

Legal environment and space of civil society organisations in supporting fundamental rights

The Netherlands

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1 Five most significant civic space developments in 2020

1.1 Freedom of assembly and the fight against Covid-19

In the fight against COVID-19 various lockdown measures were implemented by the government which restricted social life but assemblies and demonstrations as covered by the Public Assemblies Act (*Wet Openbare Manifestaties*) were exempted from these measures. The lockdown measures were implemented by regional emergency ordinances from 16 March to 30 November. As of 1 December 2020, the lockdown measures are implemented by the national 'Emergency Act on measures against COVID-19' (*Tijdelijke wet maatregelen covid-19*).¹ While there was no general ban on demonstrations, the chair of the safety region (the Mayor of the most municipality of that region) has the authority to limit or ban demonstration.

On 28 May 2020 the preliminary relief judge (*voorzieningenrechter*) of the District Court The Hague decided that the Mayor of The Hague (as chair of the safety region) may limit demonstrations to a maximum of 30 participants under the regional emergency ordinance.² The case was initiated by action group Code Rood and the Public Interest Litigation Project (PILP), which is part of the Dutch Section of the International Commission of Jurists (NJCM).³ Action group Code Rood wanted to demonstrate in front of the Shell headquarters in The Hague with 100 people, in a square that allows the gathering of 300 people in accordance with the 1.5 metre distance rule. The action group had indicated that it will adhere to the anti-corona measures by keeping sufficient distance, arranging and wearing masks, facilitating the possibility of washing hands and disinfecting all protest materials regularly. The mayor of The Hague decided that no more than 30 people were allowed to demonstrate. The Mayor based his decision on the Public Assemblies Act, which makes it possible to impose restrictions on public demonstrations in the context of public health. The Mayor links this legal basis for restrictions to the regional emergency ordinance, which states that religious gatherings may only take place with a maximum of 30 people. Code Rood did not agree with this limitation of their right to demonstrate and started a procedure (a request for preliminary injunction) to ensure that the envisioned demonstration with 100 people can still take place. The preliminary relief judge refused the preliminary injunction request. According to the judge, the restriction by the mayor has been sufficiently motivated.

¹ The Netherlands, Emergency Act on measures against COVID-19' (*Tijdelijke wet maatregelen covid-19*) (2020), 1 December 2020, available at: <https://wetten.overheid.nl/BWBR0044337/2020-12-01>

² The Netherlands, District Court The Hague (*Rechtbank Den Haag*) (2020), Case nrs. SGR 20/3493 BESLU en SGR 20/3494 BESLU, 18 May 2020, available at: <https://pilpnjcm.nl/wp-content/uploads/2020/05/uitspraak-code-rood2-3.pdf>

³ Public Interest Litigation Project - Dutch Section of the International Commission of Jurists (2020), 'Legal action against restriction of right to protest under anti-corona measures lost', News release, 18 May 2020, available at: <https://pilpnjcm.nl/en/lawsuit-against-restriction-protests-under-corona-measures-lost/>

On 19 June 2020⁴ and on 27 June 2020⁵, the preliminary relief judge (*voorzieningenrechter*) of the District Court the Hague decided again in favour of the Mayor of The Hague who had banned two demonstrations planned by anti-lockdown action group virus madness (*viruswaanzin*) on 21 and 28 June. The demonstration on 21 June was banned because the demonstration could be larger than the action group had announced.⁶ As a result, the 1.5 meter rule could not be observed. In both cases the antilock down group challenged the Mayor's decision in the court. In both cases, the court decided in favour of the Mayor of The Hague. On 21 June 2020, despite the ban, some 2,000 protesters came to The Hague. The Mayor decided therefore to give permission for a smaller, shorter version of demonstration when people started gathering anyway, under the condition that everyone stayed 1.5 meters apart. The police intervened when a group of demonstrators, according to the police, football supporters sought confrontation with the police at The Hague Central Station.⁷ The police arrested about 400 protesters. On 28 June around 200 people showed up for the banned demonstration in The Hague. The police kept them away from the public square 'Malieveld', where the organizers wanted to hold the demonstration. 37 people were arrested for refusing to leave.⁸ Later in the year the anti-lockdown action group virus madness, renamed virus truth, were allowed to demonstrate in the Hague. For example, demonstrations were held on 23 August⁹, on 24 October¹⁰ and on 21 November 2020¹¹.

On 1 June 2020 a Black Lives Matter demonstration was held in Amsterdam on the Dam Square to protest against racism in the wake of the worldwide protests against the death of George Floyd. Organisers urged all participants to wear a mask or face protection and maintain 1.5 meter distance at all times. The mayor of Amsterdam (as chair of the safety region) gave permission the demonstration.

⁴ The Netherlands, District Court The Hague (*Rechtbank Den Haag*) (2020), Case nr. SGR 20 / 4222, 19 June 2020, ECLI:NL:RBDHA:2020:5577, available at: ECLI:NL:RBDHA:2020:5577

⁵ The Netherlands, District Court The Hague (*Rechtbank Den Haag*) (2020), Case nr AWB - 20 _ 4354 , 27 June 2020, ECLI:NL:RBDHA:2020:5865, available at:

<http://deelink.rechtspraak.nl/uitspraak?id=ECLI:NL:RBDHA:2020:5865>

⁶ NOS (2020), 'Coronaprotest in Den Haag verboden, organisatoren stappen naar rechter', 19 June 2020, available at: <https://nos.nl/artikel/2337788-coronaprotest-in-den-haag-verboden-organisatoren-stappen-naar-rechter.html>

⁷ NRC (2020), 'Politie Den Haag: vierhonderd arrestaties verricht', NRC, 21 June 2020, available at:

<https://www.nrc.nl/nieuws/2020/06/20/coronablog-21-juni-a4003497>

⁸ RTL Nieuws (2020), '37 arrestaties bij verboden demonstratie op Malieveld', News item, 28 June 2020, available at <https://www.rtlnieuws.nl/nieuws/nederland/artikel/5168198/malieveld-viruswaanzin-demonstratie>

⁹ Schouten, T. and De Waard. T. (2020), 'Zo'n duizend betogers demonstreren tegen coronamaatregelen op Malieveld', , <https://www.ad.nl/binnenland/zo-n-duizend-betogers-demonstreren-tegen-coronamaatregelen-op-malieveld~a27146a8/>

¹⁰ Metro (2020), 'Demonstraties tegen coronamaatregelen in Den Haag en Londen', Metro, 24 October 2020, available at: <https://www.metronieuws.nl/in-het-nieuws/binnenland/2020/10/demonstraties-tegen-coronamaatregelen-in-den-haag-en-londen/>

¹¹ Nu.nl (2020), 'Demonstratie Viruswaarheid met ruim honderd aanwezigen rustig verlopen', Nu.nl, 21 November 2020, available at: <https://www.nu.nl/den-haag/6091988/demonstratie-viruswaarheid-met-ruim-honderd-aanwezigen-rustig-verlopen.html>

Authorities had initially been expecting some 500 people to show up.¹² The actual number, which the municipality said was closer to ten times the original estimate, came as a surprise. It became so crowded that social distancing was impossible. The Mayor of Amsterdam was criticized in Parliament and the Amsterdam Municipal Council because of her decision not to disband the demonstration. The mayor apologised in the Municipal that the city authorities had not communicated to warn people about the crowd on Dam Square, and had not called on demonstrators to leave. Following the demonstration in Amsterdam, demonstrations against racism were held in several places in the Netherlands. For example: on 2 June 2020 in The Hague, on 3 June 2020 in Rotterdam, on 5 June 2020 in Utrecht and on 10 June in Amsterdam. During the demonstrations social distancing was maintained except for the demonstration in Rotterdam which was at the end disbanded.

1.2 Transparency of funding of civil society organisations

On 25 June 2020 a Committee of members of the House of Representatives published a report concluding that many mosques in the Netherlands are being funded by foreign organisations seeking to promote a hard-line, anti-democratic version of Islam.¹³ The committee voiced concern about the influence of countries such as Saudi Arabia, Kuwait, the United Arab Emirates and Qatar on the Dutch Muslim community. The list of donors is dominated by Salafi organisations, the vast majority of which fund mosques that share their fundamentalist interpretation of Islam. Donors also influence the appointment of mosque leaders, imams and preachers, as well as the type of education and literature on offer, the committee said in its report. On 17 November 2020, as response to this report, the government submitted a bill for a Transparency Civil Society Organisations Act (*Wetsvoorstel Wet transparantie maatschappelijke organisaties*) to the House of Representatives.¹⁴ The Bill will apply to foundations, associations, and religious organisations. The Bill consists of two parts: an information obligation that will apply to all civil society organisations, and a filing obligation for foundations. With regard to the obligation to provide information, the bill gives a number of government institutions designated by law (including the mayor, the Public Prosecution Service and the Tax and Customs Administration) the power to request information about the geographical origin, purpose and extent of donations (including inheritances and legacies) received (directly or indirectly) from countries outside a member state of the EU or EEA. The background to this obligation to provide information is the prevention of unwanted foreign influence on civil society organisations as a result of received donations. With regards to the filing obligation, the Bill contains the obligation for foundations (which are not

¹² Mühlberg, B. 'Roughly 5,000 join Black Lives Matter protest on Dam Square', *NL Times*, 1 June 2020, available at: <https://nltimes.nl/2020/06/01/roughly-5000-join-black-lives-matter-protest-dam-square-work>

¹³ The Netherlands, House of Representatives (*Tweede Kamer der Staten-Generaal*) (2020), (On)zichtbare invloed. verslag parlementaire ondervragingscommissie naar ongewenste beïnvloeding uit onvrije landen, available at: https://www.tweedekamer.nl/sites/default/files/atoms/files/eindverslag_pocob.pdf

¹⁴ The Netherlands, Minister for Legal Protection (*Minister voor Rechtsbescherming*) (2020), Wetsvoorstel Wet transparantie maatschappelijke organisaties, 20 November 2020, available at: <https://www.tweedekamer.nl/downloads/document?id=8dd7395a-01e6-4214-88e6-a346769405b6&title=Voorstel%20van%20wet.pdf>

already obliged to publish annual accounts) to file a balance sheet and a statement of income and expenditure with the trade register the Chamber of Commerce. Currently, Dutch foundations are required to draw up an annual balance sheet and a statement of income and expenditure. If it concerns a non-commercial foundation, these financial data do not need to be filed with the trade register of the Chamber of Commerce. This bill will oblige these non-commercial foundations to do so.

1.3 Land Information Manoeuvre Centre (LIMC) of the Ministry of Defence

On 15 November 2020 the Dutch daily newspaper 'NRC' disclosed that during the beginning of the Corona crisis, in March 2020, the Dutch military had set up a special data-analysing unit, the Land Information Manoeuvre Centre (LIMC) to gain insight into the social effects of the Corona crisis.¹⁵ The newspaper reports that the analysed data were used to predict social unrest. The Land Information Manoeuvre Centre collected a lot of data about groups such as Virus Madness (later renamed Virus Truth) or the Yellow Vests who oppose the various lockdown measures the government is taking to fight the Corona virus. The Ministry of Defence replies in the 'NRC' article that the Land Information Manoeuvre Centre does not investigate the behaviour of individuals because it is not allowed, that the Land Information Manoeuvre Centre only uses open sources and that their analyses are only for internal use. Journalists of the 'NRC' state that their research shows something else: that from the start the centre shares the analyses with, for example, the National Coordinator for Security and Counterterrorism and the National Police. Moreover, the 'NRC' states, the Land Information Manoeuvre Centre uses 'semi-closed sources', behavioural analyses and information from military liaisons in hospitals and nursing homes, in addition to open sources. It is the first time in its history that the Dutch military collects data on citizens. On 27 November 2020, the Minister of Defence informed Dutch parliament by writing that the data protection officer of the Ministry started an investigation and that pending this investigation the Land Information Manoeuvre Centre won't collect and analyse data.¹⁶ On 3 December 2020 the Minister of Defence stated in House of Representatives that she knew about the existence of the Land Information Manoeuvre Centre but she did not know it collected data from Dutch citizens.¹⁷ She also stated that the Centre did not have a mandate to collect data on citizens.

¹⁵ Rosenberg, E. and Berkhout, K. (2020), 'Hoe defensie de eigen bevolking in de gaten houdt', *NRC*, 15 November 2020, available at: <https://www.nrc.nl/nieuws/2020/11/15/hoer-het-leger-zijn-eigen-bevolking-in-de-gaten-houdt-a4020169>

¹⁶ The Netherlands, Minister of Defence (Minister van Defensie) (2020), 'Reactie op NRC-artikel van 15 november over LIMC, Letter to House of Representatives, 27 November 2020, available at: <https://www.rijksoverheid.nl/binaries/rijksoverheid/documenten/kamerstukken/2020/11/27/kamerbrief-reactie-op-artikel-leger-verzamelde-data-in-nederland/kamerbrief-met-reactie-op-artikel-nrc-over-leger-verzamelde-data-in-nederland.pdf>

¹⁷ Boon, F. and Berkhout, K. (2020), 'Op grond waarvan Defensie Nederlandse burgers in de gaten hield is onduidelijk', *NRC*, 3 December 2020, available at: <https://www.nrc.nl/nieuws/2020/12/03/op-grond-waarvan-defensie-nederlandse-burgers-in-de-gaten-hield-is-onduidelijk-a4022493>

1.4 Criminalisation of search and rescue operations at sea

On 13 November 2020 the House of Representatives adopted¹⁸ a motion¹⁹ urging the government not to support the guidance by the European Commission on the implementation of EU rules on the definition and prevention of the facilitation of unauthorised entry, transit and residence which is part of the new EU Migration Pact²⁰. This motion was put forward by the leader of the Forum for Democracy, Thierry Baudet, during a debate by the House of Representatives on the new Migration Pact. The motion singled out this passage of the recommendation: "in particular, the criminalisation of NGOs or any other non-state actors that carry out search and rescue operations at sea, while complying with the relevant legal framework, amounts to a breach of international law, and therefore is not permitted by EU law". The motion adopted by the House of Representatives urges the government not to support this recommendation and to find support among other EU Member States not to pass the recommendation. The goal of this motion is to keep open the option to criminalise search and rescue operations carried out by NGOs. A coalition of more than 30 NGOs (including Amnesty International and the Dutch Refugee Council) sent a letter to three political parties (VVD, SGP and CDA) which voted for the motion.²¹ The NGOs urges these parties not to support the criminalisation of search and rescue operations any further. The letter states that prosecuting rescue workers for carrying out rescue operations is in violation of international law. Furthermore, this coalition of NGOs started a petition urging members of parliament not to criminalise search and rescue operations.²²

¹⁸ The Netherlands, House of Representatives (*Tweede Kamer der Staten-Generaal*) (2020), Moties ingediend bij het VAO JBZ-Raad op 13 november 2020 (behandelvoorbehoud migratie-pact). Plenaire vergadering 12 november 2020, available at:

<https://www.tweedekamer.nl/kamerstukken/stemmingsuitslagen/detail?id=2020P18034>

¹⁹ The Netherlands, House of Representatives (*Tweede Kamer der Staten-Generaal*) (2020), Motie van het lid Baudet. Voorgesteld 11 november 2020, Parliamentary document (*Kamerstuk*) 32317, No.650, available at:

<https://zoek.officielebekendmakingen.nl/kst-32317-650.pdf>

²⁰ European Union, European Commission (2020), *Commission Guidance on the implementation of EU rules on definition and prevention of the facilitation of unauthorised entry, transit and residence*, 23.9.2020, available at:

https://ec.europa.eu/info/sites/info/files/commission-guidance-implementation-facilitation-unauthorised-entry_en.pdf

²¹ Noord-Holland Dagblad (2020), 'Brandbrief: stop criminaliseren van reddingswerk bij migranten', 24 November 2020, available at:

https://www.noordhollandsdagblad.nl/cnt/dmf20201124_88755766?utm_source=google&utm_medium=organic

²² De Goede Zaak (2020), 'Aan: Leden van de Tweede Kamer der Staten Generaal. Het redden van mensenlevens is geen misdaad!', Web page, available at:

<https://actie.degoedezaak.org/petitions/het-redden-van-mensenlevens-is-geen-misdaad>

1.5 Involvement of civil society organisation in the implementation of the CRPD

On 3 December 2020, the Netherlands Institute for Human Rights published the fourth report of its monitor on the implementation of the CRPD.²³ The report presents the situation in the Netherlands with regard to one aspect of the CRPD: the obligation imposed by article 4, lit 3 of the CRPD on States parties to consult with and actively involve people with disabilities, through their representative organisations, in the development and implementation of legislation and policies to implement the CRPD. This report is based on desk research and interviews with stake holders. The Netherlands Institute for Human Rights concludes that the possibilities for participation of people with disabilities in legislation and policy are not yet good enough in the Netherlands. The central government and municipalities often do not involve people with disabilities and organisations representing the interests of people with disabilities or involve them too late. As a result, the Dutch government does not comply with the obligations of the CRPD. In the report the Netherlands Institute for Human Rights provides a number of recommendations. The national government and municipalities must draw up rules about involving people with disabilities in the policy making process. In addition, they should make it easier for people with disabilities to participate in this process.

²³ The Netherlands, Netherlands Institute for Human Rights (*College Rechten van de Mens*) (2020), *articipatie van mensen met een beperking bij de totstandkoming van wetgeving en beleid. Jaarlijkse rapportage over de naleving van het VN-verdrag handicap in Nederland 2020 in the Netherlands*], Utrecht, College voor de Rechten van de Mens, available at: <https://publicaties.mensenrechten.nl/file/f145d12c-b4ac-4da2-a518-46745a8fb974.pdf>

2 Example of promising practice

Ruling Supreme Court 15 December 2020

On 15 December 2020 the Supreme Court²⁴ upheld the judgement by which the Court of Appeal ²⁵ convicted a number of activists who on 18 November 2017 blocked the A7 highway halting two buses taking anti-Black Pete campaigners to the town of Dokkum where an anti-Black Pete demonstration was planned by the action group Kick Out Zwarte Piet (KOZP) during the national entry of Sinterklaas. The activists were pro-Black Pete activists who wanted to stop the planned demonstration in Dokkum. The buses never arrived at Dokkum. In its judgement the Court of Appeal stresses that by their actions the pro-Black Pete activists prevented the anti-Black Pete campaigners from exercising their constitutional right to demonstrate. This judgement underlines that everyone must be able to exercise their right to protest in a peaceful manner. The Supreme Court in its ruling agreed with the Court of Appeal.

Black Pete (*Zwarte Piet*) is the helper of Saint Nicholas and during Dutch celebrations of Saint Nicholas Black Pete is traditionally played by a white person in blackface makeup but over the years protests against the racist stereotype have been growing. Campaigners against Black Pete character want to change Black Pete into a non-racist sooty Pete (*roetvegenpiet*). Protests by antiblack campaigners are sometime disrupted by counter-protesters who do not want to change the Black Peter character. On 15 November 2020 an anti-Black demonstration was held in Maastricht during which was disrupted by counter-protesters.²⁶ Tensions at the scene escalated, leading to violence and police intervention. The action group Kick Out Zwarte Piet (KOZP) had a permit from the municipality to demonstrate against the blackface character. But when counter-protesters gathered and the atmosphere became threatening, the riot police decided to intervene.

²⁴ The Netherlands, Supreme Court (Hoge Raad) (2020), Case. No. ECLI:NL:HR:2020:2020 , 15 December 2020, ECLI:NL:HR:2020:2020, available at: <http://deeplink.rechtspraak.nl/uitspraak?id=ECLI:NL:HR:2020:2020>

²⁵ The Netherlands, Court of Appeal Arnhem-Leeuwarden (Gerechtshof Arnhem-Leeuwarden) (2019), Case no. 21-006479-18, 31 October 2019, ECLI:NL:GHARL:2019:9290, available at: <http://deeplink.rechtspraak.nl/uitspraak?id=ECLI:NL:GHARL:2019:9290>

²⁶ Nu.nl (2020), 'KOZP-betogers verlaten Maastricht vanuit 'geheime locatie' na onrustige dag', Nu.nl, 15 November 2020, available at: <https://www.nu.nl/binnenland/6090599/kozp-betogers-verlaten-maastricht-vanuit-geheime-locatie-na-onrustige-dag.html>

3 Any other developments

3.1 Proposal to restrict the legal standing of civil society organisations

In its draft election programme for the 2021 elections for the House of Representatives, the political party Volkspartij voor Vrijheid en Democratie (VVD) includes a proposal to restrict the legal standing of foundations and associations so “they cannot litigate in the name of the public interest in order to force a political decision.”²⁷ The VVD is the party of Prime Minister Rutte and is the party with most seats in the House of Representatives and is likely to win the elections which are scheduled for 17 March 2021. The proposal was removed from the final election programme and replaced with a new one.²⁸ This new proposal aims to strengthen the possibilities for the court to assess the representativeness of organisations claiming to represent the public interest in civil proceedings. For example, by introducing an opt-out for citizens in civil proceedings. This would allow citizens to indicate that the proceedings are not being conducted on their behalf. Effective access to justice for citizens and interest groups will be guaranteed.

3.2 Bill prohibiting antidemocratic organisations

On 13 October 2020 the House of Representatives passed a bill which makes the prohibition of anti-democratic organisations easier.²⁹ The bill is currently under review of the Senate. The bill intends to amend Book 2 of the Dutch Civil Code by adding the possibility of prohibiting organisations whose aim is to overthrow or abolish the democratic constitutional state (*democratische rechtsstaat*). The bill lowers the bar for presentation of evidence by the Public Prosecution Service (*Openbaar Ministerie*). This makes it easier to prohibit and to dissolve organisations that threaten to disrupt society. The bill specifies in more concrete terms what is, or may be, in conflict with public order in the Netherlands. Public prosecutors can prove more easily that an organisation is, for instance, promoting hate and violence or that it presents a threat to national security. And the courts are given a stronger footing if they need to decide on a request by the Public Prosecution Service to prohibit an organisation. In addition, the bill ensures that this prohibition is more extensive. Leaders of an organisation which is banned can expect a directorship disqualification of three years or more. This prevents them

²⁷ VVD (2020), Samen aan de slag. Nieuwe keuzes voor een nieuwe tijd. Verkiezingsprogramma 2021-2025 (concept), available at: <https://www.vvd.nl/content/uploads/2020/11/Concept-verkiezingsprogramma-TK-VVD-2021-2025.pdf>

²⁸ VVD (2020), Samen aan de slag. Nieuwe keuzes voor een nieuwe tijd. Verkiezingsprogramma 2021-2025, available at: <https://www.vvd.nl/content/uploads/2021/02/Verkiezingsprogramma-VVD-2021-2025.pdf>

²⁹ The Netherlands, The Netherlands, Minister for Legal Protection (*Minister voor Rechtsbescherming*) (2020), Wijziging van Boek 2 van het Burgerlijk Wetboek ter verruiming van de mogelijkheden tot het verbieden van rechtspersonen, available at, <https://www.eerstekamer.nl/9370000/1/j9vkvfj6b325az/vlcxmlk2zxzy/f=y.pdf>

continuing their culpable activities unhindered in another organisation. Courts can also order the activities of an organisation to be halted during the legal proceedings. Failure to comply with such a court order becomes punishable. The penalty for continuing the activities of an organisation banned by the court is doubled, to a maximum of two years' imprisonment.