



International Convention on the Elimination of All Forms of Racial Discrimination

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Committee on the Elimination of Racial Discrimination

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Summary record of the 1635th meeting

Held at the Palais Wilson, Geneva, on Tuesday, 9 March 2004, at 10 a.m.

Chairperson: Mr. Yutzis

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The meeting was called to order at 10.10 a.m.

Consideration of reports, comments and information submitted by States parties under article 9 of the Convention (agenda item 6) (continued)

Fifteenth to sixteenth periodic reports of Netherlands (CERD/C/452/Add.3) (continued)

1. *At the invitation of the Chairperson, the members of the Netherlands delegation resumed their places at the Committee table.*

2. **Mr. Ramaer** (Netherlands) said that the Netherlands Government attached great importance to cooperation with NGOs but nonetheless considered that the drafting of the periodic reports was the exclusive responsibility of States parties.

3. The representative of the Netherlands said that the draft law ratifying the Framework Convention for the Protection of National Minorities of the Council of Europe was currently before the Dutch Senate for consideration and approval and should be adopted by the end of March 2004. On the other hand, the Netherlands had not ratified the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families since it was not in a position to comply with all the obligations it entailed. The Netherlands law on social benefits (resident status) restricted social security benefits and other similar allowances to Netherlands nationals and nationals of other countries holding a residence permit, which was contrary to the Convention on Migrant Workers. The Netherlands had signed the Convention on Cybercrime of the Council of Europe in 2001, as well as its additional protocol in 2003.

4. **Ms. Staäl** (Netherlands) explained that the Employment of Minorities Act, also known as the SAMEN law, which came into force in January 1998, was to have been applicable until the end of 2001, but had in fact been extended until 2003. The aim of the law was to make employers aware of the importance of the measures promoting the employment of minorities and to enable firms to manage a multicultural staff more easily. The evaluation carried out at the end of 2003 had concluded that its goals had been achieved and to continue the policy could be counter-productive in that it could stigmatize ethnic minorities.

5. The new instruments for promoting the employment of minorities were now focused essentially on strengthening branch-enterprise agreements. The Government's new employment policy was aimed among other things at promoting the voluntary registration of employees according to race, sex and ethnic background and at establishing a national management centre for employers that would spread the best practices adopted by employers to give equality of employment opportunity to members of ethnic minorities. In addition, the third central agreement on minorities concluded between employers and unions, which would come into force at the end of 2004, illustrated the new government policy regarding employment since it placed the emphasis on measures at the employer level.

6. Responding to Mr. Sicilianos who had expressed surprise at the large number of temporary measures favouring the employment of members of ethnic minorities, Ms. Staäl explained that the measures introduced to improve the situation of ethnic minorities in the job market were no longer necessary since the targets had been achieved. In the Netherlands, the measures concerned had lowered the unemployment rate among ethnic minorities from 22 percent in 1996 to 10 percent in 2000. However, certain ethnic groups sometimes enjoyed a better employment situation than others. For example, nationals of Suriname had the lowest unemployment rate of all the foreigners working in the Netherlands, even if the rate still remained twice as high as that for Dutch nationals.

7. With regard to wage differences, a pilot study carried out by the Labour Inspectorate on the situation of ethnic minorities in the workplace, based on the criteria of gender, ethnic origin and working hours, had not revealed any pay discrepancies. Another pilot study commissioned by the Ministry of Social Affairs and Employment on wage discrepancies at the macroeconomic level, undertaken in three enterprises, had similarly failed to identify any wage inequalities.

8. **Ms. de Pijper** (Netherlands), referring to the right to education and training, stressed that the Dutch government had developed policies aimed at improving infant school teaching particularly for the children of disadvantaged and poorly educated families. In 2004, the Dutch Government had allocated €60 million to schools catering for children from disadvantaged families. She also noted that primary and secondary establishments were obliged to provide teaching on multiculturalism.

9. The Ministry of Education, Culture and Science had drawn up intensive programmes for backward children and programmes to improve the academic levels in schools attended by a large number of children from ethnic minorities. To combat the tendency of white families not to send their children to schools catering for a large proportion of children from minority backgrounds, the Ministry had encouraged schools to conclude agreements with municipalities in order to balance the composition of the school population.

10. **Mr. Niehoff** (Netherlands) said that, under the new provisions applicable to the return of asylum seekers whose appeals had been rejected by the competent courts, when an asylum seeker proved cooperative while providing genuine proof that he could not return to his country, the Government could grant him a residence permit despite the court's decision. Moreover, asylum seekers who entered the Netherlands as a family were in no case separated or expelled separately. There were occasional exceptions to that rule - for example, when one of the family members failed to obtain refugee status as the result of a criminal record. Finally, the decision by the Council of State, whereby a residence permit could not be issued to children whose parents had themselves been refused a residence permit or who were not covered by the international refugee protection system, was totally in accord with the provisions of the Convention on the Rights of the Child, since the best interests of the child required that he or she should not be separated from the family.

11. **Mr. Perrenet** (Netherlands) said that illegal immigrants only enjoyed free health care in the Netherlands in the case of urgent medical need, the aim being to avoid encouraging illegal immigration. As for the health sector on the island of Aruba, it was not the responsibility of Government of the Netherlands and information on that subject would be transmitted to the Committee in the report of the Government of Aruba.

12. **Ms. Mattijssen** (Magenta) said that, to improve still further the very positive results already obtained by the Magenta Internet Discrimination Hotline, mentioned in paragraphs 39 to 45 of the addendum to the State party's report (CERD/C/452/Add.3), the Government had decided to strengthen coordination between Magenta, the police and the public prosecution service.

13. **Mr. Koekkoek** (Magenta) recognized that the number of persons from ethnic minorities in active police service was still rather low. However, if trainees were taken into account, it turned out that proportion of persons from ethnic minorities serving with the police was continuing to rise and that it had reached 5.8 percent in 2002, a relatively satisfactory figure given the composition of the population as a whole. However, further efforts were needed to promote acceptance of the idea among the general public and police officers in particular that members of ethnic minorities could form part of the police force.

14. **Ms. Vreecamp** (Netherlands) admitted that the proportion of complaints placed on file was higher in cases of discrimination than in other cases. However, the proportion was tending to diminish, amounting to only 11 percent in 2002 compared with 26 percent in

2000. However, the Government had ordered an enquiry into the question, and the results would be made known to the Committee in the next periodic report.

15. Ms. Vreecamp added that the police had been given new instructions concerning the handling of complaints of discrimination and that each complaint was now the subject of an enquiry aimed at identifying the suspect and of a report to the public prosecution service, which decided whether or not there was a case for instituting proceedings. It should be noted in that connection that the public prosecutor's office had received instructions to drop proceedings as little as possible.

16. **Ms. Mattijssen** (Netherlands) pointed out that the decision to prosecute in cases of discrimination did not rest with the Attorney General's Office alone and that private individuals could also lodge complaints with the police or prosecution service in such cases. The fact that no political party had been prosecuted since 1998 for incitement to racism did not mean that the Government had stopped monitoring the activities of extreme right-wing political parties. It was simply that there had been a tendency for racist behaviour by extreme right-wing militants to diminish. Moreover, the legislator had defined a framework within which the prohibition and prosecution of racial discrimination should take place. When handling such offences, the Prosecutor's Office demanded the penalties specified by law. However judges, who were independent of the political authorities, were free to impose lighter sentences than those demanded by the Public Prosecutor.

17. **Mr. Kuijer** (Netherlands) said that, under the current system in the Netherlands, anyone with a net income below 150 percent of the minimum wage had the right to free legal assistance, except if the case had no chance of success or if the sums in question were paltry. Unfortunately, out of respect for the privacy of the persons concerned, no statistics existed concerning requests for legal aid.

18. **Ms. Rabarison van der Laan** (Netherlands) pointed out that the Dutch government had for a number of years been implementing various measures in relation to town planning, the sale of social housing and the fight against organized crime with the aim of improving living conditions in disadvantaged neighbourhoods, whose inhabitants were not simply members of minorities but also underprivileged individuals.

19. **Mr. Koekkoek** (Netherlands) said that recent manifestations of Islamophobia and anti-Semitism were a cause of great concern to the Dutch Government. Specific measures had been taken to foster exchanges between religious leaders and members of their communities. Meetings had been organized at places of worship to promote dialogue among religions. Non-governmental organizations and civil society associations such as the Anne Frank Foundation played a key role in promoting public awareness of the problems of racism and anti-Semitism.

20. **Mr. Ramaer** (Netherlands) said that the situation of the Traveller community with regard to racial discrimination was significantly improved and that efforts by the Netherlands to avoid the segregation of the Gypsy and Sinti communities and to improve their living conditions by establishing better equipped sites to accommodate them had been successful. However, children's schooling remained a major problem. The Government had adopted strict rules concerning the accommodation of Travellers on the sites reserved for them so as to avoid abuses. For example, they had been asked to furnish proof that they had been living for over a year in a caravan. Mr. Ramaer moreover indicated that the Dutch Government was endeavouring to establish sites that were smaller but better distributed throughout the country.

21. **Mr. Shahi** said that the highly detailed information provided by the Dutch delegation testified to the extreme importance that the State party attached to combating discrimination in all its forms. He particularly welcomed the measures taken in the criminal justice field to punish those guilty of racist remarks and to reduce unemployment among

the members of minorities. However, he asked the delegation to explain why the unemployment rate remained three times higher among members of minorities than among persons of Dutch origin.

22. **Mr. Thornberry** said that, in its previous conclusions concerning the thirteenth and fourteenth periodic reports of the Netherlands (CERD/C/304/Add.104), the Committee had expressed satisfaction at the declared intention of the State party to apply the Council of Europe's Framework Convention for the Protection of National Minorities without regard to nationality. He asked the delegation why the State party had still not ratified the Framework Convention.

23. **Mr. de Gouttes** welcomed the clear commitment of the Dutch government to involve non-governmental organizations, civil society and religious leaders in combating xenophobia and racial discrimination. With regard to the spread of racism on the Internet, he wished to know how the State party was dealing with the problem of territorial jurisdiction, since many of the sites were located abroad, and asked whether the Netherlands was cooperating with other countries in that regard. He wished to have information on the measures taken against members of political parties guilty of racial remarks. He also asked whether an association representing a number of individuals could institute proceedings whose legal effects would be applicable to all concerned, even if all were not formally parties to the proceedings.

24. **Mr. Kjaerum** noted that girls from minority communities were more successful at school than boys and asked whether they enjoyed specific programmes. Noting that the State party provided statistical data disaggregated by nationality and ethnic minority, he would like to know the rules applicable to the treatment of statistical data disaggregated by ethnic group, race or nationality.

25. **Mr. Amir** asked whether there were any links between the development of community-based separatism ("communautarisme") and racial discrimination. He would also like to know in what cases freedom of expression could give rise to an offence punishable by law. Finally, he asked whether there were any positive discrimination programmes for employing members of national minorities in the civil service.

26. **Mr. Boyd** welcomed the priority given by the State party to improving the school performance of children from disadvantaged social classes and minorities and asked what specific measures had enabled young girls in particular from minority communities to perform better at school than previously.

27. **Ms. Rabarison van der Laan** (Netherlands) said that the Senate was considering a bill aimed at granting Friesians the status of national minority. She pointed out that they were the only minority in the country able to use their language in State schools and in all administrative procedures.

28. **Ms. Mattijssen** (Netherlands) said that, in its efforts to combat discrimination through the Internet, the Dutch judiciary was confronted by the problem of the place of the offence (*locus delicti*), the Dutch judge not being competent to pursue the authors of such offences resident in foreign countries. The isolated cases of discrimination referred to the courts to date had involved Dutch citizens, but if a case were to involve persons living abroad the Attorney General would be ready to cooperate with his foreign counterparts.

29. **Ms. Vreecamp** (Netherlands) said that a non-governmental association or organization could initiate legal action on behalf of persons who considered themselves wronged without the latter being formally parties to the proceedings. At the conclusion of the trial, those concerned received a copy in writing of the reasoned decision.

30. Dutch criminal law protected citizens against insults on the grounds of race, religious belief or sexual preference, among other things, as an offence against their honour

and reputation. Invectives against others were regarded as insults whereas offensive remarks did not constitute defamation. Finally, judges were generally lenient in the case of defamatory remarks made in the context of a public debate.

31. **Ms. Pijper** (Netherlands) explained that girls from ethnic minorities performed better in school than boys because they were more conscious of the importance of education for their future and because they feared being victims of multiple forms of discrimination. The speaker stressed that, under measures to promote gender equality, schools had to ensure that all children were treated on an equal footing with regard to education. Given the large number of questions posed to the delegation on that subject, the Dutch Government would deal with that question in detail in its next periodic report.

32. **Ms. Rabarison van der Laan** (Netherlands) said that the Dutch Government considered it was better placed to respond to the needs of ethnic minorities and to implement policies on their behalf if it possessed detailed statistics concerning them, in particular the numbers involved and their countries of origin. It was therefore planned to take account of the birthplace of those concerned for a variety of purposes, in particular schooling, work, housing allocation and criminal proceedings. By means of surveys and interviews, local authorities were able to build up a picture of the degree of economic and social integration of ethnic minorities.

33. **Mr. Herndl** expressed his appreciation to the large Dutch delegation for the quality of its replies and the productive dialogue established with the Committee. He particularly welcomed the many innovative ideas that had enabled the State party, since its initial report in 1973, to continue responding to the various requirements of the Convention, with particular regard to improving the situation of ethnic minorities from both the legal standpoint and in the areas of immigration, education, employment and housing. He considered the State party to be a model in that regard.

34. The speaker regretted that the law encouraging the employment of minorities had expired at the end of December 2003, and he hoped that the Government would maintain some of its relevant provisions. With regard to immigration, he regretted that reform of the law on aliens had tended to disadvantage - in terms of the prescribed deadlines - person seeking to enter Dutch territory for the purposes of family reunification as compared with those applying for immigration who did not have family in the Netherlands. He found that segregation still seemed to be a fact of life in the Netherlands and called for great vigilance by the State party.

35. Finally, he thanked the delegation for the information it had provided on what he considered a "third court of appeal", namely the fact that the Government could overrule the decision of the court of first instance as well as the Court of Appeal in order to grant a residence permit to asylum seekers who, despite their best efforts, had not been able to return to their country of origin, and he welcomed the amendments to article 137 of the Criminal Code, effective on 1 February 2004.

36. **Mr. Ramaer** (Netherlands) said he was very satisfied with the arrangements for consideration of the fifteenth and sixteenth periodic reports of the Netherlands, which, as in the case of the previous reports, had been conducive to the establishment of a constructive dialogue.

37. *The delegation of the Netherlands withdrew.*

The meeting rose at 12.55 p.m.