

Universal Periodic Review (UPR) for the Netherlands

In this report, ASSEDEL presents its observations for the Universal Periodic Review of the Kingdom of the Netherlands under 3 major subheadings, which are :

Police Brutality and Intolerance

Police brutality in the Netherlands is a controversial discussion in the recent years. Tomy Holten's case, who was killed by police violence, a case that has an identical nature to the George Floyd's case (May 2020, Minnesota, US), is one of them. The number of people who die during or immediately after police custody has raised by more than 50 percent in 2020.¹ Although direct 'color-based' racist violence can not be distinguished, the nature of the conduct, violence beyond self-defense is observable without "reasonable justification". While politicians are queuing up to condemn American police brutality, the Netherlands has just passed a law stating that police brutality in the Netherlands leads to lesser sentences. This means that an important percentage of the reports against agents were dismissed by the Public Prosecution Service. The penal code provides that officers can no longer be prosecuted for 'ordinary' offenses: a new article will be introduced in the criminal law stating that violence that was not in accordance with the official instruction is punishable. There will also be a separate court for police brutality cases.

The new law has further complicated the situation regarding police use of disproportionate force. Against the demonstrators who wanted to protest the Covid-19 measures, the police responded violently in different provinces of the Netherlands. While many people were detained during the demonstrations, many others were injured by the misconduct of the police force. The police violence has received a wide range of coverage in the Dutch media, leaving a very negative country perceptions where high democratic standards has been enjoyed for decades.

According to the report of Amnesty International, police violence has raised during the pandemic.² State intervention and abuse of power regarding Covid-19 has been observed in other countries as well, "justified" on the grounds of "protecting public health" that have resulted in deaths and injuries. There were also mass arrests, illegal deportations, forced evictions, and the aggressive crackdown on peaceful protests.

The Dutch police also followed the general trend in the world, and protests were banned and curfews were imposed on the grounds of protecting public health. Even peaceful protests were brutally suppressed, and unprotected and harmless individuals were dealt with by the

¹ <https://www.oneworld.nl/lezen/discriminatie/racisme/dit-zijn-de-george-floyds-van-nederland/>

² <https://www.amnesty.nl/actueel/regeringen-en-de-politie-moeten-ermee-stoppen-corona-te-gebruiken-als-dekmantel-voor-schendingen>

police in a hurtful way. Regarding a demonstration to protest the Covid-19 measures in Den Haag in March 2021, Amnesty International requested the mayor to initiate an investigation. Likewise, UN rapporteur Nils Melzer described the footage as the ugliest thing he had seen since the George Floyd incident.³

Recommendation

The Netherlands has been among the most democratic countries in the world for a long time. According to the latest data from the Economist Intelligence Unit, the Netherlands is the 10th most democratic country in the world.⁴ The fact that the country that antecedes democratic values is so prominent in terms of police violence that ultimately harms the positive perceptions. The legal regulation on the punishment of police violence, which started in 2016, was also passed by the parliament in 2019, but the ambiguity of the wording of the law could not alleviate the concerns about how the implementation would take place. Therefore, the legislation text needs to be clarified. Considering the cosmopolitan nature of the Netherlands, training the police units against possible uncontrolled and dangerous protests might be feasible. In this regard, the police units might collaborate with the countries with significant experience, as the training will provide a better understanding of the police in which situation and how to act.

Tax Authority (Belastingdienst) Nation and Ethnic Profiling

Dutch Tax Authorities have launched a series of studies to investigate individuals they suspect of tax evasion. The most striking part of these investigations was the criteria of having Dutch citizenship and a second nationality, that directly counted as being “usual suspects”. Tax Authorities have done ethnic profiling at the level of government agencies over the past decade, causing many people to suffer. Many people were blacklisted just because they were dual citizens and they suffered great victimization due to account errors. Although these victims received compensation from the state years later, they paid Tax Authorities large sums of money over the years for miscalculations. The event that led to the fall of the government is briefly as follows. The Tax and Customs Administration (Belastingdienst) has worked with a risk profile between 2011 and 2015. Based on the risk profile, people were selected for a check on the declaration. The profile consisted of five different criteria. Having a second nationality was one of the five criteria. The other four criteria are not yet known. According to RTL, an investigation was started into all people with a Ghanaian background.⁵ Of these five criteria, the second citizenship criterion creates a fully discriminatory control mechanism.

After a change in the law in 2015, information about the second nationality was no longer included in the Personal Records Database (BRP). Theoretically, the Tax and Customs Administration (Belastingdienst) no longer had this information. However, RTL writes: "In the allowances affair it turned out that the Allowances department of the Tax Authorities did keep old data about the second nationality for years and that those data could still be consulted by employees of Allowances." But the Tax Authorities deny that there was any question of ethnic profiling, RTL: "Within the Tax Authorities, sources say that selecting on nationality is not necessarily the same as discriminating based on race or origin."⁶ However,

³ <https://www.bnnvara.nl/joop/artikelen/vn-rapporteur-nederlandse-politie-schuldig-aan-marteling-bij-coronaprotesten>

⁴ <https://www.eiu.com/n/campaigns/democracy-index-2021/>

⁵ <https://www.rtlnieuws.nl/nieuws/artikel/5117616/belastingdienst-toeslagen-profileren-nationaliteit>

⁶ <https://www.trouw.nl/economie/belastingdienst-erkent-toch-sprake-van-etnisch-profileren~b91d1a45/?referrer=https%3A%2F%2Fwww.google.com%2F>

after this scandal, everything is not completely recovered. Research shows that Tax Authorities still use old citizen information in its database. Research conducted by PwC, an accounting firm commissioned by the Ministry of Finance, shows that Tax Authorities consider not having a western appearance, in addition to the old criteria, as a sufficient reason to blacklist citizens.⁷

Recommendation

Tax authority officials do not hesitate to persistently use discriminatory criteria. Many families have suffered because of the mistakes made by the officials. Afterward, large sums came out of the state's coffers to compensate for this grievance. Tax Authority, on the other hand, was subject to financial penalties. Despite this, the determination of the officials who maintain the discriminatory approach and recourse to the relevant responsible persons in case of compensation of the grievances, if necessary, will enable the employees to work more meticulously and avoid deliberate mistakes.

Discrimination over getting a driving license

To get a driving license in the Netherlands, you must pass the theoretical and practical exams, but if you have a license from a European Union member country or Switzerland, you can change it without an examination. Apart from this, those who came to the country as "kennismigrant" expats in 1995 are allowed to change their license regardless of where they came from. The relevant regulation was enacted by Annemarie Jorritsma, Minister of Traffic and state water affairs. Although the regulation was made to facilitate the arrival of expats in the country, there is clear discrimination for the individuals who immigrated to the country. Even if they have a driver's license in their own country, they can get a driver's license in the Netherlands after successfully passing the theory and practice exams. 40 percent of those who come to the Netherlands as expats come from India, where driving licenses can be purchased in some cases as it is reported.⁸ However, when you come as an expat, the driver's license, which is changed without question, is not applied to people who came to the country as immigrants in other ways, causing clear discrimination.

Recommendation

Although the Netherlands aimed to attract more brain drain to the country with this concession in 1995, there is a situation contrary to the essence of obtaining a driver's license. Because there should be no discrimination between expats who come as "kennismigrants" and those who come as normal immigrants in terms of obtaining a Dutch driver's license. This discrimination should be expanded to the advantage of other immigrants. If the situation in question is thought to pose a danger to traffic, giving this right only to expats will not reduce the danger in question.

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⁷ <https://www.nu.nl/economie/6180204/belastingdienst-schatte-frauderisico-regelmatig-in-op-uiterlijk-of-nationaliteit.html>

⁸ <https://eenvandaag.avrotros.nl/item/duizenden-expats-zonder-rij-ervaring-krijgen-nederlands-rijbewijs-cadeau-rijleraren-waarschuwen-voor-de-gevaren/>

