

Presentation to the Committee on the Elimination of Racial Discrimination

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Netherlands Institute for Human Rights

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Distinguished members of the Committee,

Thank you very much for giving us the opportunity to speak with you about racial discrimination in the Netherlands. My name is Adriana van Doijeweert; I am the president of the Netherlands Institute for Human Rights, the National human rights institution for the Netherlands, accredited with A-status. I am accompanied by a staff member: Leonie Huijbers.

Introduction

As our report shows, racial discrimination in the Netherlands is a serious and persistent problem in all areas. Large numbers of people cannot fully enjoy their rights. Discrimination exists in the field of employment, education, housing and in the public domain. It is clear that racial discrimination is not a series of unfortunate incidents, but rather a structural and systemic problem. The Institute welcomes that the government has recently acknowledged that institutional racism exists in our country and has taken a number of serious measures to address discrimination. The Black Lives Matter demonstrations and a report of a parliamentary inquiry into policies and practice by the Tax authorities on day care benefits prompted the government to step up its actions to address institutional racism. The steps that have been taken are most welcome. They could contribute to combating racial discrimination. Nevertheless, the Institute stresses that more is needed to guarantee that the systemic nature of discrimination is addressed. This requires a comprehensive and well-coordinated long-term strategy.

In this address, I will highlight a number of issues. I will first present a number of situations in which discrimination occurs, and the effectiveness of policy measures that are being taken. I will then go into further detail on the role of the government and its agencies.

This presentation concludes with a number of remarks on the need to further strengthen the institutional and policy framework in order to combat racial discrimination effectively, and the need to strengthen access to justice.

Discrimination in the enjoyment of social rights

Employment

I will start with discrimination in employment. Early July, the Institute published its annual status report. The topic is the impact of COVID-19 on human rights in employment. Our main finding was that - despite the many measures the government took to mitigate the impact of the pandemic on employment - some groups are more severely affected than others. We also concluded that this was not a coincidence.

Groups that were particularly hard hit, included people with a temporary contract and flexible working hours. They were the first to lose their jobs, while having no or only limited access to social security. A significant number of these flexible workers have an immigration background.

Unequal opportunities at the labour market are not just a result of the COVID-19 pandemic. We see that individuals with an immigration background are more often unemployed, work in lower sections of the labour market and have a lower income. Further, they more often have flexible contracts and work in low-paid jobs.

Indeed labour market discrimination is a serious and persistent problem in the Netherlands. A largescale study by the Netherlands Institute for Social Research concluded that many people with an immigration background experienced discrimination in access to employment. Research also showed that quite a number of employment agencies are willing to comply with discriminatory requests of employers on the grounds of ethnic origin by potential employees.

The government has taken various policy measures. These do not, however, set clear targets that focus on discrimination on the ground of race and religion. Further, more attention is needed to prevent and combat discrimination. Especially, in light of the serious risk that the COVID-19 pandemic aggravates existing inequalities. The Institute has therefore called upon the government to take specific policy measures to guarantee that persons who are at risk of discrimination have equal opportunities in accessing or re-accessing the labour market. If not, existing inequalities will be deepened and even more difficult to overcome.

Education

I now turn to discrimination in education. I find it particularly worrying that social and ethnic inequalities in secondary education have increased. Children from families with an immigration background and with a lower income and lower education, have a higher chance to receive a recommendation by their

teacher to follow lower level secondary education, than what they could be recommended on the basis of their school results.

Where in the past, education helped overcoming social inequalities, this is no longer always the case. Also in the field of education, the COVID-19 pandemic has had an impact that may have lasting effects. Children living in poorer households have fewer facilities at home to do their homework, and may not as easily call on their parents to help them with studying at home.

A closely related and equally worrying problem is the persistent discrimination in accessing internships. While welcoming the various measures taken by the government, the Institute has pointed out that the government needs to do more to address discrimination by employers and the responsibilities of schools in dealing with discrimination.

Housing

The third issue I address under this heading is discrimination in housing. Discrimination in access to housing at the rental market is a serious problem, as is shown by various studies. Measures have been taken, and legislation has been proposed to provide additional instruments to local authorities to combat discrimination. At the same time, however, there are still municipal policies and legislative acts that may disproportionately affect persons with an immigration background. For example, the act allowing for distinction in access to housing on the ground of socio-economic status, known as “the Rotterdam Act”, continues to be in force.

Discrimination and hate speech in the public domain

Hate speech and other forms of discrimination on the ground of ethnic origin or religion are widespread. These forms of discrimination take place online as well as offline. Especially since the rise of populist parties in the Netherlands, hate speech has increased. Such groups claim that the right to freedom of expression is a right without limitations. As a consequence, there is a trend to normalisation of racist speech in the public domain. This severely impacts the rights and dignity of people who are humiliated and discriminated against on the grounds of skin colour, ethnicity, religion, and national descent.

Ethnic profiling in law enforcement

There is substantial evidence of ethnic profiling during traffic control, identity checks, preventive searches, and border stops by law enforcement authorities. The National police has taken serious steps to prevent racial profiling, including the development of a professional code and a training module for officers. Monitoring the impact of these measures should be improved, because it is not clear to what extent the introduction of measures has the desired effect.

The Royal Netherlands Marechaussee, on the other hand, continues to allow for risk profiles where ethnic origin plays a role. The Marechaussee argues that ethnicity is only one of the factors that plays a role in selecting individuals at the

border for - what they call - preventive controls. At present the district court of The Hague is examining a case on the issue.

According to the Institute, there is a clear need for more legal certainty about the limits of legitimate profiling and racial profiling. Is the use of race as a factor only prohibited when it is a sole and decisive factor, or does its mere inclusion already mean that this is discriminatory? The Institute has undertaken a project to contribute to more clarity. In a recent position paper, it indicated that the use of race as a factor is allowed only when this can be objectively justified.

Intensify government policies and strengthen access to justice

The Institute welcomes a number of significant steps that have recently been taken. These include the forthcoming appointment of a National coordinator on racism and discrimination and the establishment of a steering group to improve coordination among ministries. The Institute itself has received additional funding to play a role as well. On the basis of the Equal Treatment Act it will judge in individual cases whether racial discrimination has occurred. Also we will develop trainings for public officials to prevent discrimination in their work.

The increased awareness and acknowledgement of the existence of institutional racism have led to several government initiatives to combat racial discrimination, including discrimination by state institutions. What has struck me deeply in the day care benefits scandal, that is described in our report, is that parents who were wrongfully accused of fraud and attempted to seek justice, were not heard for such a long time. In many cases the road to justice was long, full of obstacles and damaging in both financial as emotional sense.

I must also point out that there are signals that this specific scandal may not be an isolated problem. If this actually is an illustration of structural inequality and discrimination entrenched in laws, policies and practice, it is then clear that the root causes of the injustices must be tackled. A fundamental review of existing and new laws, policies and practices is necessary to detect whether and where racial bias and discrimination exists.

Specific attention is needed for the risk of discrimination that can occur when algorithms are used in automated or semi-automated decision making. The lack of transparency in the decision making process is of particular concern. For example, in the day care benefits scandal, it was unclear to parents with dual nationality why they were selected for additional controls, and which information was used to conclude that they had committed fraud. There is a risk that automated processes (unintentionally) discriminate against individuals on the grounds of race or any other ground. This is even more problematic as the data on which decisions are based, can be biased. Automated risk profiling and decision making can consequently reinforce or even amplify existing inequalities and discrimination. The Institute has pointed out that recently proposed legislation in which it is made possible for various state institutions to share, exchange and process data, contains such a risk.

Therefore, the government and other authorities involved must be vigilant, and should guarantee transparency and effective monitoring of the implementation of such legislation.

Complaining about racial discrimination

I will conclude with some remarks on access to justice for individuals who are victims of discrimination. Our report deals with the various possibilities that exist in the Netherlands to complain about discrimination and their effectiveness, which warrants improvement. Only a very limited number of reports are submitted to authorities, as victims do not expect that reporting to the police will have effect, nor that they will be treated respectfully. Furthermore, systemic discrimination - such as racial profiling by authorities - is hard to address through individual complaints alone. The Institute therefore finds it necessary to introduce a collective complaints procedure to deal with cases and situations of racial profiling.

Lastly, the Institute expresses the hope that the current discussions on racial discrimination and institutional racism will result in a structural improvement of the prevention of and protection against racial discrimination.

Thank you for your attention. I look forward to answering any questions you may have.