hierarchical - to place them in order of importance. The Cabinet did, though, want more attention paid to the active propagation of the values of the democratic constitutional state, both in education as well as during the integration of immigrants.

3.6 Summary

Citizens are protected against physical violence. Aside from relevant legislation, an abundance of government organisations are also occupied with the protection of the citizen. As a supplement to this, the Cabinet instituted a safety programme through which a substantial number of projects are being carried out with respect to increasing safety.

The freedoms of association and assembly and the freedom of speech are guaranteed in both national and international legislation. There are no indications that these liberties are being structurally and unnecessarily curtailed. Dutch judges have been reticent about pronouncing sentences in cases of profanity or blasphemy.

Over the last few years, due in part to the murder of Theo van Gogh and the row over the cartoons published in the Danish media satirising the Prophet Mohammed, there is talk of a revival in the public debate on the tension between freedom of speech and the fundamental rights in a political or religious context. The number of incidents where an attempt was made to hinder freedom of speech with violence or the threat of violence appears to have increased, although investigations into this are very limited. On the other hand, it is evident from the National Freedom Study 2006 that the Dutch population consider the right to free expression as extremely important, more important than the prohibition on discrimination, freedom of religion and right to privacy.

⁵⁵ see the memorandum "Radicalisme en Radicalisering" and the memorandum "Weerbaarheid en Integratiebeleid" (2004-2005, 29754, no 26 and 27).

⁵⁶ Kamerstukken II 2003/04, 29 614, no 2.

4. Economic and Social Rights

Are economic and social rights guaranteed for everyone on an equal footing?

Without a minimum of economic and social rights at their disposal, citizens cannot effectively exercise their (political) civil rights. When basic needs are insufficiently satisfied or when education cannot be enjoyed, a person cannot develop into a fully-fledged politically active citizen. That is why it is important to review whether economic and social rights in the Netherlands are being respected.

4.1 To what extent is access to employment or social security available to all, without distinction?

4.1.1 Legislation

Through legislation, policy and advice, the Dutch government undertakes its treaty obligations pursuant to treaties such as the European Social Charter or the Universal Declaration of Human Rights (UDHR). The Dutch government is also, through direct action, bound to stipulations with respect to the employment rate, as recorded in the EC Treaty and European directives.⁵⁷ In the Netherlands, principles of non-discrimination are included in the General Equal Treatment Act [*Algemene Wet Gelijke Behandeling, AWG*]. In terms of labour relations, there are the Equal Treatment in Employment (Age Discrimination) Act [*Wet Gelijke Behandeling op Grond van Leeftijd bij de Arbeid*] and the Equal Treatment (Disability or Chronic Illness) Act [*Wet Gelijke Behandeling op Grond van Handicap of Chronische Ziekte*]. The latter law pertains as well to areas other than employment: professional training and public transport also fall under the law. Discrimination in the labour market is, as a result of the aforementioned legislation, prohibited: citizens may, subject to legal exceptions, not be treated unequally on the grounds of their marital status, gender, race, religion, age, sexual disposition, philosophy, nationality, political convictions, working hours, handicap or health.⁵⁸

4.1.2 Implementation

The Equal Treatment Commission (was instituted to uphold the equal treatment legislation. It is an independent, national board that, at the request of citizens, hands down a judgement on whether or not this legislation has been transgressed. In addition, the CBG sees to the fulfilment of its judgments and provides information and recommendations on equal treatment.⁵⁹

⁵⁷ See, amongst others articles 22-25 Universal Declaration of Human Rights (1948), Article 11 Convention on the Elimination of all Forms of Discrimination against Women (1979), Article 5 UN Convention on the Elimination of all Forms of Racial Discrimination (1965)

⁵⁸ For this legislation, see [o.a. www.cgb.nl](http://www.cgb.nl) or www.minszw.nl

⁵⁹ CGB Fact sheets 1994-2004, <http://www.cgb.nl/downloadables.php>

The freedom and accessibility of social security is tied to the legislation of the Ministry of Social Affairs and Employment, as recorded in, amongst others, the Labour and Welfare Act [*Wet Werk en Bijstand*]. Citizens have the right to social security if they cannot support themselves. There are legal conditions, which citizens must fulfil in order to have a right to social security, including the lawful residence in the Netherlands. In addition, the General Old Age Pension Act [*Algemene Ouderdomswet, AOW*] can also be mentioned.

4.1.3 Indicators

Certain of society's groups are under-represented in the labour market. The participation of women, ethnic minorities and the youth is especially lower than average. This could be an indication of unequal access to employment.

Unemployment decreased over the period 1996 to 2000 from 7.5% to 3.5% of the labour force. Thereafter, unemployment increased once more to 6.5% in 2005. The same trend can be seen when the figures are split up into gender and origin. What is apparent from the figures is that the unemployment percentage for women and members of non-Western ethnic minorities has decreased with respect to indigenous Dutch men.

Table 4.1 Unemployment in terms of gender and origin as a percentage of the labour force.

	Men	Women	Indigenous Dutch	Non-Western minorities	Western minorities
1996	5,5	10,5	6,2	21,8	10,0
2000	2,6	5,4	3,0	11,0	5,1
2005	5,6	7,7	5,2	16,4	9,1

Source: CBS

The employment rate of members of non-Western ethnic minorities increased between 1996 and 2001 from 39.5% to 45.9%, while in terms of the indigenous Dutch population it rose from 54.4% to 58.7%. Figures with respect to social security again indicate a difference between people of Dutch origin and citizens who are members of ethnic minorities. With respect to gender, there is hardly any difference in terms of the percentage of the population receiving social security.

Table 4.2 Persons receiving social security as a percentage of the labour force

	Men	Women	Indigenous Dutch	Non-Western minorities	Western minorities
1999	14,6	13,5	12,7	24,8	15,6
2000	14	13,3	12,4	23,5	14,9
2001	13,6	13,3	12,2	22,8	14,5
2002	13,9	13,6	12,5	23,1	14,9
2003	14,7	14,1	12,9	24,6	15,7

Source: CBS

4.2 How effectively are the primary basic needs guaranteed, including an adequate provision of food, shelter and clean water?

4.2.1 Legislation

The government has the constitutionally enshrined task of guaranteeing the public health and social security of residents. Through the General Old Age Act, the 2003 Labour and Welfare Act and the 1994 Welfare Act, the government supports citizens who do not have the resources to acquire essential materials. Further, the government is responsible for the public drinking water supply through, amongst others, the 1957 Water Supply Act [*Waterleidingwet*].

4.2.2 Implementation

The government endeavours to make sufficient houses of sufficient quality available to citizens who cannot afford a house of their own.⁶⁰ For this purpose, income instruments, such as rental allowances and deduction of interest on mortgages, are implemented on the one hand, and on the other, policy instruments such as bilateral agreements with the construction industry. Investment is also made into the inclusion of the homeless and support of people who cannot live on their own.⁶¹

The environmental policy also has consequences for the living conditions of Dutch citizens. The air in the Netherlands is becoming cleaner, albeit haphazardly, but despite great efforts in many locations the Netherlands does not fulfil the European norms for particulate matters and oxides of nitrogen. The central government endeavours to tackle this situation with maximum efforts through providing subsidies for the use of particulate filters.⁶²

4.2.3 Indicators

In 2002, over 5% of low-income earners stated they were (compelled) to be in debt, a figure that was doubled to almost 10% in 2005. By imposing rules upon creditors, through information campaigns and the review of the statutory debt rescheduling arrangement, the government intends to prevent people falling into problem-causing debt.⁶³

Another relevant indicator for the problems surrounding the primary essential commodities is the food banks. It is evident from research that there is no registration of the number of households making use of the food banks. What is clear, however, is that the number of new food banks being established and the number of users of existing food banks have increased in the last few years.⁶⁴

⁶⁰ SCP, *De Sociale Staat van Nederland 2005*, pg 263

⁶¹ Tweede Kamer, session 2005–2006, 29 325, no 7

⁶² as is evident from various memoranda from VROM, <http://www.vrom.nl/pagina.html?id=21441>

⁶³ Memorandum: Het rijk rond schulden. Samenwerking en samenhang tussen departementen op het gebied van de schuldenproblematiek. 2005 pg 4

⁶⁴ *Klantenanalyse Voedselbanken*, Regioplan Beleidsonderzoek, 2006 pg 27-28

4.3 To what extent is the health of the citizens at all stages of life protected?

Physical and mental health is an essential condition for participating in the democratic constitutional state. The promotion of this is the task of the government.

4.3.1 Legislation

Pursuant to the new 2005 Health Care Insurance Act [*Zorgverzekeringswet*], every citizen is obligated to possess medical insurance. The health and safety of citizens as consumers is also guaranteed through the 1935 Commodities Act [*Warenwet*] and through environmental legislation, wherein the quality of air and water are secured.⁶⁵ International treaties such as the UDHR (articles 25-29, 1948) and the Convention on the Rights of the Child (article 24-27, 1989) also obligate the Dutch government to protect the health of the citizen.

There is specific legislation with respect to abortion and euthanasia in the Netherlands. The Termination of Pregnancy Act [*Wet Afbreking Zwangerschap, Waz*] endeavours to find a balance between the protection of the rights of the unborn human and the right of the woman to assistance with an unwanted pregnancy.⁶⁶ The Termination of Life on Request and Assisted Suicide (Review Procedures) Act [*Wet Toetsing Levensbeëindiging op Verzoek*] determines that a doctor is not criminally liable for the employment of euthanasia if he or she has satisfied requirements of meticulousness described in the law.

Further, one can refer to the Occupational Health and Safety Act [*Arbeidsomstandighedenwetgeving, ARBO*]. This legislation contains many regulations for the establishment of good ARBO policy within labour organisations and the tasks and possibilities available to the employer, employees, work's council, ARBO service and the Labour Inspectorate. The legislation also contains specific regulations with respect to combating certain risks, such as handling hazardous substances, working with screens, fitting out places of work, etc. The supervision and enforcement of labour legislation (ARBO Act and the Working Time Act [*Arbeidstijdenwet*]) is undertaken by the Labour Inspectorate, an enforcement body of the Ministry of Social Affairs and Employment. Local and regional authorities (municipal investigators and enforcement officials, police) check whether companies transgress environmental legislation. Because, in the opinion of Parliament, this supervision was insufficient, the biannual progress report on environmental enforcement was instituted in 1999. From 2003, it was transferred to VROM [*the Ministry of Housing, Spatial Planning and the Environment*] inspectorate.

4.3.2 Implementation

Control is exercised by a number of bodies with respect to the application of the above-mentioned legislation. The Foods and Consumer Products Safety Authority was established to supervise businesses that must observe the legislation and regulations with respect to food safety.⁶⁷ The Health Insurance Supervision Authority oversees the implementation of the Health Insurance Act and the General Exceptional Medical Expenses Act [*Algemene Wet Bijzondere Ziektekosten*]. Due to the

⁶⁵ Dossier Luchtkwaliteit Ministry of Housing, Spatial Planning and the Environment, <http://www.vrom.nl/pagina.html?id=20542>

⁶⁶ *Evaluatie Wet afbreking Zwangerschap*, reserach institute ZonMW, 2005

⁶⁷ *Ons eten gemeten*, National Institute for Public Health and the Environment 2004 pg 183

recent introduction of the Health Insurance Act, not much information on the implementation thereof is as yet available.

4.3.3 *Indicators*

Health of the citizen remains a point of attention for the government. There are, however, no negative indicators that indicate that the functioning of the democracy is negatively influenced.

4.4 How comprehensive and inclusive is the right to education, including education on the rights and obligations of state citizenship?

4.4.1 *Legislation*

The right to free education for all is enshrined in the Convention on the Rights of the Child and the Convention on Economic, Social and Cultural Rights. Various requirements are herein imposed with respect to education, with the intention of providing as complete a development as possible for the child. The Dutch Constitution states that education is the responsibility of the government. Everyone is, however, free to establish a school and to provide education that is based upon a specific philosophical or religious foundation. The financial equality of public and special education is determined in the Constitution (article 23).

According to the Equal Treatment Act, special schools may, on admission to and participation in education, set requirements that are necessary for the realisation of the basis of the special school. These requirements may not lead to discrimination on the grounds of political conviction, race, gender, nationality, heterosexual or homosexual orientation or marital status. Discrimination, however, is not taken into consideration when we are dealing with special educational systems for sex or religion, so long as everyone has equal access and the quality of the education is safeguarded.⁶⁸

The 1969 Compulsory Education Act [*Leerplichtwet*] states that all children who live in the Netherlands or are long-term residents of the Netherlands are obliged to receive education starting in the month after their fifth birthday. This compulsory education ends after the school year in which the child turns sixteen (with a minimum of 12 complete years of education), after which they must complete one further year (art. 3). The Ministry of Education, Culture and Science covers the budget of primary education in accordance with criteria stipulated by law.

Article 8 of the 1981 Primary Education Act [*Wet op Primair Onderwijs*] and article 17 of the 1963 Secondary Education Act [*Wet op Voortgezet Onderwijs*] stipulates that the education must in part be geared towards the stimulation of active citizenship. Core goals have been instituted by the state that are intended to ensure that pupils obtain an interest in a number of important aspects in society, and are able to increase their knowledge thereof. Hereby, the moulding of

⁶⁸ Articles 1 and 2 Convention against Discrimination in Education 1966

critical persons, who can be expected to behave respectfully and civilly responsibly, will be stimulated.⁶⁹

4.4.2 Implementation

The supervision of the observance of the Compulsory Education Act is charged to the mayor and aldermen of the municipalities. Every municipality has a compulsory education officer who deals with checking whether compulsory education (art 16) is being observed. The number of cases where compulsory education is structurally evaded is negligible.

4.4.3 Indicators

The general level of education increased over the period 1996 to 2004. In 2004, 65% in the age group 15-64 had at least completed higher secondary education. The level of education of males is slightly higher than that of females, but the difference between the genders is shrinking. The level of education of members of ethnic minorities in the last eight years has increased more dramatically than the level of education of indigenous Dutch people, but it still remains behind the level of education of latter.⁷⁰

When it comes to primary education, the performances of pupils vary greatly. Pupils who are members of ethnic minorities and children of lower-educated parents are especially at risk of falling behind. The policy for the educationally disadvantaged is aimed at this group.⁷¹

4.5 How free are trade unions and other work-related associations to coordinate and represent the interests of their members?

4.5.1 Legislation

Pursuant to the international treaties and national legislation, employees have the right to join or establish organisations that safeguard their economic and social interests.⁷²

In addition, the government endeavours to stimulate deliberations between employers and employees by offering space for the concluding of collective agreements.

The rights of association and assembly and the right to demonstrate are included in the Dutch constitution (articles 8-9): The 'right to organise' grants trade unions the right to institute their own rules and basic principles, elect representatives, formulate a programme of policies and organise activities.

⁶⁹ See Kerndoel 15-18, <http://www.minocw.nl/documenten/kerndoelen-kern.pdf>

⁷⁰ Jaarboek Onderwijs in cijfers 2006 CBS pg 85

⁷¹ Gemeentelijk Onderwijsachterstandenbeleid 2002-2006 MOCW 2006 pg 5

⁷² Articles 5 and 6 of the European Social Charter 1963, articles 20 and 23 of the Universal Declaration of Human Rights 1969, Article 22 International Covenant on Civil and Political Rights.

As stated in the treaties of the International Labour Organisation (ILO), employees must be protected from all forms of discrimination on the grounds of their trade union membership.⁷³

The 1927 Collective Agreements Act [*Wet op de Collectieve Arbeidsovereenkomst*] and the 1937 Collective Agreements (Declaration of Generally Binding and Non-binding Status) Act [*Wet op het Algemeen Verbindend en Onverbindend Verklaren van Bepalingen van Collectieve Arbeidsovereenkomsten*] regulate the concluding of collective agreements. In order to be able to conclude collective agreements, the authority to do so must be stated in the statutes of the trade union. Dutch trade unions easily fulfil the requirements for acquiring complete entitlement to their rights.⁷⁴ Both trade unions and employees must ensure that the members observe the obligations of the agreement. In order to achieve this, the members must endorse the agreement prior to the collective agreement being concluded. In addition, employers are obligated to also offer the collective agreements to employees who are not a member of that trade union.⁷⁵

4.5.2 Implementation

The government has engaged various obligations in order to promote and improve voluntary consultation between employer's and employee's organisations. The Social and Economic Council (SER) was established by the 1950 Organisation of Business and Industry Act [*Wet op de Bedrijfsorganisatie*] in order to involve both employers and employees in the problems with respect to social security, employment and economic growth. The SER advises the Cabinet and Parliament on the outlines of the socio-economic policy. In addition, the SER supervises the industry branch's statutory trade organisations [*publiekrechtelijke bedrijfsorganisaties – PBO*] of employers and employees. Employers and employees can reach agreements through commodities boards and industrial boards and arrange matters that they feel are of concern to their own industry branch. As the chief body, the SER oversees the PBO's with respect to composition of the directors, the finances and the authorities of the boards.

There are twelve members appointed by the Crown in the SER who represent public interest, as well as eleven corporate members and eleven employer's members. The allocation of seats is dependent on the size of the organisations. Government employers and employees are additionally represented in the Council for Public Sector Personnel Policy [*Raad voor het Overheidspersoneelsbeleid*], the central negotiating platform for collective sector employers and employees in the public sector.⁷⁶

Another important institute is the Labour Foundation [*Stichting van de Arbeid*], established in 1945. Only social partners are present in this consulting body. The Labour Foundation gears itself towards the promotion of good labour relations between employers and employees.⁷⁷

Trade unions are, according to Tros, Albeda and Dercksen, complex organisations that must fulfil the requirements of internal democracy, efficiency and effectiveness. During negotiations, this can lead to problems. According to the abovementioned authors, the development of trade unions is characterised

⁷³ Articles 2-5 IAO Verdrag nr. 87 betreffende de vrijheid tot het oprichten van vakverenigingen en de bescherming van het vakverenigingsrecht, 1950, Articles 1-4 IAOVerdrag nr. 98 vrijheid van organisatie en collectief te onderhandelen, 1993.

⁷⁴ A.T.J.M. Jacobs, *Collectief arbeidsrecht*, 2005 Kluwer Deventer pg 32

⁷⁵ Articles 1, 2, 8 en 14 Wet op de collectieve arbeidsovereenkomst 1927, Articles 4-6 Wet op de Loonvorming 1970

⁷⁶ see also www.ser.nl, www.stvda.nl and http://rop.caop.nl/html/rop_acr.shtml

⁷⁷ Article 670 section 5 Burgerlijk wetboek 7, Article 125a Ambtenarenwet 1929

by centralisation and concentration. Members have a vote in union or association councils and in the General Meeting, but there can be a yawning gulf between the members and the professional directors of the trade union. Through cooperation with work's councils, integration of the collective agreements policy with the work of the work's councils and with individual attention, the trade unions have attempted to strengthen their relationship with the shop floor.⁷⁸

Trade unions must not only work on behalf of their members as insiders, but also on behalf of the general interest of employees. This can potentially lead to tension in the functioning of the trade union. For the trade union movement the union density is not only of concern with respect to the acceptance by the employees and the government that they act as representatives of the employees, but also with respect to their capacity for organising collective action. Problems surrounding the attempts to increase and expand the union density are mostly due to the fact that non-members can also make use of the collective agreements. There are also issues with decreasing solidarity, it being less of a norm to become a member of a trade union, the trade unions functioning in an ever-increasing centralised manner and the worsening image of trade unions.

Aside from the union density, there are multiple factors that influence the power of a trade union, such as political relationships, economic development, the position of trade unions in the institutional system, the strategies employed by trade unions and the coordination within the trade union movement itself. Yet still, the decrease in the union density since the 80s has not led to collective agreements becoming less important. This is due to the existent legislation and the choice of employer's when it comes to concluding collective agreements, which up until now were a stabilising factor in labour relations in the Netherlands.⁷⁹

During the 2003 autumn consultation^{vi}, the second Balkenende Cabinet concluded an agreement with the social partners and with the Labour Foundation with regard to the freezing of salaries in 2004 and a 'wage increase approaching zero' in 2005. In the spring of 2004, the cabinet and the employee's organisations could not reach an agreement on early exit from the labour market and early retirement. Finally a social agreement was reached in the autumn through policy amendments to a large number of points, such as career, flexible retirement, the Disability Insurance Act [*Wet Arbeidsongeschiktheid – WAO*], the Unemployment Insurance Act [*Werkloosheidswet – WW*], wage increases and childcare.⁸⁰

The SER sets its own guidelines with respect to the participation of the employee's organisation and the number of seats it can occupy in the advisory, administrative and executive bodies. As a result the decision over the degree of representation is left up to the established social partners. Bias can arise when existing partners are chosen to maintain the goal-orientation of the consultation, while democratic principles demand that no insurmountable barriers are erected for new trade unions.⁸¹

⁷⁸ Tros, F.H., Albeda, W., Dercksen W.J., *Arbeidsverhoudingen in Nederland*, Kluwer Alphen aan de Rijn 2004 pg 44, 48, 49

⁷⁹ *ibid*, pg 46

⁸⁰ Poldermodel, <http://www.parlement.com/9291000/modulesf/gqefwfp9> Sociaal Akkoord 2004: wat betekent het voor u? www.szw.nl

A.T.J.M. Jacobs, *Collectief arbeidsrecht*, 2005 Kluwer Deventer pg 37, 38

When it comes to private law, there are no regulations on the representativity during collective agreement deliberations. In the Netherlands it is the norm, though, to determine labour conditions in collective deliberation between the employers and the employees, but the employer can bypass the trade unions and reach an agreement with the employees alone on the labour conditions. The trade union cannot take any legal action to prevent that happening.⁸²

In 2000 the SER accentuated the directive the Representativeness of Organisation with a regulation. The directive determines, amongst other things, that the organisation should take the legal shape of an association with full entitlement to rights, the internal organisation of the association is geared towards members (provision of information and advice), the organisation is independent, able to act professionally in its own interests and to have a not insignificant amount of members. Here too it is stated that rightful organisations are only representatives of trade and industry. The public sector and the institutes subsidised in full by the government are therefore not part of trade and industry.

4.5.3 Indicators

Approximately 85% of employees are represented by trade unions when regulating the more important labour conditions. In addition, individual collective agreements are also concluded and labour conditions are increasingly being adjusted to the wishes of individual employees and employers. According to the CBS, in 2003 only 6.5% of organised employees were members of a trade union that was not connected to the three established federations and thus was not represented in the national consultation bodies. They were mostly category-specific and professional associations, primarily with highly skilled members.

Criticism of the trade unions is mostly directed at the problem of representation: do the trade unions really represent the employees? Firstly, there is a low union density amongst employees. The total number of members, it is true, did increase from 1.8 million in 1993 to 1.9 million in 2003, but the union density decreased over this same period from 28.3% to 25.6% of the working population.

Moreover, the composition of the membership is not a good reflection of the diversity in the labour market. Men and elderly people form the majority of trade union membership. Between 1992 and 2001 the membership share of young people decreased from 10% to 6%. There are also great differences between the various industries when it comes to union density. In power and water companies, and in the public sector, trade union membership is high, around 40%, while this percentage is much lower when it comes to business services and trade, approximately 12%. But the membership has to some degree become more plural and the traditional supporters are no longer as obvious.⁸³

⁸² Schets van het Nederlandse arbeidsrecht 2000 Kluwer Deventer pg 203 and 204

⁸³ Tros, F.H., Albeda, W., Dercksen W.J., Arbeidsverhoudingen in Nederland, Kluwer Alphen aan de Rijn 2004 pg 46

In October 2005, due to dissatisfaction with respect to representation and the direct and indirect consequences thereof, a new trade union was established, *Alternatief Voor Vakbond*^{vii}, specially for the young work class and the self-employed.⁸⁴

Decreasing membership is contrasted to the appreciation of the work of the trade unions. Some 53% of the Dutch have a reasonable to great deal of confidence in trade unions. This percentage is well above the average (38%) of all 40 countries involved in the study of the World Values Study Group. The percentage of non-members that consider the trade union movement of importance to society also increased, from 68% in 1993 to 78% in 1998.⁸⁵

4.6 How difficult are the requirements to fulfil and how transparent are the rules for proper corporate governance? How effectively are public interest companies regulated?⁸⁶

4.6.1 Legislation

There is extensive legislation in the Netherlands with respect to the protection of health and safety at work, protection of the consumer and protection of the environment.

In 2003 the Tabaksblat Commission, on the instigation of the ministries of Finance and Economic Affairs, drafted a Corporate Governance Code, wherein the principles and recommendations for good governance of (listed) companies are recorded. These principles are primarily aimed at the official filling out of the administration, responsibility and rewarding of performance. Although the code does not have any legal character it is, according to a study by the Winter Commission in 2005, widely accepted and reasonably well adhered to, with the exception of the theme reports and accountability of salaries.

With respect to that, the Work's Councils Act [*Wet op de Ondernemingsraden*] and also the so-called Two-Tier Entity Act [*Structuurwet*^{viii}], that was implemented on 1 October 2004 (to reinforce the position of shareholders and work's councils, amongst other things) can also be mentioned. The law also contains a stipulation on the grounds of which the Minister of Justice can assign a code of conduct. Such an assignment obligates the companies to indicate in their annual reports whether they have applied the stipulations of the code and, if not, to explain why they did not. The Minister has designated the above-mentioned '*Tabaksblat Code*' as the corporate governance code for listed companies.

4.6.2 Implementation

⁸⁴ Mei Li Vos, *Dan maar een eigen vakbond*, Volkskrant 1 October 2005

⁸⁵ Kamerstuk Tweede Kamer, 2001-2002, 27400, XV, no 50

⁸⁶

The Netherlands Competition Authority [*Nederlandse Mededingingsautoriteit, Nma*] and the Netherlands Authority for the Financial Markets [*Autoriteit Financiële Markten, AFM*] are the supervisory bodies that supervise companies with respect to market-hindering activities. Companies are legally obliged to cooperate with investigations by the NMa and the AFM. If, in their opinion, relevant laws have been broken (Competition Act [*Mededingingswet*] - or the Financial Services Act [*Wet Financiële Dienstverlening*]), then they have the authority under administrative law to impose sanctions (fine, penalty).

4.6.1 Indicators

In 2004 there were 93 industrial accidents that resulted in a fatality in the Netherlands. This is lower than the average of 102 per year. Of the 93 victims, 21 were not registered as employees legally residing in the Netherlands.⁸⁷ It is evident from figures provided by the National Working Conditions Survey that the percentage of accidents causing physical injury in 2005 amounted to 4.5%. This is a slight rise with respect to the annual average, but lower than the European average of 5.4%.⁸⁸ Men and young people are herein over-represented.

4.7 Which measures, if any, are taken to solve publicly identified problems in this area? What degree of political priority and public support is devoted to this?

With respect to the above-mentioned inquiries, it was obvious that members of non-Western ethnic minorities find themselves lagging behind in a socio-economic sense. This problem is the emphatic subject of government policy (labour market policy, education), as a component of a specific minorities policy.

The problem of representativity in trade unions is evidently also (still) the subject of current public debate. What is now evidently at hand is the ageing of the membership. With respect to that trade unions are now being established for young employees and more emphatically specific policy geared towards the young is being implemented by existing unions.

4.8 Summary

Certain of society's groups are under-represented in the labour market. The participation of women, ethnic minorities and the youth, especially, are lower than average. The employment rate of members of non-Western ethnic minorities has increased over the last few years, but is still almost 20 percentage points behind the employment rate of indigenous Dutch citizens.

⁸⁷ Figures from the CBS, see Nationale Enquête Arbeidsomstandigheden

⁸⁸ *EU Labour Force Survey*, see also the ILO's SafeWork Report

The government has the constitutionally enshrined task of promoting the public health and social security of residents. Through, amongst others, the General Old Age Pension Act, the Labour and Social Security Act and the Welfare Act, the government supports citizens who do not have the resources to acquire the essentials of life themselves.

Indicators for the distribution of wealth, such as the number of people with structural debts or the number of food banks, indicate that the relative wealth has decreased for many people in the last four years.

Access to education for the youth up to the age of 17 is guaranteed by law and international treaties. The Education Inspector supervises the quality and degree of uniformity of the education. The general level of education increased over the period 1996 to 2004.

The role of trade unions and workers' organisations is both institutionally and structurally anchored in society. The Collective Agreements Act guarantees the validity of collective employment contracts. There is a tradition in the Netherlands of constructive consultation between social partners. In the last cabinet session, the social consultation was put under some pressure, on the one hand because the economic situation offered the cabinet scant space for negotiation. On the other hand, the legitimacy of the trade unions is facing increased scrutiny due to the decreasing membership. An alleged absence of inter-generational solidarity was also raised.

Supervision of employment conditions and working hours is regulated by the law and is implemented by the Labour Inspectorate.

Part II. Political Representation and Public Accountability

5. Free and Fair Elections

Do elections give citizens power over the government and politics?

The holding of free and fair elections is one of the most obvious characteristics that distinguishes a democracy from a totalitarian form of statehood. Elections form one of the most important instruments that the citizens have for exercising control of the power.

5.1 To what extent are administrative or legislative functions filled through free and general elections? How frequently do elections lead to a change in the composition of the administration?

5.1.1 Legislation

In the Netherlands, the government and the Parliament (Senate and House of Representatives) together make up the legislative power and, there is no strict separation between the legislative and executive power. The legislative power is elected by the people in free elections. The government in the Netherlands is tasked with the governance - the executive power. The government is formed by the King and the ministers, as stipulated by art. 41 section 1 of the Constitution.

Every Dutch person has the right to be equally eligible for appointment to the public service (article 3 of the Constitution). The term public service bears relation to all public bodies and other public organs and institutions.

The right to vote or to be voted for (active and passive suffrage; article 4 of the Constitution) concerns the right to participate in the public matter through elections. Understood under general representational bodies, which article 4 of the Constitution is concerned with, are both houses of the Dutch Parliament (legislature), the provincial houses, the municipal councils and general representative bodies at local and sub-municipal level.

The Constitution expresses the principle of 'one man, one vote'. The article stipulates the possibility for the legislature to limit the suffrage and to provide exceptions to suffrage. This is of concern to, amongst other things, the elections for the Senate. The members of the House are not directly elected, but are chosen by the provincial parliament (chapter 3 of the Constitution). The suffrage regulation is included in the Electoral Act [*Kieswet*].

5.1.2 Implementation

With the application of the rules of the Electoral Act, both houses of Parliament are recomposed through elections every four years. The elections are held by secret ballot, on the basis of equal representation within the boundaries determined by the Electoral Act.

Immediately after the House of Representatives elections, the Cabinet is formed. The head of state requests advice on the Cabinet to be formed from the presidents of the Senate and the House of Representatives, the vice-president of the Council of State (*Raad van Staat*) and the leaders of the parliamentary parties in the House of Representatives. The head of state then requests one or more *informateurs*^x to investigate possible new cabinets that can count on sufficient support in the House.

5.1.3. Indicators

Over the period 1946-2006, elections led to a shift in the party-composition of the governing coalition eleven times, while in seven cases it remained unchanged. Indicators on provincial and local level are not available.⁸⁹

An impression⁹⁰ of the House of Representatives elections provides the following picture:

House of Representatives elections 2003

On 22 January 2003, early House of Representatives elections were held. The elections were necessary after the collapse of the Balkenende Cabinet.

House of Representatives elections 2002

On 15 May 2002, regular (four-yearly) elections for a new House of Representatives were held. It is true that the Kok II cabinet had collapsed on 16 April, but the election campaigns were by then already on full steam. The Kok II cabinet remained in office while it was the outgoing government.

House of Representatives elections 1998

The so-called purple coalition retained its majority, despite dramatic losses by D6 (from 24 to 14 seats). The PvdA and VVD (each gained eight) amply compensated for that loss. The big winner was GroenLinks, which jumped from five to eleven seats. The SP won three seats and the SGP won one.

House of Representatives elections 1994

Large shifts were experienced in this election. PvdA and CDA lost dramatically (12 and 20 seats, respectively), whereby the incumbent coalition lost its majority. The parties aimed at the elderly (AOV and Unie 55+) won spectacular gains with seven seats.

House of Representatives elections 1989

During these early elections the CDA maintained its majority, it won 54 seats, just as in 1986. The PvdA lost three seats, ending up with 49. D66 gained (from nine to twelve seats) as did the GPV (from one to two seats).

⁸⁹ a start has been made - with a random survey amongst 123 municipalities - by P.E.W.M. Tops in his thesis 'Afspiegeling en afspraak. Coalitietheorie en collegevorming in Nederlandse gemeenten (1946-1986)' (VUGA, The Hague 1990), m.n. pg 146-153

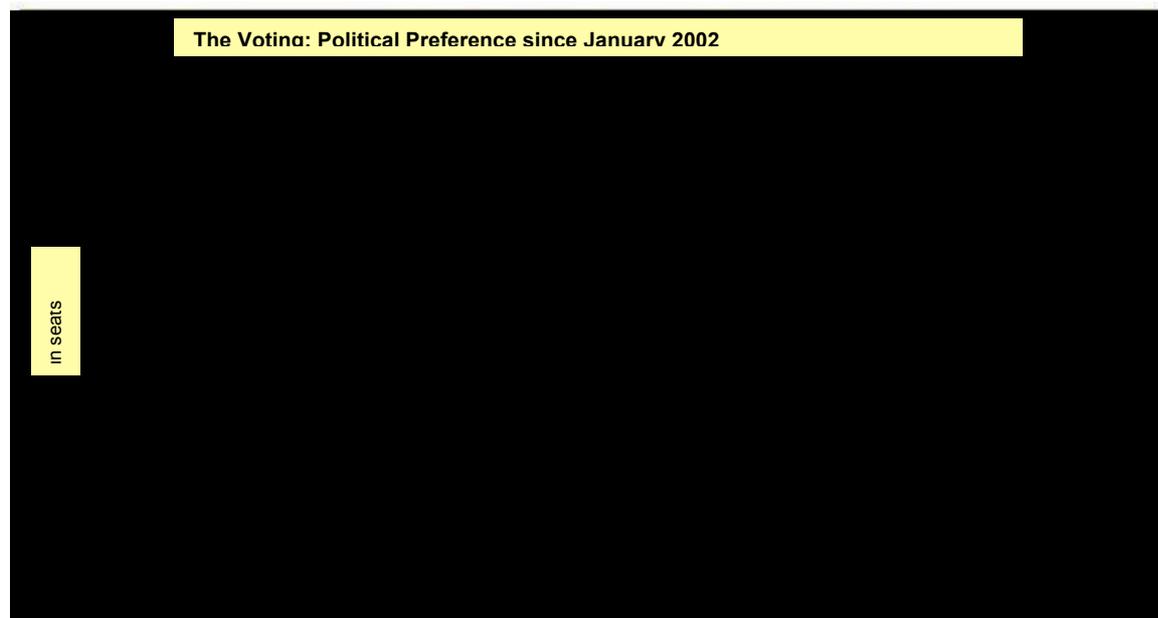
⁹⁰ see www.parlement.com

House of Representatives elections 1986

Under the leadership of Prime Minister Lubbers ("Let Lubbers finish the job"), the CDA won by a large majority. They won 54 seats, gaining nine. On the other hand, governing partner VVD lost nine seats.

Of note were the dramatic shifts of political preferences by the electorate, especially in the year 2002.

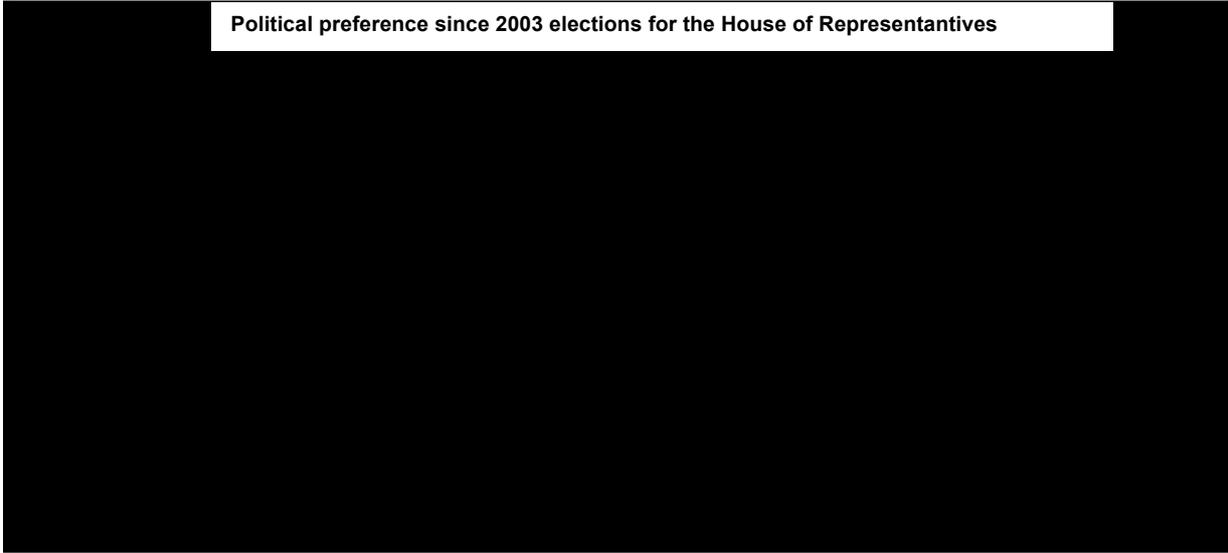
Graph 5.1 Political preference House of Representatives 2002-2003; the floating voter



Source: peil.nl

It appears from post-2002 polls that the phenomenon of the floating voters in 2002 has decreased a bit of late, at least if one considers the overall preferences.

Political preference since 2003 elections for the House of Representatives



Source: peil.nl

W. van der Burg stated - on the basis of the analysis of the National Elections Study, the 2002/2003 election results and the opinion polls in 2002 and 2003 - the following: "The increased instability in election results is naturally, from the perspective of political parties and even from the perspective of a politically system, somewhat problematic. We must, however take care with the conclusions that we draw from this with respect to voters and voter-behaviour. From a normative point of view of the role of the voter in a democracy, it is desirable when citizens keep open a number of options, critically following politicians and allowing them to be followed and punishing parties if one is dissatisfied with them. That the Dutch voters have increasingly done this can then primarily be considered as a form of emancipation of the citizens. When parties differ little with respect to ideology and opinions on policy, then those parties are, for citizens whose preferences - to a significant degree - are determined by these ideologies and policy plans, approximately equally attractive. The analyses in this contribution have shown that citizens hesitate the most between parties who are ideologically close. That small factors are decisive in such a case primarily says something about the limited differences between parties, but nothing about a deficient or irrational opinion-forming by the citizens."⁹¹

5.2 How accessible, and on an equal footing for all citizens, are electoral registrations and voting procedures? How independent are they from state supervision and party control? To what extent are they safeguarded against intimidation and abuse?

Suffrage

⁹¹ Brug, W. van der, 'Zwevende of geëmancipeerde kiezers?', in: *Jaarboek 2002 Documentatiecentrum Nederlandse Politieke Partijen*, pg 248 (2004)

The members of the House of Representatives are directly elected by those who are Dutch citizens on the day the candidates are nominated and are 18 years of age or older on the day of the election - whether they were resident in the Netherlands or abroad.

Excluded from the suffrage are those who have been disenfranchised by the courts or under guardianship due to a psychological disorder. Disenfranchisement can only take place as a result of a limited number of offences, and then only if the offender is sentenced to a prison sentence of at least one year.

Voter registration

The right to vote of the residents is registered in the Municipal Database of Personal Records [*Gemeentelijke Basisadministratie Persoonsgegevens*, GBA]. The municipal voter's roll is thus a selection from this GBA. Persons who actually live outside of the Netherlands are, at their request, included in the roll supplied by the municipality of 's-Gravenhage. Together with the persons included in the municipal registers or rolls, these "foreign voters" make up all the people who have a right to vote. The mayor and aldermen register the right to vote of the residents of the municipality. In order to protect personal information, this registration is not public.

The registration of the right to vote is generally permanent and is done in the population database, the municipal database of personal records (GBA). This however does not apply for the registration of Dutch nationals who live abroad. They must, prior to every election of the House of Representatives and the European Parliament, be registered in the municipality of The Hague. A request for registration can be submitted between six months and six weeks prior to the day on which the election will be held to the head of the consulate under which the residence of the voter falls (and in the Netherlands Antilles and Aruba, to the representative of the Netherlands). This person then sends the application to the mayor and the aldermen of The Hague. Dutch people who submitted an application with respect to the prior elections of the House of Representatives or the European Parliament are included in a semi-permanent file. Prior to the following election, they automatically receive a new registration form.

No party control is exercised upon the voter registration or during the voting procedures.

Voting procedure

The elections and the voting procedure are regulated by and on the strength of the Electoral Act. The results of the elections are computed through the adding up of the results from all the municipalities in the Netherlands. They are recorded in a written statement by the Central Polling Station. The official result determines the allotment of seats in the House of Representatives.

Abuse

Little is known about intimidation and abuse during the ballot. One can point to one single incident in the past involving the *Centrumpartij*, whereby the incident involved the collecting of signatures for the nomination of candidates, and not the ballot itself. Incidents are known with respect to the use of mandated votes during (municipal) elections. In addition, after the 2006 municipal elections there were a few incidents reported in the news where irregularities

were suspected.⁹² The Public Prosecutor's Office recently launched an investigation into irregularities during the last municipal election in the municipality of Weert. With respect to irregularities in Stadsdeel Bos en Lommer (municipality of Amsterdam) - whereby voters, contrary to the Electoral Act, who were not physically handicapped received assistance during the exercising of their vote - the municipal ombudsman recently published a critical report, with recommendations.⁹³

Independence and neutrality of the Electoral Council

The Electoral Council is the body that acts as the central polling station for the House of Representatives' and Senate's and the European Parliament's elections. The means, amongst other things, that the Electoral Council officially determines the election results and that political parties can register a designation with the Electoral Council. In addition the Electoral Council serves as an advisory body for the government and the parliament in the areas of suffrage and elections. As far as the Electoral Council itself is concerned, one can note that it is an independent, administrative body instituted by law. The law determines that the members of the Electoral Council are appointed by royal decree for a period of four years, and can be re-nominated twice. They are nominated "on the grounds of the expertise necessary for providing recommendations within the area of suffrage and elections, as well as on the grounds of social knowledge and experience". With respect to the independence and neutrality of the Electoral Council, there are no doubts; the Electoral Council is, moreover, a body that is *de facto* composed in a politically balanced manner. With the intention of strengthening the independence of the Electoral Council, at the end of 2005 the secretariat of the Electoral Council was separated, also in an organisational aspect within the responsible managing ministry (BZK), from the organisational components of the ministry who are responsible for the legislation and policy with respect to matters of suffrage.

5.3 How fair are the procedures for the registration of candidates and parties for elections? To what extent is there fair access for candidates and parties to the media and other means of communication with the voters?

Candidates and parties endure few impediments unless they register too late or chose a name that is considered as being contrary to the accepted principles of morality and the public order. The procedures surrounding the nomination of the candidates are described in the Electoral Act. Incumbent parties do not have to satisfy certain conditions. An example of this is the submission of declarations of support. Parties who want to field candidates in all constituencies can lay claim to the broadcast time made available by the government on radio and TV, but it goes without saying that that time is limited.

Pursuant to article 39g of the Media Act [*Mediawet*], the Media Authority [*Commissariaat voor de Media*] allocates broadcast time on national stations to political parties who have won one or more seats at the last election for the Senate or House of Representatives. The Media Authority furthermore allocates national broadcast time to political parties who are participating in all constituencies for the election of members to the House of Representatives,

⁹² Cases during municipal council elections 2006 in Landerd (voting machin in zorgcentrum Compostella in Zeeland (municipality of Landerd) Case of the four voluntary firemen in Vroomshoop (municipal council elections Vriezenveen 2006), Municipal council and ward elections in Amsterdam/Bos and Lommer.

⁹³ Report of 4 September 2006, no RA0612492.

as well as to political parties who are participating in the election of members to the European Parliament in the Netherlands.

The media decides how much attention they will devote to old and new parties and to candidates. The importance of the media in the opinion shaping of the voters is evident from the study by Professor Jan Kleinnijenhuis cs. (VU Amsterdam) into the role of the media in the May 2002 House of Representatives elections.⁹⁴ According to that study, there was no bias or manipulation. The researchers do however point out the fact that nobody feels accountable for the consequences of the news. Journalists ultimately are happy to take responsibility for the creation of the form of their news, but do not feel responsible for the final production. In the eyes of the researchers, a contribution can be expected from the media "to immunize the public against hype," whereby the editor's office would have to play a role.

The role of the media is of great importance in this day and age when it comes to the appearance of politicians. Their appearances are rendered larger than life by the many media and the presence of cameras. This also entails a mutual dependence between career politicians and professional journalists. The intertwining of politicians and the media is designated as 'medialogic' or 'mediacracy' in the literature.

⁹⁵

5.4 To what degree does the system of elections and of political parties offer the voter a free choice? To what degree does every vote count equally? To what degree is the composition of the legislative and executive authority determined on the basis of the voters' choice?

In the Netherlands, free elections take place whereby various safeguards are built into the procedures surrounding the ballot to ensure that the voter is able to vote with secrecy.

The Dutch electoral system is a system of proportional representation. The seats of a representative body are distributed in accordance with the number of votes cast in the whole land (House of Representatives and European Parliament elections), the whole province (provincial legislature elections) or the whole municipality (municipal council elections) for a party. This means that a party that won 10% of the votes also obtains 10% of the number of seats.

The voter must make a choice from a list presented to him. Compared with other countries, the Dutch voter thereby has a wide choice. Furthermore the form of proportional representation in the Netherlands is a clear one, so that the composition of the legislative authority (national, provincial and local) pretty accurately represents the choice of the voter: every vote counts equally. The flip side of that is that the composition of the executive authority is not so much determined by the voter

⁹⁴ Kleinnijenhuis, J., Oegema, D., Ridder, J.A. de, Hoof, A.M.J. van, & Vliegthart, R. (2003). *De puinhopen in het nieuws: de rol van de media bij de Tweede Kamerverkiezingen van 2002* (Communicatiedossiers, 22). Deventer: Kluwer.

⁹⁵ in recommendations of the same name by the Council for Social Development and the Dutch Advisory Council for the Public Administration respectively.

as by the elites of the parties through negotiations. It is however the norm that the biggest party can take the lead in the negotiations, and that the winners of the elections are the first to come into consideration when the cabinet is formed. However, one can also deviate from this norm, such as the 2003 cabinet formation and council formation in some towns.

With respect to suffrage, at the end of 2006 a report will be issued by the Electoral System Civic Forum, which was established for that purpose, wherein it will be described with motivation which electoral system is, in the opinion of the Civic Forum, the most suitable for the electing of the members of the Parliament.

5.5 To what extent does the legislative authority reflect the social composition of the electorate?

Much research has been geared towards this in the past,⁹⁶ but in the last few years it has not been the subject of research. A complete reflection of the population in the House of Representatives appears not to be an issue, either politically or administratively.

Pursuant to the Constitution, the legislature represents the entire Dutch population (article 50). There are no indications that the social background of the members is problematic. What is clear is that males, the highly educated and citizens with a background in the public sector are (still) over-represented in the legislature.

5.6 What is the turnout for elections? To what extent are the results of the election accepted by all political rulers at home and abroad?

5.6.1. Legislation

From 1917 to 1970 voting was compulsory in the Netherlands. Since the abolishment of this compulsory voting, the turnout has decreased. In particular, for the elections for the provincial parliaments and the European Parliament, turnout percentage of lower than 30% have been achieved, while the turnout for the House of Representative's and municipal council's elections are high when compared to other countries (60 to 80%).

5.6.2 Implementation

There is a campaign to stimulate turnout prior to elections. As a rule, an information circular is sent to all municipalities. The circular consists of a general section and a section pertaining to voting in a polling booth of the voter's choice, which can also be consulted on the internet. At the same time, informational material is drawn up and distributed, e.g. a booklet containing "answers to frequently asked questions". In addition, (mass media) campaigns have been undertaken in the past, such as "you're coming (voting) too, aren't you?" ["*u komt toch ook?*"] (until 2005) and the campaign - "It's up to you" ["*U heeft het voor het zeggen*"] (2006). The material for the

⁹⁶ See, for example, J.Th.J. van den Berg: *De toegang tot het Binnenhof: de maatschappelijke herkomst van de Tweede-Kamerleden tussen 1849 en 1970*

turnout campaign consists of folders, posters, (television) commercials, a CD and the website. Explanation is provided on the voting pass and the differences with the unofficial polling card on the general website, the site for the youth and in Remote Voting folder. Further, attention is paid to the rules that are applicable for the granting of a mandate, the application for a new voting pass and the fact that enfranchised persons cannot request a replacement voting pass on the day of the election.

5.6.3. Indicators

It is evident from data supplied by the CBS that the percentage of the population (older than 15) that state they are very or reasonably interested in political subjects has risen since 1997 from 50% to almost 60%. In this context, the turn out for elections for the House of Representatives can be called relatively high (pushing 80% and stable). The turnout for the national referendum on the new European Constitution on 1 June 2005 stood at 63%

Up until 1970, voting was compulsory in elections and the turnout percentage fluctuated around 94%. Since then the turnout for elections for the House of Representatives has decreased to some extent, and fluctuates around 80%, with a historical low point of 73.3% in 1998.

Table 5.2 Turnout figures for House of Representatives elections (% of enfranchised persons)

Year	1971	1972	1977	1981	1982	1986	1989	1994	1998	2002	2003
Turnout percentage	79,1	83,5	88,0	87,0	81,0	85,8	80,3	78,7	73,3	78,9	79,9

Source: CBS (*History of House of Representatives elections*)

The results of the election are accepted by all political rulers at home and abroad.

In 2002 research was undertaken into non-voters in the light of concern with respect to the decreasing turnout for elections. It was difficult to draw general conclusions on the basis of the study, but interviews within the framework of the study did offer "a good insight into the lifestyle and political dissatisfaction of a number of non-voters and showed something of the breeding ground of dissatisfaction for the electoral turbulence of the spring of 2002".⁹⁷

The turnout for the municipal council elections is structurally lower than for the House of Representatives elections and displays a slightly decreasing tendency, from 67 percent in 1970 to 58 percent in 2006. The turnout figure in the elections for the Provincial parliaments and the European Parliament demonstrate a more pronounced decrease of 22 and 19 percentage points respectively. It must be stated, though, that in the most recent election of each of these bodies, the turnout was higher than in the preceding one. We can thus speak of a small revival in the interest in elections in general.

⁹⁷ *Niet-stemmers. Een onderzoek naar achtergronden en motieven in enquêtes, interviews en focusgroepen.* Paul Dekker (ed.) Social and Cultural Planning Office, The Hague, April 2002, pg 143.

Table 5.3 Turnout figures for Council (% of enfranchised persons)

Year	1970	1974	1978	1982	1986	1990	1994	1998	2002	2006
Turnout percentage	67,2	69,1	73,7	68,3	73,2	62,3	65,3	59,5	57,7	58,2

Source: CBS (History of Municipal Council elections)

Table 5.4 Turnout figure for Provincial Parliament elections (% of enfranchised persons)

Year	1970	1974	1978	1982	1987	1991	1995	1999	2003
Turnout percentage	68,9	75,1	79,6	68,4	66,3	52,3	50,2	45,5	47,6

Source: CBS (History of Provincial parliament elections)

Table 5.5 Turnout figure for European Parliament elections (% of enfranchised persons)

Year	1979	1984	1989	1994	1999	2004
Turnout percentage	58,1	50,9	47,5	35,7	30,0	39,3

Source: CBS (History of European Parliament elections)

5.7 Which measures, if any, are taken to solve publicly identified problems in this area? What degree of political priority and public support is devoted to this?

Another electoral system?

In the Dutch political system candidates are selected for the House of Representatives elections by political parties (see chapter 6). In response to, amongst other things, a perceived gulf between citizens and politics, the Balkenende II Cabinet instituted the Civic Forum. The Civic Forum consists of a group of 140 citizens who, under the leadership of experts, tackle questions on the renewal of the electoral system. For some time there has been the suggestion of the possible introduction of a (shared) constituency-based first past the post system, in order to make the connection between citizens and representatives more direct. Up to now the proposal has been rejected; the Civic Forum will tackle these sorts of problems for renewal and, after a process of debate and consultation around the country, make recommendations to the cabinet.

The Civic Forum initiative is in itself a project of renewal, because an interactive process of policy shaping like this one is rare at this scale. An important objective of the Civic Forum is thus also bringing politics and the citizen closer together and boosting discussion with respect to the democratic values of the political system.

Remote voting

The voting process has been gradually made easier in the Netherlands since 2000, with the introduction of information and communication technology to make voting less location-dependent. The ultimate goal of that is to make things more efficient and to bring politics and the citizen closer together. The first experiments were held during the

election for the members of the European Parliament in June 2004. During the 2006 elections tests were run with voting in a polling booth of the voter's choice and voting on the internet. During the House of Representatives election of 22 November 2006, an experiment will be conducted using internet voting. This will be reserved for voters living abroad, whether because they live there or because they are working there temporarily.

Promoting turnout

Under the responsibility of the ministry of the Interior and Kingdom Relations, during every national election for the (Dutch members of) the European Parliament, the members of the House of Representatives, the members of the Provincial parliaments and the members of the municipal councils, a campaign to promote turnout is held, wherein voters are called upon to go and vote. In 2005 such a campaign was also held for a national referendum on the European Constitution. Promoting turnout enjoys (political) priority, and the use and necessity of it is not disputed.

5.8 Summary

Procedures for free and fair elections and equal access to both active and passive suffrage for Dutch citizens (living in the Netherlands) are guaranteed by the Constitution and dwelt upon in the Electoral Act. This is applicable to both elections on the central government level as well as elections on a provincial and municipal level. The independence of supervisory bodies (the Electoral Council) of national and European elections is also statutorily determined. On very few occasions are irregularities observed in municipal elections, after which an investigation is launched.

The electoral system of proportional representation - the number of allotted seats is equal to the number of votes divided by the total number of available seats - leads to multiple parties participating in the elections. The reflection of the social composition of the electorate in the elected organs is not an issue.

The turnout for elections has fluctuated dramatically since the abolishment of the compulsory vote in 1970. With the exception of national elections, the turnout has decreased by at least 10 percentage points during the last 30 years. The most recent elections (since 2003) however show that there has been a slight upturn in voter turnout.

6. The Democratic Role of Political Parties

Does the party system support the functioning of the democracy?

Political parties make up an essential component of our democracy. Their job is to recruit and to select candidates for representational bodies in order to serve the interests of the citizens in the formulation of policy and programmes and to provide options to the electorate.⁹⁸ Party-less democratic systems are relatively rare.

6.1 How free are parties to form, to solicit members, to get involved in the public debate and to campaign?

Citizens can make their voices heard through parties and provide shape to the democratic constitutional state. That is why it is of importance to investigate how free citizens are in forming political parties and organising political activities.

6.1.1 Legislation

There are no statutory regulations in the Netherlands with respect to the organisation of political parties. The underlying thought is that the government should not get involved in the structure of the relationships that are considered to control it. Freedom of association, freedom of speech and the right to assemble and demonstrate are enshrined in the Constitution (articles 6-9 of the Constitution). Nevertheless, from the start of the 70s, the involvement of the legislature in political parties has increased, in the first instance through the regulation of granted governmental subsidies. When the Electoral Act was amended in 1989, the stipulations were included that the request to register a party name can only be done by 'a parliamentary fractioning that is an association with full legal jurisdiction'. Through this requirement, the party organisation was subjected to the provisions of the right of association set down in the Civil Code, which require a minimum of internal democracy within associations. In reaction to this indirect, gradual involvement, the political scientist Koole spoke of a 'creeping codification' of political parties.⁹⁹

In the 1999 Political Parties Subsidies Act [*Wet Subsidiëring Politieke Partijen*], the concept of a political party is for the first time defined as 'an association, the designation of which is registered on the grounds of article G1 of the Electoral Act with the Electoral Council'. This law, however, can certainly not be regarded as the equivalent of the much more comprehensive German *Parteiengesetz*.

On the one side, the government attempts to facilitate the formation of political parties and stimulate participation in elections, while on the other, the government intends to regulate participation to ensure that only serious parties participate in the elections.

⁹⁸ Andeweg, R. B., Irwin, G. A. *Governance and Politics of the Netherlands* 2nd edition 2005 Palgrave Macmillan New York pg 62

⁹⁹ see G.Voerman, *Frictie in de fractie; een onderzoek naar de spanning tussen fractiediscipline en kiezersmandaat in Nederland, België, Duitsland en het Verenigd Koninkrijk*

Registration of the designation of a political party

There are a number of requirements that a party must, in accordance with the Electoral Act, fulfil in order to obtain registration for elections. A copy of the notarial deed which includes the charter of the association must be submitted, as well as a proof of registration in the Commercial Register and a proof of payment of the deposit (€ 450). In addition, conditions are imposed upon the designation of the party. It may not, for example, be in conflict with public order, longer than 35 characters or correspond to a legal entity prohibited by the courts.¹⁰⁰

Restrictions for participation in elections

Restrictions have been imposed upon political parties' participation in House of Representatives elections. In order to stand as a candidate, a deposit of €11,250 must be paid, which will be reimbursed if the involved party wins more than 75% of the quota. Declarations of support are also required, that is to say, written declarations wherein voters support a list (at least 570 for the House of Representatives).¹⁰¹ In practice it is evident that political parties do not regard these requirements as insurmountable. On the other hand, in 2006 questions were posed whether it would not be desirable to consider accentuating the requirements after a political party for paedophiles was established.¹⁰²

Subsidies for political parties

When a party has participated in an election for Parliament and the party is awarded one or more seats, the central government will provide a subsidy. The subsidy is then only awarded if the party has at least 1000 members who pay an annual contribution of at least €12. The amount of the subsidy depends on the number of seats won and the number of members.

Campaigning

For campaigning at a local level, political parties must stick to, amongst others, the rules of the municipality, which are generally recorded in local by-laws.¹⁰³ The Media Authority allocates national broadcast time to parties who have one or more seats in the last elections for the House of Representatives or the Senate or who partake nationally in these elections (Article 39 G Media Act 1987). The freedom to campaign is in principle all encompassing, but is *de facto* limited by the availability of financial resources and access to the media. Professionals were engaged by the parties from the 90s onwards to direct their campaigns. This has resulted in a considerable increase in the budget for campaigns. The planned campaign expenditure increased by some 38% in 2002

¹⁰⁰ see Article g-1 of the Electoral Act.

¹⁰¹ Articles H 4 and 12 Electoral Act 1989

¹⁰² Appendage to Handelingen II 2005/2006, 2050616800 by members Arib and Dubbelboer (both PvdA), 1860 by the member Van der Staaij (SGP) and 1771 by the member lid Wilders (Groep Wilders) to the Ministers of Justice and Interior and Kingdom Relations on the establishment of a political party for paedophiles.

¹⁰³ Kiesraad, BZK and VNG 2006 *Verkiezingen 2006-2007 Antwoorden op de meest gestelde vragen* Den Haag VNG Uitgeverij b.v. pg 33,34

with respect to that of 1998. By comparison to other countries, this development can however be labelled as conservative.¹⁰⁴

6.1.2 Indicators

Putting aside mergers and transformation processes, between 1946 and 2002 only 15 of the 125 newly established parties actually made it into the House of Representatives.¹⁰⁵

The membership of political parties has, in total, decreased, from some 630 thousand in 1950 to 295 thousand in 2000. At the same time, the number of enfranchised persons rose from 5.5 million in 1952 to 12 million in 2000. Approximately 15% of the members are active in their parties.¹⁰⁶ It is striking that the established parties, such as the CDA, WD and PvdA, are fighting with a decreased membership, up to 50% in the last 30 years, while the opposition parties, like the SGP, GroenLinks and the SP have upped their membership.

Table 6.1 Membership of the political parties (currently) represented in the House of Representatives

	1978	1982	1986	1990	1994	1998	2002	2004	2005	2006
CDA	164,500	153,490	127,849	125,033	107,00	89,000	78,000	77,000	73,000	69,000
CU	17,143	22,847	21,004	21,345	24,118	26,498	27,250	25,074	24,235	24,156
D66	12,000	15,000	8,000		14,500	13,747	12,188	13,507	11,744	11,065
CPN	7,500		8,500	5,700						
GL	28,500		21,200	15,462	12,500	11,873	15,037	20,503	20,709	21,383
LPF								4,000	2,111	1,274
PvdA	121,000	105,306	100,979	96,600	70,000	61,720	57,374	61,935	61,111	61,913
SGP	18,000	20,760	21,500	23,000	23,700	23,800	25,907	25,700	25,900	26,400
SP					15,892	21,975	27,291	43,389	44,299	44,853
VVD	101,000	101,309	86,821	64,554	54,000	52,197	47,441	44,196	41,861	40,157
Total	457,143	438,509	387,353	345,991	321,710	300,810	290,488	311,304	304,970	300,201

Source: Documentatiecentrum Nederlandse Politieke partijen (various Annuals)

6.2 How effective is the party system in the formation of and maintaining of the cabinet?

Since the introduction of the general suffrage, not one single party has gained the majority in the House of Representatives. The cabinet is dependent on political parties, both in the formation of as well as in the maintaining of the government, but the extent of this dependence can vary. No legislation is available with regard to the role of the parties in the maintenance of the cabinet.

¹⁰⁴ Brandts, K., Praag, van P. *Politiek en media in verwarring. De verkiezingscampagnes in het lange jaar 2002*. 2005 Het Spinhuis Amsterdam pg 23-24, 34-35

¹⁰⁵ A.P.M. Lucardie, Van profeten en zwepen, regeringspartners en volkstribunen. Een beschouwing over de opkomst en rol van nieuwe partijen in het Nederlands politiek bestel. In: C.C. van Baalen et al (ed.), *Jaarboek parlementaire geschiedenis 2002*. The Hague, 2002 pg 10-19

¹⁰⁶ Koole, R.A., J.J.M. van Holsteijn & J. A. Elkink. *Rekrutering en representatie in een representatief bestel. Bevindingen van een empirisch onderzoek onder leden en kiezers van het CDA, D66, PvdA en VVD*. Leiden: University of Leiden The Hague 2000

6.2.1 Implementation

In the Dutch political system the citizens, as voters, determine the ratios of parliamentary power, but not the composition of the cabinet. Criticism of this system is mostly directed towards the legitimacy of the system. The introductory coalition talks to hold the elections do however lead to more strategic voting behaviour.¹⁰⁷ The Netherlands, of all the countries in Western Europe, has the longest formation period. Arguments in favour of this maintain that a solid coalition agreement can prevent later conflicts within the cabinet.

Parties also play a central role in the maintaining of the Cabinet. The Cabinet is responsible to the House of Representatives on the basis of ministerial accountability. Ministers and secretaries of state should be able to enjoy the confidence of the majority of the House of Representatives. This is called the *vertrouwensregel*^x (literally 'confidence rule' - a motion of confidence), whereby confidence must exist until it is withdrawn. The leadership of the parliamentary fraction takes the decision whether or not to withdraw that confidence (a motion of no confidence).

6.2.2 Indicators

Since 1981, only four parties have gone into the formation of the cabinet: CDA, D66, PvdA and VVD. In 2002, as the exception to the rule, the LPF participated in the cabinet for a few months. Putting aside outgoing cabinets, the average life span of a cabinet is almost three years. The percentage of cabinet sessions with respect to the maximum time that a cabinet could govern is high in the Netherlands, when compared to other Western European countries, some 82%. Considering that we are here dealing with broad coalitions, parties remained focussed on the maintaining of the cabinets.¹⁰⁸

6.3 How free are opposition and non-governing parties to organize themselves within the legislative authority? How effective is their contribution to the responsibility of the cabinet?

6.3.1 Legislation

Opposition parties have the same rights as parties that form a part of the cabinet. In order to be able to control a cabinet, the House of Representatives has various constitutional rights and instruments. The ministerial responsibility and the right to information are recorded in the Constitution (articles 42, 70 of the Constitution). These rights, which are elaborated in the Rules of Procedure for the House of Representatives (Reglement van Orde van de Tweede Kamer), are: the right to amend, the possibility to make motions, the right of interpellation, the right to ask questions, the right of initiative, the right to decide on the budget and the right of inquiry.

¹⁰⁷ Andeweg, *op.cit.* pg 115-118

¹⁰⁸ *idem*, pg 116,117

Using these instruments, both the parties that are a part of the cabinet as well as parties that form an opposition to the cabinet can call the Cabinet to account. This is expressed through fellow legislation and controls. Participation in the cabinet provides a party with a significant degree of influence. This is dependent on the number of parties in the Cabinet, the relevant ministers and secretaries of state with their portfolios per party, and the number of seats won.

The Rules of Procedure for the House of Representatives stipulates, to a limited degree, the rights and obligations of the parliamentary fractions. The parliamentary fractions in the house are, however, the structuring factor in parliament. They determine, for example, the composition of the parliamentary commissions and, on the basis of their size, speaking time is apportioned in the House of Representatives. Generally, when it comes to voting, only the parties are counted.

6.3.2 Implementation and indicators

The use of pretty much all parliamentary rights by members of the House has increased dramatically over the last few years, as is evident from the table below.

Table 6.2 Use of parliamentary rights (average per annum, periods of four years)

	Plenary	Commission	Total number of laws	Initiative laws	Amendm ents	Written questions	Interpellation	Motions
1956-60	74	273	258	0	101	228	6	0
1960-64	79	354	252	1	187	268	5	20
1964-68	58	368	282	1	130	621	3	63
1968-72	87	639	276	7	262	1,389	15	171
1972-76	100	597	274	3	493	1,498	12	249
1976-80	94	736	303	5	728	1,532	15	639
1980-84	96	1.124	322	4	1,483	1,305	15	831
1984-88	102	1.286	266	7	1,460	1,011	15	597
1988-92	99	1.078	264	3	1,085	736	12	872
1992-96	100	1.051	276	6	1,030	990	9	535
1996-00	103	1.429	254	6	1,188	1,57	8	898
2000-02	98	1.304	266	11		1,494	12	1078

Source: CBS and Rijksbegroting 2004

It is apparent that in 2004 most of the parliamentary questions were posed by opposition parties, although they form a parliamentary minority. From investigation into all the 'initiative bills' from 1945, it is evident that almost 60% of all proposals were submitted by members of opposition parties, against almost a quarter by members of the parties that have been as good as continuously in the governing majority. A sixth of all proposals were submitted by members of opposition and governing parties together. According to G. Visscher, the figures make it clear that the results of the submissions are strongly dependent on the position of the submitters. "While members of the opposition did not make the Government Gazette with a quarter of their proposals

the governments parties managed to do this with almost four out of every nine proposals. Of the proposal submitted by the opposition and coalition together, more than half managed to cross the finish line. With the increase in the number of initiative proposals of late, cooperation between members of the governing and opposition parties appears to be of less relevance than it once was." ¹⁰⁹

6.4 How fair and effective are the rules that determine the party discipline in the legislative authority?

6.4.1 Legislation

The Electoral Act makes reference to 'parliamentary fractions' that can forward candidates for representative bodies; the term 'political party' does not appear. In this manner, the law leaves room for the possibility that individual citizens who have not allied themselves to a party can also stand as candidates.

The parliamentary fractions (or parties) have dominated the parliamentary process in the 20th Century. They are not covered by the Constitution or the law, one of the reasons being to grant them 'as much autonomy as possible' in Parliament. ¹¹⁰ The Rules of Procedure for the House of Representatives of the Parliament has, however, formally acknowledged the existence of parliamentary fractions since 1966. The members of the House of Representatives who have been elected off the same electoral list are considered to be a parliamentary fraction.

It is not just the Constitution, but the Rules of Procedure too that is reticent about the regulation of parliamentary fractions. It determines their rights and obligations only to a limited extent. Nevertheless, the political groups are leading in the parliament. They determine the composition of the parliamentary commissions and, on the basis of their size, speaking time is apportioned in the House of Representatives. As a rule, it is only stated which groups are for or against when a vote is held. ¹¹¹ The constitutional law expert Elzinga applauds the limited constitutional profile of the parliamentary fractions, because in his opinion this prevents 'an unbridled development of the fraction-ocracy [*fractieocratie*]. And ultimately a parliamentarian can still appeal to the constitutional prohibition on causing inconvenience, whereby compulsory voting is excluded."¹¹²

6.4.2 Implementation

Both parties and parliamentary fractions have the freedom to regulate the relationship between the member on the one hand and the party or group on the other in group-rules. Of the twelve parliamentary fractions in the House of Representatives in 2005, four have such rules at their disposal: the CDA, the PvdA, the LPF and the ChristenUnie.

¹⁰⁹ House members in specialist journal *Regelmaat* (2004), G. Visscher

¹¹⁰ D.J. Elzinga, 'Parlementaire fracties: organen in en niet van het parlement', in: E.C.M. Jurgens and J.A. van Schagen, ed., *Tweede Kamer op orde. Beschouwingen over het herziene Reglement van orde*, Den Haag, 1993, 19-25; 20.

¹¹¹ It is only reported how individual House members voted in votes by call. See. *Reglement van Orde Tweede Kamer*, articles 69 and 70; and J.A. van Schagen, *De Tweede Kamer der Staten Generaal. Een staatsrechtelijke studie over haar organisatie en werkwijze*, Zwolle, 1994, 101.

¹¹² Elzinga, 'Parlementaire fracties', 20, 24.

Most of the other groups have informal rules, labelled 'working arrangements' by the VVD and 'practices' by GroenLinks. The Sp and the SGP have stated they have no group rules.

According to the rules of the political groups of these parties, the group leaders are bound to the decrees of the group conference. The group leaders exercise a certain amount of control over the House members. The members should submit motions, amendments, parliamentary questions and such to the group leader first. Permission is not always required, sometimes consultation is sufficient. The rules of the groups of the CDA, the LPF and the ChristenUnie also regulate, to a certain level, contact with members of the media. All four groups allow for the possibility of members, in exceptional cases, deviating from the group standpoint.

Group binding and discipline arise from, amongst other things, the will of the group to be able to act effectively. Parliamentarians frequently consider their activities as a struggle, which requires a united front against the adversary. To be able to operate decisively in parliament, there must be a significant degree of political concurrence, as well as readiness to accept the collectively determined political line.

The standard of the prohibition of inconvenience, the constitutional wording of which contains no details, is overruled to a significant degree by the right of parliamentary fractions and their practices. A number of stipulations herein are contradictory to the constitutionally free mandate of the members of the House of Representatives. These include the necessary permission for posing questions orally or in writing, for the application for an interpellation and for the co-signing of motions and amendments, the compulsory attendance in the House for votes and the fact that members are bound to the decisions of group conferences. As long as these rules are based on voluntary agreements and obligations to which the members of the House want to adhere, then these practices do not have to be rejected per se.¹¹³

6.4.3 Indicators

The tendency of members of the House of Representatives to conform to the standpoint of the parliamentary fraction while they have another opinion, appears to have increased considerably in the last few decades. In an inquiry amongst House of Representatives members in 1972, almost half of the (48%) declared they would allow their own opinions to prevail, while in 1990 only 11% of the members reiterated that. Specifically, only in matters of conscience was the solitary path accepted.¹¹⁴ It also emerged from the inquiry that most members of the House of Representatives valued a unanimous stand, because the parliamentary fraction or the party is then clearer and more recognisable to the voter. They also stated that unity is strength.

Whether it results from loyalty or the threat of (political) sanctions, members of parliamentary fractions are relatively obedient. From an investigation by Vischer into deviant voting behaviour by parliamentarians, it appears that the ranks, in

¹¹³ Elzinga and Wisse, *op. cit.*, 178.

¹¹⁴ M.P.C.M. van Schendelen, 'Fracties en kamercommissies', in: J.J.A. Thomassen, M.P.C.M. van Schendelen and M.I. Zielonka Groei, ed., *De geachte afgevaardigde... Hoe kamerleden denken over het Nederlandse parlement*, Muidenberg, 1992, 75-97; 82.

large parties too, are rarely broken. The number of splinter groups formed is also relatively low. He also believes that the parliamentary fractions must be regarded as the primary political actors, and not the individual members of the House.¹¹⁵

Aside from dissidents who, after leaving the groups disappear (almost) immediately from the House of Representatives, there were 36 occurrences of splinter parliamentary fractions in the period 1945-2005, mainly new parties and parties without a strong ideological glue (single-issue parties). However, not one single party, irrespective of their age or the strength of their ideological foundations, is immune.

The chances of the dissidents of being re-elected in the following House of Representatives elections have always been very limited in the past. Since World War Two, only three dissident parliamentarians have managed to stage a come-back (13% of those who attempted it). As an electoral strategy, splintering is not very rewarding. As opposed to Belgium, floor crossing from one parliamentary fraction to the other almost never happens in the House of Representatives.

6.5 To what extent are parties effective member organisations? To what extent are members able to influence the policy of the party and candidate-selection?

6.5.1 Legislation

Every party decides for itself how the party organisation is structured and how it functions. There are differences between the parties, in the area of candidate selection or the formation of policy programmes, for example. The rights and obligations of members are included in the party's charter. This charter is approved by the members themselves and can also be amended by the members.

6.5.2 Implementation

The highest authority within the party organisations is the rule of the party conference, or the general meeting of members - in reality this is applicable to all parties who are currently represented in the Parliament. The party conference/general meeting of members either consists of delegates from the regional branches of the party (PvdA, SU, CU, SGP) or by all party members (CDA; VVD, LPF, GL and D66). Decisions are made at the party conference with respect to candidate nominations and the direction of the party. These decisions are, however, prepared by other bodies in the party, such as the directorship or commissions.

Declining memberships and decreasing confidence in political parties can undermine the legitimacy of the role of political parties. By acting more democratically internally and being more geared towards formation of policy, political parties can reinforce their constructive contribution to democracy.¹¹⁶

¹¹⁵ G. Visscher, *Parlementaire invloed op wetgeving. Inventarisatie en analyse van de invloed van de beide Kamers der StatenGeneraal op de wetgevende activiteiten van de kabinetten-Marijnen tot en met - Lubbers I*, The Hague, 1994, p.783.

¹¹⁶ International Institute for Multiparty Democracy, *Support for Political Parties and the Party System_The IMD approach*, pg 4, 8

Over the last few years, for example, there have been increasing calls for a more direct involvement by party members in the selection of candidates to stand in elections. An established gulf between citizens and politics, decreasing social basis and/or electoral failures formed the basis of this. The selection procedure of the 'House Leader' and the other parliamentary candidates has (since 2002) been changed by almost all parties. Most parties opt to appoint a House Leader through a member consultation, whether by referendum or during the members' congress. The SP, CU and SGP adhere to an election by party delegates. The selection procedures for other candidates diverge more and the voice of the party members is considerably smaller with respect to that. In most cases, a list of candidates is drafted by a commission of House members.

The reforms could bring about changes that are contrary to their aim, in particular, more influence by the party leadership. It could become easier for the party leadership to legitimise decisions through elections than to do that through consultation of middle-ranking members. Executive and active members after all know the party better than relatively inactive members. The party leadership is also controlled and influenced more intensively by the middle-ranking members than by individual inactive members.¹¹⁷

In the formation of the party manifest, the parliamentary party organisation does not, from an official point of view, play a role. As a rule the party leadership appoints a commission to create a programme, which is discussed in different parts of the party organisation. Ultimately, a decision is reached at the national party conference or party council.¹¹⁸

6.6 To what extent does the system of party funding prevent parties being subjected to specific interests?

6.6.1 Legislation

Subsidies

On the grounds of the 1999 Political Parties Subsidies Act (WSPP), national parties can lay claim to subsidies. The intention of this subsidy is to contribute to the maintenance and reinforcement of the intermediary position of national political parties in the democratic state system. A subsidy budget of approximately 15 million euros is available. Thanks in part to decreasing membership, the incomes from contributions are not enough to cover the many tasks and activities of the party. Thanks to the government subsidy, parties do not require it as necessary to obtain money from the private sector.

The WSPP contains, amongst other things, conditions for the entitlement to a subsidy, the amount of the subsidy and the activities that the subsidy can be spent on. The conditions for entitlement to the subsidy concern a registered designation, at least one seat in the Parliament, at least one thousand

¹¹⁷ G. Voerman, *Plebiscitaire partijen? Over de vernieuwing van de Nederlandse partijorganisaties*. See also <http://dnpp.eldoc.ub.rug.nl/FILES/root/jb-dnpp/jb04/voerman.pdf>

¹¹⁸ Andeweg, R. B., *Fractiocracy? Limits to the ascendancy of the parliamentary party group in Dutch politics* in Heidar, Knut and Koole, Ruud (2000) *Parliamentary Party Groups in European Democracies: Political parties behind closed doors*. New York and London: Routledge. pg 89-95

paying members and the absence of a conviction or unconditional fine on the grounds of discrimination.

Every party can determine for themselves how the subsidy will be employed for activities, as long as these activities are a part of the limitative summary of subsidisable activities, as reported in the Act. Political formation and education activities, the soliciting of members, activities within the framework of election campaigning and the maintaining of contacts with fellow parties outside of the Netherlands are some of the subsidisable activities.¹¹⁹ Policy autonomy is, however, limited with concern to subsidising the political science institutes and political youth organisations. This part of the subsidy is earmarked as an amount paid by the party to the political science institute and the political youth organisation.

Donations

Alternative financial sources, in the form of donations or sponsorship, are acceptable subject to conditions. Objections can adhere to these financial sources if they are coupled to undesirable or invisible influence. That is why it is preferable that, with respect to these sources of income, as much openness as possible is demonstrated.

In article 18 of the WSPP, it is stated that donations of €4,538 or more must be made public. This stipulation is aimed at donations originating from the private sector or from social institutions and organisations. The statutory obligation of publicising these donations does not pertain to donations from natural persons. The publicising of the abovementioned donations is done through a statement in the financial report of the political party and states the amount and the origin of the sum. No sanctions are tied to the statutory norms in the case of non-observance.

6.6.2 Implementation

The Minister of the Interior and Kingdom Relations executes the current subsidy system. There is no supervision over whether the rules with respect to donations are followed.

The funding of political parties makes it clear that their incomes consist of a variety of elements.

Table 6.3 Income of political parties in 2000

	Amount	Percentage
Contributions	13,300,893	46.4
Subsidies	7,459,076	26.0
Payment political functionaries	3,589,424	12.5
Donations	1,369,422	4.8

¹¹⁹ See http://www.minbzk.nl/grondwet_en/subsidiering

Capital	953,327	3.3
Other	1,995,214	7.0
Total	28,667,356	100.0

Source: Memorandum Review Political Parties Subsidies Act 2002

The income under 'other' relates to various sources of income such as party activities, real estate and costs charged to third parties. While subsidies are not the key source of income for political parties, the dependency on the subsidy is growing as the memberships of most parties' drops. Government funding has grown over the last few years, whereby parties can compensate for their decreasing memberships.

Review of legislation

The current system of rules is regarded as being inadequate. The primary objections are that the current rules are exclusively geared towards political parties themselves and not towards associated institutes, the requirement of transparency is not applicable to contributions from natural persons or contributions in kind and that supervision of the fulfilment of these regulations is absent. A new bill wherein these points will be included, as well as a maximum amount of (€25,000) per donation per year, is expected to be submitted at the end of 2006. As planned, the Electoral Council will be tasked with both the execution of as well as supervision of the fulfilment of the Political Party Financing Act [Wet Financiering Politieke Partijen].

6.6.3 Indicators

There is no demonstrable evidence of specific personal preferences in policy or legislation by financiers, or privileges for them.

6.7 To what extent do political parties bridge the ethnic, religious or linguist dividing lines in society?

6.7.1 Indicators

The political spectrum in the Netherlands is not constructed strongly along ethnic, religious or linguistic lines. There are a number of political parties that operate from a religious perspective or philosophy. The section of the electorate that adheres to them is relatively small. A large section of the voters who are members of ethnic minorities (approximately 80%) voted for the PvdA in the 2006 municipal council elections. This is partially related to the number of candidates of the same heritage on the PvdA's election list, but also due to social position and ideological background.

As is evident from the table below, there are councillors from across the political spectrum who have an ethnic background that is not Dutch. Only the Christian parties have no representatives from the ethnic minority sector of the population. What is clear is that the parties on the left-hand

side of the spectrum (the progressive parties) have more representation from ethnic minorities in their ranks than the conservative parties (7.5% against 1.3%).¹²⁰

Table 6.5 Percentage of councillors who are members of an ethnic minority per party (2006)

Source: IPP: Diversiteit Gemeenteraden 2006 ¹²¹

Table 6.6 Municipal councillors according to origin and political party (2006)

	PvdA	CDA	VVD	GL	SP	Local D66	Islam Democraten	Total	
Turkey	86	24	5	19	8	12	1	1	157
Morocco	48	1	0	8	2	7	0	0	66
Suriname	23	3	6	3	0	2	0	0	38
Antilles	4	0	1	0	0	1	0	0	6
Other	22	0	2	4	3	4	0	0	35
Total (2002)	183 (84)	28 (41)	14 (9)	34(33)	13(5)	26(31)	1(1)	1(-)	302(204)

Source: IPP: Diversiteit Gemeenteraden 2006

**6.8 Which measures, if any, are taken to solve publicly identified problems in this area?
What degree of political priority and public support is devoted to this?**

The results of a study that the ministry of the Interior (BZK) has undertaken amongst citizens are contained in the report "Political Parties are Indispensable, but they must change". The most significant strategic conclusion of this study is that the opinion exists that political parties are indispensable today, and will also be so in the future. No real alternatives were conceivable. Single-issue organisations and forms of direct democracy cannot replace political parties; at the most they could be a useful supplement to them. This is, however, not the final word on the matter. This study also made it clear that citizens require political parties to change: they would have to become parties that give emancipated citizens space to partake in the decision-making process. Political parties would have to become more open

¹²⁰ See. http://www.publiek-politiek.nl/bestanden/diversiteit_gemeenteraden_2006

¹²¹ The IPP investigation is geared towards members of ethnic minorities to whom the integration policy of the government is geared: the classic migrant groups who are represented in the LOM: people from Suriname, Netherlands Antilles, Morocco, the southern European countries (including the former Yugoslavia), the Moluccans and Chinese, as well as the new migrant groups represented in the LOM by the stichting Vluchtelingen-Organisaties Nederland (VON). The biggest groups of new migrants come from Afghanistan, Iraq, Iran and Somalia. Aside from the southern Europeans, all the groups are members of non-Western ethnic minorities.

and clear and would have to involve citizens much more actively in their unique function of balancing the divergent concerns in society.¹²²

The symposium held in 2006, 'The Future of the Political Party'¹²³, prominently posed a number of questions. There is a lot of criticism of political parties. Citizens are less inclined to join political parties. They are becoming evermore vocal and have many opportunities of exercising influence. How should parties develop so that they can still bear their responsibilities in the 21st Century? Do political parties actually still have the right to exist? A number of prominent speakers emphasised that interest in politics is not declining, but that democracy is more vital than it has ever been within society. 'Apparently the Minister of BZK is worried about the future of political parties,' chairman Frank de Grave concluded. 'As we speak, Verdonk is holding a presentation on her campaign. Politics is, at any rate, on the centre stage in society. Political parties are a very important phenomenon in a living democracy, but the idea exists that political parties have a problem.' Political scientist Hans Anker stated that political parties really had to change. 'What people associate political parties with is: great distance, lots of talk, getting little actually done, unreliability, lack of clarity and 'jobs for pals'. But if you were to say that the age of political parties is over, then people find the indispensable.' During the symposium, those present evidently felt it was urgent to assign rules to party funding (see further: chapter 10 of this report).

As far as the involvement of the youth in politics is concerned, some parties are investing in the popularisation of politics. Included in that are political rap songs and initiatives such as *Coolpolitics*. It is however evident from recent research that this cannot play a sizeable role when it comes to involving the youth in politics. "Both the anti's and the for's miss the point when it comes to popularisation: popularisation is mostly irrelevant to the youth and does not affect their lives in either a positive or a negative sense. It does, though, form a constant source of debate because many think that popularisation will narrow the gulf between politics and the citizen. The youth think that others will find politics interesting as a result of it. This expectation leads to that the fact that new initiatives are constantly being unfolded at this level, but the expectation could not be substantiated in this investigation."¹²⁴

6.9 Summary

There is a large degree of freedom for the formation of a political party in the Netherlands. Further there are relatively few obstacles to participation in elections. Parties in principle have the right to be subsidised and receive broadcast time on the national public broadcasting service as soon as they have won one or more seats in parliament.

¹²² See report: Politieke partijen zijn onmisbaar, maar moeten wel veranderen. Final report of focus groups. Interior and Kingdom Relations (January 2006).

¹²³ Held on 5 April 2006 in the Museum for Communication, 82 Zeestraat, The Hague The symposium was organised by the Ministry of the Interior and Kingdom Relations. See, for a short report: http://www.minbzk.nl/pechtold_live/algemene_onderdelen/overige_onderwerpen/subsidiering/nieuwsberichten/is_er_nog_ee

¹²⁴ C. Aalberts *Aantrekkelijke politiek? Een onderzoek naar jongeren en popularisering van politiek*, Amsterdam: het Spinhuis (2006). Quote from: <http://www.chrisaalberts.nl/> (consulted on 28 July 2006)

On the one hand, the government attempts to facilitate the formation of political parties and to stimulate participation in elections, through subsidies and media access, amongst other things. On the other, the government intends to regulate, through the Electoral Act and the Political Parties Subsidies Act, political parties in order to ensure that only serious parties participate in the elections. These rules ensure that access to the political stage is relatively easy for new parties.

Of all the countries in Western Europe, the Netherlands has the longest formation periods (coalitions). A solid coalition agreement is regarded as necessary in order to prevent conflicts in the cabinet at a later stage. Although a multitude of parties participate in the national elections, since 1981 only four parties have had seats in the cabinet (with the exception of the short participation of the LPF in 2002). The average session of a cabinet is three years. When compared to other European countries, it can thus be stated that the Netherlands possesses stable governing coalitions.

The same parliamentary rights that are applicable to the governing parties are officially applicable to (members of) the opposition parties too. Although more attention is paid to duality in the House, it is evident from figures that by far the most parliamentary questions and initiative bills are still submitted by members of the opposition (a parliamentary minority). At the same time, less than a quarter of the opposition's proposals are adopted, while for the governing parties the average stands at 45%. Of the proposals submitted by the opposition and coalition together, more than half managed to cross the finish line.

With respect to party discipline, no rules are set down. House members vote formally without consultation, but the inclination to conform to the standpoint of the parliamentary fraction appears - according to research - to have increased in the last few decades. The number of dissidents or parliamentarians who have struck out on their own has however also increased of late.

Declining membership of - mainly - the three largest parties (PvdA, CDA and VVD) appears to be undermining the socially embedded role of the parties.

The internal procedures for nominating candidates for elected bodies and/or determination of the content of the party standpoints have become more democratic in the last few years in most political parties.

Research points to the fact that single-issue parties and forms of direct democracy are sooner seen as supplementing existing political parties rather than substituting them.

Initiatives to get more youth involved through popularisation of political appear to have had little to no (long-lasting) results.

Financial dependence or influencing of political parties by the private sector is restricted by, amongst other things, legislation. Most of the financial resources come from the contribution made by party members.

7. Effectiveness and Public Accountability by the Executive Authority

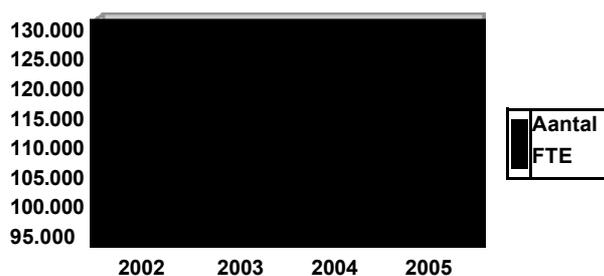
Are citizens and representatives able to call the executive authority to account?

The Dutch system rests upon the principle of 'no power without checks'. In principle, all (executive) governing power should be called to account by a democratically elected representation. The degree to which the House of Representatives can employ its parliamentary rights will clarify the functioning of the democracy. At the same time, it is of importance that the government actually exercises its power. It after all legitimately gained this authority and must thus be rendered able to execute its policy for a certain period of time. For this, legislation, tax policy and executive bodies must be made available.

7.1 To what degree is the elected government able to influence or control issues that are of importance to its citizens? How well informed, organised and equipped is it for this?

Before covering the effectiveness of the government's policy, a brief aside must be included on the resources that are at this government's disposal in the executing of their policy. Hereby it is immediately noticeable that the size of the central government (figure 7.1) has decreased of the last few years. One of the reasons for this is the corporatisation of various governmental tasks. To what extent this occurs at the cost of the effectiveness of the executing of policy and the checks thereon will be discussed in the sequel to this chapter. For the provision of information, the government is dependent on the administrative apparatus and the media (chapter 10). Relatively highly educated employees are available to the central government.¹²⁵ The relationship with the administrative apparatus is discussed in section 7.3.

Figure 7.1 Changing size of the workforce of the central government 2002-2005



Source: MinBZK sociaal jaarverslag 2005¹²⁶

¹²⁵ Central Bureau of Statistics, http://www.cbs.nl/NR/rdonlyres/65B5C8C0-B439-4AA6-80D7-7D2FDB40FE23/0/200601x1_3pub.pdf

¹²⁶ http://www.minbzk.nl/overheidspersoneel/de_overheid_als/persberichten/omvang_rijksoverheid

Effectiveness

To what degree the elected government is able to influence or control issues that are of importance to its citizens is difficult to ascertain. Even if we put aside the matter of which issues are of importance to citizens and which are not, we can only endeavour to sketch a picture of the effectiveness of the government using a number of indicators. A first indicator is the extent to which the cabinet has succeeded in implementing the agreements made in forming the governing coalition in the last few years. Of interest here is the attitude of the governing coalition to their original election programmes. Are the promises really fulfilled and do the parties also act as representatives or their rank and file between the elections? Another indicator is the (recently criticised high) degree with which the administration and politics are intertwined.

The main outlines of the Balkenende II cabinet policy consist of more personal responsibility by the citizen, more solidarity and reforming of the welfare state that has become stuck in a quagmire of bureaucracy. According to the Social and Cultural Planning Office (SCP), in the socio-economic arena a large number of steps have already been settled, while the reforming of the welfare state - through the introduction of the new health system, amongst other things - was also well on the way. At the same time, however, the administrative renewal agenda appeared to have made little progress. The influence that the cabinet exercises, with all the new measures, upon the lifestyle of the citizens could not yet be assessed by the SCP in 2005.¹²⁷

The Council for Public Administration (ROB) warns against an amalgamation of politics and administration. This finds expression in the ties between the governing parliamentary fractions and extensive coalition agreements, parliamentary criticism of members of the administration who choke on expressions of regret (the 'sorry' democracy) and in the frequent contact between members of the administration and kindred parliamentary fractions (whether or not in the little tower occupied by the Prime Minister). With respect to their own accountability for policy, the cabinet could also contribute to their own recognisability and approachability through the systematic provision of information on policy undertaken and policy considerations, amongst other things. Further, it must be endeavoured to, as much as possible, to avoid the monistic relationship with the coalition fractions and set up less rigid and less comprehensive governing coalitions. According to the ROB, it is also desirable to involve groups of citizens or their organisations explicitly in the policy preparation and to give more space to the political debate in the House of Representatives, so that the citizens do not get the impression that everything is arranged beforehand and that there is no difference between the executive power and the controlling power.¹²⁸

The administrative problem is a dominant theme in the (public administrative) literature. We are then dealing with the phenomenon that policy is overrated, preferably converted into rules of a general purpose, which in practice always break down in the stubborn and differentiated reality. According to the literature, there is frequently an insufficient perception of the problems of execution that are manifested in practice. Examples from the past also, according to a recent publication by Grin, Hajer and Versteeg, make that clear.¹²⁹

¹²⁷ Social and Cultural Planning Office, *Sociale Staat van Nederland 2005* (The Hague, September 2005) 35-37

¹²⁸ Council for Public Administration, *'De Staat van de Democratie'*, 37-40

¹²⁹ *Meervoudige democratie; ervaringen met vernieuwend bestuur*. Maarten Hajer, John Grin en Wytske Versteeg (ed.) (2006), Aksant, Amsterdam,

The primary reaction of politicians to the identified shortcomings in the execution is to then again formulate more and more detailed policy according to a specific vision. This leads to the so-called 'paradox of policy accumulation'.¹³⁰ In a recent interdepartmental reconnaissance¹³¹ into the mechanism of over-regulation, five main themes were described that would have to be tackled in order to deal with this:

- the social demand for control and risk-prevention;
- bureaucratisation and silos;
- the call for rules and especially the equality of rules;
- the need for consensus and a basis for policy;
- dealing with incidents and a rapidly alternating attention for abuse in the media;
- internationalisation, the pressure of European directives.

7.2 How great is the public confidence in the effectiveness of the executive authority and the political leadership?

The public confidence in the effectiveness of the executive authority could say something about the power to control and influence the issues that are of concern to the citizens. In July 2005 a low point was reached when only 15% of the population had confidence in the Balkenende II Cabinet. Although this percentage had risen to 26% a year later, in comparison to the last Kok Cabinet (40%), it was still relatively low. The recent fall of the Balkenende II Cabinet once led once more to a light rise. The 'rump cabinet' of the CDA and CCD enjoys the confidence of 30% of the citizens.¹³² When we compare this percentage to the confidence in other institutions (table 7.2), the low score of the Dutch government in the last two years is once again noticeable.

Table 7.2 Confidence in public and political institutions, people of 15 years and older (in %)

Rather more than less confidence*	Autumn 1997	Spring 2001	Autumn 2001	Spring 2002	Spring 2003	Autumn 2003	Spring 2004	Autumn 2004
House of Representatives	66	65	71	61	53	43	45	50
Dutch government	68	64	73	64	45	38	40	38
Political parties	41	34	36	37	34	28	28	35
Justice/Judicial system	55	63	64	57	63	51	51	58
Police	71	71	69	61	70	60	59	65

¹³⁰ This development is called, by Roel In 't Veld (1995) *De wet op de beleidsaccumulatie* (bad policy leads to new policy to improve it, succesful policy also leads to extra policy to improve it even further, so that there is never less policy). See also WRR-rapport 'Bewijzen van goede dienstverlening' (2004). par. 8.2.1.

¹³¹ *In regels gevangen? Een verkenning van mogelijke oorzaken van regeldruk*. essay van een interdepartementale werkgroep (2006), Ministry of Justice, The Hague.

¹³² RTL Nieuws / TNS NIPO (1 June 2006 & 3 July 2006)

Military	54	60	70	58	63	55	55	67
European Union	38	47	66	51	49	40	40	50
Average confidence	60	58	61	57	56	50	50	56

*The question pertained to 15 institutions (aside from the above, the written press, radio, television, church, trade unions, large corporations, the UN and charitable institutions)

Source: Eurobarometer (1997-2004) weighted results

7.3 How effective and open to accountability are the administrative options of elected politicians and ministers with respect to civil servants and executive services?

7.3.1 Legislation

Administrational apparatus

The political control of the administrational apparatus is regulated through the ministerial responsibility. The primacy of politics assumes that civil servants function loyally and neutrally with respect to their political superiors. That is laid down in the Civil Servants Act. In general there is no direct contact between either houses of parliament and civil servants. The Minister is, in the Dutch state system, responsible for the issuing of information to the Parliament and for taking responsibility for the implemented policy. Nevertheless the provision of public, factual information by civil servants to members of the House of Representatives does not meet with objections. It would, in the interests of a good and democratic administration, even be desirable if members of the House had access to the public, factual information they want. The initiative for this contact with the members of the House must, however - subject to instruction by the Minister - not lie with the civil servants. Aside from the Civil Servants Act the Kok cabinet determined an extra directive in 1988, which regulates the contact between civil servants, journalists and politicians. The most important directions from the so-called Kok Ukase (*Oekaze Kok*) are summarised below:

- * The Minister under whom the applicant falls will decide on a case-to-case basis on all applications from either houses of Parliament for written or oral contact with civil servants. The Minister can reject the requested contact with civil servants.
- * Personal contact between Parliament and civil servants will occur, for as much as possible, in the presence of the Minister.
- * The civil servants will limit themselves in all cases during contact with the Parliament to the issuing of the requested information of a factual nature.
- * A request from a member of either house for written or oral contact with a civil servant will only be gone into if the application concerns the issuing of public information. [...] Civil servants will only get in touch with a member of the House at the instruction of the relevant Minister.¹³³

ZBO's

¹³³ http://www.integriteitoverheid.nl/contents/library/27/aanwijzingen_externer_contacten_rijksambtenaren_stcrt.1998_nr.104.pdf

Aside from the classic, territorial decentralisation, whereby other administrative levels such as regional and local administrations gain ground, there is also functional decentralisation, whereby independent bodies, agencies and non-departmental public bodies [*Zelfstandige Bestuursorganen*, ZBO's] gain resources and authorities. With the rise of the *New Public Management* in the 80's, the movement towards more independence was launched, working on the assumption that more autonomy for executive organisations would lead to a more efficient and effective working of the involved organisations, and a better service. The budgets of most ZBO's are only partially an entity of the national budget. This is because a ZBO is, as an external autonomous public body, not a part of a ministry. In contrast to this, agencies (executive 'banking' agencies, *baten- en lastendiensten*) are internally autonomous organisational entities of ministries. Despite the fact that they have been distanced, they still fall completely under the responsibility of the relevant Minister. For this reason the budgets of the agencies are in their entirety a part of the budget of the central government.

ZBO's are functionally decentralised organisations governed by public law who exercise a specific administrative task without there being complete hierarchical subservience to the Minister.¹³⁴ A non-departmental public body is charged with its task by law or by governmental decree. The responsible Minister for the policy area of a ZBO retains a limited number of authorities. The ministerial responsibility is limited to these authorities. The Minister is not responsible for the executive decisions that the public body makes itself.¹³⁵

7.3.2 Implementation and Indicators

Administrational apparatus

The fundamentals of smooth teamwork between the leading politicians and the loyal civil service are, according to Professor of Public Management and Administration^{xi} Paul 't Hart, disappearing. The floating voters, the rise of the media-cracy and the fact that the government is increasingly considered to be the problem instead of the solution, lead, according to 't Hart, to politics being increasingly involved in micromanagement. As a result the distinction between the civil service and politics disappears and policy autonomy and the responsibility of the civil service becomes limited. The increased mistrust and cynicism that the civil service harbours with respect to (especially) parliament means that more information is being withheld from the political sphere.¹³⁶ The Ukase of Kok contributes nothing, says 't Hart, to mutual understanding and trust. The increased complexity of society, administration and policy renders, in both his opinion and that of other administrative experts, traditional hierarchical management instruments in politics obsolete. Traditional concepts like political primacy and administrative loyalty are outdated. We are dealing with a politico-administrational complementarity.¹³⁷

¹³⁴ van den Berg, pg 344

¹³⁵ <http://www.minbzk.nl/openbaarbestuur/organisatie/beleid>

¹³⁶ Hart, Paul 't, during lunchtime lecture *Ambtelijk leiderschap* 'Parlement is belangrijkste bondgenoot ambtenarij' (The Hague 19-5-2005)

¹³⁷ Kickert, Walter J.M., *Lessen uit het verleden. Onderzoek naar veranderoperaties bij de overheid*. (The Hague 2005) pg 33

Ab Klink, director of the CDA's Research Institute, has likewise ascertained that during the Balkenende I cabinet a higher level of unease was introduced into the relationship between politics and the civil service. He points out that the most significant cause of this was the revitalisation of the key political problems such as the ageing population and problems surrounding integration. Because 'our' institutions are not geared to these sorts of problems, the civil service does not know how to adequately tackle these things. Because political parties are at the same time insufficiently equipped, the civil service and politics find themselves at an impasse.¹³⁸ "The picture that civil servants and politicians have of each other is frequently unjustly negative and must be changed. That is the conclusion that Jan Willem Weck, director general of the Senior Public Service, and I reached during a fascinating discussion last summer. We began to consider solutions to this problem, because this mutual negative impression is not good for the functioning of politics and the ministries. However simple it might sound, a part of the solution simply lies in better and more frequent contact between politicians and civil servants." So says Frans W. Weisglas in the forward to the publication "*Bekend maakt bemind*" by the Senior Public Service (June 2006).¹³⁹

ZBO's

Over the years gone by the status of a great number of civil servants changed to becoming employees of ZBO's, especially with respect to the downsizing of the various ministries. Many departmental tasks and the departments tasked with them have become autonomous. At the same time, the criticism levelled at the functioning of the ZBO's and the manner in which political control is regulated has increased.

In its 2004 report, 'A Recognizable State', the Kohnstamm Commission concluded that the corporatisation of government tasks has led to much lack of clarity with respect to the authorities and responsibilities and has weakened the instrument of political control. Ministers do not know exactly what their territories consist of and feel limited in their direction of civil servants, while the parliament no longer knows what the Minister can and cannot address. The Commission then also appealed for the restoration of ZBO's to ministerial responsibility.¹⁴⁰ Champions of ZBO's are, however, of the opinion that the Commission bypassed the fact that ZBO's have contributed much to the improvement of the execution. In order to restore the primacy of politics, it would suffice to better regulate the responsibilities, instead of doing away with the ZBO's.¹⁴¹

7.4 How effective and far-reaching are the competencies of the parliament to initiate, amend and review legislation?

7.4.1 Legislation

The Dutch Parliament consists of an Upper House - the Senate - and the Lower House - the House of Representatives - which together make up the Parliament called *Staten-Generaal*. The role of both in the legislative process is discussed in brief below. Article 81 of the Constitution clearly states

¹³⁸ Klink, Ab, during lunchtime lecture *Ambtelijk leiderschap 'Parlement is belangrijkste bondgenoot ambtenarij'* (The Hague 19 May 2005)

¹³⁹ http://www.algemenebestuursdienst.nl/download/mce.cfm?file_name=ABD%5Finterview%5Ftweedekamerlid%2Epdf&file_content_Type=application/pdf

¹⁴⁰ Werkgroep Verzelfstandigde Organisaties op Rijksniveau, *Een herkenbare staat: investeren in de overheid*. (2003-2004) 6-7

¹⁴¹ 'ZBO's hebben hun sporen verdiend in de uitvoering', www.andereoverheid.nl (14 September 2004)

that the Parliament is a co-legislator. Laws come into existence through collaboration with the government. The House of Representatives hereby has three competencies or authorities to its name: right of initiative (art. 82 section 1 of the Constitution), right of amendment and the right to adopt or reject bills. (article 87 of the Constitution). The latter must be done with a majority of votes. The Senate does not have the right to initiative and amendment. It can, though, adopt or reject a bill, once more with a majority of votes.¹⁴²

7.4.2 Implementation and indicators

For an overview of the use of parliamentary rights, please refer to section 6.3.

7.5 How effective and far-reaching are the competencies of the representatives to control and call to account the executive authority?

7.5.1 Legislation

The controlling function of Parliament is officially derived from two foundations. They are the ministerial accountability (article 42 section 2 of the Constitution) rule and the rule of confidence. The latter falls under constitutional common law and means that a Minister, state secretary or the cabinet in its entirety must resign when they no longer enjoy the confidence of the House of Representatives. In practice this means that the cabinet and its members enjoy the confidence of the House until that confidence is retracted by the majority of its members. In order to announce that lack of confidence, the House of Representatives has two instruments at its disposal: motion of no confidence and motion of censure. On the acceptance of one of these motions, the Minister concerned or the entire cabinet must resign. The ministerial accountability means that ministers are individually accountable to Parliament. Both Houses can render government members and even cabinets accountable for individual mistakes or mistakes by the public administrative apparatus. Through its controlling task, the parliament also has the following competencies at its disposal: right of inquiry (article 70 of the Constitution), right to information (article 68 of the Constitution), the right to decide on the budget (article 105 of the Constitution), the right of amendment (article 97 of the Rules of Procedure [RvO]), and the right to submit motions (article 66 of the RvO II and article 101 of the RvO I).

7.5.2 Implementation and Indicators

One of the biggest bottlenecks when it comes to controlling and calling to account the executive authority lies in the ministerial responsibility. As already stated in section 7.3, over the past few years constitutional law and political science have been wrestling with the application of this rule to the administrative apparatus and ZBO's. Criticism is likewise expressed with respect to the manner in which the House of Representatives fulfils its tasks. Various aspects of this will be dealt with below. This section concludes with a consideration of the manner in which political commissions can influence the task of control.

¹⁴² Berg, J.Th.J. van den, et al., *Inleiding staatkunde* (Deventer 1995) 261-282

House of Representatives

Prior to discussing a number of criticisms of the House of Representatives, it is useful to first list a number of facts. It thus becomes evident from the tables below that the House of Representatives makes very regular use of the resources placed at its disposal to control and correct the government as well as to call it to account.

Table 7.3 Number of motions and questions in the House of Representatives (2002-2005)¹⁴³

Type of motions/question	2002	2003	2004	2005
Submitted motions	1158	1007	1309	1434
Adopted motions*	391	327	437	513
Rejected motions*	363	433	568	513
Withdrawn motions	38	61	55	85
Postponed motions ***	44	42	52	85
Amended motions	45	56	66	109
Motions being dealt with ***	266	52	60	8
Lapsed motions ***	11	36	71	121
Written questions	1563	1678	2101	2045
Answered written questions*	1551	1668	2121	2225
Oral questions	99	65	98	96
Interpellations	13	5	5	5

* also including the bills, motions and questions submitted in the previous year.

due to an amendment of the Rules of Procedure (article 69, second section), a postponed motion will, after a lapse of time, if no counteraction is undertaken, automatically lapse. As a result from 2001 the figures for postponed motions and motions being dealt with diverge from the figures in the years preceding. *due to an amendment of the Rules of Procedure whereby a postponed motion will, after a lapse of time, if no counteraction is undertaken, automatically lapse, a rubric for lapsed motions (C.2.h) has been added.

In its report 'Not Too Many Questions', the ROB stated that between 15% and 20% of parliamentary questions are metaphoric: they are not part of the *span of control* of government members, and frequently pertain to incidents. A reason for this could be that members of the House want to gain kudos by having their parliamentary question being covered by the press. Some members of the House regularly allow their image-making role to prevail over their guiding or controlling roles. House members themselves lay the blame at the feet of the vague responses to their questions by civil servants, amongst other things. It is evident from an investigation by 'PM' that this is not wholly untrue. 35% of civil servants responded that parliamentary questions were not always responded to in full. Moreover, the posing of long series of questions in the House could also simply be a delaying tactic.¹⁴⁴

A second point of criticism directed at the functioning of the House of Representatives comes from ex-politician van Thijn. In his opinion, the House of Representatives votes too much along coalition lines and as a result negates itself.

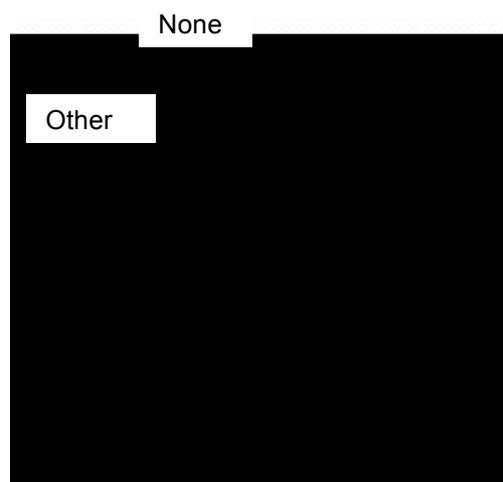
¹⁴³ see http://www.tweedekamer.nl/organisatie/voorlichting/lijsten/overzichten/Index_jaarcijfers.jsp#0

House members exercise insufficient control over ministers and secretaries of state. They tolerate a far too limited ministerial accountability.¹⁴⁵ Van Thijn is not alone in this opinion. Professor Kortmann recently expressed similar criticism on occasion of Minister Verdonk's immigration and integration policy. He labelled the House of Representatives weak and impotent. According to him, the parliament should have been a lot more critical in its approach to Verdonk and her policy, and should not have allowed itself to be led by coalition relationships and upcoming elections. A consequence of this may be that the citizen would lose confidence in the controlling function of the parliament.¹⁴⁶

Political commissions

GroenLinks was boldly critical of the functioning of political commissions on occasion of the 2004 investigation into the existence of a 'fifth estate'. The members of these commissions - an average of ten per annum - form a shadow-authority within Dutch politics. They undertake their actions in the back rooms without the transparency and control that belongs in a parliamentary democracy. Furthermore, the chairmen and members of the commissions are party politically appointed and they generally are part of the established order of the (major) governing parties. In 82% of the cases, the chairman is a member of whether the CDA, PvdA, VVD or D66 (figure 7.5). GroenLinks likened it to an old-boys network that is closely intertwined with business.¹⁴⁷

Figure 7.4 Chairmanship of commissions, by political party



The ROB, at the request of the House of Representatives, modified this picture somewhat in response. For now, the ROB considers the fact that politics makes regular use of external, academic and administrative expertise as being positive in principle. The quality of the decision-making process and of the decisions adopted can be, after all, increased. Nonetheless the Council acknowledges that when it comes to composition, the expertise and deciding power of the commission members must be a priority. The Council also called for more transparency with respect to the tasking and functioning of the temporary commissions. In conclusion the Council underlined the fact that it must ultimately be the politicians

¹⁴⁴ Senior Public Service Bureau, *Bekend maakt bemind. Tweede Kamerleden en ambtenaren in gesprek*

¹⁴⁵ 'Kamerleden zijn er nog genoeg in voorraad.', NRC Handelsblad 11 April 2006

¹⁴⁶ 'Tweede Kamer zwak inzake beleid Verdonk', [http://www.nu.nl/news/709335/11/Tweede Kamer zwak inzake beleid Verdonk.html](http://www.nu.nl/news/709335/11/Tweede_Kamer_zwak_inzake_beleid_Verdonk.html) (9 April 2006)

¹⁴⁷ Groen Links, 'De Schaduwmacht', <http://www.groenlinks.nl/2ekamer/notities/Notitie.2004-05-05.2423/view>

who must have vision and make difficult decisions. Politicians should respect disagreeable recommendations.¹⁴⁸

In its recommendations released on 14 July 2006, "Appointments in the Public Administration. Transparent, Well-founded and Functional", the Council stated that more transparent appointment procedures in the public administration would increase political and social confidence in the manner in which appointments in the public administration come into being and have come into being. The Council furthermore posited that political convictions could, under certain circumstances, be relevant criteria for appointment.¹⁴⁹

The National Convention argued that party membership should only play a role in an appointment when it comes to directors of strict political organs.¹⁵⁰

7.6 How serious are the procedures for supervision and approval of the levying of taxes and public expenditure?

From Policy Budget to Policy Accountability (VBTB)

The goal of the VBTB operation, launched in 1999, is that ministers are accountable for realised achievements and effects, so that the House of Representatives knows whether policy goals are being realised and it can fulfil its controlling task. By allocating the budget, the House of Representatives also grants ministers authorisation, whereby agreements are reached on intended effects and performance and the resources to be issued for them. Afterwards the House of Representatives checks, using the annual reports, whether these agreements have been fulfilled.

The Court of Audit determines on an annual basis to what extent the obligations, expenditure and income have, corresponding to the laws and legislation, come into being (an investigation of the legitimacy). That leads to a per ministry judgement and for the State as a whole, with a reasonable amount of certainty (95%). In general the percentage of legitimacy is very high (almost 100%). The Court of Audit observes in its report 'The State Balanced 2005' that the annual reports from the various departments are containing more and more concrete information on goals, performance and resources. Using a triumvirate of the cabinet's policy priorities, as recorded in the National Budget 2005, the Court of Audit investigated the realisation of goals, the effectiveness of and the foundation for the policy. The leading conclusion was that the cabinet was not yet completely successful in providing the House of Representatives with the required information. With respect to various components, the information provided was, according to the Court of Audit, inadequate, absent or not available in time.¹⁵¹

As far as the levying of taxes is concerned, according to the Court of Audit there is a reasonable amount of certainty that it was correctly implemented and the law and legislation was correctly applied. Last year, though, on occasion of the

¹⁴⁸ Council for Public Administration, 'Commentaar op het rapport de Schaduw Macht', www.rfv.nl (June 2004)

¹⁴⁹ For criticism of the last recommendation, see ROB: "Vriendjespolitiek" in HP/DeTijd 2006, week 31

¹⁵⁰ Rapport Hart voor de publieke zaak, aanbevelingen van de Nationale conventie voor de 21^e eeuw (2006), pg. 39.

¹⁵¹ Staat van de beleidsinformatie 2006. <http://www.rekenkamer.nl/9282302/v/>

legitimacy inquiry into the annual reports for 2005, the legitimacy of the wages and income taxes was declared uncertain.¹⁵²

7.7 How extensive and effective is the legislation with respect to the right of citizens to information from the government?

7.7.1 Legislation

The government intends, through the Open Government Act [*Wet Openbaarheid van Bestuur*], to provide the citizen with more insight into government actions, whereby the latter can better participate in the processes of democracy and governmental decision-making. The government frequently, of its own initiative, provides information on policy and the execution thereof over the Internet, through press releases, the distribution of pamphlets and brochures, the making of announcements in the Government Gazette or the broadcasting of a so-called *Postbus 51* advertisement, for example. In addition it is also possible to apply for the disclosure of certain government information: the WOB application. The point of departure here is that all government information should be public, unless otherwise determined in the WOB.

7.7.2 Implementation and Indicators

Every year about a thousand WOB applications are submitted to the central government, of which only 15% succeed. The biggest obstacle is the formulation of the applications and the knowledge of jurisprudence possessed by journalists and citizens. Criticism has been directed at the reaction time of civil servants. The government will not respond to 90% of WOB applications within the first four weeks. The deadline for a definitive answer has been set at eight weeks. Recent amendments make the law even more complicated. Furthermore, since the Balkenende Cabinets, evermore categories of policy documents are being classified. As a result, WOB applications are stagnating.¹⁵³ In the memorandum on Open Government, Duyvendak and Vleugels make a number of proposals for the improvement of access to government information:

- * Honour more applications by lowering the number of grounds for exceptions and restrictions;
- * Expand the scope to include ZOB's and constructions of public-private collaboration;

¹⁵² Announcement Algemene rekenkamer 25 August 2006. Refer to the report in the Jaarverslag 2005 by the ministry of Finance - can be found at www.rekenkamer.nl

¹⁵³ Vleugels, Roger, 'Fringe Spitting - WOB-Special', (12 July 2005)

- * React quicker;
- * Turn the WOB into a layman's law;
- * Declassify many more documents on their own initiative;¹⁵⁴

7.8 Which measures, if any, are taken to solve publicly identified problems in this area? What degree of political priority and public support is devoted to this?

GroenLinks attempted, through an initiative memorandum, to resuscitate the Open Government Act. They said that it was too complicated and time-consuming, and the Dutch administration has hardly become more open as a result of it; the administration may reject applications on numerous grounds. GroenLinks wanted to restrict the grounds for rejection, expand the act to cover autonomous and corporatised government tasks, implement sanctions when the time limit is exceeded, implement simpler procedures and have the government declassify the documents itself. In the meantime a preliminary draft for a general government information act is being worked on, on the instructions of the cabinet, which contains a regulation for the judicial and administrative aspects of publicising administrative and governmental information, taking into consideration, amongst other things, the aspects of security and privacy.¹⁵⁵

7.9 Summary

Confidence in the effectiveness of the policy and the performance of the incumbent government has - according to opinion polls - been low in the last number of years. This is only partially related to a decline in confidence in other public institutions.

The primacy of politics dictates that civil servants are loyal to their political superiors and that they, in turn, are responsible for the performance of the administrative apparatus. In general, there is no direct relationship between civil servants and representatives. The Minister is, in the Dutch state system, responsible for the issuing of information to the Parliament. Nevertheless, the provision of public, factual information to members of the House of Representatives by civil servants is possible.

The Open Government Act does not, according to the critics, function well enough in practice. Suggestions have been made for amendments. New legislation is currently being prepared.

The limited ministerial accountability with respect to partially non-departmental public bodies (ZBO's) is being increasingly called into question with respect to the democratic control over government policy and government performance. That is why the Kohnstamm Commission has argued for the restoration of ZBO's under ministerial responsibility. Critics of this opinion state that the improvement in the execution of government tasks by ZBO's should prevail over a more direct leadership by the ministers.

¹⁵⁴ Duyvendak, Wijnand en Roger Vleugels, 'Voorstellen: meer openheid en betere Wob', http://www.wobverzoek.nl/archief/2005/07/voorstellen_mee.shtml

¹⁵⁵ See answers to parliamentary questions by member Duyvendak (GroenLinks) to the Minister of Bestuurlijke Vernieuwing en Koninkrijksrelaties on an amendment to the Wet openbaarheid bestuur Aanhangsel Kamerstukken II, 1637.

The floating voters, the rise of the media-crazy and the fact that the government is increasingly considered to be the problem instead of the solution, lead, according to critics, to politicians being increasingly involved in micromanagement, and to restrictions upon the freedom to determine policy and the accountability of civil servants.

Use of the instruments available to parliament for exercising control over the government has increased dramatically over the last few years. Democracy is not automatically served by this; according to the critics, the so-called politics of incidents or subjects are too often concerned, which do not fall within the responsibilities of the government. House of Representatives members seem to be interested in media attention when posing parliamentary questions, as is sometimes said. On the other hand, it is noted that parliamentary questions are rarely answered in full.

Since the 90's there has also been increasing criticism of so-called "monistic" behaviour on the part of the House of Representatives. By voting too frequently along coalition lines and accepting a much too limited ministerial responsibility, the governing parliamentary fractions in the House of Representatives are negating themselves and play, as some say, into the hands of the 'sorry-democracy'.

An important part of the preparation in political decision-making is undertaken by advisory boards. Criticism of this amounts to the fact that advisory bodies operate too often in the back rooms of politics, are disproportionately under the chairmanship of members of the major parties and make too much use of old-boys network relationships with the business-sector.

8. Civilian control of the military, police and security services

Are the military, police and security services subject to civilian supervision?

Direct authority with the potential of exercising force, coercion or interventionary restrictions upon the rights of citizens means that the actions of the military, police and security services and the democratic embedding of these services are an essential object of study in assessing the state of the democracy. In a totalitarian state, the military, police and secret services are, often with reason, feared organisations. And still, civilised countries also have a military, police and secret service. The services are even necessary to protect the country, the citizens and the democratic rule of law. They should function well, but in a democratic constitutional state they must operate in accordance with a statutory framework and be democratically embedded.

8.1 How effective is civilian control of the armed forces? To what extent is politics free of military influence?

8.1.1 Legislation

The military

Article 97 of the Constitution stipulates that there is one military force for the defence of and the protection of the interests of the Kingdom, the maintaining and promotion of the international rule of law. In addition, the military also has the task of supporting civilian authorities in the enforcement of law, combating natural disasters and providing humanitarian aid, both nationally and internationally.

Article 97 section 2 of the Constitution stipulates that the government has supreme authority over the military. The Minister of Defence is, as a member of the cabinet, the person responsible for general defence policy. He is accountable to the Senate and the House of Representatives. The military leadership of the Nederlandse Defensie lies in the hands of the Commander of the Armed Forces. He is responsible, on behalf of the Minister, for the execution of the military operations. He is also the highest military advisor to the Minister.

As far as the mobilisation of the armed forces in a European and international context is concerned, in article 100 of the Constitution it is stipulated that the government, the Senate and the House of Representatives must be informed beforehand with respect to the introduction or allocation of the military for the maintaining of and promoting of the international rule of law, which is also taken to include their introduction for providing humanitarian aid in the case of an armed conflict.

Military action, also with respect to international operations, falls under the Military Penal Code. The Military Regulations on the Rules of Engagement are also stipulated therein. In addition the rules of engagement during military operations outside of the Netherlands are stipulated in regulations that are adjusted to the concrete circumstances under which action must be taken. These rules are also generally designated as the Rules of Engagement (RoE).

The right of states to invade another country with military resources is recorded in the United Nations Charter. Within the UN, the Security Council is the body that is primarily tasked with maintaining international peace and security. The international operations in which the Netherlands participates generally occur on the grounds of article 51 of the UN Charter.

Control by parliament

The military functions under the complete political responsibility of the Minister. Unlimited parliamentary control is also possible. The government, as commander-in-chief of the military, makes the decisions with respect to the execution of international operations. The Parliament must be informed beforehand and the House of Representatives has the right to pronounce on the mobilisation (article 100 of the Constitution). With respect to obtaining wider parliamentary support, the government can whether limit the action or actually expand it. This could have an effect upon the choice of weaponry, theatres of operation and duration and/or restrictions in the authorities of the operational units.

8.1.2 Implementation

Defence Doctrine

Aside from the policy documents wherein the ambitions and capacities of the branches of the armed forces are registered, a Netherlands Defence Doctrine (NDD) has also been composed. The NDD contains fundamental points of departure with which the armed forces provide direction to the execution of military operations. The design of the NDD is to a large degree derived from the British Defence Doctrine, which can boast of a great deal of experience when it comes to military operations. Aside from clear directives and strengthening of the cooperation between the branches of the armed forces, the NDD also has the function of informing the wider public - both in the Netherlands and abroad, of the tasks and operational capabilities of the Dutch military.

One of the first tasks of the military is the protection of territorial areas of the Kingdom of the Netherlands. Within this framework, the army may, after the approval of parliament, employ force. The use of force must be seen as the last resort. The Netherlands has been free of the threat of war for a long time and the necessity of protecting the national borders, including the overseas territories through the use of physical force has not occurred for years. Through European cooperation, which includes the arena of defence, and free movement between the member states, there has not been a question of the threat of war by countries within the European Union for a long time, and the physical national borders have blurred.

The second task of the armed forces is to contribute to the restoration, maintenance and promotion of the international rule of law, either in a European or an international sense. This action is especially geared towards assisting to prevent and combating regional and international conflicts, which can easily escalate into a larger conflict. With regard to the decision of the deployment and contribution of Dutch military forces to international operations, an assessment framework has been drafted. It contains points for attention such as ground for participation, political aspects, mandate, participating countries and influence. The assessment framework is also employed within the framework of the provision of information to parliament.

Some of the components of the Rules of Engagement can be in conflict with the national judiciary rules or policy. Under Dutch law, there is no right to use force. The Rules of Engagement (including the Instruction Card on the Use of Force) and the *aide-memoire* drafted for these sorts of situations, thus do not have an explicitly statutory basis. This means that if a Dutch soldier wounds or kills someone, in the first instance we are dealing with an offence. The comment was made in the Senate that there is clearly no statutory basis for the use of force during military operations abroad. It was argued that a Kingdom law on the use of force by the military was needed. The judge, however, determined that in the case of Eric O. who was charged with not having followed military regulations with respect to the use of force in Iraq in December 2003, that both the abovementioned documents satisfied the requirements that Article 135 of the Military Penal Code [*Wetboek van Militair Strafrecht*, WMSr] places on the Military Regulations on the Use of Force.

The third task of the military is to supply, on request, support to the civil authorities. In brief, this support can be supplied for disasters and accidents, such as with rapidly spreading animal diseases, flooding and forest and heather fires. But within the framework of exceptional situations too, as determined in article 103 of the Constitution, when there is a need for maintenance of the public order and in the combating of terrorism (or the combating of the consequences of terrorist attacks). Further, the military provides, if required in the public interest, personnel and material assistance in widely divergent situations for, amongst other things, large-scale events like the Vierdaagse in Nijmegen.

Civil-military agreements

With respect to the introduction of the military to support civil authorities and the police, civil-military agreements [*civiel - militaire bestuursafspraken*, CMBa] have been made. They stipulate that support that the military provides and that is not grounded in a legal basis, must be considered as support within the framework of the public interest. The procedure is described in the regulation, and the group of applicants are restricted to ministers, Queen's commissioners, mayors and *dijkgraven*^{xii}. All actions are coordinated by the National Coordination Centre (NCC), under the responsibility of the Minister of the Interior and Kingdom Relations.

With respect to military support to police, standard regulations have been drafted that can be applied to various incidents. Thus there are standard regulations for the protecting of civilian objects and for support with respect to the maintaining public order in the case of an outbreak of an infectious animal disease.

The military police are typified as a police organisation with a military status. As an autonomous component of the military, it is a part of the ministry of defence. The commander of the Royal Military Police [*Koninklijke Marechaussee*] is directly answerable to the Minister of Defence in as far as military tasks are concerned. For 80%, however, the military police fall under the authority of other ministers. As far as the tasks within the framework of the Aliens Act, the policing and protecting of civilian airports and the protecting of members of the Royal house are concerned, the royal police fall under the authority of the Minister of Justice.

When the military police provides support to the police, whether in criminal matters or within the framework of maintaining public order, the Minister of the Interior and Kingdom Relations is the responsible party. With respect to security tasks around embassies abroad, the military police falls under the authority of Foreign Affairs. In order to keep the consultation on civilian police tasks by the military police on track, the Minister of Defence has the Advisory Council on the Royal Military Police at his disposal. Justice, Interior and Defence are all represented in it.

Inspector-General of the Armed Forces

Aside from the Commander of the Armed Forces, there is also an Inspector-General of the Armed Forces, also the Inspector of the Veterans. He occupies an independent position and is directly under the Minister. The Inspector-General advises on matters of concern to the military, institutes investigations and mediates in individual cases, which is why he is also considered as the ombudsman of the armed forces. Aside from this internally oriented function, the Inspector-General also has the task of reporting and making recommendations to political and public service leaders every three months. In joint consultation with members of the government and the Inspector-General, special points for attention are periodically determined. The Inspector-General hereby contributes to the policy-development in the ministry of Defence. He is accountable to parliament through the annual reports of the Inspector-General.

8.1.3 *Indicators*

There are no statistical indicators available with respect to civilian control on the introduction and activities of the armed forces.

8.2 To what extent should police and security services be publicly accountable for their actions?

8.2.1 *Legislation*

The Police

The task of the police is, subordinate to the competent authority and in accordance with the applicable judiciary rules, to ensure that the rule of law is actually maintained and to provide assistance to those in need of assistance (article 2 Police Act, 1993 – [*Politiewet, PW*]). The tasks, the organisation and the management of the police are recorded in the PW, as well as the authority under which the police exist. The Minister of the Interior and Kingdom Relations is responsible for general police policy. The activities that of maintaining public order and providing assistance are performed by the police under the responsibility of the mayor. The mayor can thereby issued instructions. When investigating criminal offences, the police are under the authority of the public prosecutor .

In article 4 of the Police Act, the current police organisation in the Netherlands is described. The Dutch police are organised into 25 regional police departments, or corps', and one national department: the National Police Services Corps (KLPD). A regional police department is tasked with the execution of all police tasks in the

relevant region. There are 11 services under the KLPD, each with their own area of tasks. The tasks of the Royal Military Police are also listed in the Police Act. For the execution of the tasks stipulated in the 1993 Police Act, the military police have the same status as the police. Every department is led by a chief of police (*korpschef*), who is responsible for the day-to-day matters of the department, and a department director (*korpsbeheerder*), responsible for the management of the department. The department director of a regional department is the mayor of the biggest municipality in the region. The Minister of the Interior and Kingdom Relations is the director of the KLPD. Rules are laid down in the Police Act with respect to the management and as well we the rules for assistance of other departments.

Intelligence and security services

The intelligence and security services (Inlichtingen- en veiligheidsdiensten, I&V), are an integral part of the Dutch constitutional state, and they are tasked with the protection of the achievements of the democratic constitutional state. The tasks and authorities and the supervision of the Military Intelligence and Security Service (MIVD) and the General Intelligence and Security Service (AIVD) are regulated in the 2002 Intelligence and Security Services Act [*Wet op de Inlichtingen- en Veiligheidsdiensten*] and in the Security Investigations Act [*Wet Veiligheidsonderzoeken*]. The MIVD supports the preparation of the armed forces in its general defence tasks and in the decision-making process with respect to the introduction of the Dutch military in crisis management and humanitarian operations. The MIVD falls under the complete responsibility of the Minister of Defence.

The AIVD is concerned with the task of national security:

- the undertaking of investigations with regard to organisations and person who, through their goals or activities, give rise to the serious suspicion that they form a danger to the continued existence of the democratic rule of law, or to the security of other weighty concerns of the state,
- the undertaking of security investigations,
- promotion of security,
- the undertaking of investigations with respect to a few specific countries,
- protecting and securing.

The AIVD falls under the complete responsibility of the Minister of the Interior and Kingdom Relations. A number of special authorities are recorded in the legislation for ministers who want the tasks concerning national security to be well carried out. The exercising of these special authorities is, by law, bound to the principles of necessity, proportionality and subsidiarity. Control of the services is also regulated through the legislation. In the Netherlands, there is a system of control mechanisms with which supplementation is supplied to democratic control in such a way that the balance between freedom and security is guaranteed. Democratic control can contribute to the (expansion of) acceptance and legitimacy of the work of intelligence and security services in a democratic system. Effective democratic control, as it is regulated in the Netherlands, places the AIVD and the MIVD in the middle of the democratic system governed by constitutional law, and is geared towards guaranteeing the liberties of the citizens, not least in their relationship with the government. This control is aimed at the maintaining of the statutory framework (the jurisprudence) and the administrative framework (general functioning, including efficiency).

8.2.2 Implementation

Parliamentary control over the AIVD and MIVD

If we are dealing with information that must remain classified, this will be discussed with the House of Representatives in the Committee for the Intelligence and Security Services. This commission reports to the House of Representatives on its activities. Until the start of 2004, the commission consisted of the party leaders of the four biggest political parties. Now it consists of the leaders of all the parties who have taken a place in the House of Representatives immediately after the elections (and thus not those who splintered off afterwards).

Supervision of the AIVD and MIVD

On the basis of the Intelligence and Security Services Act, the Review Committee on the Intelligence and Security Services was established on 1 July 2003. This committee is tasked with the review (retrospective) of the legitimacy of that which is specified by law and the called for and un-called for intelligence and recommendations of the involved ministers with regard to the findings of the committee. The committee provides recommendation to the ministers concerned, also with respect to the investigations and the assessment of complaints.

In its report, 'The Changing AIVD', the AIVD Administrative Evaluation Commission (the Havermans Commission) recommended that, by way of change the control of the organisation and the functioning of the AIVD should both be reinforced. It also saw a task in that for the Review Committee. This committee should, aside from the reviewing the legitimacy, also be granted the opportunity of investigating the organisation and the functioning of the AIVD, including the manner of control and prioritisation.¹⁵⁶

In 2005, the AIVD had a study instituted into the democratic control of intelligence and security services in a number of countries. The reason for this was a general consultation with the permanent commission for BZK with respect to the report of the above-mentioned AIVE Administrative Evaluation Commission. The study was undertaken by the Clingendael Centre for Strategic Studies TNO (CCSS). The report resulting from this study was submitted to the House of Representatives on 14 December 2005. Thereby the Minister of the Interior and Kingdom Relations indicated, also on behalf of the Minister of Defence, that the constitutional differences between the countries studied made it difficult to make a qualitative assessment in an absolute sense on the basis of comparative constitutional law with respect to the democratic control of the intelligence and security services undertaken in the Netherlands. Review of the Dutch system using the framework of indicators, however, provides a positive impression of the democratic control of the Dutch intelligence and security services. It is expected that in October 2006 the study and the standpoint of the ministers will be discussed with the House of Representatives.

Aside from this politico-administrational review, there is also, on the strength of the applicable legislation and other applicable laws, a regular judicial review of the actions of the services.

Supervision of the police

The regional police departments are administratively housed in police regions. Each region is administrated by a regional board that consists of mayors of the municipalities in the region and the Chief Prosecutor^{xiii}. The chairman of this board is the department director. The department director is responsible for

¹⁵⁶ Kamerstukken II 29, 876, no 5

the police department being, in a quantitative and qualitative sense, sufficiently staffed, efficiently organised and reasonably well equipped, so that it can adequately perform its tasks. The regional board has a number of annually returning tasks, such as determining the policy plan, the budget, the annual accounts and the annual report. In addition, the department director is accountable for the administration undertaken by him of the regional police department to the regional board.

National Anti-Terrorism Coordinator

In the Netherlands there are approximately 20 institutions, including the AIVD and the police, who are involved, either in terms of policy or operationally, in the combating of terrorism. The National Anti-Terrorism Coordinator (NCTb) was appointed to improve cooperation between these bodies. The coordinator is the person ultimately responsible for the development of policy, the analyses of (intelligence) information and the direction of security measures to be taken in the combating of terrorism. He is subordinate to and thus accountable to the ministers of Justice (the coordinating Minister for the combating of terrorism) and the Interior and Kingdom Relations.

8.2.3 Indicators

Democratic control of intelligence and security services

Both the MIVD and the AIVD release a yearly public annual report. It contributes to the continuous parliamentary and public control of these services. Aside from the public annual report, the AIVD also releases a classified annual report. Through the (internal) AIVD annual plan, the directing of the service can be promoted and insight is provided into areas needing attention and the choices made with respect to the employment of personnel capacity and resources.

Democratic shortcomings police regions

The *Police Organisation Evaluation Steering Committee*, the Leemhuis Steering Committee, published a report for the police. It is evident from this evaluation that the regional autonomy of the departments has not improved the efficiency of the departments. The police departments bypass each other too much. The marginal role of the municipal councils in the regional policy and the weak democratic embedding of the system (the 'democratic whole') are regarded as bottlenecks by the steering committee. Directly elected persons cannot, whether at a central or non-central level, exercise direct control over the policy and management of the departments. The cabinet is of the opinion "that in the mean time a number of significant steps have been taken" by the management council of the police, but that the democratic embedding of the proposals was still insufficient whereby further-reaching steps were necessary.¹⁵⁷ At present legislation is being prepared with respect to this.

Wiretapping of de Telegraaf journalists

In January 2006, two journalists from *De Telegraaf* obtained classified information that originated in the AIVD. The journalists publicised, amongst other things, the circulation of secret documents in the underworld, after which the AIVD launched an internal investigation to uncover the leak within its own organisation

¹⁵⁷ Brief aan de Tweede Kamer over Kabinetsstandpunt evaluatie politieorganisatie, reactie 'Politie in ontwikkeling' en de notitie kerntaken politie, 14 October 2005, pg

and thus eavesdropped on the journalists. In June 2006, a judge ordered that the wiretapping of the two journalists from *de Telegraaf* by the AIVD be stopped. The judge found that in this case there was a disproportionate application of the wiretapping. The Minister of Interior and Kingdom Relations appealed against this decision. The Minister deplored the fact that *de Telegraaf* did not employ the regular complaints procedure through the independent Review Committee on the Intelligence and Security Services. This independent commission after all has, according to the Minister and as opposed to the court, unrestricted access to all information from the AIVD. That is why he then asked this independent commission himself to, with haste, assess the legitimacy of the AIVD's investigation.¹⁵⁸ The court judged on appeal that the investigation into the leak within the AIVD concerned national security and that thereby weighty concerns of the state were at issue here. According to the court, the AIVD had the opportunity to employ exceptional authorities such as these, but in this case the service should have ceased employing these authorities when, after launching the investigation into the leak, they began to investigate people other than the journalists. From that moment there was insufficient necessity to apply these exceptional authorities to the journalists. According to the court, it was ultimately up to the Independent Review Committee on the Intelligence and Security Services (CTIVD) to judge on the legitimacy of the operational AIVD investigation. Further, the judge determined in the summary proceedings that the information obtained must be destroyed. The court has now decided that that is not necessary.¹⁵⁹

8.3 To what extent is the composition of the military, the police and the security services a reflection of the social make-up of the society as a whole?

Composition of the military

Approximately 50,000 military personnel and 15,000 civilian employees are employed in Defence. The military contained less than 4,500 (8.4%) female personnel in 2001. Compared to the central government, this percentage is low. Females are rarely employed in the higher ranks, the ranks of non-commissioned officers and officers. Thus, in the military, from the rank of lieutenant^{xiv} or major upwards, approximately 4% of the personnel are women. Defence wants to increase the number of women in the organisation, in all branches and at all levels. To this extent, a special plan of action was launched. The 2003 *Defence Social Policy Framework* means, for example, that in the case of equal suitability, preference will be given to female personnel. The number of women in the officer's ranks increased in 2005. As of 1 November 2005, the military also had its first female (brigadier) general.

Defence endeavours to have the military consist of 12% females in 2010. With respect to the civilian personnel, they strive for a level of 30% of women by 2010. Amongst the branches, the quantitative goals for promoting female civilians to higher, managerial positions have been reached. The results achieved, however are behind for the goals set for 2010 across Defence.

¹⁵⁸ http://www.ministerremkes.nl/veiligheid/algemene/persberichten/remkes_in_hoger

The Defence published steps previously for improving the position of members of ethnic minorities within the military. The most important steps are:

- * A memorandum from the Director of Employment Conditions Policy (DAVB) stated that - aside from the already extant Christian holidays - a number of other holidays for Jewish, Moslem and Hindu soldiers and civilians should be acknowledged. This acknowledgement was subsequently affirmed in the AMAR and BARD;
- * In the Feeding and Housing Regulation (MP31-1 10), the right of military personnel to alternative foodstuffs was included by authority of the state - when the military personnel lay claim to that on religious grounds.
- * In the oath, the word "God" can be replaced by Allah when the military personnel requests that.
- * The resolution agreed to in 2003 to appoint two pundits (Hindu clerics) to the armed forces has been effected;
- * At the end of 2003 the *Multicultural Defence Network* (MND) was officially established, with the most important goals set as: the optimisation of the foundation for a multicultural defence organisation and the supplying of a contribution to diversity within the defence organisation from a multicultural approach.

As a result of the temporary application in 1998 of the Promotion of Labour Participation of Ethnic Minorities Act [Wet Stimuleren Arbeidsdeelname Minderheden, SAMEN^{xv}], Defence reported annually until August 2004 on the number of personnel who belonged to ethnic and cultural minorities (ECM's).

Table 8.1 Proportionality and percentages realised for ECM's in Defence

	1998	1999	2000	2001	2002	2003
Proportionate percentage	4,0	4,7	5,5	6,0	7,7	7,7
Percentage realised	7,9	7,4	7,3	7,4	7,3	7,6

Sources Abdoelkhan, 2005 ¹⁶⁰

From this it is apparent that in 2001, more ECM's were included in the organisation than the prescribed proportion. After 2001, however, the realisation remained below the proportionate percentage. From 1999 on, the realisation remained stable, but the requirements imposed upon the proportionate percentage were raised with respect to the rising number of ECM's in the labour market. The SAMEN Act was not extended after 1 January 2004, but Defence wants to continue collecting the statistical data for internal use. Tracking the number of ECM's in Defence is considered necessary with respect to the rising number of that group in the labour market and the necessity of "adequate supplementation of the organisation". ¹⁶¹

¹⁵⁹ UJN: AY7004, Gerechtshof 's-Gravenhage, KG 06/821, 31-08-2006. Consulted on www.rechtspraak.nl.

¹⁶⁰ Reproduced in: Kleur bekennen? Evaluation by the Etnisch Cultureel Minderhedenbeleid Defensie 2000-2005 Drs. Femke Bosman, Dr. Rudy Richardson en Dr. N. Guns. Faculteit Militaire Wetenschappen, Dutch Defence Academy, no 8. (can be found at: http://www.defensie.nl/binaries/Rapport_ECM_tcm15-64497.pdf)

** Inspector-General of the Armed Forces

¹⁶¹ Kleur bekennen?, pg. 8-9.

From recent studies by the Dutch Defence Academy into the attitude of Dutch military personnel with respect to members of ethnic minorities, the following emerged:

*There is a slightly negative tendency in the generally prevailing attitude of defence personnel with respect to multiculturalism. This is more prominent in the youth and low-skilled employees. This picture is, however, not reflected in the perceptions regarding diversity policy (guaranteeing equal opportunities, eliminating racism, helping both indigenous Dutch citizens as well as ECM's through education and moulding) and the effects thereof; defence personnel are positive to relatively positive with respect to the policy. However, this does not apply to policy aimed at funding and promoting events that celebrate various cultures. There are likewise divisions with respect to the 'reflective policy' the Defence endeavours to fulfil and the reversed discrimination that can be brought about as a result of the policy of diversity.

*With respect to the 'dilemma of retaining identity or adapting the Dutch culture', Defence personnel adopt different attitudes/strategies with regard to the private and public context. Although respondents were reticent about their private situation, the majority voiced the preference of retaining ethnic culture, which in general results in a separate strategy. In the public context, adaptation of the Dutch culture was the most widely supported, resulting in a preference for the strategy of assimilation.

As far as homosexuality in the armed forces is concerned, it was evident from research conducted in 1999 that homosexuality was being increasingly accepted. At the request of the ministry of Defence, the attitude of the armed forces' personnel was freshly polled. The results of this study were released in September 2006.

Composition of the police departments

Figures with respect to the police¹⁶² show the following picture:

Table 8.2 Composition of the Police

	Members of ethnic minorities		Total	Women		
	Regions	KLPD		Regions	KLPD	Total
2003	3299 (6,1%)	125 (3,2%)	3424 (5,9%)	13388 (27,7%)	666 (18,1%)	14054 (27,0%)
2005	3459 (6,4%)	170 (3,7%)	3639 (6,1%)	13387,5 (29%)	887 (20,4%)	14274,5 (28,3%)

Source: Jaaroverslag Politie 2003/2005

The number of women and members of ethnic minorities in the regions and the KLPD has, as is evident from this overview, increased relatively. Nevertheless, occasional incidents do occur. Thus the National Ombudsman (NO) launched an investigation in June 2006 on possible discrimination with respect to promotions within the Gelderland-Midden police department. This investigation was launched on occasion of a complaint by a police inspector of Moroccan descent with respect to the lack of transparency and integrity he had witnessed in the Gelderland-Midden police department with respect to him in the framework of a recent promotion. Colleagues of Dutch origin with less experience apparently made

¹⁶² http://www.politie.nl/Overige/Images/33_214805.pdf

promotion before him. According to the NO, there are indications in the media that this is not a solitary complaint. That is why the NO decided to not limit its investigation to the complaint submitted by him. The NO's investigation will be geared towards the question of whether the origin of a candidate for promotion was a decisive factor in the regional police department of Gelderland-Midden.¹⁶³

Composition of the security services

At present 1 100 people are employed by the AIVD. As far as personnel policy of the AIVD is concerned, there is specific policy for the AIVD over and above the general regulations and policy with respect to the ministry's personnel. Thus, the AIVD the requirement of good standing is applicable and everyone is subjected to security clearance. You must also have Dutch nationality and, in principle, have lived in the Netherlands for the previous ten years. Both men and women of a minority and indigenous background are employed at the AIVD. In the AIVD's annual report, however, not details are included on the composition of the personnel. The AIVD predominantly invisible to the public, whereby the degree to which the service is a reflection of the social composition of our society as a whole can only be of limited relevance. The same is applicable to the MIVD (as of 1 January 2006, consisting of 744 posts).

8.4 To what extent is the Netherlands safeguarded against paramilitary operations, warlords, private armies and organised crime?

For the answer to this question, please refer to section 2.1.3 (Hell's Angels)

8.5 Which measures, if any, are taken to solve publicly identified problems in this area? What degree of political priority and public support is devoted to this?

AIVD information in criminal proceedings

A bill is currently before the House of Representatives wherein the possibilities of using information gleaned by the AIVD in criminal proceedings are extended. Civil servants in the AIVD can be more expansive about the content of their official reports before the examining magistrate, and the *in camera* hearing of witnesses will be possible. The courts may also take official reports from the AIVD into consideration as evidence.

Improved democratic embedding of the police organisation

The Balkenende II cabinet decided that the police organisation should be changed with respect to the point of democratic embedding. The department director is not accountable with respect to the administration and the current policy undertaken by him - either to the democratically elected body or to the ministers. The cabinet proposal includes a direct relationship between the police organisation and the ministers. The ministers will thereby be accountable to parliament.

¹⁶³ Press Release No, 15 June 2006

Departmental organisation

In the meantime the Brinkman Commission recently recommended that the ministries of Justice and the Interior and Kingdom Relations be merged.¹⁶⁴ The Brinkman Commission also argued for a Minister of security who is politically accountable for the entire arena of criminality, terror, crisis management and disaster combating. There have been both positive as well as critical reactions to this proposal. A decision has not yet been reached with respect to it. The degree of political priority and public support for the proposals is at present not clear.

Rapid introduction of intervention forces and public accountability

On 28 October 2004, the Permanent Committees for Foreign Affairs and for Defence decided that an investigation was necessary into parliamentary involvement in the posting of Dutch troops within the framework of participation in the NATO Response Force (NRF) and multinational rapid reaction forces, like the EU Battle Groups. The goal of this was to investigate whether the current procedure of parliamentary involvement in decisions to post Dutch troops abroad was adequate. On the grounds of a motion submitted by Van Aartsen-Bos, the investigation was widened: the working group also devoted attention to the nature and the implications of article 100 of the Constitution with respect to the involvement of parliament in the posting of troops. The parliamentary working group that then undertook the investigation concluded that with respect to parliamentary accountability, no problems existed for the rapid introduction of the NRF. The government can always request for retrospective approval. The working group, however, found that a good regulation would as such be important so that the preference is given to the application of article 100 of the Constitution. The working group report was submitted to the Parliamentary Chairman and to the chairmen of the Permanent Committees. The recommendations will first be discussed by the House itself. Thereafter there will be a debate with the government.

The posting of the armed forces to international operations is increasingly aimed at the offering of humanitarian assistance and assistance with reconstruction. As a result the development work is becoming more intertwined with military operations, and the military is increasingly involved with NGO's. This can lead to problems. Differences in goals, working methods, the decision-making structure and mandate are all involved. In addition, the NGO's emphasise that they are impartial, neutral and independent, while the armed forces are, as a political instrument, partial. By working together with the military, NGO's fear that they will not only lose their impartiality, but they are also scared of becoming a military target. Furthermore, a part of the budget for Development Cooperation is devoted to activities carried out within the framework of humanitarian assistance by the military. For a fruitful collaboration between NGO's and the military, both parties should at any rate know more about each other's expectations, culture, objectives and tasks. This has now become a structural component of training in the armed forces.

¹⁶⁴ Interim report titled "Veiligheid; meer samenhang en slagkracht, betere informatie, minder beleidsdrukte". Presented to the House of Representatives by letter date 18 November 2005.

8.6 Summary

Responsibility for and direction and control of the posting of the armed forces are constitutionally enshrined and are the duties of the government, with control falling to parliament. There are no indications of inadequate direction or deficient control. Military action is regulated by the Military Regulations on the use of force and (in missions abroad) the Rules of Engagement. Following from jurisprudence, these instructions satisfy stipulations in the Military Penal Code (WMSr). With respect to the mobilising of the army in support of the civil authorities and police, civil-military agreements (CMBa) have been made.

Tasks, authorities and supervision of the (military) intelligence and security services are determined by law. In support of parliamentary control, there is the *Committee for the Intelligence and Security Services* in which all House leaders have (if so desired) a seat. A comparative international investigation by the Instituut Clingendael indicates that the democratic control of the intelligence and security services is sufficient.

Administration, direction and accountability of the police services are determined in the Police Act. Administration and direction of the services are the tasks of the chief of police, who assists the director. Policing with respect to maintaining public order and providing assistance fall under the responsibility of the mayor. The *Police Organisation Evaluation Steering Committee* has noted the problems that control of the police by democratically elected bodies by the current structure of autonomous regional police departments leaves something to be desired. It has been proposed that a direct relationship of responsibility is created between the Minister and the department directors. To that extent, proposals are at present being prepared.

Women and members of ethnic minorities are under-represented in the police force, but this does not lead to a demonstrable unequal treatment of citizens by this service.

9. The Eradication of Corruption

Are public incumbents and civil servants incorruptible?

Integrity and the absence of corruption, at all levels and in all government departments and in the public domain in the widest sense are of fundamental importance for the good functioning of a democracy. The integrity of public incumbents, judges, politicians, representatives and civil servants contributes to the confidence in the government and in democratic processes and institutions. Aside from that, an honest government is also a condition for a well functioning market economy and economic growth.

9.1 How independent is the public administration (elected and appointed) with respect to party political favouritism and the private interests of the public incumbents?

9.1.1 Legislation

Article 2:4 of the General Administrative Law Act (AWB) provides a general norm in this context. The article stipulates: "The administrative body fulfils its task without prejudice. The administrative body guards against persons belonging to or employed by the administrative body who have a personal interest in a decision influencing that decision. Further, the general rules as laid down in the Open Government Act are of concern."

In addition, in various areas and for various sorts of persons (civil servants, specific incumbents, civil servants in specific sectors, etc.) separate rules are imposed, such as the Civil Servants Act, the Judicial Data Act [Wet Justitiële Gegevens], the Security Investigations Act and the 2002 act promoting integrity evaluations, legislation on dualisation in municipal and provincial administration (Wet bevordering integriteitbeoordelingen, wetgeving dualisering gemeente- en provinciebestuur).¹⁶⁵ Recently, on 1 March 2006, an obligation was included in the Civil Servants Act for government employers to pursue an integrity policy.

9.1.2 Implementation

In 1992, the Minister Dales of the Interior emphatically put integrity policy on the agenda. Since then, various policy memoranda have appeared, legislation and rules have been created and the tackling of corruption has become a leading element in the policy of the central government. The central government attaches great value to the long-term establishment of an image of an honest government and life in a society where transparency is the norm. The numerous measures, in various areas, are described in the memorandum *Preventing Corruption*.¹⁶⁶

9.1.3 Indicators

¹⁶⁵ <http://www.integriteitoverheid.nl/>

¹⁶⁶ Kamerstukken II 2005/2006, 30 374, no 2. See further Kamerstukken II 28 844, no 11.

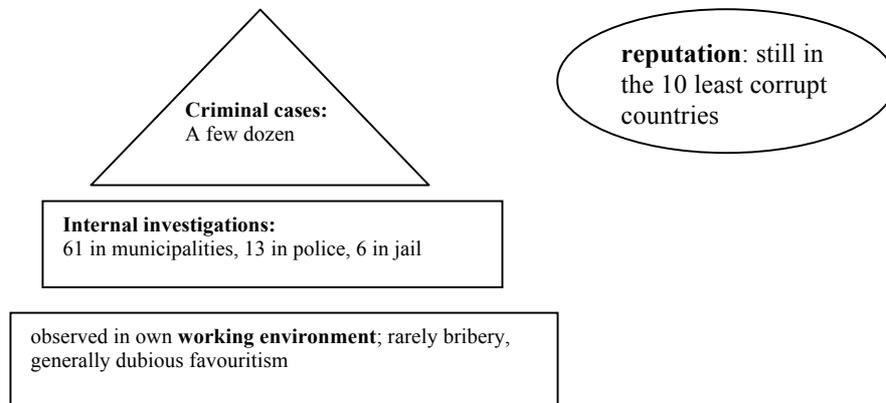
It is difficult to measure corruption, or its absence. In the first place, an itemising study was undertaken into the presence of measures for promoting integrity and combating corruption. In 2004, the central government released a report of an inventory of integrity policy in the public administration and in the police. From the results of this inventory it appears that the police departments, ministries, executive services and provinces pretty much all are pursuing an integrity policy. It can, though, be seen that not all branches can already lay claim to the presence of an integrity policy with adequate integrity instruments.

The Court of Audit concluded after a baseline measurement in 2004 that the system of integrity-concern in the ministries needed considerable momentum. There has been more attention paid to integrity since earlier studies by the Court of Audit in 1996 and 1998, but ministries still rarely employ risk analyses and violations of integrity are scarcely centrally registered.

In addition, Transparency International (TI) composes the *Corruption Perceptions Index* annually, a list of the least corrupt countries in the world. Because there is no internationally comparable data on corruption available, the TI bases the composition of its index on the reputation of countries amongst experts, such as businessmen and risk analysts. In 2005 the Netherlands dropped one place on the Index, and is thus no longer in the top ten of the least corrupt countries. The drop to eleventh place follows a previous drop in 2004 from 7th place to 10th place. In 2002 and 2003, the Netherlands still stood in the 7th place. The drop can be explained by the after-effects of the construction fraud scandal, considering that the annual scores are based on the perception of the extent of corruption over the last three years. On occasion of the parliamentary enquiry into the construction fraud scandal of 2003, the VU, on assignment of the ministry of Justice, undertook an investigation into the nature and extent of corruption in the public services. This investigation was published in August 2005. From this investigation amongst a polled group of leading civil servants, it is evident that the perception exists that 3.2% of civil servants and 5.2% of politicians in the Netherlands are corrupt.

The VU investigation concluded that, as far as the extent of public service corruption is concerned, although the attention devoted to corruption in the public service has increased in terms of policy, this has not been translated into an increase in internal corruption inquiries. It emerged in the investigation that, within the investigated public services, there were about 130 internal investigations and 50 criminal investigations undertaken per annum with respect to corruption. The total number of internal corruption investigations is linked to the number of employees in the governmental body. There are differences between governmental levels and branches, but they are not as great as was thought. Municipalities have, proportionally, had more corruption investigations, while the non-departmental public bodies have had less. Actions that do not fall under the definition of corruption as it was employed in the investigation, but that push the line, such as the '*smeren en fêteren*' (palm-greasing), buddy politics and conflicts of interest appear to occur more frequently than concrete indications of corruption. Further, according to the investigators, it seems that the reactions to suspicions of corruption are more serious than reactions to indications of conduct that pushes the line.

Figure 9.1 Extent of corruption in the Netherlands



Source: *Corruptie in het Nederlandse openbaar Bestuur Omvang, aard en afdoening* Vrije Universiteit Amsterdam 2005

In 2005, on occasion of the VU investigation, Peil.nl/Maurice de Hond¹⁶⁷ undertook a follow-up investigation into both the perception and the extent of corruption as a personal experience with corruption amongst 1 600 Dutch persons of 18 years and older. It emerged from the investigation into perception that:

- * The Dutch think that an average of 12% of the members of the government and the House of Representatives are corrupt;
- * The score for national civil servants is higher than that for national politicians - 17%.
- * With respect to provincial and municipal politicians, the Dutch think that 18% are corrupt;
- * With respect to provincial and municipal civil servants, the score is equal to that of the politicians - 18%.

According to the investigation, the respondents were then asked whether they had had a personal experience with corrupt politicians and civil servants in the last 5 years. 12% replied that they had. With respect to civil servants, the score was 11%. Almost 15% of respondents indicated that the case of corruption involved the interviewee him or herself and 85% said that it involved others.

Respondents who had experienced or knew of corruption primarily mentioned permits and tasks in the (residential) construction sector. As far as politicians are concerned, in almost half of the cases, municipal and ward councillors were involved, and in almost a third it was aldermen. Five percent indicated that it was the mayor, an equal number pointed to the provincial director or *statenlid*^{xvi}, while less than 2% stated that a national politician was concerned. With respect to experiences of corruption involving civil servants, 88% of those respondents who answered affirmatively reported that it concerned local civil servants. In 6% of the cases, national or provincial civil servants were involved. In over 60% of the cases, a

¹⁶⁷ Press release 24-08-2005: Corruptie bij de Nederlandse overheid (www.peil.nl).

an executive civil servant was involved while in over 30% it was a subordinate. Investigator De Hond emphatically stated that: "It cannot be stated how many politicians and civil servants are actually corrupt on the basis of this."¹⁶⁸

In 2005, the central government registered 136 cases of violations of integrity by on or more employees. There were 34 reports of corruption submitted to the Public Prosecutor's Office. In 34 cases, the reports also led to dismissal. the number of registered violations of integrity rose dramatically in 2005 with respect to the preceding year. Only 59 violations were established in 2004. An important cause of the increase is considered to be the increased attention paid to integrity within the (national) government.¹⁶⁹

9.2 How effective is the protection of political incumbents, civil servants and the public from involvement in bribery?

With respect to the answer to this question, the relevant legislation, the implementation and the indicators, please refer to section 9.1. No information is as yet available on the effectiveness of the rules intended for combating conflicts of interest (other activities, obligation to report financial interests, etc). In order to monitor this effectiveness, work is being undertaken on improved registration. Thus every ministry in the mean time keeps its own central registration of violations of integrity.

9.3 To what extent do the rules and procedures for funding elections prevent candidates and elected representatives from falling under the influence of sector concerns?

9.3.1 Legislation

Political parties must, in accordance with the current Political Parties Subsidies Act, disclose donations of €4,537 or more from legal entities. In that disclosure the amount must be stated as well as the identity of the donator. The latter does not have to happen, however, should the donator object. In that case, it must only be stated what type of company or institution made the donation. Donations from natural persons are now not covered at all. The House of Representatives has also stated in the Rules of Procedure that all members register their other positions held, gifts of over € 50 and trips abroad at the invitation of third parties. The register containing other positions held is made public twice a year. There is a statutory order for representatives and political directors in municipalities and provinces, laid down in the Municipalities Act and the Provinces act, to impose codes of conduct.

9.3.2 Implementation

¹⁶⁸ <https://n39.noties.nl/peil.nl/>

¹⁶⁹ Sociaal Jaarverslag Rijk 2005 (17 May 2006).

On occasion of the construction fraud scandal, the House of Representatives undertook a discussion in 2003 on the duty of representatives to set an example when it comes to integrity. The majority of members of the House of Representatives agreed that integrity is in the first instance everybody's own responsibility. Further discussion and initiatives with regard to transparency and behaviour would be welcomed.

The VNG, the IPO and the Ministry of Interior and Kingdom Relations drafted an Aid for Integrity of Directors in Municipalities and Provinces containing recommendations and a (draft) code of conduct for directors. This (draft) code of conduct concerns, amongst other things, preventing conflicts of interest, accepting other positions, dealing with government information, accepting gifts, declaring expenses and trips abroad.¹⁷⁰

9.3.3 *Indicators*

No investigation or registration of incidents has been undertaken in this area.

9.4 To that extent is the influence of powerful companies and the interests of trade and industry in public affairs under control? How free of involvement are they in corruption both at home and abroad?

Political lobbying by companies

In the Netherlands there has always been a strong link between the corporate world, civil society and the public sector. With respect to this reference is often made to the polder model (a Dutch version of corporatism); within the framework of socio-economic policy the phrase consultation economy is also employed: it is endeavoured, through consultation at various levels, to reach concord with respect to the goals and resources of the socio-economic policy. In companies, the work's council consults with management. At industrial sector levels, the trade unions consult with the employer's organisations on collective employment conditions. And on a national level, the SER and Labour Foundation (STAR) are active. Membership of representative organisations is high and stable amongst employers, about 90% of members are members of employers' associations.¹⁷¹ Membership amongst employees is lower (see section 4.5.3).

The influence of companies and the validating of the interests of trade and industry in the public sector in the Netherlands can, with reference to the consultation economy and the PBO, be regarded as strong.

As far as contact between trade and industry and the political world are concerned, it is evident from research conducted in 1998 that corporate representatives endeavour to influence politics particularly through civil servants and less through the House of Representatives, because space for negotiations is greatest during the departmental phase.¹⁷² At the end of the 70's, on occasion of a number of incidents - Lockheed, Dassault, Lubbers,

¹⁷⁰ Kamerstukken II 2005/2006, 30 374, no 2, pg 10- 11.

¹⁷¹ Source: SER. www.ser.nl (on the SER)

¹⁷² Lobby op het binnenhof / with contributions by M.P.C.M. van Schendelen et al. - Namens 3(1988)2 (mrt.), pg 27.

single premium insurance policies - stricter codes of conduct for politicians with respect to the private sector were argued for.¹⁷³ The House of Representatives drawn up rules with respect to this in the Rules of Procedure (see the above section).

Corruption in the private sector

The commission of inquiry into the construction industry spoke in the 2002 presentation of its final report of its concerns on the "culture of palm-greasing" in the construction industry..¹⁷⁴ The construction sector was called upon to "finally get rid of the palm-greasing of civil servants and to truly adopt an integrity policy". As far as policy development after that is concerned,. the following can be stated.

According to the SER, the code of conduct for whistleblowers drafted by the Labour Foundation in 2003 offers, together with the existing standard labour laws, sufficient protection for whistleblowers in the private sector (recommendation dated 22 December 2004)¹⁷⁵. Over and above the labour law aspects of whistle blowing, to which the SER's recommendations pertain, the Netherlands Competition Authority (NMa) employs an anonymity rule for whistleblowers when it comes to the Competition Act, whereby the NMa guarantees anonymity to the best of its capacity. This is stipulated in the Policy Rule for Informants. Since the start of 2006, the NMa has been cooperating with the *Stichting Meld Misdaad Anoniem - meldpunt M* - where citizens can phone in anonymous information and report cases of possible abuse. An intermediary can also report an abuse.

There are no (statistical) details with respect to corruption in the private sector. There is no general or standardised system of registration of corruption in the private sector either. But a number of corruption cases have received media attention of late. One of the most well-known corruption cases in the private sector is the so-called construction fraud. Ad Bos, at that time technical director of road builder Koop Tjuchem, stated during the television programme Zembla on 9 November 2001 that construction companies divided up work amongst themselves when awarded major projects, mostly by the government. He presented so-called shadow-bookkeeping during the show. This revelation led to a parliamentary inquiry.¹⁷⁶ In 2003 sanctions were imposed against five construction companies involved in buildings and road and waterworks.

In January 2004, the NMa called on the construction sector to voluntarily report actions that were contrary to the Competition Act. In February 2004, a whistleblower revealed further shadow-bookkeeping, this time originating in the civil and utilities construction sector. The Minister of Economic Affairs reiterated the call and set a deadline of 1 May 2004. In total, 481 companies in the construction sector heeded the call to clear the air. Of these applications, 379 were considered as petitions for clemency. All major construction companies reported in, but also many small and medium sized enterprises. The received reports came from buildings, road and

¹⁷³ Anne Vondeling. *De schijn des kwaads. Bespiegelingen over gedragsregels voor politici*. The Hague 1978.

¹⁷⁴ Introduction by the chairman of the commission of inquiry into construction fraud at the presentation of the final report, 12 December 2002. Source: www.tweedekamer.nl

¹⁷⁵ See www.ser.nl

¹⁷⁶ Enquête Bouwnijverheid, kamerstukken II 28 244.

waterworks, the installation sector, civil and utilities construction and various other sectors of the construction world.

The demand for figures with respect to the involvement of trade and industry in corruption both at home and abroad is difficult to satisfy. According to the Transparency International's Global Corruption Barometer Survey 2004, the majority of Dutch people think that the private sector and the media are particularly guilty of bribery. As stated earlier, the Netherlands dropped from 7th place on the Corruption Perceptions Index to 11th place, and this drop can be explained in part by the after-effects of the construction fraud.¹⁷⁷

9.5 To what extent do citizens have confidence in the integrity of political incumbents, civil servants and public services?

An important aspect of the quality of the government is the absence of corruption. Where there is a suspicion of a great deal of corruption, the citizens appear to have little confidence in the government and the public administration.¹⁷⁸ As far as confidence in the judiciary and jurisprudence is concerned, please refer to section 2.6, assuming that confidence in the judiciary and the professionalism also extends to the practitioners of law.

As far as the other departments of the government are concerned, one can make reference to the international comparisons in Transparency International's Global Corruption Barometer 2004. It is evident from that study that less than 10% of the interviewees state that corruption has influenced politics in a large degree. In 2005 it rose to between 11% and 30% of the interviewees.¹⁷⁹

9.6 Which measures, if any, are taken to solve publicly identified problems in this area? What degree of political priority and public support is devoted to this?

Measures against public service corruption

In the cabinet memorandum on the prevention of public service corruption (30,374), a large number of points of action were formulated. For the sake of brevity, it will here suffice to refer to the memorandum.

Measures against corruption in the private sector

In the above-mentioned cabinet memorandum, a plan of action for combating corruption in the private sector was announced.

Rules on party finance

¹⁷⁷ <http://www.integriteitoverheid.nl/monitoren/transparency>

¹⁷⁸ Prestaties van de publieke sector. Een internationale vergelijking van onderwijs, gezondheidszorg, politie/ justitie en openbaar bestuur. Social and Cultural Planning Bureau, The Hague, September 2004, pg 299

¹⁷⁹ Global Corruption Barometer 2004, og 10 en Global Corruption Barometer 2005, pg 7.

According to the Cabinet, the system of rules with respect to politicians is inadequate.¹⁸⁰ That is why legislation is currently being prepared (political parties finance bill), which is intended to expand and accentuate the rules with respect to the financing of political parties. The following proposals are included therein:

- * The Electoral Council is tasked with the execution and supervision of the observance of the Political Parties Finance Act
- * The regulations with regard to donations (contributions) are also applicable to institutions (foundations) affiliated to the political party and who undertake activities in the direct interest of the party.
- * Contributions from natural persons (private persons) will also fall under the regulations.
- * The regulations also concern payments in kind.
- * The amount above which political parties must disclose contributions will be lowered to €2,000.
- * Contributions will be limited (maximum of €20,000).
- * Sanctions will be imposed upon the non-observance of the regulations.
- * Newly elected political parties will be able to use their subsidies to pay expense incurred during the election.

9.7 Summary

Although the Netherlands dropped a number of places on the international list of least corrupt countries in 2005, it is still one of the leading countries. Amongst other things, the reason for this drop is the outcome of the parliamentary inquiry into the construction fraud scandal. The number of internal corruption investigations rose in 2005, but this can principally be attributed to the increase in attention paid to integrity and the number of protocols instituted by government organisations. Non-departmental public bodies, in relation to other government services, are behind when it comes to the attention paid to corruption and integrity.

Although there appears to be (relatively) little corruption in the public service, according to an investigation by the VU there is a certain culture of palm-greasing, with the risk of conflicts of interest in relationships between the government and private individuals.

The confidence of citizens in the government and politics has evidently not been significantly influenced by cases of corruption.

Integrity of administration and transparency in public services for a spearpoint for the current policy of the central government, witnessed by, amongst other things, the Memorandum on the Prevention of Corruption. The ministry of Interior and Kingdom Relations drafted the *Aid for Integrity of Directors in Municipalities and Provinces*. The new Political Parties Subsidies Act currently being prepared intends to combat conflict of interest among politicians.

According to the SER, the code of conduct for whistleblowers drafted by the Labour Foundation in 2003 offers, together with the existing standard labour laws, sufficient protection for whistleblowers.

¹⁸⁰ Kamerstukken II, 2001–2002, 27 422, no 6 and 7 and 2005/2006, 30 374, no 2, pg 11.

Part III. Civil Society and Participation

10. The Media in a Democratic Society

Does the method of working (and the institution) of the media support the functioning of democratic values?

In a healthy democracy, the task of a free and independent media is to report events and standpoints and to interpret and comment on them. Mutual dependency between politics and the media is inevitable, but from the point of view of supplying information to citizens, also desirable - thanks to the media, after all, citizens are aware of the plans of political parties and the government, and vice versa. Social organisations and companies also partly orientate themselves through the media with respect to developments in their environment.

Hereby, three fundamental objectives must be kept in mind. Firstly, the task of the media is to disseminate information that citizens need in order to assess their political representatives. Moreover, this information renders them capable of participating effectively. Secondly, the media create a public forum where citizens can assemble, debate and discuss. In addition, they give voice to public opinion. Finally, the media critically follows all actions of the government and the political representatives, with the intention of preventing abuse of power. It goes without saying that the mass media, by its nature, cannot highlight all the aspects and phases of policy procedures. That is certainly applicable to television. But all media have the self-formulated assignment - to fulfil their informative and opinionated role with great care.

It is because of the role that the media fulfils in a democracy that the quality of the coverage is important. Because what the media reports can ultimately affect the decisions reached by politicians, companies or social organisations as well as the attitude and (voting) behaviour of the electorate. That is even more applicable now that the media has become a dominant factor in the moulding of public opinion, while other social institutions - such as political parties, the church and family - have lost influence.

Likewise, they play a major role in the publicising of all decision-making. The media is considered to be the watchdog of democracy. This chapter examines the question of to what extent and how the media contribute to the functioning of the democracy.

10.1 To what extent is the media independent of the government, pluralistic and free of interference by foreign governments and multinational companies?

In the Netherlands the media's independence is not under threat. In the worldwide study on press freedom by Reporters Sans Frontiers (RSF), the Netherlands has shared first place for a number of years now.¹⁸¹ This does not mean that overall one cannot make a number of critical annotations with respect to the functioning of the media in the Netherlands. The impact of the modern mass media upon the

¹⁸¹ Reporters sans Frontières; http://www.rsf.org/article.php3?id_article=15338

attitude and conduct of journalists, politicians and directors is just as much a part of that. This has previously been the subject of the *kabinetsreactie* (literally, a "cabinet response") entitled 'Politics and the Media' in June 2004.¹⁸²

This chapter, which will be concentrating primarily on the diversity of the media's role, will limit itself to the aforementioned theme. The cultural influence of the media upon the attitude of our politicians is of real relevance here.¹⁸³

10.1.1 Legislation

Article 7 of the Constitution stipulates that prior permission to publicise thoughts or emotions through the written press or a medium other than television or radio is not required, subject to everyone's responsibilities in accordance with the law. While the above state-supervision is also prohibited with respect to radio and television broadcasts, the Media Act and Telecommunications Act have imposed rules. These rules are at their most expansive when it comes to the public broadcasters. The media policy has set aside an important role for the public media (local, regional and national public broadcasters).

The traditional goal of the public broadcaster is "the supply at a national, regional and local level, of a plural and qualitative highly-principled range of programming for general broadcasting within the arena of information, culture, education and entertainment" (article 13c of the Media Act). The so-called 'complete programming requirements' [*volledig programmavoorschrift*] were inaugurated with the 1988 Media Act. This act was repeatedly adjusted in the following years to fit current developments. The public broadcasters are collectively legally obliged to broadcast a fixed percentage of information and education (35%) and culture (25%), of which half (12.5%) must be art. Further, a maximum of 25% of pure entertainment per network is applicable. For the NPS, higher percentages of culture and art (40% and 20% respectively) apply, as well as a minimum of programming for minorities (20% of television programming and 25% of radio programming). In the last three years the public broadcasters were also been subjected to a legislative course, which came to a halt, however, with the fall of the Balkenende II cabinet.

An important ruling of the Media Act with respect to the commercial broadcasters and publishing daily newspapers (article 71b) is the restrictions placed upon cross-ownership. Thus a commercial broadcaster is not permitted to own 33% or more of the Dutch daily newspaper market. Publishers of dailies with such a share in the market may only exercise limited control of a commercial broadcaster. Furthermore, publishers who control more than 50% of a regional daily or newspaper market may not own any regional broadcasters in the same region, unless there is a public regional or local broadcaster who will guarantee the plurality of the news-supply in the area concerned. No rules are tied to the ownership of a media company in the Netherlands.¹⁸⁴

¹⁸² Kamerstukken II, session 2003-2004, 29692, no 1

¹⁸³ See also section 5.3.

¹⁸⁴ EFJ (2005) The Netherlands 102

Presently, article 10 of the ECHR also plays a prominent role when it comes to restrictions placed on the freedom of speech. This stipulation of international law entails direct action and protects the entire process of communication, irrespective of borders and irrespective of the communication techniques employed.¹⁸⁵ Nationally restrictive measures, in the form of a permit system, for example, must consequently satisfy the 'three step test'. They must be provided for by law and be essential for the protection of specific interests, as well as being. Nevertheless, nations are allowed a margin of freedom in which their judgements may vary.¹⁸⁶ EU legislation provides statutory directives for European productions (50% of the broadcast time for each network), productions 'on assignment' (25% for the broadcaster as a whole, at least 17.5% per network), programming originally in Dutch or Frisian (50% per broadcaster) and subtitling for the deaf and hearing-impaired (50% for the public broadcaster as a whole). In conclusion, the public broadcaster itself must realise the goal of attaining a 33% market-share of current television viewership.¹⁸⁷

While there are no statutory obligations, almost the entire daily newspaper market has an editorial charter. The publisher and editorial staff determine the contributions to the independence and plurality of the publication in this charter.¹⁸⁸

10.1.2 Implementation

At the same time as the introduction of the Media Act (1 January 1988), the Dutch Media Authority (CvdM) was also established. This ZBO makes decisions independent of the Ministry of Education, Culture and Science, but is still accountable to the Minister. The primary task of the Media Authority is the supervision of the observance of the Media Act and the rules base thereupon. This, however, always occurs retrospectively, prior supervision is never practised. The broadcasting bodies are responsible for the form and content of their own programming. Other tasks of the Authority are guaranteeing equal access to the media and guarding quality, diversity and independence. In order to promote stimulate of the rules, the Media Authority has a number of competencies. They can impose fines of up to €225 000 and even decrease or withdraw broadcast time, or withdraw licences. The CvdM has since 2001, also published an annual report 'A View on Media Concentration'. It continuously follows developments with respect to the concentration and economics of media companies active in the Netherlands.¹⁸⁹

The CvdM has numerous times argued for a legally stipulated maximum market share coupled with more flexibility with respect to the restrictions on cross-ownership. The key reason for this is the threatening lead in expansion opportunities in Dutch media companies with respect to companies operating internationally. A merger between a foreign media company and a Dutch daily is assessed by the European Commission for compliance with the competition laws, while the Dutch newspaper is not permitted to start a radio or television station with.

¹⁸⁵ article 10 ECHR

¹⁸⁶ Scientific Council for Government Policy, 'Trends in het medialandschap', 196

¹⁸⁷ Public Broadcaster, Meerjarenbegroting 2007-2011, 95

¹⁸⁸ Kabinetsstandpunt inzake het advies van de commissie mediaconcentraties (Jessurun) 11

¹⁸⁹ Dutch Media Authority; <http://www.cvdM.nl/pages/actueel.asp?m=p&ID=1244&flash=5>

a Dutch licence. This competitive disadvantage to Dutch media companies threatens its competitive position with respect to major foreign corporations.¹⁹⁰

Digitalisation has provided fresh impulse to the media's concentration in the hands of a few international companies. As a result of commercialisation and competition, the central government fears that the market will also in the future not fulfil all its social functions of its own accord. The public broadcaster must therefore still guarantee independence, plurality, accessibility and qualitative provision of information.¹⁹¹

10.1.3 Indicators

The Netherlands is traditionally very high on the list of countries that guarantee press freedom. The government and commercial sector, however, have a real "negative influence upon the media," concluded professor of journalism Frank van Vree and lecturer Mirjam Prenger of the University of Amsterdam in their book *Schuivende Grenzen, De vrijheid van de journalist in een veranderend medialandschap*. "Press freedom in the political or legal sense had not been an issue in the Netherlands for decades, but still we must stay alert. Of much more urgency are the problems with regard to the accessibility of the media, and especially the autonomy of journalism. By that I especially refer to the enormous growth of information and PR services, the endeavouring of many institutions - including the government - of bypassing the media and approaching the public directly, and the advance of commercial interests into the field of information." But this says little about the success with which the media is countering these influences.

Research in other countries has indicated that an average of 80% of financial news and between 40% and 50% of standard news is derived directly from PR and information service. Frank van Vree: "There is no reason to think that this is different in the Netherlands."

In addition, editors-in-chief are increasingly taking the wishes of advertisers into account, as is evident from a series of interviews on behalf of the above publication. The researchers find this a disturbing fact, because the public is of the opinion that the news presented to them is disinterested in principle. That is why the academics advise newspapers, broadcast stations and magazines to compose a code of conduct.

Media concentration

It is evident from the monitor, *A View on Media Concentration, Concentration and Diversity of the Dutch Media, 2002* that the media is highly concentrated. The 'rule of three' is still maintained in the daily newspaper, television and cable sectors, although this is beginning to shift: in each of those sectors there are three dominant suppliers with a total market share of between 80% and 90%. The horizontal concentration amongst dailies, television and cable broadcasters has reached its limit, and further concentration is not desirable. At the same time, one can observe an increasing tendency towards diagonal concentration (cross-ownership).¹⁹²

¹⁹⁰ Dutch Media Authority, *Mediaconcentratie in Beeld. Concentratie en pluriformiteit van de Nederlandse Media 2004*, 9-10

¹⁹¹ Ministry of Education, Culture and Science, *Met het oog op morgen.... De publieke omroep na 2008* (The Hague 2005) 7

¹⁹² Dutch Media Authority, <http://www.cvdm.nl/pages/actueel.asp?m=p&ID=1244&flash=5>

The completion of the takeover of PCM Uitgevers by APAX Partners is the most significant development in the arena of media concentration in the daily newspaper sector. In mid-2002 the British investment company obtained a controlling interest in the Netherlands' second biggest publisher of national dailies. The takeover of PCM by a foreign company led to parliamentary questions being asked. At the end of 2004 the cabinet announced proposals for coming round to a maximum market share for daily newspaper publishers (35%) and more flexibility with respect to the cross-ownership regulations.

The number of actors in the cable sector is decreasing. The cable companies Multikabel, Casema and Essent were taken over in 2006 by an American investment company. This company now has 55% of cable subscribers.

10.2 To what extent does the media represent divergent political convictions? How accessible is the media for diverse groups in the society?

10.2.1 Legislation

Because the media plays a key role in the democratic process, it is very important that a wide diversity of platforms is guaranteed. This diversity is consciously stimulated through the media policy. Aside from national public broadcasters, there are also local public broadcasters at a regional and a municipal level. Aside from the numerous commercial television stations at a national level, there are also a large number of national and regional commercial radio stations. The Netherlands thereby has one of the most competitive media sectors in Europe.

The Netherlands has an exceptional tradition of guaranteeing social trends access to public broadcast time through broadcasting organisations. This has been typified by the phrase 'external pluralism'. External pluralism assists in creating a distance between the public broadcaster and the government. The social embedding of the public broadcaster is essential to its socially relevant function.

Church organisations and spiritual organisation have been able to submit an application to the CvdM for national broadcast time for many years. The allocation is valid for a period of five years. The Media Authority allocates national broadcast time annually to political parties and to the ministry of General Affairs with respect to supplying government information.

In principle, everyone can establish a broadcasting company, subject to certain conditions. Permission to establish a commercial station is easiest for individuals to obtain. The designation 'commercial' does not necessarily mean that the broadcasting company must be geared towards making a profit or that the programming must include advertising. Aside from public broadcasting, the only other form of broadcaster acknowledged in the Media Act is the commercial broadcaster. Hybrid forms (public-private) are not permitted. Private initiatives on the internet (radio and television stations) do not fall under the authority of the CvdM.

10.2.2 Implementation

Internet

Over the last ten years, the government has worked towards providing internet access to citizens in a great many places. Considering the rapid spread of this access, attention is now being paid to the development of skills so that the available opportunities can be utilised (*skills for all*).¹⁹³ That was the reason why in 2005 the Arts Council issued a recommendation under the name Media Wisdom, the Development of New Citizenship [*Mediawijsheid, de Ontwikkeling van Nieuw Burgerschap*], which explored the role of the citizen in the information society.¹⁹⁴ Most initiatives are aimed at expanding digital skills and, occasionally, the stimulating of labour market participation. Through *digitale trapveldjes* (digital playgrounds) the government aimed at, amongst others, the population in deprived neighbourhoods, the elderly and handicapped persons.¹⁹⁵

10.2.3 Indicators

Accessibility

A study by the International Press Institute (IPI) concurs that the Netherlands has one of the highest media concentrations in Europe.¹⁹⁶ With respect to the area of interest to this study, news, the Dutch person has 66 different news titles on offer. Logically, this enhances access to the media for almost all groups in our society. Figures indicate that 95% of the population will consume news from one of these sources once every two days. The first four news sources - NOS radio news, ANP radio news, NOS television news and the RTL television news - together make up almost 50% of the market share. The danger of a one-sided supply of information is thus limited. Table 10.1 furthermore shows that a large section of media-consumers employ more than one of these platforms. Because cross-media activities are simultaneously linked to limitations, concentration appears to be restricted in advance.¹⁹⁷

Table 10.1 Behaviour of news-consumers: supplementary use, media types (in percentages)

Consumed type of media	Radio news	Daily newspaper	Television news	Internet news	Opinion magazine
Radio news	100,0	59,7	46,4	17,9	3,0
Daily newspaper	71,3	100,0	55,0	17,9	3,6
Television news	74,5	74,1	100,0	17,4	5,5
Internet news	68,7	58,5	42,0	100,0	4,3
Magazine	74,3	73,3	83,3	27,6	100,0
Average	76,0	63,6	47,4	19,5	3,1

Source: *Mediaconcentratie in Beeld* (October 2005) p. 80

¹⁹³ PriceWaterhouseCoopers 2004

¹⁹⁴ Council for Culture, 'Mediawijsheid, de ontwikkeling van nieuw burgerschap', June 2005

¹⁹⁵ Sociale staat van Nederland, 162

¹⁹⁶ IPI 2004 & European Federation of Journalists

¹⁹⁷ Dutch Media Authority, 'Mediaconcentratie in Beeld' (5

Internet

Access is not only about the online services and information on offer, but also about the access of citizens to ICT. In the EU, the Netherlands is comparatively ahead. The ownership of a personal computer in Dutch households rose from 51% in 1995 to 81% in the spring of 2004. The spreading of the internet has gone faster than that of the PC. The portion of Dutch people who have access to the internet at home has jumped from 3% in 1995 to 74% in 2004. One year later, 83% of Dutch people had access to the internet, of which 60% of them had access through a broadband connection. This places the Netherlands in the top five in Europe.

Table 10.2 Possession and employment of ICT and digital skills (percentage of the population, 2004)

	<i>Possession of PC's in households</i>	<i>Daily use of PC's</i>	<i>Access to the internet at home</i>	<i>Is good with computers</i>
Men	85	55	78	61
Women	77	44	70	46
16-19 years	97	80	86	91
20-34 years	90	57	82	72
35-49 years	93	58	87	59
50-64 years	81	44	73	39
65-79 years	40	16	31	17
Over80	30	10	21	9
Low-skilled	41	18	30	19
Lbo/Mavo - lower education	74	44	68	40
Havo/Vwo/Mbo - intermediate education	88	55	80	62
Hbo/University	95	60	89	73
Total	81	49	74	53

Source: SCP (TOS '04)

The media and political ideology

An oft-heard criticism of Dutch journalists is their alleged left-wing political ideology. Doctoral research undertaken by Mark Deuze of the University of Amsterdam in 2002, in collaboration with the Dutch Union of Journalists [*Nederlandse Vereniging van Journalisten, NVJ*], into the lifestyle and opinions of journalists, appeared to confirm this image: "Politically, journalists regard themselves, almost without exception, as left-wing (32%) or left-wing to centre-left (47%), although many journalists commented that such classifications were 'outdated, anyway'. Only 20% were in the political centre and only 1% labelled themselves 'right-wing'." ¹⁹⁸ Researcher and Director of the Press Institute, Dr Otto Scholten, stated in an interim report from the *Nieuwsmonitor* that the hard figures had sooner indicated the opposite. The most important conclusion of the study was that the news coverage in the national dailies was dominated by the coalition. ¹⁹⁹ Apparently, the political preferences of many journalists (Deuze) evidently had no influence

¹⁹⁸ <http://www.geocities.com/mediacontrole/linksemedia.html>

¹⁹⁹ 'Wetenschapper: de pers is niet links', in: *Algemeen Dagblad* (18 April 2006) <http://www.ad.nl/binnenland/article281490.ece> (see also: Scholten, Otto and Nel Ruigrok, 'De Nederlandse Nieuwsmonitor' (Amsterdam April 2006) 3

upon journalistic coverage.²⁰⁰

10.3 How effective are the media and other independent organisations in investigating the government and powerful businesses?

Research by Pauw, Sanders, van Spaendonck and Zeilstra points out that the large majority of parliamentary questions are as a result of media publications.²⁰¹ According to Hans Jeekel in *De ontbrekende dialoog*, the media determine the parliamentary agenda over the short term. He calculates that news events, (alleged) accusations and (potential) scandals determine approximately 30% of parliamentary work. The media are thus in a decent position when it comes to influencing the political agenda. To what extent this is also valid in specific research into the government and powerful companies, is not exactly known. On the other side, members of the House of Representatives also attempt to attract the media's attention through parliamentary questions, etc.

10.4 To what extent are journalists safeguarded against restrictive legislation, interference and intimidation?

The freedom of speech is indispensable in the undertaking of a sound public debate on the questions of general interest, without which a democratic, plural and open society would be inconceivable. As a result of this essential role, this right not only provides protection when are received with assent, but also with respect to expressions that might be considered as injurious, shocking and/or distressing. Aside from these statutory guarantees, it is just as important in terms of the quality of a democratic debate that journalists and other citizens can publish the most divergent standpoints without fear of sanction and can publish opinions with the retention of everyone's responsibility pursuant to the law, so incitement to discrimination, violence, racial hatred etc. remain punishable. After a brief overview of the legislation and its implementation in this respect, a number of recently relevant matters will be covered.

10.4.1 Legislation

The freedom of speech is the cornerstone of a plural society and a dynamic democracy. But still, limits are imposed upon this freedom in the Civil Code. Thus, the freedom of speech may be restricted if one incites hatred, discrimination and/or is offensive, or if the freedom of expression is employed to propagate violence. In the context of religion, this entails, amongst other things, the obligation to refrain from expressions that are needlessly offensive to others. Needless entails, amongst other things, that the expression is not intended to contribute to the public debate.²⁰²

²⁰⁰ Prof Klein Nijenhuis also undertook research into this with interesting results on the guiding influence of politics in the coverage and who has what on the agenda. See literature references in: <http://www.adviesorgaan-rmo.nl/?s=9>

²⁰¹ See also <http://www.villamedia.nl/journalist/n/dossiers/journalisten1.shtm>

²⁰² Fundamental rights in a plural society

10.4.2 Implementation

The national courts are generally reticent with respect to taking on transgressions of the limits of free speech. Generally, crucial to the assessment of the acceptability of expressions, is the question of whether a conviction in a democratic society can be regarded as necessary. As such expressions are intended to contribute to the public debate, the space for assessment by the national courts becomes more restricted. When it comes to the laying charges as a result of expressions, the Dutch criminal legislator has made a choice between expressions that are indecent yet not punishable and expressions that are indecent and thus punishable. These borders, however, are not always easy to discern and can even depend on *zeitgeist*.²⁰³

10.4.3 Indicators

Murder of Theo van Gogh

The murder of filmmaker Theo van Gogh in November 2004 was an exceptional violation of journalistic freedom in the Netherlands. Considering that a murder such as this one appears to be a one-off incident, the Netherlands still occupies the top position on the international list for press freedom. Nevertheless, the murder stirred up debate with respect to the freedom of the press. To what extent were van Gogh's comments on Islam and the prophet beneficial and to what extent did they contribute to the public debate? Although the murder was condemned by almost everyone, the opinions on both it and the extent of freedom of speech appear to diverge. While the Minister of Justice was of the intention, in November 2004, to sharpen up the prohibition on blasphemy (article 147 of the Constitution), D'66 submitted a motion arguing for the abolishment of the article itself as it would create inequality between religious and non-religious people. A more extensive overview of incidents with respect to freedom of speech is provided in box 10.3 below.

The Right of Non-disclosure

In the last few years regional television stations have had to, with a great deal of reluctance, surrender recordings to the courts. Various organisations, both at home and abroad, have voiced concern about this. They fear that journalists are being increasingly used as an extension of the law and that thereby journalistic freedom is under threat. This has led to a call by, amongst others, the SP, the IPI and the International Federation of Journalists, to introduce a statutory right of non-disclosure for journalists.²⁰⁴ However the Commissie Verschoningsrecht, a commission established to examine the case for this right, stated that a statutory regulation for journalists with respect to protecting their sources was not necessary. It concluded this in a study, undertaken on assignment of the Dutch Union of Journalists (NVJ) and the Dutch Society of Chief Editors [*Nederlands Genootschap van Hoofdredacteuren*], into the problems surround the protection of sources and the confiscation of journalistic material.²⁰⁵ See Goodwin judgement Strasbourg Court (1996)

²⁰³ Fundamental rights in a plural society

²⁰⁴ http://www.sp.nl/opinies/Journalist_hulpje_van_justitie.html

²⁰⁵ De Journalist, <http://www.villamedia.nl/journalist/n/dossiers/verschoningsrecht2.shtm>

Box 10.3 Illustrative overview of incidents between journalists and the law since 2000

2000	K. Voskuil (Metro)	Amsterdam court detains Voskuil after he refused to reveal the name of his source.
2004	Van den Heuvel (Telegraaf) because they	The Public Prosecutor's Office tapped Van den Heuvel's telephone, think that he is withholding relevant information on a murder case.
2004	RTV Dordrecht	Camera crew are arrested by police and their material is confiscated. They were alleged to have been filming in an area where they were not allowed to film
2005	Omroep Brabant	Police raids Omroep Brabant's office and demand their visuals of riots.
2006	Telegraaf	Court determines that AIVD wiretaps on and monitoring of two Telegraaf journalists must cease.

Source: International Press Institute (edited)

10.5 To what extent are individual citizens safeguarded against intimidation and invasions of their privacy by the media?

10.5.1 Legislation

Individuals who are the (potential) subject of public disclosure expect that the media will respect their reputation and privacy. When the media has insufficient respect for the interests of the individual, they are possibly acting in an accountably unlawful manner, and are obligated to pay damages. The consideration of whether an action was unlawful is dealt with against the backdrop of the freedom of speech and (frequently) the right to privacy. If the judge considers that sanctions should be imposed, then he assesses the expression against article 10 section 2 of the ECHR.²⁰⁶

10.5.2 Implementation and Indicators

With respect to a specific case of journalistic conduct, everyone who is directly involved can lay a complaint with the Dutch press council [*Raad voor de Journalistiek*]. The Council will then determine whether professional norms have been transgressed. This council stimulates the media to function well and to tread carefully when it comes to the reputation and privacy of citizens. The council cannot, however, impose sanctions. The procedure does little for the injured party, whereby over the last few years an average of only 65 complaints have been laid.

A person whose reputation or privacy has been violated can also go to the civil or criminal court. Research has however shown that the injured party gains little from the sanctions that can be imposed. But the damage has already been done, attention for the party has grown and the awarded damages are frequently slight.²⁰⁷ The vast majority of citizens (77%) clearly have the feeling

²⁰⁶ L.R. van Harinxma thoe Slooten, 'De criticus bekritiseerd: een waakhond voor de media?', 5 http://www.uvt.nl/faculteiten/frw/onderzoek/schoordijk/cva/publicaties/rapporten/criticus.bekritiseerd_lang.pdf

²⁰⁷ L.R. van Harinxma thoe Slooten, 'De criticus bekritiseerd', 12-17

that privacy is under threat these days; the majority of these (71%) think that this threat is due to the growth of information and communication technology.²⁰⁸

10.6 Which measures, if any, are taken to solve publicly identified problems in this area? What degree of political priority and public support is devoted to this?

Self-reflection

A public debate on the role of journalism with respect to politics is deemed to be pressing and necessary. In his 2005 annual speech, Pieter Broertjes, chairman of the Society of Chief Editors, said: "In The Hague's political circles, and also further a field, the power of the media is being increasingly considered as a political factor of note, but then without the relative accountability. It isn't without reason that the WRR has made a plea for 'responsible journalism', through the reinforcing of self-regulation and seeking to confront both each other and readers, listeners and viewers."

At the end of 2005, the state secretary of the OCW announced that fund would be made available for self-reflection in the media. This was due to the increasing criticism being levelled against the functioning of Dutch journalism. The University of Amsterdam published the very first news monitor in the spring of 2006.. Other monitors followed, such as a monitor of special events and a monitor devoted to special issues. Using news publications, these monitors researched to what extent journalists echoed each other, how reliable and factual the reports were and what influence coverage had upon certain subjects.

The changing media landscape

The rise of the Internet and the ongoing technological developments in the field of ICT and new media have a continuing and strong influence upon the media landscape. The significance of this media to the functioning of democracy is not yet certain. The rise of blogs, citizen journalism, the increase of source materials such as digital cameras and internet forums means new and unknown possibilities for democratic processes and institutions. The possibilities exist in particular for opinion and debate. The problem of the reliability of the information found on the Internet is still of great relevance. Developments in this region appear to happen relatively autonomously. The notion exists that the democratisation of the (new) media has import for functioning of our democracy.

10.7 Summary

According to comparative international study, there is a great deal of press freedom in the Netherlands (shared first place). Freedom of speech and freedom of the press are guaranteed in the Constitution.

²⁰⁸ Dubbeld, Lynsey, 'Privacy in het tijdperk van informatie, communicatie en technologie', 9

Regulation by the Media Act concerns the safeguarding of the media's pluralism, the prevention of media concentrations and the ensuring of the quality of the public broadcaster in particular.

In the last few years a number of (regional) television stations have been placed under pressure to surrender their recordings to the courts. The fear that journalists are being employed as an extension of the law has led to a call amongst some politicians for the introduction of a statutory right of non-disclosure for journalists. The Commissie Verschoningsrecht has, however, stated that this is not necessary for the protection of a journalist's sources.

For both society and politics, the importance of reportage and imagery created by the media is growing. Research points out that the large majority of parliamentary questions are as a result of media publications. The demand for responsible journalism and a more self-regulatory and critical attitude by the media is growing. The majority of financial coverage and half of the standard news is evidently derived directly from PR and information services. The wishes of advertisers are also increasingly being taken into account. The independence and critical attitude of the media are placed under pressure as a result. Self-regulation of the media is performed primarily through the Raad voor de Journalistiek [Press Council] and via editorial charters.

The idea has now arisen that the democratisation of the media, with retention of quality, independence and plurality, is of importance to the functioning of our democracy thanks to the wider access to an availability of sources through the internet. The rise of citizens journalism, internet forums, etc. is a relatively autonomous process, potentially with far-reaching implications for democracy and its institutions. The problem of reliability of the coverage on the internet is, in addition, of relevance. As yet, aside from initiatives to stimulate it, there is no regulating government policy with respect to the new media.

11. Public Participation

Do citizens participate fully in the public life?

Political participation can be approached from a wider angle than by just examining voting behaviour, lobbying of the House of Representatives or membership of a political party. By including participation in voluntary organisations, trade unions and other social institutions, it is possible to glean a more complete picture of the society and the role of citizens in the democracy. A wider concept of the citizen's political participation is of concern to the legitimacy and responsibility of the government.

Direct participation by citizens in public matters is expressed through individual (personal) initiatives for societal self-control and through the exercising of an invited and uninvited influence upon government decision-making. In both cases, there is no guarantee that all citizens' voices will be given equal status. On the contrary, these forms of participation in essence rest upon the voluntary dedication of the citizens, and that dedication is not equally proportional. A form of market functioning is a healthy sign when people choose to devote their energy in a political and social sense. Insofar as consulting with citizens is concerned, again everyone's equal contribution is not demanded, but it boils down to the articulation of all relevant approaches and concerns. In order to gain a balanced input, it is sometimes necessary to expressly approach certain weaker and less-empowered points of view and concerns in order to understand their vision. Otherwise there is a threat of an over-accentuation of certain groups who already know how to approach the appropriate bodies anyway.

11.1 How wide is the reach of voluntary organisations, private organisations, social movements, etc? How independent are they from the government?

11.1.1 Legislation

Depending on the legal nature of the organisation, they must adhere to civil law. The government is not involved in the actions and behaviour of these organisations, unless they are indicted as a result of unlawful actions. Sometimes, aside from membership revenue and donations, these organisations are also dependent on subsidies.

11.1.2 Indicators

Paul Dekker attempted to gain further insight into developments with respect to political participation since the 70's. He indicates that political participation has increased. He concludes this on the basis of various voter-studies, wherefrom it is evident that the proportion of the population that occasionally participates has grown. Although party political participation has shrunk, activism - participation in demonstrations or action groups - has increased. This is due to the rising support for more specialised,

ideological organisations.²⁰⁹

There are many voluntary organisations in the Netherlands. There are numerous fields in which the Dutch citizens are organised, with, for example, respect to philosophy, labour, healthcare and sport. One can distinguish between organisations that have been sitting with a decreasing membership since 1980, and organisations that have actually grown since then. Included in the first group are churches, broadcasters, major political parties, and women's leagues. The second group consists of organisations such as sport's unions, nature and environmental organisations and international aid organisations.²¹⁰

Table 11.1 Social participation by people of 18 years or older (in percentages)

	1997	1998	1999	2000	2001	2002	2003	2004
Organised volunteer work	46	44	45	45	43	42	42	43
Youth work	4	4	4	4	5	5	4	4
School	9	9	9	9	9	8	8	9
Health care, nursing	8	6	7	7	8	8	7	8
Sport's union	12	14	14	14	13	12	14	13
Hobby club	5	6	5	5	5	4	5	4
Cultural union	5	5	5	5	5	5	5	5
Philosophical Organisation	9	9	8	9	9	9	8	8
Labour organisation	4	3	4	4	3	3	2	2
Political organisations	1	1	2	1	1	1	1	1
Other organisations	8	8	7	7	6	7	7	7

Source: CBS

11.2 How extensively do citizens participate in voluntary organisations, independent authorities and other voluntary public activities?

On the other hand, the vitality of the collective lives of the citizens - the civil society - is of concern to the functioning of democracy. Citizens can here form and nurture their own concerns, call the government to account, provide information or endeavour to be of influence. Political participation can ensure that the representative democracy functions in a more democratic manner. In this way, the citizen's participation can lead to, not just in the shaping of policy but also in the implementation thereof, to a democratic government. This will thus strengthen public control. Furthermore, individual citizens can learn, through participation, to collaborate, realize solidarity and orientate themselves with respect to the general interest. This contributes to the stability and effectiveness of democratic rule.²¹¹ Participation provides an improved basis for policy.

²⁰⁹ P. Dekker, *Politieke Participatie* in J. Thomassen, K. Aarts and H. van der Kolk (ed.), *Politieke veranderingen in Nederland 1971-1998: kiezers en de smalle marges van de democratie*. The Hague: Sdu, 2000 pg 5-14

²¹⁰ J. de Hart, *Landelijk verenigd*. The Hague, SCP (2005) pg 19, 39-40

²¹¹ SCP *Landelijk verenigd* 2005 pg 4

When citizens participate in voluntary social relationships, such as unions, they learn to collaborate. They too can practice in the democratic function. In this way, citizens can find a contact with the government and the latter can be nettled into occupying itself with social questions.²¹²

11.2.1 Indicators

In order to assess the participation of citizens, one must first examine the membership of social organisations. We can distinguish between a variety of organisations. From 1979 to 1990, membership only increased, only to stagnate from then on. In the 90's a slight reversal with respect to the organisational density of the population was observed.²¹³

Table 11.2 Membership of organisations, 18 years or older (in percentages, weighted)

	1997	1983	1987	1991	1995	1999	2003
ideological organisations, total:	11	12	13	18	15	12	12
Political party/association	9	8	7	6	7	6	4
Organisation with specific social goals	3	5	8	14	11	9	9
Special interest organisations, total:	22	24	24	26	26	26	22
Employee/employer organisations	18	17	17	18	20	22	17
Education or school association	7	11	11	11	11	9	8
Recreational organisations, total:	28	38	40	42	42	41	39
Sport's union	18	17	17	18	20	22	17
Choral/musical/drama club	5	7	8	9	9	9	7
Hobby club	3	5	7	8	9	8	5
Women's league	5	7	7	7	8	6	4
Youth club/scout	2	3	3	3	4	4	2
Nature/environmental organisation		-	-	-	-	-	22
Other association	9	16	17	22	19	19	16
Member of above organisations	55	45	45	40	42	43	46
Member of one of the above organisations	29	34	33	34	34	34	34
Member of two of the above organisations	16	21	22	26	24	23	20
Average number (amongst those who are members)	1,5	1,6	1,7	1,7	1,9	1,7	1,5
Count themselves as a member of a church denomination	72	69	66	61	63	62	61
Population 18 years and older (x1000)	9991	10599	11135	11689	12039	12298	12599
Population index (1997=100)	100	106	111	117	120	123	126

Source: SCP (AVO '79-'03)

²¹² P. Dekker, *Vijftientig jaar politieke betrokkenheid en participatie*. Appeared in A.E. Bronner *et al.* (ed.) *Recente ontwikkelingen in het marktonderzoek* (Jaarboek 2000 van de NVMI). Haarlem: De Vrieseborch, 2000 pg 10

²¹³ J. de Hart, Landelijk verenigd. The Hague, SCP (2005) p.16. SCP *De Sociale Staat van Nederland* 2005 pg 390

Membership by no means guarantees an active contribution, and the active contribution of citizens can occur without them being members of one or another organisation. Other forms of participation include participation in collective action, performing volunteer work and providing informal assistance.²¹⁴

If we are to examine the various sectors of voluntary work, it is striking that sport's unions, especially, have many volunteers at their disposal - despite a certain decline of the number of volunteers in that sector. Further, it can be seen that the total participation in voluntary work has decreased slightly since the end of the 80's.²¹⁵

If the differences in social participation with respect to the indigenous population and those who are members of ethnic minorities are examined, a number of points are perceived. Amongst ethnic minority groups, the percentage of the population connected to social organisations is significantly lower than amongst the indigenous Dutch population. A major exception to this is the number of members of ethnic minorities who are members of a religious organisation. Additionally, amongst the indigenous Dutch population, the degree of participation is lower.²¹⁶

Table 11.3 Overview of social participation (in percentages) in terms of ethnic groups and gender, 15-64 years, 2004/2005

	Women					Men				
	Tur.	Mor.	Sur.	Ant.	indg.	Tur.	Mor.	Sur.	Ant.	indg.
Member of or donor to at least one organisation	23	24	46	39	71	42	38	55	52	77
Is active in at least one organisation	12	11	23	26	37	21	24	30	30	49
Performs voluntary work in at least one category	15	14	23	24	41	22	19	21	22	41
Actively participates (degree of participation)	20	19	33	35	55	32	31	36	35	59
Frequently attends a religious gathering*	29	18	24	41	10	54	58	15	23	11

* frequently = a few of times a month or more frequently (this question was only posed to those who count themselves as being religious).

Source: SCP (LAS '04/'05)

From a study by the SCP amongst social organisations, it is evident that a shifting has taken place amongst the rank and file of the social organisations. Church members, the youth, indigenous Dutch and the low skilled are not as prevalent. However, the representation of the elderly, women, members of ethnic minorities, the highly skilled and those who do not belong to a church has increased

²¹⁴ SCP *De Sociale Staat van Nederland* 2005 pg 391

²¹⁵ J. de Hart, Landelijk verenigd. The Hague, SCP (2005) pg 23

considerably. This corresponds to developments in society where the level of education is rising, participation in the labour market is rising and church-attendance drops and the average age increases.²¹⁷

11.3 To what degree do women participate at all levels in the political and public administration?²¹⁸

11.3.1 Legislation

Discrimination against women, including their participation in politics and public life, is prohibited. The government guarantees women in particular the right to vote, stand for elections, create policy, execute policy, fulfil official functions, and participate in non-governmental organisations and associations within the public and political spheres of the nation - all on an equal footing with men. Women must also, just like men, have the opportunity to represent the government at an international level and to participate in the activities of international organisations.²¹⁹

Furthermore, exceptional measures may be engaged in order to achieve the equality of men and women.²²⁰ There is only one statutory obligation for advisory bodies to strive for the equal participation of women and persons belonging to ethnic or cultural minorities.²²¹

11.3.2 Implementation

Of the total number of people employed in public administration, 46% are women. The proportion of males and females differs, however, per sector. Thus, in the education sector, relatively more women are employed, while in defence it is more men. It can also be seen that women are less represented in higher positions.

In politics it is the political culture and the employment conditions, both at a national and at a provincial level, that form the greatest obstacles to the participation of women in the political realm. The Ministry of the Interior and Kingdom Relations has developed policy to demolish these obstacles. Through preparation, execution or support of measures, the central government is trying to make participation in politics more attractive for women. Further, ministries have adopted various policy initiatives and organised activities in order to up the proportion of women as well as their promotion up the ladder

²¹⁶ *ibid*, pg 24-26

²¹⁷ J. de Hart, Landelijk verenigd. The Hague, SCP (2005) pg 53, P. Dekker *De deelname aan vrijwilligerswerk in Nederland, wat meten we ervan?* In *Vrijwillige inzet onderzoek 2 2005/2* pg 9. See also: S.Keuzenkamp, *De sociale atlas van vrouwen uit etnische minderheden*. The Hague: SCP (2006)

²¹⁸ more information on power and decision-making with respect to emancipation and participation in: *Van vrouwenstrijd naar vanzelfsprekendheid, Meerjarennota emancipatie beleid: achtergronddeel*, SZW 2000,

²¹⁹ Articles 1, 7 and 8 Convention on the Elimination of all Forms of Discrimination against Women 1980, Article 1, 1a and 1b Wet gelijke behandeling van mannen en vrouwen 1980

²²⁰ *ibid*, article 4

²²¹ Artikel 12 section 3 Kaderwet adviescolleges 1996

to higher positions. An example of what is hereby applied is the an ambassadors' network, which aims to increase the number of women in the administration of political and social organisations.²²² The government is also acting in a manner intended to create conducive conditions as well as being stimulating. The government has, for example, instituted goals for increasing the proportion of women. The target figures are recommend to political parties. They, after all, bear the primary responsibility for the nomination of candidates and recruiting the representatives. The objective of these target figures shows the government's ambition in this respect. By setting goals, participation can be measured and the measures employed with respect to them can be reviewed in terms of the results and, if necessary, be amended. These goals can also be used to set an example for other organisations or companies.²²³

In the Long-range Policy Plan 2006-2010, the central government formulated the above-mentioned target figures. The central government wants to realise a proportionate representation of women in decision-making positions. By striving for diversity in the institution and composition of administrative and decision-making bodies, the capacities and talents of women can be utilised and the quality and representativity will be improved. The government's target figures must be realised by 2010. The number of women in top positions in the government must also be upped by at least 25%. An associated goal states: "The stimulation of political parties to realise the target figures and to guarantee a proportional composition of the councils and commissions to be appointed by the cabinet." With respect to the electoral system and the candidate lists, a guideline for the recruiting of politicians has been developed in order to increase diversity amongst politicians and obtain a better representation of the population. Engaging provisions to combine employment and healthcare for local and provincial politicians concerns another activity for the promotion of participation by women.²²⁴

Table 11.4 Women in political and administrative positions (in percentages)

	1992	2000	2003	Target figure 2010
Cabinet	23	31	40	50
House of Representatives	29	34	39	50
Senate	25	28	33	50
European Parliament	28	36	44	50
Provincial parliaments	30	30	29	50
Municipal councils	22	22	24*	45
Queen's Commissioners	8	0	8	30
Mayor and aldermen	15	18	20	40
Management of water boards	-	11	13	30
Council of State, General Court of Audit	18 to 25	21	21 to 33	40
Magistracy	-	42	-	50
Executives in ZBO's, interdep. commissions	-	5 to 7	6 to 10	25
Public administration executives (18 and up on the scale)	-	-	12	25

²²² Final report ambassadeursnetwerk Besturen (ordered on 6 June 2006)

²²³ Fourth Dutch Implementation Report on the UN Convention on the Elimination of all Forms of Discrimination against Women 2003-2004, 2005, pg 37-44,46, Voortgangsrapportage 2003, Vrouwen in politiek en openbaar bestuur, BZK

²²⁴ Meerjarenbeleidsplan Emancipatie 2006-2010 Tweede Kamer session 2005-2006, 30420 no 2 pg 4, 11, pg 63

Public administration executives (15 and up on the scale)	-	14	30
Corporate executives	-	5	20
NGO executives	-	22	45

- = not known

Source: *Emancipatiemonitor 2004*, figures from, amongst other sources, TK (200/2001); BZK (2004); SCP (VIB'04) * rose in 2006 to 26% (source: decentraalbestuur.nl, 2006)

11.3.3 Indicators

As stated the participation of women differs by level, institution and function. Data on the political and public administration will become successively available.

*Politics and public administration*²²⁵

Women have the highest representation in national politics and the European Parliament. The share of women in cabinet is 40%. In the House of Representatives, the share is 39%. These 2003 percentages are almost equal to the target goals set for that year. Women, however, are harder to find in provincial and municipal politics. The difference between the participation of women at a national level and at lower levels is problematical, especially when it comes to local politics. The cause for this poor representation at a local level is the fact that many new local parties have arisen who are not directed by a national party with respect to the recruitment and selecting of women. In addition, the exercising of a political function at a local level is a voluntary function. The workload is frequently found to be too heavy and it becomes difficult to combine it with already-existing work. This has emerged through the high exodus of female politicians. Moreover, the participation is dependent on party politics and the prevailing culture, which differs per municipality.

The target figures are not attained at lower levels either. The proportion of women is higher when it comes to decision making than in management. The number of women involved in the management of waterworks and the number of female Queen's Commissioners are also proportionately low. No increase has been observed in provincial and municipal politics with respect to the number of women, while the increase is perceptible at a national level. The exception to this is the increase in the number of women occupying the mayor's seat.²²⁶ It emerges in the monitor 'Social Atlas of Ethnic Minorities' that in 2005 only 19% of councillors who were members of an ethnic minority were women. Within the under-represented group of ethnic minorities, there is thus also an under-representation of women.²²⁷

Women continue to occupy a minority position when it comes to public administration. It must be noted that there have been efforts, both amongst the political parties as well as in the public administration, to appoint more women to higher positions, but that a number of rash appointments that had the wrong effect have led to some recalcitrance with respect to the implementation of a promotional policy. But there has

²²⁵ More data on the representation of women in policy making and policy making positions can be found at the website of the European Commission, DG EMPL, Database on women and men in decision-making, http://ec.europa.eu/employment_social/women_men_stats/measures_in41_en.htm

²²⁶ SCP/CBS Emancipatiemonitor 2004 pg 194-1 97

²²⁷ SCP Sociale Atlas van vrouwen uit etnische minderheden pg 246

been a perceptible rise in the last few years in the representation of women in, for example, the General Court of Audit, the executive levels of the police force and in the Council of State. With respect to the executive level of the civil service, while it is true that there was only a slight increase in the proportion of women, there are still few women present at this level.²²⁸

The percentage of women that are employed by the government rose by 1% between 2004 and 2005, to a level of 40.6%. Despite the downsizing of personnel, the proportion of women at the lower end of the scale increased. At the higher end, a more dramatic increase can be seen.²²⁹

Table 11.5 Male/female distribution in the government in terms of levels on the scale (in percentages)

Scale	2002		2005		Development 2003-2005	
	Men	Women	Men	Women	Men	Women
Scale 1-4	52,8	47,2	60,3	39,7	- 23,4	- 43,6
Scale 5-9	56,6	43,4	53,5	46,5	- 14,2	- 2,9
Scale 10-13	69,0	31,0	65,5	34,5	- 5,6	+ 10,5
Scale 14-16	84,2	15,8	80,1	19,9	- 7,8	+ 21,4
Scale 17+	90,6	9,4	85,8	14,2	- 2,7	+ 56,1
Total	61,6	38,4	59,4	40,6	-11,3	-2,8

Source: Sociaal Jaarverslag Rijk 2005

SGP

The courts have determined that from 2006 the State may no longer subsidise the SGP [Staakundig Gereformeerde Partij - the Reformed Political Party] as long as women are not equally able to become members of the party.

The value of this is in no way diminished by the fact that the State has launched an appeal against the judgement. This means that new applications for subsidisation by the SGP will be rejected; decisions already reached to grant subsidy will not be reversed. The State's appeal is intended to obtain a 'judgement in principle' on the relationship between the State and political parties. The cabinet believes that government interference with political parties must be kept to a minimum. The thereby states that it does not support the SGP's position on women.

Voluntary organisations

It is interesting to observe the participation of women in civil society, because societal participation can lead to political participation. It is also possible to compare the areas and manner of participation in civil society with that in the public administration.

A spate of women joining social organisations has been witnessed. While the proportion of women amongst the national population is almost unchanged, the number of women counted as members by the social organisations that the SCP studied for the investigation 'Nationwide United' [Landelijk Verenigd] has increased by 27% and decreased by only 7%.²³⁰

²²⁸ SCP/CBS Emancipatiemonitor 2004 pg 198-1 99

²²⁹ Min.: BZK, Sociaal Jaarverslag Rijk 2005, pg 52

²³⁰ J. de Hart, Landelijk verenigd. The Hague, SCP (2005) pg 32

Table 11.6 Voluntary work and the proportion of women (2003)

	Percentage voluntary work	Proportion of which are women	Percentage management function in voluntary work	Proportion of which are women
Total	42	51	37	41
Youth work	4	46	41	38
School	8	69	28	57
Health care	7	76	32	72
Sport's union	14	36	39	32
Hobby club	5	41	43	42
Cultural union	5	52	44	47
Philosophical Organisation	8	55	41	42
Trade union/industrial organisation	2	29	69	27
other	8	47	52	41

Source: SCP, Landelijke Verenigd 2005 (CBS permanent onderzoek leefsituatie)

On average, half (51%) of the volunteer workers in the Netherlands are women. Women feature especially with respect to voluntary work at schools and in healthcare. Relatively few women volunteers are active in trade unions and industrial organisations. If one is to examine the managerial work undertaken, then the proportion of women is lower. The only exceptions to this were in schools and in healthcare. Women are relatively well represented in the administration and management of political parties and other social organisations.

Opinion

A significant portion of the Dutch population believes that the position of women in the decision-making process is not ideal. Women believe, more than men, that the influence of and opportunities offered to women are at minimal in this arena. Although there is support for the government's intention to improve the position of women, the support basis for developing special preferential policy with respect to this is less great. Half of the men and 40% of the women are not in favour of preferential policy for women in executive positions.²³¹

11.4 How equal is the access for all social groups to the public administration? How proportionate is their representation therein?

Representativeness is of great importance to our democracy, just as great as diversity within the public administration. If certain groups in society do not feel properly represented or if the composition of the parliamentary fractions and the political incumbents does not reflect the population, then confidence and participation in the democracy can shrink. The access to the public administration and the actual representation therein is of importance to the functioning of the democracy. That is why the participation of social groups who are discriminated against is being investigated.

²³¹ Emancipatiemonitor 2004, SCP en CBS, pg 201-202

11.4.1 Legislation

According to article 3 of the Constitution, every Dutch person has the right to be equally eligible for appointment to the public service. According to the General Equal Treatment Act it is prohibited to, amongst other things, draw a distinction when appointing a civil servant and when terminating the employment contract of a civil servant.²³²

11.4.2 Implementation

The representation of women and ethnic minorities in the public administration does not reflect the population.

Women

The participation of women has already been dealt with under 11.3.

Ethnic minorities

It is evident from the State's Annual Social Report for 2005 that the central government has launched various activities in the last few years in order to stimulate diversity amongst its employees. These have helped to improve the percentage of women and ethnic minorities. These activities were aimed in particular at specific groups and hardly any connection is manifested between them. That is why an integral plan of attack has now been opted for, which will appear in 2006.

The proportion of minorities is discussed in the Annual Social Report. In order to combat the under-representation of ethnic minorities the policy of diversity will be, despite the expiration of the SAMEN Act, intensified. Ministries still work in accordance with the same target group definition and systems with respect to the number of members of an ethnic minority that they employ. Assessment and selection methods are also controlled with regard to elements that could be to the disadvantage of ethnic minorities. The degree of under-representation is decreasing. In 2005, the proportion of ethnic minorities in the public service rose from 8.4% to 9.3%.

In 2002 the Institute for Migration and Ethnic Studies investigated political participation amongst ethnic minorities in the four large cities of the Netherlands. The differences in turnout, party preference and the functioning of councillors who were ethnic minorities were explained in that study.²³³ In order to determine to what extent local politics is open to newcomers, the study examined the characteristics of the political system. Constitutional law was the first thing on the agenda. As a result of suffrage or forms of institutional discrimination, the voice of the newcomers can, in an established order of political consultation, be silenced. Secondly, political parties take care of the recruitment of representatives themselves. Should that recruitment take place within closed, informal networks, or should reputation be the most important criterion for recruitment, then it is difficult for

²³² Article 5 Algemene wet gelijke behandeling

²³³ *Sociaal kapitaal en politieke participatie van etnische minderheden*, M. Fennema, J. Tillie, A. van Heelsum, M. Berger en R. Wolff Institute for Migration and Ethnic Studies 2000 pg1

newcomers to stand as candidates for representatives. Ideology and the direction the party has taken can also limit the opportunities the newcomer has. The enticing of migrants is on the increase. A third factor that appears to be relevant for the political participation of ethnic minorities is government policy. Specific government campaigns for stimulating the turnout of minority voters in local elections have proved to work favourably. The personnel policy can also have an influence upon the participation of ethnic minorities.²³⁴

11.4.3 Indicators

Of the approximately 800 executive civil servants, three are from an ethnic minority group.²³⁵

Since foreigners are allowed to vote in local elections, the participation of ethnic minorities at a municipal level has increased. In 1998, the four largest ethnic minorities were almost proportionally represented in the municipal councils of the major cities.²³⁶ In the meantime, it seems that the number of members of municipal councils that are from an ethnic minority rose dramatically after the elections of 7 March 2006. Of the more than 9 500 council seats in the Netherlands, 302 were occupied by members of an ethnic minority. The previous elections saw only 204 voted in.²³⁷

According to Leijenaar et al. the ethnic minorities are better represented in the major cities than in the rural regions, because local parties - who have been successful in those regions - are not stimulated by a national leadership to take representatives of ethnic minorities into account when it comes to the recruiting and selection processes. In addition, as a result of the amalgamation of rural municipalities, whereby the quota rises more and more, it is more difficult for newcomers to acquire an election place on the electoral list.²³⁸

11.5 Which measures, if any, are taken to solve publicly identified problems in this area? What degree of political priority and public support is devoted to this?

As far as expanding the participation of women and ethnic minorities in the public sector is concerned, please refer to the above-mentioned measures taken at a national level.

The *Nationale Conventie* has pointed out that voluntary effort by citizens on behalf of the public cause has been gradually decreasing for years. That is why the Convention has proposed to render it possible to pay "tax in kind"

²³⁴ *ibid*, pg20-23

²³⁵ *Je weet wel, die Mo!ukker van OCW*, PM nummer 10, 25 mei 2006. Zie ook Kamerstukken II 2005/2006, Aanhangsel 1915 Responded to questions from the members Bussemaker and Boelhouwer.

²³⁶ Fennema *et.al.* *op.cit.*, pg 1

²³⁷ See "Allochtonen in de politiek van het Instituut voor publiek en politiek. http://www.publiek-politiek.nl/thema_s/allochtonen/in_de_politiek

²³⁸ Leijenaar, M., K. Niemöller & A. van der Kooij, Kandidaten gezocht. Politieke partijen en het streven naar grotere diversiteit onder gemeenteraadsleden Amsterdam IPP 2005 pg 103

through extraordinary efforts on behalf of the public cause, structural volunteer work or home-care. Moreover, a recommendation was made for the promotion of active citizenship amongst the unemployed to enable work placement programmes and to undertake compulsory work placement programmes for the youth.²³⁹ As yet no (political) support has been voiced for these measures.

11.6 Summary

Voluntary organisations, private organisations and social movements are free to behave and act as they wish, as long as they are within the law. At the most, they are dependent on the government within the framework of subsidisation.

Citizens are organised in numerous fields. The participation of citizens is dependent on, amongst other things, the personal interests in and knowledge of the relevant subject, but also upon the possibility of serving a personal interest. Thereby, the degree of participation amongst ethnic minorities seems to be significantly lower than amongst people of Dutch origin, with the exception of participation in religious organisations.

We have witnessed a dramatic drop in membership of churches, broadcasters, political parties and women's leagues since 1980. On the other hand, the membership of organisations geared towards nature and environmental issues, international aid organisations and sport's unions too, has grown. Voluntary work has also decreased slightly since that time. Only sport's unions evidently still have enough volunteers at their disposal.

Discrimination and unequal treatment of women is prohibited by law. That, and a number of exceptional measures, form the basis for the government policy on the promotion of an equal participation by women in politics and the public administration. The number of women that are employed in the public administration amounts to 46% of the personnel, whereby women are under-represented in higher functions. The number of women in the House of Representatives amounts to 39%, while this proportion is significantly lower at a provincial and municipal level.

On the grounds of the Constitution and the General Equal Treatment Act, all social groups officially have equal access to the public administration. Yet the actual representation of women and ethnic minorities is evidently still not a reflection of the electorate, despite diverse activities by the government to further that.

²³⁹ Rapport Hart voor de publieke zaak, aanbevelingen van de Nationale conventie voor de 21^e eeuw (2006), pg 16

12. Responsive Government

Is the government responsive with respect to the concerns of the citizens?

Government responsiveness is of great importance to democratic rule. Where accountability always happens retrospectively, a responsive institution of governance requires the inclusion of society's relevant concerns before policy or legislation are drafted. In this way the desires, expectations and opinions of the citizens can be better taken into account and the confidence in and a basis of support for policy can be acquired.²⁴⁰ This approach would, when considered from a democratic point of view, involve various difficulties about which several remarks have already been made in the introduction to the previous chapter. When the government explores the true (perceptions of) society, it ends up in uncharted territory, which must also fulfil democratic qualities such as the principles of *audi alteram partem*, transparency and a certain amount of representativity.

12.1 How open and systematic are the procedures for public consultation on government and legislation? To what degree do relevant interests have access on an equal footing to the government?

12.1.1 Legislation

The right to submit a written request to an authorised authority is constitutionally enshrined (article 5 of the Constitution). Free access to government information is also laid down in the Constitution (article 1 10) and in the Open Government Act (WOB 1991). The government must provide information if a request for that is submitted, subject to certain grounds for exclusion or restriction. This is a form of passive transparency. The law also prescribes active transparency - the government must release information on its own initiative regarding policy executed and the results thereof.

An open government demands that information is accessible. Aside from easy availability, this information must also be comprehensible to the citizen (article 8 section 2 WOB).

Participation

A second category of statutory procedures came into being in the 1960's and 70's when, particularly with respect to spatial planning procedures, the citizen's say was regulated. This was originally a retrospective emergency provision in order to guarantee that specific interests were not disproportionately damaged.²⁴¹ In the 80's and 90's the emphasis in practice shifted gradually to the prior contribution by society to spatial planning - at an early stage in order to prevent interests and insights from being ignored and in order to enlarge the support base.

²⁴⁰ Democratic Audit: Framework for Democracy Assessment www.democraticaudit.com

²⁴¹ The most common possibilities for participation are regulated by the Algemene wet bestuursrecht (wherein participation is regulated in the uniform public preparation procedure), the M.E.R. procedure, the Tracéwet and the Wet ruimtelijke ordening. The latter is regulated, amongst other things, the *planologische kernbeslissing* (PKB) - the core planning decision - whereby there is participation on part 1 of the PKB.

Citizen's initiative

Since 1 May 2006, it has been possible to submit a citizen's initiative to the House of Representatives. If he is supported by 40 000 signatures, a franchised person can submit a proposal to place a specific subject on the agenda of the House of Representatives. A citizen's initiative must concern the institution, amendment or abolishment of a statutory regulation or other government policy. The proposal may not be contrary to the Constitution and the accepted principles of morality. Budgets and taxes are excluded from the citizen's initiative. In 2008 the House of Representatives will, after an evaluation, decide on whether the citizen's initiative will be continued.²⁴²

12.1.2 Implementation

Transparency, provision of information and participation

The government intends, through digital initiatives, to improve both its service as well as making it easier to release information to citizens. Aside from the information on tasks, activities, intended policy and other intentions provided by government institutions, digital availability must ensure that, for example, registration details result in an improved and more client-oriented relationship with the citizen. The target figure for the Modernising Government programme [*Programma Andere Overheid*^{xvii}] is that 60% of government services are electronically available (that is to say, available, retrievable and able to be dealt with) by the end of 2006. name projects/measures of PAO? Administrative research indicates that the 'digital government' is more transparent than the 'paper government'. Because more data is recorded and because this data is better released, the opportunities for democratic control of the government are increased.²⁴³

Should citizens have personal complaints about the function of government institutions and the standard petitions and lawsuits (in the case of government decrees) did not stick, then there is the possibility of approaching the National Ombudsman or the *Commissies voor de Verzoekschriften* 'committees for petitions' of the Senate or the House of Representatives. In the latter case, it must concern matters for which a Minister can be called to account.

In the field of participation, the cabinet concluded in 2006 that the traditional right to have a say did not, at the end of the day, satisfy all needs and could be better designated as the "final test". With new-style participation, from now on collaborative thinking will be part of the policy procedure. The growing policy implementation in this field is now being converted through a number of pilot projects into a fixed procedure and will subsequently be progressively absorbed into the legislation.²⁴⁴

12.1.3 Indicators

There is no information that points to systematic exclusion from the consultative process (whether formal or informal) or to a so-called government bias during consultation on relevant concerns.

²⁴² Burgerinitiatief, www.parlement.com

²⁴³ A. Meijer, *De Doorzichtige Overheid* (2002). Eburon Academic Publishers

²⁴⁴ Kamerstuk TK 2005-2006, 29385, no 7

12.2 How accessible are elected delegates to their constituents?

12.2.1 Legislation

There are no official requirements for representatives to be available to their electorate.

12.2.2 Implementation

Due to the Dutch electoral system of proportional representation and the absence of constituencies, there is no strong relationship between the member of the House and his/her location-specific supporters. Contact between voters and parliamentarians mostly runs through the party or the parliamentary fraction and is related to a certain portfolio or representation of the voter's interests. Each party and each parliamentary fraction make their own arrangements when it comes to the availability of representatives. There are differences between individual representatives - one will characterise him or herself as a typically regional representative, another will characterise him or herself as an expert in a field of policy and maintain many contacts with organisations in that field.

The Parliament and its members represent all the Dutch people (article 50 of the Constitution). In the Netherlands, representatives do not take care of specific individual concerns; Council or House members who receive questions concerning individual problems will point the citizens concerned in the direction of the civil service or the legal system, through which they can attempt to solve their problems. But members of the House of Representatives and councillors do often employ signals they receive from citizens in their questions and arguments to and with directors.

12.2.3 Indicators

It is evident from a 2004 comparative study by the Universities of Utrecht and Twente on assignment by the Ministry of Interior and Kingdom Relations that approximately 5% of the Dutch electorate occasionally got in touch with a member of the House. This is a low percentage when compared to Germany (11%) or New Zealand (24%).²⁴⁵ According to House statistics, House Committees have, over the last few years, not paid many professional domestic visits, while members of the House of Representatives publicly state that they attach a great deal of importance to their representative role.²⁴⁶

In general, representatives (House of Representatives, municipal councillors and members of the provincial parliaments) are easily accessible in the Netherlands. Consulting hours and email and/or postal addresses are easily available. The Internet is becoming an increasingly important means of keeping in touch with politicians, while various representatives' keep a blog.

²⁴⁵ Kummeling, H.R.B.M., H. van der Kolk, M. Lourijsen, *Gemengde kiesstelsels*, Achtergrondstudie ten behoeve van het ministerie van Binnenlandse Zaken en Koninkrijksrelaties, http://www.minbzk.nl/contents/pages/674/gemengde_kiesstelsels.pdf, consulted on 12 June 2006

²⁴⁶ A. Wille, Kamervragen en de dagelijkse dwang van politieke controle, *Bestuurswetenschappen* Jrg 59, no 5 2005 pg 406-430

Aside from examining the opportunities for getting in touch with representatives, the reactions of these representatives must also be examined. Do they react consistently? This also has an influence upon the satisfaction citizens might feel with respect to their representatives.

12.3 How accessible and reliable is public service for those who need it? How systematically are the consumers consulted on the service?

Within the framework of the *Modernising Government* programme it is agreed that every government body that is in contact with citizens must institute a 'quality charter'. It contains a number of concrete promises to the clients (citizens and companies) with respect to the quality of the service provided and the products that the relevant body supplies. The quality charters, also called services norms or a citizen's charters, must be accessible - over the counter or through the website, for example - and clearly recognizable and must ultimately also serve as a yardstick with which the government can be assessed by the citizen.

The objective of the quality charter is, firstly, to provide clarity on the performance and the service of government institutions and, secondly, to create actual expectation patterns of the citizen with respect to this service. Communication client-oriented service norms must ensure that a greater effort is made by the government to realize the norms set, and that a greater degree of satisfaction is experienced by citizens with respect to the performance of these institutions. Over the course of 2008, all relevant government bodies must engage a quality charter.

Many government institutions have opted to draft the quality charter in consultation with citizens and social organisations. That is to say, the quality charters will be presented to (a panel of) citizens, and they can respond with their own vision and desires. Government institutions have the final word and are not legally bound to the proposed norms.

12.4 How much confidence do the citizens have in the chances of the government to solve the key problems in society and in their own chances of influencing government policy?

According to figures published by the Government Information Service [Rijksvoorlichtingsdienst] - in the 2003 *belevingsmonitor* [literally, the "experience monitor"] - over 80% of citizens thought that the government did not fulfil their expectations, ranging from some extent (64%) to a great extent (19%). The accessibility of both the central and local government is insufficient, although with respect to this local government's score (61%) is not as bad as that of the central government (74%).

The responsiveness of the government also leaves much to be desired, the citizens feel. The government pays no or little attention to the wishes of the citizen (83%), does not or hardly involves the citizens when it comes to policy and decisions (90%) and is not held particularly accountable with respect to its performance (79%). This negative assessment of the government's performance can be connected to the critical

assessment of the citizen for the Balkenende II cabinet - only 34% stated they had confidence in this government. On the other hand, figures provided by the SCP (*de Sociale Staat 2005* - the Social State), show that confidence in the central government has also suffered a downward trend. In 2004, 36% of citizens thought that the government's activities had no influence upon daily life. 54% of them were of the opinion that they had no influence upon the decisions of the government.

Table 12.1 Opinions about politics and social trust (in percentages, 16 years and older)

Agree with the following statement	1992	1996	2000	2002	2004
Whatever the government does, it is of little use to daily life.	23	21	-	-	36
People like me have no influence whatsoever upon what the government does.	46	46	52	49	54
I don't think that members of the House and ministers care much about what people like myself think.	46	42	48	46	51
When I look at politician's actions, I think they're arrogant.	-	-	-	48	55
Members of the House devote too much attention to the interests of a few rich groups instead of general interests.	57	54	58	60	64
What we need are less laws and institutions and more courageous and dedicated leaders.	38	30	33	-	61
In general, most people are trustworthy (instead of you can't be too careful/don't know).	-	56	47	52	53

SCP: *De Sociale Staat 2005* (CV '92-'04)

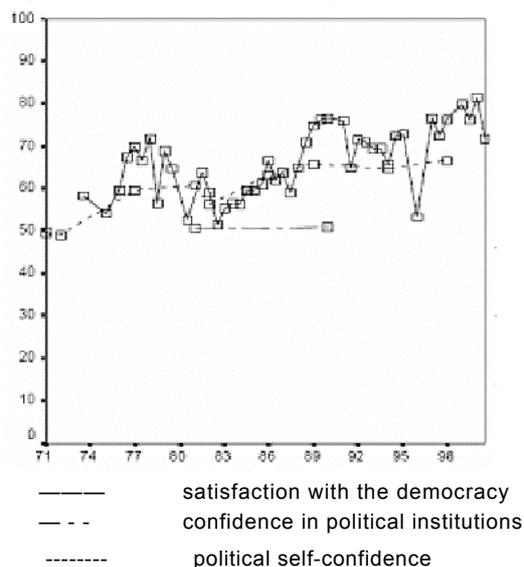
The biggest perceived discrepancy between what the citizen and the government consider to be important points for attention for the country includes themes such as: reliability of the government and the involvement of citizens in government policy (next to problems such as quality of life and integration of foreigners). With respect to quality of the services provided by the government, there was a narrower divide.

On the other hand, confidence²⁴⁷ in political institutions, political self-confidence and satisfaction with respect to the democracy in the Netherlands have increased as a trend over the last few decades. The satisfaction with the democracy has been increasing since the 1980's. Political self-confidence, too, appears to have gradually increased until 2000, with an interruption in 1982. It has been concluded from research that a considerable part of the increase in satisfaction with respect to the democracy has been caused by an improvement in the economic situation, but that if this is corrected, there still remains a structural increase in satisfaction with respect to the democracy.²⁴⁸

²⁴⁷ Belevingsmonitor, see: http://www.regering.nl/Images/0523belmongraf_tcm42-17215.pdf

²⁴⁸ Communarisme en vertrouwen in politieke instellingen. Verslag van een empirisch onderzoek, J. van der Meer, proefschrift Erasmus Universiteit Rotterdam (2003), pg 180. The figure is also from the thesis.

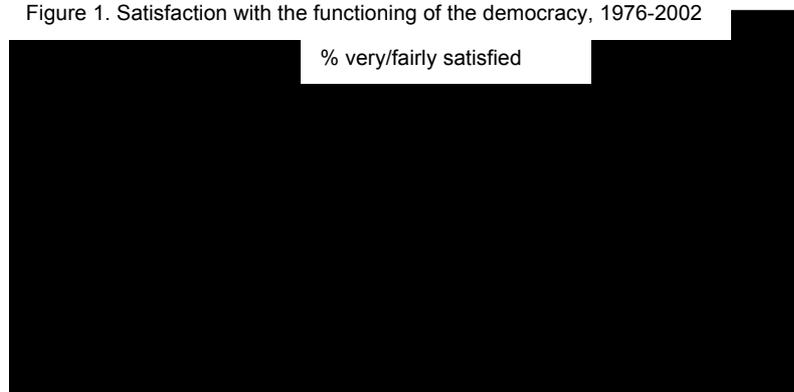
Figure 12.2 Confidence in political institutions



Sources Eurobarometer 1973-1999, Nederlands Kiezersonderzoek 1971-1998, World Values Survey 1981-1990

The satisfaction with and confidence in the functioning of the democracy in the Netherlands has, since the mid-80's risen steadily from 53% to 75% of the population, as is evident from the graph below.

Figure 1. Satisfaction with the functioning of the democracy, 1976-2002



(the flowing line represents the advancing average) Source: *Jaarboek Parlementaire geschiedenis 2003*

The Social and Cultural Report for 2004, for example, also indicates that satisfaction with the functioning of the democracy has increased between 1980 and 2000 (from 52% to 81%). There was a downward turn to 71% in 2003. This downward turn is possible temporary and requires a correction on the basis of the economic conjuncture.

**12.5 Which measures, if any, are taken to solve publicly identified problems in this area?
What degree of political priority and public support is devoted to this?**

As a result of the cabinet standpoint 'Inspraak Nieuwe Stijl' [new-style participation], the involvement of citizens will become more effective with respect to spatial-economic intervention. The central government sees modernisation of participation as an opportunity for clarifying, tailoring and goal-orienting dialogue between the government and citizens on policy intentions. *Inspraak Nieuwe Stijl* comprises of two steps that converge towards a decision. In the policy preparation, consultation takes place aimed at utilising the power of collective consideration by society through creative and constructive forms of involvement. In the draft phase, a finale review of concerns takes place in accordance with the uniform public preparation process. This final review of concerns acts as a safety net for matters and concerns that have been neglected as well as for citizens who are of the opinion that their personal concerns are being disproportionately prejudiced. The review of concerns makes up the conclusion of the consultation phase, and the entry point to the judicial review. By placing the centre of gravity at the start of the planning processes, where there is still room for policy changes, optimum use can be made of the collective considerations of citizens. This requires that participation be tailored; a free interpretation thus, whereby the quality is guaranteed by a professional approach. Elements of this approach include: a code of behaviour with the principles of good consultation, an inter-departmental bureau that supports policy employees and project leaders through, amongst other things, offering a platform for the exchange of knowledge and a periodical reviewing of the quality and effectiveness of the participation.

Organising participation in good time can be seen, according to Guido Enthoven²⁴⁹, amongst others, as one of the dominant developments in public administration in the last few decades. Interactive administration is implemented in all phases of the policy-cycle and has met with - strikingly - varying success - ranging from breakthroughs to stillbirths. As a concept, it seems to have peaked. The underlying movement will, according to Enthoven, probably persevere under different, dynamic, denominators. The role of the representatives in such processes is problematic and the connections between their representational and participatory democracy are inadequate. It will most probably be years before a productive practical method is crystallised. With respect to this, Grin et al. states: "It's not something that will be acknowledged just like that, but the reality of today is that the House, provincial parliaments or the municipal council are often seen as more of a problem than a centre of power. A wide collection of actors (including civil servants, social organisations, citizens and leaders) will, in countless administrative processes, arrive at a solution acceptable to all, and thus the question arises: 'what do we do with the democratically elected?'"²⁵⁰

²⁴⁹ G. Enthoven, *Representatief en participatief een tussenbalans na 10 jaar interactief besturen*, in *Bestuurskunde*, volume 14. 2005, no 2

²⁵⁰ G. Enthoven, *Representatief en participatief een tussenbalans na 10 jaar interactief besturen*, in *Bestuurskunde*, volume 14. 2005, no 2

12.6 Summary

The responsiveness of the government leaves, according to opinion polls (2004), much to be desired. Thus 83% of the people feel that the government pays little attention to the problems of the citizen, 90% feel that the government scarcely involves citizens in policy-making and 79% feel that the government is not sufficiently accountable for its performance.

Yet an increase in satisfaction with the democracy and confidence in politics can also be ascertained. This is mainly caused by an upswing in the economic situation.

A mere 5% of the citizens has had contact with a member of the House. When compared to countries like Germany (11%) and New Zealand (24%), this is a very low percentage. But still, members of the House of Representatives, municipal councils and provincial parliaments, appear to be more accessible thanks to question hours, email and the keeping of a blog.

The government endeavours, within the framework of improved services, to deal with 60% of services digitally in 2006. It is apparent from research that a "digital" government is more transparent than a "paper" government and can be controlled better.

In addition, government bodies can draw up quality charters, which state the quality of the services and products provided by the government. They must also serve as a yardstick in the assessment of the government by the citizen.

The central government is also, through the modernisation of the participation process, occupied with improving dialogue between government and citizens with respect to policy intentions.

13. Decentralisation

Are decisions made at the lowest possible level of government, where in practical terms the citizens gain the most?

From the point of view that governance can best take place close to the citizen, where the citizen can exercise a relatively direct influence upon the government and can participate in it, a territorial decentralisation has been pursued. It is enshrined in the Constitution that the Netherlands is a decentralised unitary state with a three-tier administration. Included in the central government are: the ministries (13), the High Councils of State [Hoge Colleges van Staat], the advisory bodies and the non-departmental public bodies (ZBO's). At a regional level, the government consists of provinces (12) and water boards (28). At a local level there are the municipalities (458).

13.1 How independent is the decentralised government administration with respect to the central government? To what extent do they have the necessary authority and means for executing their tasks?

13.1.1 Legislation

The decentralised government bodies are guided by their own body of legislation (provincial law, municipal bylaws and water boards law). The foundation for this legislation is found in the Constitution (articles 123-136), wherein stipulations are contained with respect to the institution and termination of non-centralised administrative bodies, as well as elections, nominations of authorities and competencies and relationships between administrative bodies. No separate articles are included in the Constitution for provinces and municipalities. This emphasises the uniformity of the chief structure of province and municipality and the fact that the Netherlands is a decentralised unitary state. The financial relationship with the State is regulated by the Provinces Act [Provinciewet] for the provinces, while the Allocation of Finances Act (or Financial Relationships Act – [Financiële-verhoudingswet]) covers the municipalities.

It is laid down in article 124 of the Constitution that provinces and municipalities are bodies with autonomous authorities. In accordance with article 108 of the Municipalities Act, the authority to legislate and govern is allocated to the municipal council. This is without prejudice to the fact that the municipalities are obligated to enforce rules that are imposed by a higher organ. Municipalities can be subjected to supervision by law or on the strength of the law. Proposals for measures are only made at state and provincial level when it is evident that municipal councils cannot enforce them in an effective and efficient manner.

As with municipalities, the authority to legislate and govern is allocated to the provincial administration (article 105 of the Provinces Act). The provincial administration can transfer authorities, provided under the Provinces Act or another act, to one or more municipalities or water boards (article 107, section 1 of the Provinces Act).

Administration of water management and related infrastructure has always had a separate place in the non-central administration. Article 133 of the Constitution deals with the institution, termination, tasks and authorities of the water boards. Water boards are responsible for facilities for combating flooding (embankments) and the water management within a certain region. Hereby they are managed in both a form of functional as well as territorial decentralisation. The authority for the institution and equipping of water boards, as well as the supervision of the management of the water boards lies, in principle, with the province.

13.1.2 Implementation

Provinces and water boards

The province's key tasks are: spatial planning, water and environment, economy, nature and landscape and welfare and culture. The provinces receive, just as the municipalities do, a large portion of their revenue from the central government in order to carry out their tasks. This is called the Provinces Fund and the so-called designated benefits [*doeluitkeringen*] for, amongst other things, public transport or soil decontamination. In addition, the provinces also receive revenue from the imposition of dues, utilities companies in which they have an interest and (possibly) European funds. Provinces may employ the money, with the exception of the designated benefits, at their own discretion. Provincial parliaments [*Provinciale Staten*], as the highest provincial body, determine the spending.

There is a clear administrative relationship of dependency with respect to the provinces and the water boards. Thus, the provincial parliaments have the authority to terminate, institute, equip, task and compose the management of water boards. The water board receives revenue in order to undertake the tasks from water board charges and, insofar as it concerns - to a significant degree - a national or provincial interest, moneys from the State and the province. The allocation of revenue is functionally bound to the tasks of the water board itself. The management of the water board has the authority to create regulations, insofar as these regulations are not contrary to higher regulations.

Municipality

The municipality must cater for a number of tasks on behalf of the citizen, including the providing a habitable environment and looking after the general welfare of the citizens. In addition, the municipalities are responsible for the execution of a number of laws and regulations at a local level. For this purpose, they have a certain amount of freedom when it comes to policy.

The municipality receives money from the central government in order to carry out its tasks. A portion of this money comes from the municipal fund and a part is derived from the so-called designated benefits for, for example, public transport or youth welfare. Over 90% of the municipalities' revenues are derived from the central government. In addition, the municipality also has taxation instruments, such as property tax, refusal removal tax, dog tax and tourist tax, acquires revenue from certain services provided to citizens and organisations. Municipalities may employ the money, with the exception of the designated benefits, at their own discretion. The municipal council determines the broad lines of the policy and decides on the disbursement.

As far as public order and safety are concerned, the municipalities have a key responsibility. They can, within this framework, draft local regulations that are intended to maintain and promote public order and safety.

Shifting of responsibility from the central administration to non-central administrations

Since the 80's the central government has transferred important and complicated tasks to municipalities and provinces. These include spatial planning, the welfare sector, work and income and (recently) care for the disabled. This decentralisation is intended to provide municipalities and provinces with greater responsibility and elbowroom. One of the major operations that the municipalities are now faced with, is the implementation of the Social Support Act [Wet Maatschappelijke Ondersteuning, WMO]. Next to the Services for the Disabled Act [Wet Voorziening Gehandicapten], which is already implemented by the municipality, the municipality will now also undertake a number of other tasks, such as home care and household assistance, which currently fall under the General Exceptional Medical Expenses Act [Algemene Wet Bijzondere Ziektekosten, AWBZ] and the Wet Openbare Geestelijke Gezondheidszorg [Act pertaining to Public Mental Health Care). As a result, municipalities have more room to anticipate the local circumstances and need for care.

In the field of administrative instruments and supervision, too, a considerable economy has been implemented, whereby non-central governments experience greater autonomy than at the high point of the welfare state. The number of specific benefits has decreased from around 580 in 1980 to 110 in 2005. The preventative supervision of the state and provinces has as good as disappeared.

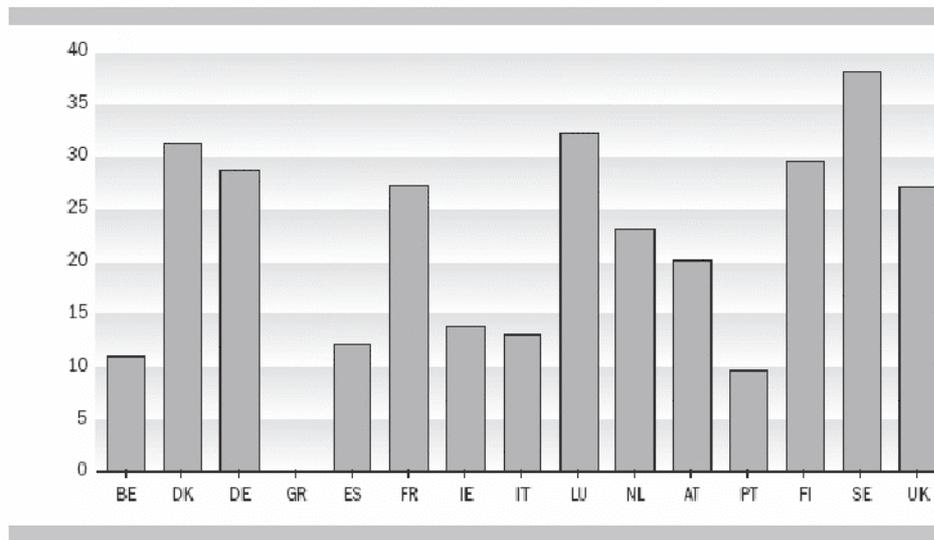
13.1.3 Indicators

Financial relationships

Decentralisation is mostly approached from a fiscal point of view - in other words, one considers decentralisation of the public resources. Extent is, however, to rough a measure for decentralisation. Can we speak of decentralisation when the local administration only acts as an agent for higher levels? Figures with respect to extent must always be considered in light of the autonomy of the local administration. Possible indicators with respect to autonomy are discretionary disbursement and the freedom to build up one's own resources. On the one hand there is the freedom to force certain sources of revenue up or down - to build up one's own resources. On the other hand, there is the freedom to spend income at one's own discretion - discretionary disbursement.

The figure on the following page combines the sum of the local administration with the discretionary disbursement as a measure of autonomy. The graph represents the product of the percentage of government expenditure that is disbursed by local administrations with the percentage of which the local government has a high degree of discretionary disbursement.

Figure 6.1. Figure 6.1: Spending on local governments in % of total government expenditure



Bron: Raad van Europa, 1997

Source: SCP²⁵¹

13.2 To what extent is the decentralised government administration subjected to free and fair elections, as well as to the criteria of openness, public accountability and responsiveness, in its functioning?

13.2.1 Legislation

Elections are held every four years for the composition of the municipal councils and the provincial parliaments. The conditions for nominating candidates and participation in the elections are laid down in the Electoral Act.

Municipalities

The management executive of the municipality consists of a council of the mayor and aldermen and is not directly elected. The councillors represent the people of the municipality and determine the broad lines of the municipality's policy. In order to become a member of the municipal council, one has to be a resident in that municipality, be at least 18 years of age and not have lost the right to vote. Non-Dutch citizens who have been registered for five years may also stand as candidates and vote for candidates the municipal council. The number of councillors depends on the number of residents. The mayor is appointed by the Crown, on the recommendation of the municipal council. Aldermen are appointed by the coalition parties of the council.

²⁵¹ Prestaties van de publieke sector. Een internationale vergelijking van onderwijs, gezondheidszorg, politie/ justitie en openbaar bestuur. Social and Cultural Planning Bureau, The Hague, September 2004, pg 274

The major cities - Amsterdam and Rotterdam - have municipal wards. These wards were established in order to bring the decision-making and task-execution processes closer to the citizen. For this purpose tasks and authorities are transferred from the municipal council, they can determine a part of their own policy and have their own budget and civil servants at their disposal. The ward councils are directly elected by the citizens of the ward in official elections, just as with standard municipal councils.

There are also neighbourhood or village councils in many municipalities who are allocated specific tasks and authorities by the municipal council and primarily have an advisory role. They represent the population of a certain neighbourhood or village, provide information on what is happening and are the official contact-point for the municipal council. There is no official nomination of candidates or elections for neighbourhood and village councils.

Provinces

The provincial executive [*College van Gedeputeerde Staten, GS*] forms the management executive of the province and is not directly elected. The governing board is formed by provincial parliaments. The members of the provincial parliaments are also entrusted with the special task of (indirectly) electing the members of the Senate. The Queen's Commissioner [*Commissaris van de Koningin, CdK*] is chairman of and member of the GS and is appointed by the Crown for a period of 6 years, with the possibility of an extension.

Water boards

Water board elections are also held every four years. Taking the relationship between the provinces and the water boards into account, these elections are generally held at the same time as the provincial elections. The basis for the composition of the administration is the interests of the involved parties and the contribution to the costs of the water board. The administrative and financial structure of the water board is determined in accordance with the principle of having an interest, contributing financially, having a say ('*belang-betaling-zeggenschap*'), also called 'the trio' ('*de trits*'). According to this principle there are four different categories (undeveloped, developed, commercially developed and residential) and different interests involved in the work and the tasks of the water board.

The water board's administration is elected through a different system than the one applied for municipal and provincial elections. The provincial government has laid down in the water board regulations how many seats are allocated to representatives of the different categories (article 11, section 1 of the Water Boards Act).

The electoral system also differs. The voter, who belongs to a specific category, can only vote for a person nominated as a candidate for that category. This electoral method is connected to the predominantly functional character of the water boards.

The management executive consists of a chairman and other members, the number of which is to be determined by the governing board, taking into account the representation of the categories in the governing board (article 40, section 1). The chairman [*watergraaf*] is appointed by royal decree for a period of six years, with the possibility of an extension. He or she also represents the water board in respect to external contacts and is authorised to enter into obligations on behalf of the water board. The governing board makes recommendations (article 46).

13.2.2 Implementation

As far as the course of the 2006 municipal elections are concerned, please refer to chapter 5 of this report and the more detailed information that is expected to be presented by the Ministry of the Interior and Kingdom Relations over the course of October 2006 in the report on trends in the state of the administration.

Openness, information, participation and objection are all of great importance to citizens who want to be informed on and/or want to exercise influence upon the municipal and provincial policy. Moreover, the Open Government Act (WOB) grants everyone who requests it the right to information. The provision of information can only be refused in a restricted number of cases. The WOB even instructs administrations to, in such an event - such as zoning plans - voluntarily provide the information as well as advice or open up documents for public inspection. Concerned parties can then lodge objections.

Council, parliamentary and other committee meetings are, in principle, open to the public. Concerned citizens generally get the chance to speak during committee meetings. Should citizens not be in agreement with certain decisions, then they can lodge an objection against that and consequently give notice of appeal. In order to do this, the citizen can approach the municipal objections committee and/or the complaints committee. In addition, the citizen can take his complaint to the National Ombudsman.

Since 1 January 2002 citizens have had the opportunity, in all municipalities, to submit an appeal for an advisory referendum to be held. Although the council is not necessarily bound to the results of the referendum, it will certainly have to take it into account.

Over the last few years the demand by citizens and companies for accountability of the municipality with respect to services has increased. That now happens in two ways: through the citizen's annual report and through quality charters.

Since the introduction of the dual system, one of the reasons the position of the municipal council has been strengthened was to expand the controlling function of the representation and to make the administration more responsive. The most important authorities are the determining of the budget, the determining of the regulations and the institution of council committees. An important part of the preparatory work takes place in these committees, which are established with respect to a specific field of policy. Aside from council members, citizens can also be appointed to these committees. In order to be able to exercise influence, citizens and special interest groups often gear themselves towards the council committees. The council of the mayor and aldermen can also establish task committees. Concerned citizens and/or experts often have a seat on these committees.

The Provinces Act states that provincial partners are authorised to set up committees. The most common committees are permanent parliamentary committees (also called advisory and support committees), wherein proposals by the GS and the implementation of policy are discussed. In part

as a result of that, an increasing number of matters can be settled in the permanent committees and thus no longer have to be raised in the parliamentary meetings. Aside from the permanent committees, steering committees are also set up for special topics, wherein experts and concerned parties can also have a seat.

13.3 How comprehensive is the collaboration between the government on the local level with relevant partners, associations and communities in the formation and execution of policy, as well as in the rendering of services?

13.3.1 Legislation

At a municipal level, cooperation in many fields with private partners in civil society has been a fact since time immemorial. There are, however, no statutory rules tied to this cooperation.

13.3.2 Implementation and Indicators

In the arena of healthcare, the municipality - within the framework of the implementation of legislation and rules - execute the direction. The actual implementation is left to various private and/or para-governmental institutions, such as the Municipal Health Services [Gemeenschappelijke Gezondheidsdiensten, GGD's], home-nursing associations [kruisverenigingen - Organisations of the Cross] and homecare institutions. The funding goes through a system from the central government. Contracts are frequently concluded with respect to the implementation. On the introduction of the WMO (Social Support Act), municipalities will be allocated a number of tasks that presently fall within the framework of the AWBZ (General Exceptional Medical Expenses Act) and are executed under the directorship of the central government.

In the framework of youth care, the municipality is responsible for a number of functions in the area of growing up, upbringing and family support. The execution of this is undertaken together with both professional private organisations and social organisations, as well as cooperation with other municipalities.

Within from municipal institutions, various private institutions and organisations are also occupied with sport and culture at a municipal level. In order to ensure that the needs of the citizens in the field of sport are harmonized, so far as possible, with the availability and opportunities of sports, many municipalities have a sports council. This sports council, wherein all sports and unions are represented, advises the municipal council with respect to various sports matters. In that way they have some influence upon the municipal policy.

With respect to culture, the same is applicable as it is for sport. Many municipalities have a cultural council, which advises the municipal council on various cultural matters.

In addition, municipalities also frequently have departments or civil servants who are specially tasked with these subjects. They are also contact persons for associations and for the setting up of various events.

When it comes to the economy, municipalities are in contact with and periodically consult a variety of companies, shops and institutions through local branch organisations such as the local Small and Medium-Sized Business association, shop-owners associations and suchlike.

Sports, culture and the economy determine, to an important extent, the vision of the municipality. And that is why municipalities attach a great deal of importance to good collaboration with the various organisations active in those areas, and regularly undertake consultations. However, because there are no statutory regulations for this collaboration, there is a danger that organisations have the opportunity of getting in touch with the municipal council themselves in order to pass on their concerns.

In the field of spatial planning, municipalities frequently work together with housing corporations and property developers. The zoning plan and the procedures with respect to it are municipal matters, while the further interpretation is increasingly being left up to one or more property developers. The danger here is that there are less and less opportunities for individual builders and property developers to determine the vision of the municipality.

13.4 Which measures, if any, are taken to solve publicly identified problems in this area? What degree of political priority and public support is devoted to this?

Dualism

With the introduction of the *Wet Dualisering Gemeentebestuur* and the *Wet Dualisering Provinciaal Bestuur* [acts pertaining to dualism in local government and on a provincial level, respectively], the position of the council and the provincial parliaments was strengthened and citizens obtained instruments such as the citizen's initiative and the advisory referendum so that they could exercise a more direct influence upon policy. In February 2004, the Leemhuis Commission was established in order to evaluate the *Wet Dualisering Gemeentebestuur*.²⁵² The roles within the municipal council, in particular, were examined. The implementation of the political system of 'dualism' appears to have had little effect in practice upon the quality of the governance. In general, registrars and councillors are under the impression that they received more opportunities, while aldermen and the mayor experience more troubles with this act. In the mean time, a quick scan local government has been developed, whereby counsellors, board members and civil servants too can assess the municipal reality with respect to administrative renewal.²⁵³ It is intended to serve as the basis for further improvements to dual (or two-tier) action at a local level.

At the start of 2005 the Hermans Commission was established and tasked with evaluating the *Wet Dualisering Provinciebestuur*. It emerged from this review that the implementation of a dual system was tackled and worked out in different ways in different provinces. The commission noted three inadequacies, which require a slight amendment to the act. They are: the appointment of delegates

²⁵² Report by the Stuurgroep Evaluatie Dualisering Gemeentebestuur "Aangelegd om in vrijheid samen te werken. Dualisering: bijsturing geboden" (The Hague 15 December 2004).

²⁵³ http://www.vernieuwingsimpuls.nl/producten/quick_scan_dualisme

from outside, the appointment of members of the Audit Court - which is now undertaken by the board, but should officially be performed by the provincial parliament - and the official roles of the delegates and the secretary in the appointment of the Queen's Commissioners (CdK). In addition, the Commission made the recommendations that the provincial parliaments profiled themselves more as representatives, that a majority executive was established when the parliamentary executive was composed, the role of the CdK was reconsidered and compensation was differentiated.²⁵⁴

Inter-administrative supervision

The Alders working Group issued recommendations on inter-administrative supervision in December 2005.²⁵⁵ It included a road map that can be used as a checklist and is intended to be used to determine whether inter-administrative supervision is necessary when new legislation is implemented or existing legislation is amended, and if it is necessary, what the best way to organise it is. The road map is the response to the conclusion of the Administrative working group that, when laws are implemented, what is regularly overlooked is the adaptation of supervision with respect to current insights. In practice what happens is that the existing remains intact and the new is embroidered upon it. That has created a mishmash of regulations and supervisory relationships.

Administrative pressure

When the administrative structure in a region or in a policy field is instituted in such a manner that the loss of effectiveness and/or efficiency occurs, then we are dealing with administrative pressure. It has emerged from a recent study (July 2006) that the structure of the inter-administrative relationships are considered to be the most significant cause of administrative pressure, followed by the administrative style or the cooperation with and between directors. Other causes include: lack of clarity about who must do what, ad-hoc policy on occasion of incidents and complex problems in combination with inadequate existing structures. For more detailed information, please refer to the report to be shortly released by the ministry of the Interior and Kingdom Relations on the state of the domestic administration.

Randstad

The analysis that the Randstad - the urban conglomeration in the Western hemisphere of the Netherlands - is under threat of losing the competition war with other regions in Europe if it is not administratively reorganised, is becoming a more broadly shared one. The question now at hand is whether the relationship between administrative pressure and economic performance is really like that. This was the reason why the Minister of the Interior established a commission under the leadership of former prime Minister Kok to examine the organisation of the Randstad. In addition, the Council for Public Administration is also publishing recommendations with respect to the administrative reorganisation of the Randstad.

Differences between municipalities

Municipalities can add value for citizens and win their confidence in many respects. Thereby, municipalities can truly make a difference for the citizen, as is stated in the *Commissie Lokaal Bestuur's* [commission established to examine local government] report. The 'right to differ' amongst the municipalities is one of the most significant conclusions of the report. The added value for the citizen comes through

²⁵⁴ Zonder wrijving geen glans". Report by the Commissie Evaluatie Provinciale Dualisering The Hague, 8 December 2005.

²⁵⁵ Report "Toe aan nieuw zicht op overheden." Bestuurlijke Werkgroep Alders, 7 December 2005

oppression through egalitarianism. Municipalities today actually support the differences and the balancing of interests at a regional level. This is the essence of the municipal democracy. The call for the equal treatment of people is however being echoed in the House of Representatives: facilities, regular expenses and policy must be, as much as possible, the same everywhere. This leads to a situation where an ever-decreasing amount of space is made available to local political considerations. The citizen does not experience the municipality as a physically close government. Municipalities must work more on the assumption of their own strength and identity and develop an administrative culture that is suited to their own community. That is why the municipalities need their right to differ to be acknowledged. This right is determined in the Constitution through better protection of the municipal autonomy. In addition, the municipal plurality would have more options through a completely revised Municipal Act. The commission also considers the role for the municipality in the development of civil society as being of increasing importance.

13.5 Summary

The extent of freedom with respect to policy and inter-administrative supervision form an indicator for the local autonomy of non-central government bodies. Further indicators of local autonomy are discretionary disbursement (the allocation of resources at one's own discretion) and the freedom to build up one's own resources. Local government accounts for approximately a quarter of all government expenditure. Over 90% of the municipalities' revenues are derived from the central government. Using discretionary disbursement and the freedom to build up resources as measuring sticks for local government, the Netherlands then occupies the middle ground in Europe.

Since the 80's, the central government has been characterised by the increasing decentralisation of government tasks to a municipal level. On the one hand, municipalities are in a better position than the central government to deliver tailored products and a balancing of interests in the light of local conditions. On the other hand, the government is appealed to with respect to the equal treatment of citizens - both in terms of rights and obligations as well as with respect to available facilities and treatment by the government. The *Commissie Lokaal Bestuur* concludes that the egalitarian attitude at a central level and the role of the supervisory institutions mar the added value of non-central governance and municipal autonomy. The commission also sees that the role of the municipality within the framework of developments with respect to civil society is increasingly important.

Elections for the representative bodies of the (territorially) decentralised government are regulated by law (in the Electoral Act). The municipal and provincial management executive is composed by the coalition parties in the municipal councils and provincial parliaments respectively.

The introduction of dualism to provincial and municipal government intends to, amongst other things, strengthen the controlling and decision-making functions of the parliamentary bodies. In addition, citizens have obtained instruments such as the citizen's initiative and the advisory referendum in order to be able to have a more direct influence upon government policy. It has emerged from evaluation of the dualism that the implementation of the dual system has as yet had little effect upon the quality of the administration.

Aside from instruments for obtaining further influence with respect to policy, the control by and accountability to citizens has also improved thanks to, amongst other things, the institution of quality charters and the citizen's annual report.

An inefficient and ineffective structure of inter-administrative relationships at a regional level is - according to research - seen as the most significant cause of 'administrative pressure' (multiple governmental levels devoting themselves to the same issues). The unclear distribution of authorities, the various administrative styles and ad-hoc policy on the basis of incidents are said to contribute. The discussion on the administrative reorganisation of the Randstad, which is considered as necessary, was one of the reasons for the investigation into the future organisation of mid-level government .

Part IV Democracy after the Nation-state

14. The International Dimension of Democracy

Are the external relationships of the Netherlands based on democratic principles? Is the Netherlands itself subjected to foreign influence?

The relationship between the international community and the Netherlands can clarify the functioning of democracy in two manners.

Firstly, democracy was originally based upon the sovereignty of the entire population. When important decisions are made in institutions that fall outside of the domain of the nation-state, the people lose their control of the institution of parts of their collective environment. This is detrimental to the democratic principle of the people's sovereignty.

Secondly, a democracy will, in all forms of international interaction, also have to act democratically. This means, amongst other things, that it recognises procedures in international forums and respects international treaties and law. A democracy within national borders ought to also disseminate that democracy outside of its borders. That means that the country must observe international obligations with respect to refugees and must also support democracy and human rights in other countries.

14.1 To what extent is the Dutch administration subjected to external economic, cultural or political institutions?

The vice-president of the Council of State, Tjeenk Willink, recently posited that the sovereign state - dependent on nothing and no one, no longer exists, if it ever did exist in the first place. The option is increasingly: participate in a cross-border legal system and exercise (modest) influence thereupon or protect your own autonomy and (thereby) be at the mercy of what other, more influential states unilaterally or collectively decide. The Netherlands opted for the former many years ago and thereby also for the conveyance of influence to external political institutions. The realisation, says Tjeenk Willink, that the European Union does not form a threat to the national state, but is actually the (only) saviour of national states, is absent. The national state can only keep its own legal system going, he says, in an increasingly close cooperation with others. The European democratic deficit is partially present in our own country too - in the lack of control by the Dutch Parliament. The Dutch Parliament must also be a European institution. As a result of the many years where the political and public debate was absent, the impression arose that Europe is overwhelming us. The European Union as an alibi for our own difficult choices. We are now suffering the consequences of that. At the same time, democratic (input) legitimacy is not or no longer guaranteed. Citizens frequently feel that decisions are made with respect to them, but not by them or on behalf of them. "The

shifting or displacement of politics is, in their view, not succeeded by the spread of democracy".²⁵⁶

The WRR points out the same trend in its report *De Staat van de Democratie*. A number of developments indicate, in its opinion, the shifting of national politics to other actors, mainly voluntary associations and semi-private hierarchies, multinational companies, multinational forms of sectoral and/or functional administration and the European Union.

In this section, the influences of international business, the EU and, in an extension of both, the power of lobbyists will be dealt with in succession. Firstly, however, the true extent to which the Netherlands is integrated in the global community will be discussed.

Globalisation Index

The table below shows a Globalisation Index, as it was determined by A.T. Kearney and Foreign Policy in 2005. The results are based on the impact of integration in the global community on the economic, personal, technological and political fields in a given country. Netherlands currently occupies the fifth place on this index. While a high degree of globalisation is not by definition at the expense of the national democracy, it does sketch out the large amount of influence that divergent non-statal actors can exercise upon the country and its politics.²⁵⁷ As a result, the danger that decisions are made outside of the appropriate democratic channels is a growing one. The figures in the table show the ranking of each country for that section, whereby it is noticeable that the Netherlands has a high score when it comes to the economic and political fields.

Table 14.1 Top ten of the 62 studied countries

2005 GI Ranking		Economic	Personal	Technologica	Political	Trade	FDI	International Organisation	UN	Peacekeepin	Treaties	Government Transfers	2004 GI Ranking
1	Singapore	1	3	11	32	1	1	29	3	41	47	2	
2	Ireland	2	2	13	19	4	2	12	11	28	22	1	
3	Switzerland	9	1	7	29	18	5	29	13	41	10	3	
4	USA	60	40	1	43	61	42	1	28	57	38	7	
5	Netherlands	5	11	8	4	8	4	5	17	6	6	4	
6	Canada	27	8	2	10	26	23	2	22	6	28	6	

²⁵⁶ Tjeenk Willink, H.D., "Overkoepelende slotbeschouwing tijdens het symposium – De betekenis van de Europese Grondwet voor de Nederlandse staatsinstellingen", (26 May 2005). Can be consulted via: http://www.raadvanstate.nl/speeches/speech_show.asp?speech_id=33

see also: Arts, B.J.M., 'Naar een mondiale democratie? De rol van niet-statelijke actoren', in: *The State of Our Democracy. Democratie voorbij de staat* (Amsterdam 2004) 95

7	Denmark	29	7	5	13	19	38	12	14	28	7	10
8	Sweden	12	10	9	16	21	6	17	12	6	40	11
9	Austria	10	5	14	2	14	12	12	2	6	8	9
10	Finland	15	20	6	15	33	7	12	7	28	13	5

Source: http://www.atkearney.com/shared_res/pdf/2005G-index.pdf

European Union

Traditionally, the turnout percentages for Europeans elections are lower than national elections and the municipal council elections. A low point was reached in 1999 - 29.9% - with which the Netherlands took up the rear together with the United Kingdom. During the last European elections, held in the Netherlands on 10 June 2004, the turnout had increased somewhat: 39.1% of the enfranchised Dutch people voted in June.²⁵⁸

Thus the Dutch citizen appears to attach relatively little value to the European elections, but at the same time blames the EU for having a great deal of influence upon Dutch regulations. Recent studies by De Jong/Herweijer and Bovens/Yesilkagit endeavoured to gauge this influence. And, although they state that this influence is not so great, it must be noted that they only investigated a limited part of EU law.²⁵⁹ On the other side we have the oft repeated by rarely founded assertion that 70% to 80% of Dutch regulations are imposed by Europe. So it is as yet difficult to make any definite statement about the influence of EU law upon Dutch regulations. Moreover, Princen and Yesilkagit argue that Europe - next to the official, direct influence - also exercise influence in an indirect manner upon the member states. Although this influence is practically impossible to gauge, it is agreed that it is extensive and can sometimes be even more powerful than direct influences.²⁶⁰

The government acknowledged the need for more insight into the influence of Europe, and at present a monitoring system is being developed.²⁶¹ In addition, a wide number of institutions - including the Council of State and the WRR, as well as the commissions Voorst tot Voorst and Verhoeve - have pressed for various reforms in order to be able to legitimately deal with Europe in an efficient and democratic manner. This report will consequently only briefly cover the most significant findings.

The literature mentions a number of cause for the feeling in the Netherlands that Europe is democratically deficient. The cause (and the solutions) is, however, mainly sought in the Dutch government itself and not in the allegedly coercive European institutions. Dutch politics is apparently be too uninterested in European regulations and allows the chance to exercise an influence upon them to pass by. A number of conclusions:

²⁵⁸ www.parlement.com

²⁵⁹ T.M.C. Asser Instituut, 'De invloed van EU-recht op de in Nederland geldende regelgeving', http://www.asser.nl/eurlaw/index.asp?sub_categorie=28

²⁶⁰ Ibid, 5

²⁶¹ Ibid, 5.

- Dutch politics is not sufficiently involved in policy preparation and considers itself too frequently stationed in an irreversible process when it comes to actual political decision-making.²⁶²
- The contribution of the Dutch ministers and civil servants in Brussels and the common result that is achieved there must be controlled at a national level by the parliament. The House of Representatives, especially, must involve itself in Europe and European decision-makers - just like its counterparts in other member states do.²⁶³
- The European democratic deficit is partially due to a lack of control by the Dutch parliament. It must also be a European institution.²⁶⁴
- The inter-departmental rapport is overwhelmingly reactionary in nature. Coordination is only implemented if the Commission submits a proposal - little attention is paid to the incubation processes.²⁶⁵
- The representatives, especially, must concentrate more upon the control of the contribution of the Netherlands to the European decision-making process.

In the extension to these findings, the Voorst tot Voorst commission concluded that a great need existed for the determination of clear strategic outlines for EU policy and early political guidance. A timely and thorough discussion should take place in parliament with respect to the outlines and the Dutch priorities.²⁶⁶

Further, the Dutch influence upon the policy that the EU collectively undertakes is still limited by two connected characteristics of the Dutch decision-making process. Firstly, domestic departmental autonomy is large, whereby the mutual rapport between and within ministries and with other administrations is frequently deficient. Secondly, the implementation is insufficiently taken into account. The consequence of European policy frequently only emerges later.²⁶⁷

The Council of State, in conclusion, warns against the danger of the alibi. Dutch politics uses the European Union as an alibi - an excuse - for its own difficult choices.²⁶⁸ This can create the illusion that Europe is overwhelming us. The same trend has been pointed out by de Beus and Pennings in their investigation into the Europeanization of Dutch politics. Political parties appear to, in general, only refer to Europe when it comes to policy where they cannot (or wouldn't like to) profile themselves.²⁶⁹

Yet still, the establishment of European institutions and the European decision-making processes also contribute to the unnecessarily limited influence of the national parliament on decision-making. The Netherlands is after all not represented by elected politicians in many European committees, but by ministers and their

²⁶² Kamerstukken II 2005/2006, 29 993, no 22 and 27, 7

²⁶³ Tjeenk Willink, "Overkoepelende slotbeschouwing.....", 4

²⁶⁴ Ibid

²⁶⁵ Kamerstukken II 2005/2006, 29 993, no 22 and 27, 8

²⁶⁶ 'Rijksbrede takenanalyse. Sturing EU-aangelegenheden', 32-33

²⁶⁷ Kamerstukken II 2005/2006, 29 993, no 22 and 27, 7

²⁶⁸ Tjeenk Willink, "Overkoepelende slotbeschouwing.....", 4

²⁶⁹ Beus, J. de en P. Pennings, 'Europeanisering van de Nederlandse politiek. Nog steeds een zaak voor de bovenlaag maar niet voor de gewone burgerij', in: Jaarboek DNPP 2004, Groningen

civil servants. As a result the government has gained influence at a national level over parliament. The ministers and civil servants, as representatives of the member state, have a more direct influence upon European legislation than the parliament, and they can shirk from being accountable to parliament.²⁷⁰ The controlling task of the national parliament has, in addition, only been partially taken over by the European Parliament. With respect to this, both the central government as well as parliament has proceeded with measures in order to assess (more emphatically) the subsidiarity and proportionality of (new) European regulations.²⁷¹

Outside of the European institutions, the additional phenomenon of the Brussels lobby perhaps plays an even more important role in the European decision-making process. This is concentrated upon below.

The "lobbyocracy"

Currently, between 15 000 and 20 000 official lobbyists are employed in Brussels. The majority of them - around 70% - represent the interests of international business. Another 20% serve the concerns of various governments, while the remaining 10% stand up for social organisations. Thanks to this ratio, multinationals have been able to evolve into the lead actors on the European political stage in the last twenty years. The businesses exercise a great deal of influence, both on an individual level as well as through lobby groups, upon the European Union's policy. The European Union is not a democracy, it is a lobbyocracy, Erik Wesselius of the Corporate Europe Observatory posits.²⁷²

Siim Kallas, vice-chairman of the European Commission, acknowledged this problem. In striving for a Europe that is more comprehensible to the citizen, he is endeavouring to create more transparency and efficiency in numerous areas. With the introduction of the green paper on the European Transparency Initiative, he hopes to create debate amongst all concerned parties. This debate must pertain to a greater transparency with respect to the Community's expenditure, a wider consultation with civil society and a clearer role for the lobbies and NGO's in the decision-making process of European institutions. The green paper was approved in May 2006 by the Commission.²⁷³

Economic dependency

B. Diederer (CBS) argues that the influence of multinationals upon the global economy has increased dramatically in the last few decades, while the influence of the governments of the involved sovereign states has simultaneously decreased. The UNDP points out that a partial shift of power has taken place from parliamentary representation to international institutions, multinationals and non-governmental organisations (NGO's). What does this statement mean for the functioning of the Dutch democratic constitutional state?

²⁷⁰ Princen, Sebastiaan en Kutsal Yesilkagit, 'Tussen Brussel en de Polder. De Europeanisering van Politiek en Bestuur in Nederland.' (Utrecht 2004) 6

²⁷¹ Letter to TK dated 19 May 2006 concerning the "Kabinetsanalyse Europese bezinningsperiode". See also www.nederlandineuropa.nl and the commissie subsidiariteitstoets established by the Senate and House of Representatives together (TCS, established on 18 March 2006). See <http://europapoort.eerstekamer.nl/9345000/1f/j9vvgv6i0ydh7th/vgllqc9mvrpx>

²⁷² Corporate Europe Observatory, 'De politieke macht van multinationale ondernemingen en de noodzaak van economische en politieke democratisering', in: *Voor de verandering. Alternatieven voor het neoliberalisme* (6 September 2003)

²⁷³ Kallas, Siim, http://ec.europa.eu/commission_barroso/kallas/transparency_nl.htm#3

The Netherlands is, for approximately two-thirds of its GDP, dependent on export, about 80% of which is destined for Europe, (especially Germany). Moreover, the Netherlands has a high degree of direct foreign investment as well as a considerable influence by top companies with a non-Dutch parent company.²⁷⁴ It is especially applicable to the Netherlands that the economic dependency on Europe is great. The Netherlands is a member of the Economic and Monetary Union (EMU) of the EU and employs the euro as its national currency. The monetary policy has thereby been transferred to the European Central Bank. The Netherlands retains responsibility for its own budgetary policy, but that must take place within certain European preconditions, as laid down in the Growth and Stability Pact. Furthermore, the Dutch economy has a small domestic market with an open character which, when it comes to economic growth, is greatly dependent upon developments in other (especially surrounding) countries. Finally, the Netherlands is a member of, amongst other bodies, the IMF and the World Bank. In striving for economic prosperity, the Netherlands is thus in various ways dependent on divergent foreign parties. To what extent the internal freedom to determine policy is actually influenced by this is difficult to determine. Nonetheless, vigilance is advised: The Dutch government has, through various international treaties (IMF, World Bank), anchored itself in neo-liberal policies, whereby the freedom to determine policy has become restricted, in the opinion of Erik Wesselius of the Corporate Europe Observatory (CEO). According to him, this means that the degree of democracy in the decision-making process will generally decrease and the democratic deficiency will increase. Democracy is being eroded, according to Wesselius, because the space for choices is limited. But that is also a natural result, he believes, of the Dutch economy being intertwined with the global economy to an extreme degree.²⁷⁵

14.2 To what extent are relationships with international organisations based on cooperation and transparency?

14.2.1 Legislation

The relationships between the Netherlands and International Organisations are all determined by treaties and are based upon cooperation between member states and a transparent decision-making process.

- Hence the Articles of Agreement (1944) for the World Bank and the IMF and similar arrangements for the regional development banks
- the UN charter for the UN and UN funds and programmes.

The Netherlands is either directly or indirectly represented in the governing bodies of these organisations. Furthermore, they are accountable for the policy implemented in annual reports. The responsible ministers are, in turn, accountable to the House of Representatives for all the policy implemented by them with respect to these organisations. For the World Bank and the IMF, this occurs twice per annum in the form of an AO^{xviii} prior to the annual meeting and the spring meeting of both institutions,

²⁷⁴ Diederer, Bert, 'De invloed van grote buitenlandse ondernemingen in de Nederlandse economie', 1-3

²⁷⁵ Wesselius, Erik, 'Interview met Erik Wesselius. Democratie / Democratisch tekort', 1-3. Can be found at: www.globalalternatives.nl/file/222

while for the UN it happens at any rate once per year prior to the General Assembly of the UN. Moreover, regular consultations take place with the House, at its request.

14.2.2 Implementation and Indicators

The Netherlands increasingly acknowledges the importance of the role of international organisations as instruments for realising certain policy objectives. The approximately f2.5 billion (€1.14 billion) that the Netherlands annually spends on 129 different international organisations underpins this image.²⁷⁶ In its report 'Contributions to International Organisations', the General Court of Audit reported on its investigation into perception of Dutch membership of 13 international organisations. The conclusions reached, though now a few years out of date, were divergent and are discussed below.

Firstly, the Court of Audit established that an overview of all memberships, coupled to the diverse types of contributions to international organisations, was not available. Thereby the basis for the composition of policy information, key statistics and the monitoring of trends and developments is absent. Shifts in types of contributions, whether or not guided by policy amendments, cannot be, for example, reproduced at a slightly higher aggregate level. Secondly, when it comes to accountability for the efficiency, the performance and the effects of international organisations, there is too much information available rather than too little. As a result, in the opinion of the Court of Audit, it is unclear with respect to many of these organisations whether they can achieve their goals at a reasonable cost. Further, when it comes to financial management, systematic reportage is not always undertaken and the recommendations with respect to that are only sluggishly followed up on. In conclusion it is, particularly with regard to the improvement of financial management in international organisations and improvement of information on the efficiency and effectiveness, not very obvious what the Netherlands contributes. This gives rise to the risk that, in identical cases, different instructions will be issued to the permanent representatives in the various organisations.

On the other hand, there was a trio of positive findings. Thus, the manner in which international organisations are accountable when it comes to legality can be judged positively. Although a few things can be commented on in the details, it can be concluded that the financial accountability and accounting documents predominantly satisfy accepted (international) standards and are checked in good time by independent external inspectors. In addition, the supervision of the Dutch ministers, which must lead to the positions taken by the Dutch representatives in the planning, is well regulated while there is also sufficient inter-departmental coordination.

In conclusion, the Court of Audit asks whether, with regard to the Parliament, the current manner of information provision is sufficient for the exercising of the right to determine the budget, where choices can be and/or must be made.²⁷⁷

²⁷⁶ See, for a (limited) summary: <https://www.cia.gov/cia/publications/factbook/geos/nl.html>

²⁷⁷ Rapport 'Bijdragen aan Internationale Organisaties', Tweede Kamer 1999-2000, 26 895, no 1-2

14.3 To what extent does the government support the UN human rights treaties and does it respect international law?

14.3.1 Legislation

It is laid down in the Dutch Constitution that the government must further the development of the international legal system (article 90 of the Constitution). Further, both the Dutch Constitution as well as a variety of jurisprudence state that stipulations contained in the treaties and decrees of organisations for international public law, which, by their contents can commit everyone, have binding power after they are published. (article 93 of the Constitution). This means that these stipulations impose direct obligations upon a Dutch citizen, as well as granting claim.

14.3.3 Implementation and Indicators

The Netherlands is a signatory of various human rights treaties, in particular: ²⁷⁸

- Universal Declaration of Human Rights (1948)
- European Convention for the Protection of Human Rights and Fundamental Freedoms (1950)
- International Convention on the Elimination of all Forms of Racial Discrimination (1965)
- International Covenant on Civil and Political Rights (1966)
- Optional Protocol to the International Covenant on Civil and Political Rights (1966)
- Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, CAT (1984)
- Second Optional Protocol to the International Covenant on Civil and Political Rights (1989)
- Convention on the Elimination of all Forms of Discrimination against Women, CEDAW (1979)
- Optional Protocol to the Convention on the Elimination of all Forms of Discrimination against Women (1999)
- Convention on the Rights of the Child (1989)
- International Covenant on Economic, Social and Cultural Rights (1966)

The Dutch government is subjected to these (and other) obligations that result from international (human rights) treaties. Special rapporteurs specialising in specific human rights can visit the Netherlands in order to gain information on the situation in the Netherlands. With respect to this, the EU also imposes obligations upon the Dutch government. The same is applicable - although to a lesser degree - to the Council of Europe and the OSCE. The Netherlands is party to the most human rights treaties and in this manner must respect international law. This has repercussions in the periodical reporting obligations the Kingdom has which result from them.

²⁷⁸ for these treaties, see http://www.minbuza.nl/default.asp?CMS_ITEM=MBZ405431

14.4 To what extent does the government respect international obligations in dealing with refugees and other asylum-seekers? To what extent is the immigration policy safeguarded against arbitrary discrimination?

14.4.1 Legislation

The 2000 Aliens Act regulates aliens' access to and residence in the Netherlands. The AC procedure [*Aanmeld Centrum*, application centre] has herein been provided with a statutory basis. The goal of the AC procedure is to filter out ungrounded and inadmissible applications within 48 procedural hours. This is intended to limit the long-term uncertainty of asylum applicants with respect to being accepted or repatriated. The Hoofdlijnenakkoord (outline agreement) further determines that all asylum applications are assessed in a strict and just manner, as well as rapidly and meticulously.

14.4.2 Implementation and Indicators

Criticism was levelled at the implementation of the AC procedure by various organisations. They reproach the Netherlands for negating complex matters through the AC procedure. As a result, the asylum seeker has too little time, peace and space and the time for (legal) assistance is limited. In combination with the strict application of article 4:6 AWB and the overly reticent review by the courts with respect to deviating decisions, the AC procedure is alleged to be associated with serious risks with respect to the meticulousness.²⁷⁹

In addition, in the last few years both national and international criticism has been levelled by, amongst others, the European Court of Human Rights (ECHR), the Council of Europe (CoE), the supervisory committee of the Convention on the Rights of the Child, the UNHCR and Human Rights Watch (HRW). This criticism was mainly aimed at the repatriation policy, repeated violations of the right to a family life and, recently, the fire in the asylum seeker's centre at Schiphol.²⁸⁰ The table below is for the most part derived from the stichting Vluchtelingenwerk Nederland (Dutch Council for Refugees) and provides an overview of recently voiced criticism.

Table 14.2 Indicative overview of cases and criticism on the treatment of asylum problems by the Dutch government.

Date of judgement	Organisation/institution	Criticism	Report/Case
2003	UNHCR	Interpretation of asylum procedures too narrow	
April 2003	HRW	AC procedure applied too quickly	
April 2003	HRW	Poor reception of asylum-seekers	
April 2003	HRW	Slack policy with respect to single under-aged asylum seekers	
January 2004	TCK	Children who are alone	
5 July 2005	EHRM	Violation of art. 3 European Convention of Human Rights	Incl. Said vs. Netherlands

Volkskrant; <http://www.volkskrant.nl/binnenland/article262564.ece>

²⁷⁹ Tweede Kamer der Staten Generaal, 19 637 Vluchtelingenbeleid, no 826 (2004-2004)

²⁸⁰ Volkskrant; <http://www.volkskrant.nl/binnenland/article262564.ece>

1 December 2005	ECHR		The Netherlands Tuqabo-Tekle vs the Netherlands
26 January 2006	CoE ECHR	Violation of the right to family life The Netherlands repatriation policy	Rodrigues da Silva and Hoogkamer vs the Netherlands
31 January 2006		Violation of the right to family life	
31 January 2006	ECHR	Violation of the right to family life	Sezen vs the Netherlands

In a response to the Council of Europe, the Minister for Immigration Policy and Integration, Verdonk, stated that the Commission's conclusion - based upon the report by Ms Zapfl-Helbling - that an effective repatriation of failed asylum seekers was necessary for the integrity and credibility of our asylum system. At the same time, she argues that the Dutch policy was based completely upon, and was in accordance with, international standards and conventions. (Geneva Convention on Refugees, ECHR and Convention on the Rights of the Child)²⁸¹

14.5 How consistent is the government in its support of human rights and democracy in other nations?

The Netherlands wants to protect human rights around the world and thus contribute to freedom, justice and dignity for each individual. In order to realise that ambition, the Netherlands contributes to norms. After the Second World War, the Netherlands actively cooperated in the genesis of international human rights instruments. In addition, the Netherlands promotes supervision of these norms. The Netherlands provides personnel and thought to, for example, the Human Rights Committee and special rapporteurs. The Netherlands makes efforts to have the universal standards of human rights applied globally, where possible through encouraging positive developments, and addressing countries that remain deficient in this respect. Since the end of 1999 the Netherlands has also had a human rights ambassador who endeavours to involve human rights in all the dossiers of the ministry of Foreign Affairs. In conclusion, the Netherlands plays a special role in the strengthening of the international legal system through housing a large number of bodies responsible for this system, such as the International Criminal Court and the International Criminal Tribunal for the former Yugoslavia.

The Netherlands attempts to, in various ways, contribute to the improvement of the human rights situation in third countries. The Netherlands has an active role in multilateral forums (UN, EU, Council of Europe, OSCE). Thus, the Netherlands was recently chosen by the newly established UN Human Rights Council and has devoted itself to the effective functioning of the Council. Through bilateral channels much attention is paid to human rights and democracy in the so-called 36 partner countries for development cooperation. In other 'third countries', human rights organisations are supported in their attempts to improve the human rights situation through separated funds. And finally, through various subsidies, both Dutch and a number of foreign NGO's are funded in order to complement the Dutch human rights policy.

²⁸¹ Speech Minister Verdonk; http://www.ind.nl/nl/inbedrijf/actueel/toespraak_verdonk.asp

The fact that the Netherlands is well-known abroad as a champion of human rights illustrated the following quote by Jan Egeland, UN under secretary for Humanitarian Affairs. "The Netherlands has probably become the most effective human rights advocate today."²⁸² Yet there is still domestic criticism of the human rights policy. D'66 politician Lars van Troost recently wrote: "For years the Netherlands has played a pioneering role in the fight against torture (and other human rights conventions). At present, the government however appears to have opted for a more expectant attitude. The emphasis appears to now lie more on the burdens that international inspection can cause rather than the benefits for the rest of the world."²⁸³

14.6 Which measures, if any, are taken to solve publicly identified problems in this area? What degree of political priority and public support is devoted to this?

Receiving asylum seekers

Over the last few years, criticism has been voiced on the quality of the asylum procedure in the Netherlands. This problem has received a large degree of political and public attention, whereby both the position of the asylum seekers as well as the concerns of Dutch society is highlighted.

The Netherlands in Europe

In the State of the European Union 2006-2007, the cabinet acknowledges that the government will have to continue at a national level with the promoting of dialogue on the place of the Netherlands in Europe, with the improvement of communication on Europe, increased attention for Europe in education and the improvement of the political guidance and coordination on European matters. Further, the cabinet is of the opinion that in the long term behavioural changes will be inevitable if the expanded Union (amongst others) is to become more democratic and transparent. The cabinet is an advocate of reinforcing the democratic standard of the Union.

14.7 Summary

Its high place on the globalisation index (5th) indicates that the Netherlands is, to a large degree, influenced by or dependent on external factors and actors. Various opinions say that the Dutch legal order can only be kept up through close cooperation with other countries. Due to the absence, for many years, of 'Europe', EU legislation and European cooperation from the public and political debate, citizens have - according to some - the feeling that things are decided about them when it comes to Europe, but

²⁸² Baehr, P. P. (Peter R.) "Human Rights in the Foreign Policy of the Netherlands" *Human Rights Quarterly* - Volume 24, Number 4, November 2002, pg 992-1010 [The Johns Hopkins University Press](http://www.jhu.edu/~ilw/pubs/humanrights.html)

²⁸³ Lars van Troost, 'Mensenrechten: een last voor Holland', <http://www.d66.nl/Mensenrechten%20een%20last%20voor%20Holland>

not on behalf of them. With respect to this, it has been pointed out in the public debate that inadequate control by the national parliament with regard to European foreign policy has led to a perception of a democratic deficiency in Europe.

Critics posit that shortcomings at the levels of both politics and the civil service have led to an insufficiently coherent and effective European policy. In this view, politicians would still not be sufficiently involved in the policy preparation and were therefore, in the actual political decision-making, often faced with an irreversible process. Interdepartmental rapport is, according to these critics, equally predominantly reactionary in nature. The contribution of the Dutch ministers and civil servants in Brussels and the common result that is achieved there is alleged to be controlled by the Dutch parliament in an overly restricted manner. There is now a great demand for the determination of clear strategic outlines of EU policy and early political guidance. The consequences of European decisions for the implementation of Dutch policy frequently emerge only later.

The Council of State, in conclusion, warns against the danger of the 'alibi'. Dutch politics uses the European Union as an alibi - an excuse - for its own difficult choices. This can create the illusion amongst citizens that 'Europe is overwhelming us'.

The slack of the democratic deficiency with respect to the Dutch influence on European decisions and legislation is not caught up by the European Parliament. It is not just the fact that the legitimacy and the controlling and legislative authorities of the European Parliament are not as great, but it is also due to the fact that the influence of special interest groups upon European politics is emphatically present.

The furthering of an international legal system by the Dutch government is laid down in the Constitution. International human rights treaties have a direct effect upon Dutch law. Exponents of these treaties, such as the International Criminal Court and the International Criminal Tribunal for the former Yugoslavia are established in The Hague. The Netherlands is additionally regarded as an effective champion of human rights.

Responsibility

This report was composed over the period of February-September 2006. the report is intended as a preliminary study with respect to policy-making in the next Cabinet. Thereby tips, recommendations and contributions from a great many people, active in many fields and departments, planning bureaus, non-departmental bodies, universities, research institutes and civil society organisations, have been gratefully employed.

The final draft, and thus the ultimate responsibility, lies with the Ministry of the Interior and Kingdom Relations.

The Hague, 5 October 2006

Appendices

I. List of abbreviations used

Institutions/organisations

AIVD: Algemene Informatie- en Veiligheidsdienst - General Intelligence and Security Service
CBS: Centraal Bureau voor de Statistiek - Central Bureau of Statistics
CIDI: Centrum Informatie en Documentatie Israël - Centre for Information and Documentation on Israel
CGB: Commissie Gelijke Behandeling - The Equal Treatment Commission
CCSS: Clingendael Centrum voor Strategische Studies - Clingendael Centre for Strategic Studies
CvdM: Commissariaat voor de Media - Media Authority
DNPP: Documentatiecentrum Nederlandse Politieke Partijen - Documentation Centre on Dutch Political Parties
ECHR: European Court for Human Rights
EVS: European Values Study
FIOD: Fiscale Inlichtingen en Opsporingsdienst - Fiscal Information and Investigation Service
GBA: Gemeentelijke Basisadministratie - Municipal Basis Administration
HRW: Human Rights Watch
IDEA: (international) Institute for Democracy and Electoral Assistance
ILO: International Labour Organisation
IND: Immigratie en Naturalisatiedienst - Immigration and Naturalisation Service
IPI: International Press Institute
IPO: Interprovinciaal Overleg - Association of Provinces
MIVD: Militaire Informatie- en Veiligheidsdienst - Military Information and Security Service
NCTb: Nationaal Coördinator Terrorismedebijding - National Anti-Terrorism Coordinator
Nma: Nederlandse Mededingingsautoriteit – Netherlands Competition Authority
No: National Ombudsman
NVJ: Nederlandse Vereniging van Journalisten - Dutch Union of Journalists
RVD: Rijksvoorlichtingsdienst - Government Information Service
CoE: Council of Europe (parliamentary assembly)
SCP: Sociaal Cultureel Planbureau - Social and Cultural Planning Office
SER: Sociaal Economische Raad - Social and Economic Council
SIM: Studie- en Informatiecentrum Mensenrechten - Human Rights Study and Information Centre
STAR: Stichting van de Arbeid - the Labour Foundation
TI: Transparency International
VNG: Vereniging van Nederlandse Gemeenten - Association of Dutch Municipalities
UNHCR: United Nations High Commissioner for Refugees

Legislation:

AWB: Algemene Wet Bestuursrecht - General Administrative Law Act
AWGB: Algemene wet gelijke behandeling - General Equal Treatment Act
ECN: European Convention on Nationality

ECHR: European Convention for the Protection of Human Rights and Fundamental Freedoms

PW: Politiewet - Police Act

RWN: Rijkswet op het Nederlanderschap - Netherlands Nationality Act

UDHR: Universal Declaration of Human Rights

Wet SAMEN: Wet Stimulering Arbeidsdeelname Minderheden - Promotion of Labour Participation of Ethnic Minorities Act

WOM: Wet Openbare Manifestaties - Public Assemblies Act

WIVD: Wet op de Inlichtingen en Veiligheidsdiensten - Intelligence and Security Services Act

II. List of tables and graphs

Table 1.1 Feelings of nationality amongst Dutch ethnic minorities (in percentages)

Table 1.2 Opinion per ethnic group on the integration of ethnic minorities

Table 1.3 Opinion on same-sex marriages from voting behaviour (parliamentary elections 2003)

Table 1.4 CGB discrimination grounds

Table 2.1 Confidence in the Dutch judicial system

Table 2.2 Confidence in Dutch judges

Table 2.3 Confidence in the judicial system, EVS 1999

Table 2.4 Opinions of respondents on legal facilities

Box 3.1 Illustrative overview of violence or the threat of violence with respect to expression

Table 3.2 Associations with violations of human rights

Table 4.1 Unemployment in terms of gender and origin as a percentage of the labour force

Table 4.2 Persons receiving social security as a percentage of the labour force

Graph 5.1 political preference House of Representatives 2002-2003; the floating voter

Table 5.2 Turnout for the House of Representatives elections (% of enfranchised people)

Table 5.3 Turnout for council elections (% of enfranchised people)

Table 5.4 Turnout figure for European Parliament elections (% of enfranchised persons)

Table 5.5 Turnout figures for provincial parliament elections (% of enfranchised persons)

Table 6.1 Membership of the political parties (currently) represented in the House of Representatives

Table 6.2 Use of parliamentary rights (average per annum, periods of four years) Table 6.3 Income of political parties in 2000

Table 6.5 Percentage of councillors who are members of an ethnic minority per party (2006)

Table 6.6 Municipal councillors according to origin and political party (2006)

Figure 7.1 Changing size of the workforce of the central government 2002-2005

Table 7.2 Confidence in public and political institutions, people of 15 years and older (in %)

Table 7.3 Number of motions and questions in the House of Representatives (2002-2005)

Figure 7.4 Chairmanship of commissions, by political party

Table 8.1 Proportionality and percentages realised for ECM's in Defence

Table 8.2 Composition of the Police

Table 10.1 Behaviour of news-consumers: supplementary use, media types (in percentages)

Table 10.2 Possession and employment of ICT and digital skills (percentage of the population, 2004)

Table 10.3 Illustrative overview of incidents between journalists and the law since 2000

Box 10.3 Illustrative overview of incidents between journalists and the law 2000

Table 11.1 Social participation by people of 18 years or older (in percentages)

Table 11.2 Membership of organisations, 18 years or older (in percentages, weighted)

Table 11.3 Overview of social participation (in percentages) in terms of ethnic groups and gender, 15-64 years, 2004/2005

Table 11.4 Women in political and administrative positions (in percentages)

Table 11.5 Male/female distribution in the government in terms of levels on the scale (in percentages)

Table 11.6 Voluntary work and the proportion of women (2003)

Table 12.1 Opinions about politics and social trust (in percentages, 16 years and older)

Figure 12.2 Confidence in political institutions

Figure 13.1 Expenditure by local authorities as a percentage of total government expenditure

Table 14.1 Top ten of the 62 studied countries

Table 14.2 Indicative overview of cases and criticism on the treatment of asylum problems by the Dutch government.

III Sources

In the composing of this report, grateful use was made of suggestions, tips, information and other contribution by, amongst others (employees of):

- Sociaal Cultureel Planbureau [Social and Cultural Planning Office]
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- Wetenschappelijke Raad voor het Regeringsbeleid [Scientific Council for Government Policy]
- Kiesraad [Electoral Council]
- VluchtelingenWerk Nederland [Dutch Council for Refugees]
- Peil.nl
- TNS NIPO
- Nederlands Juristen Comité voor de Mensenrechten [Dutch section of the International Commission of Jurists]
- Forum voor Democratische Ontwikkeling [Forum for Democratic Development]
- Centrum Informatie en Documentatie over Israël [Centre for Information and Documentation on

Israel]

- Ministries of Interior and Kingdom Relations, Defence, for Social Affairs and Employment, of Foreign Affairs, Justice and Education, Culture and Science

In addition, a large amount of source material was employed. As much reference as possible is made to this material in the text or in the footnotes. A considerable portion of it is publicly available via the Internet.

ⁱ Translator's note: The so-called 'autochtonen', people of Dutch origin

ⁱⁱ Translator's note: Literally: opportunity principle

ⁱⁱⁱ Translator's note: a mobile-home community is almost synonymous with a Roma settlement

^{iv} Translator's note: TBS stands for Terbischikkingstelling, literally "at the pleasure of the state"

^v Translator's note: The Evaluation Triangle (Evaluatiedriehoek) consists of the Ministry of Justice, the Ministry of the Interior and Kingdom Relations and the General Intelligence and Security Service

^{vi} Translator's note: The so-called najaarsoverleg

^{vii} Translator's note: literally: Alternative For Trade Union

^{viii} Translator's note: literally: Structure Act

^{ix} Translator's note: the person or persons charged with investigating whether a proposed cabinet formation will work

^x Translator's note: literally 'confidence rule' - a motion of confidence

^{xi} Translator's note: Public Management and Administration is a generic term, not a literal translation

^{xii} Translator's note: responsible for the maintenance of dykes

^{xiii} Translator's note: a district attorney, as it were

^{xiv} Translator's note: Not necessarily the correct title, but an appropriation

^{xv} Translator's note: The acronym means "together"

^{xvi} Translator's note: A member of a representative provincial council, a provincial parliament

^{xvii} Translator's note: PAO, the programme designed to create a 'different' or 'transfigured' government

^{xviii} Translator's note: *Algemeen Overleg* [meeting to discuss policy and current issues]