

**Contribution to the European Commission's 2025 Rule of Law report
The Netherlands**

We are giving our contribution as: "civil society/NGO"

Organisations names:

Netherlands Helsinki Committee (NHC)

Free Press Unlimited (FPU)

Transparency International Nederland (TI-NL)

Nederlands Juristen Comité voor de Mensenrechten (NJCM)

Lawyers 4 Lawyers

PILP

Main Areas of Work: *Justice System, Anti-corruption, Media Pluralism, Civic Space*

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About the contributing organisation(s)

1. The Netherlands Helsinki Committee (NHC) is a non-governmental organisation supporting catalysts of change who promote human rights and strengthen the rule of law and democracy in the OSCE area.
2. Free Press Unlimited (FPU) is committed to promoting and defending press freedom and access to reliable information, particularly in countries with limited (press) freedom.
3. Transparency International Nederland (TI-NL) strives for a world in which government services, the political world, business, civil society and citizens are free from corruption. The emphasis is on improving integrity, transparency and accountability in Dutch society.
4. Nederlands Juristen Comité voor de Mensenrechten (NJCM) works to promote and protect human rights in the Netherlands. NJCM is the Dutch section of the International Commission of Jurists (ICJ) and was founded in Leiden in 1974, where it is still based.
5. Lawyers for Lawyers (L4L) is an independent and non-political foundation which aims to promote the independence of the legal profession worldwide by supporting lawyers at risk. L4L was granted Special Consultative status with the UN Economic and Social Council in 2013.

6. PILP stands up for the protection of human rights and the rule of law in the Netherlands and in the Dutch legal sphere. PILP does this by advising on, supporting and conducting strategic litigation and legal proceedings.

JUSTICE SYSTEM

Judicial independence

⇒ *Appointment and selection of judges, prosecutors and court presidents*

Over the past year, an increasing number of concerns have been raised regarding the Council for the Judiciary. The Council represents the collective interests of the courts externally, ensures the provision of services transcending individual courts, oversees operational management and financial administration, and issues general instructions regarding operational matters as necessary.¹

In the current framework, members of the Council are appointed directly by the Minister of Justice and Security. The composition of the Council includes three judicial members alongside two non-judicial members, with the latter being subject to dismissal by the minister at any time. This arrangement underscores the substantial influence of political dynamics on the Council's operations.² Additionally, the term of appointment for members of the Council is set at six years, with the possibility of a single reappointment for an additional three-year term.

The minister holds the authority to appoint the board of the courts, which comprises three members, including the president, commonly referred to as the court president. Like the Judicial Council, board members do not enjoy lifetime appointments. Instead, they are appointed for a six-year term, with the option of a single reappointment for an additional three years.³

⇒ *Allocation of cases in courts*

A legislative proposal aimed at providing a formal legal basis for the Code of Case Allocation, as recommended by the European Court of Human Rights (ECtHR), is currently under consideration.⁴

⇒ *Independence (including composition and nomination of its members), and powers of the body tasked with safeguarding the independence of the judiciary (e.g. Council for the Judiciary)*

¹ Council for the judiciary (Raad voor de rechtspraak), *What does the Council for the judiciary do? (Wat doet de Raad van de rechtspraak?)*, <https://www.rechtspraak.nl/Organisatie-en-contact/Organisatie/Raad-voor-de-rechtspraak/>

² Margreet Fogteloo & Caspar Thomas, *We have too few guarantees (We hebben te weinig waarborgen)*, De Groene Amsterdammer, 24 January 2024, <https://www.groene.nl/artikel/we-hebben-te-weinig-waarborgen>

³ Ibid.

⁴ Mr. Online: *Professor of constitutional law: 'case allocation in the Netherlands is poorly regulated' (Hoogleraar staatsrecht: 'zaakstoedeling in Nederland gebrekkig geregeld')*, Mr. Online, 13 June 2022, [Hoogleraar staatsrecht: 'zaakstoedeling in Nederland gebrekkig geregeld' - Mr. Online \(mr-online.nl\)](https://www.mr-online.nl/artikel/zaakstoedeling-in-nederland-gebrekkig-geregeld); Parliamentary Paper No. 36243 of the Second Chamber (Tweede Kamer der Staten-Generaal) of 8 November 2022 to amend the Judicial Organisation Act, the Legal Status of Judicial Officers Act, the Council of State Act and some other laws (Wetsvoorstel tot wijziging van de Wet op de rechterlijke organisatie, de Wet rechtspositie rechterlijke ambtenaren, de Wet op de Raad van State en enige andere wetten (Kamerstuk 36243)).

A significant concern arises from the minister's authority to annul decisions of the Council and, indirectly, the court administration, as provided under sections 37 and 106 of the RO [Judiciary Organisation] Act. Furthermore, section 93 of the Act grants the minister the power to issue binding directives to the Council.⁵ The minister's claim of 'systemic responsibility' for the judiciary's proper functioning has sparked significant debate. The Supreme Court has firmly contested this stance, asserting that it compromises the judiciary's constitutionally guaranteed independence, a cornerstone of the rule of law.⁶ Similarly, the Venice Commission, in a joint opinion addressing judicial independence in the Netherlands, criticised this concept of systemic responsibility as being incompatible with the judiciary's role as an independent branch of government.⁷ Beyond this critique, the Venice Commission has called for a re-evaluation of the composition of the Council for the Judiciary. It also advocates legislative reforms concerning the procedures for suspension and dismissal applicable to the Council for the Judiciary and court boards.⁸

On 6 March 2024, a motion was passed that the appointment of members of the Council for the Judiciary on the Minister's nomination is undesirable from the perspective of the separation of powers. The motion requested that the government propose an amendment to the Judiciary Organisation Act that would reduce the role of the Minister in the appointment procedure for members of the Council for the Judiciary. Subsequently, in November 2024, another motion was adopted, advocating for the Judiciary Council to be empowered to make enforceable agreements with courts concerning financial and operational matters. However, it has been noted that granting the Council greater authority in this area is contingent upon first, or at least concurrently, strengthening its independent position to safeguard judicial autonomy and impartiality.⁹

On 2 December 2024, two judges took the rare step of publicly voicing their concerns regarding the erosion of the separation of powers. They highlighted the fragility of protections against political interference, warning, "What happens in Poland and Hungary can also happen here. It threatens the freedom of all citizens."¹⁰

⇒ *Accountability of judges and prosecutors, including disciplinary regime and bodies and ethical rules, judicial immunity and criminal liability of judges*

⁵ Camiel Driessen, *Politics can exert too much influence on the judiciary, say scientists: 'A malicious minister has all the buttons to turn' (Politiek kan te veel invloed op rechterlijke macht uitoefenen, zeggen wetenschappers: 'Een kwaadwillende minister heeft alle knoppen om aan te draaien')*, NRC Next, 24 October 2024, [Politiek kan te veel invloed op rechterlijke macht uitoefenen, zeggen wetenschappers: 'Een kwaadwillende minister heeft alle knoppen om aan te draaien' - NRC](https://www.nrc.nl/nieuws/2024/10/24/politiek-kan-te-veel-invloed-op-rechterlijke-macht-uitoefenen-zeggen-wetenschappers-een-kwaadwillende-minister-heeft-alle-knoppen-om-aan-te-draaien)

⁶ Paul Bovend'Eert, *Constitutional Law Conference #6: The Independence of the Judge. Adequately guaranteed in parts, but there are also certain risks (Staatsrechtconferentie #6: De onafhankelijkheid van de rechter. Op onderdelen afdoende gewaarborgd, maar er zijn ook zekere risico's)*, Nederland Rechtstaat, <https://www.nederlandrechtsstaat.nl/staatsrechtconferentie-6-de-onafhankelijkheid-van-de-rechter-op-onderdelen-afdoende-gewaarborgd-maar-er-zijn-ook-zekere-risicos/>

⁷ Paul Bovend'Eert, *Strengthening the Rule of Law. Better guarantees for judicial independence (Versterking van de Rechtsstaat. Betere waarborgen voor rechterlijke onafhankelijkheid)*, Nederlands Juristenblad, 22 January 2024, https://www.inview.nl/document/ide48536d91a144e6c9892f6ec8df20b50/nederlands-juristenblad-versterking-van-de-rechtsstaat-betere-waarborgen-voor-rechterlijke-onafhankelijkheid?ctx=WKNL_CSL_85&tab=tekst

⁸ *ibid.*

⁹ Mr. Online: *The president of the Amsterdam court also wants the RvdR to be more independent (Ook president van Amsterdamse rechtbank wil de RvdR onafhankelijker)*, Mr. Online, 25 November 2024, <https://www.mr-online.nl/ook-president-amsterdamse-rechtbank-wil-rvdR-onafhankelijker/>

¹⁰ [Nexis Newsdesk® \(lexisnexis.com\)](https://www.lexisnexis.com/nl/newsdesk/nexis-newsdesk).

Another vulnerable area highlighted in the ongoing debate is the disciplinary system for judges. In the Netherlands, the disciplinary process for judges operates through two channels: first, via the Attorney General at the Supreme Court, with a judgment that is publicly accessible, and second, via the president of the court, whose decisions are not made public. Through the latter route, the minister could exert influence, as he appoints and reappoints the president. While the prevailing culture in the Netherlands suggests that this influence does not occur, it remains a possibility.¹¹ The Venice Commission has called for legislative reforms concerning the disciplinary framework.¹² It also pointed out that the rule of law can quickly come under pressure from populist political developments. Constitutional and legal safeguards, therefore, provide more certainty in maintaining the rule of law.¹³

⇒ *Independence/autonomy of the prosecution service*

Concerns about political influence are also present within the Public Prosecution Service. The appointment of the Attorney General, made by the Minister of Justice and Security, is conducted without clear procedures, raising questions about transparency and accountability.¹⁴ Furthermore, the Venice Commission has criticised the possibility for the minister to issue special instructions to members of the Public Prosecution Service. In this context, the Commission calls for stronger legal safeguards, particularly suggesting that the minister's power to issue instructions for non-prosecution should either be abolished or restricted to exceptional circumstances by law.¹⁵

⇒ *Independence of the Bar (chamber/association of lawyers) and of lawyers*

In 2024, concerns over the extent to which lawyers in the Netherlands can operate freely and independently from external interference or pressure persisted. Research commissioned by the Dutch Bar Association revealed that 55% of lawyers faced aggression, threats and/or intimidation at least once in 2024.¹⁶ Especially lawyers working in certain areas of law, such as criminal law, family law and immigration law, reported that they are increasingly the subject of different forms of harassment from third parties in connection to the nature of the cases or type of clients they represent. For instance, on 14 December 2024, a lawyer faced a cyberattack and received threatening

¹¹ Camiel Driessen, *Politics can exert too much influence on the judiciary, say scientists: 'A malicious minister has all the buttons to turn' (Politiek kan te veel invloed op rechterlijke macht uitoefenen, zeggen wetenschappers: 'Een kwaadwillende minister heeft alle knoppen om aan te draaien')*, NRC Next, 24 October 2024, [Politiek kan te veel invloed op rechterlijke macht uitoefenen, zeggen wetenschappers: 'Een kwaadwillende minister heeft alle knoppen om aan te draaien' - NRC](https://www.nrc.nl/document/ide48536d91a144e6c9892f6ec8df20b50/nederlands-juristenblad-versterking-van-de-rechtsstaat-betere-waarborgen-voor-rechterlijke-onafhankelijkheid?ctx=WKNL_CSL_85&tab=tekst)

¹² Paul Bovend'Eert, *Strengthening the Rule of Law. Better guarantees for judicial independence (Versterking van de Rechtsstaat. Betere waarborgen voor rechterlijke onafhankelijkheid)*, Nederlands Juristenblad, 22 January 2024, https://www.inview.nl/document/ide48536d91a144e6c9892f6ec8df20b50/nederlands-juristenblad-versterking-van-de-rechtsstaat-betere-waarborgen-voor-rechterlijke-onafhankelijkheid?ctx=WKNL_CSL_85&tab=tekst

¹³ Ibid.

¹⁴ Margreet Fogteloo & Caspar Thomas, *We have too few guarantees (We hebben te weinig waarborgen)*, De Groene Amsterdammer, 24 January 2024, <https://www.groene.nl/artikel/we-hebben-te-weinig-waarborgen>

¹⁵ Paul Bovend'Eert, *Strengthening the Rule of Law. Better guarantees for judicial independence (Versterking van de Rechtsstaat. Betere waarborgen voor rechterlijke onafhankelijkheid)*, Nederlands Juristenblad, 22 January 2024, https://www.inview.nl/document/ide48536d91a144e6c9892f6ec8df20b50/nederlands-juristenblad-versterking-van-de-rechtsstaat-betere-waarborgen-voor-rechterlijke-onafhankelijkheid?ctx=WKNL_CSL_85&tab=tekst

¹⁶ Ipsos I&O: *Aggression, threats and intimidation aimed at lawyers – survey 2024 (Agressie, bedreiging en intimidatie bij advocaten – meting 2024)*, July 2024, www.advocatenorde.nl/document/rapport-agressie-bedreiging-intimidatie-advocaten-definitief.

emails reportedly for representing a suspect in a high-profile criminal case.¹⁷ In two isolated incidents in October 2024, law firms in Amsterdam and The Hague were targeted with explosives after office hours, seemingly to intimidate staff.¹⁸

Public officials, politicians, and media increasingly use harmful rhetoric against lawyers working on politically sensitive cases, discrediting their professional activities. In parliamentary debates, politicians referred to lawyers representing environmental NGOs in strategic litigation against the state as “activistic lawyers”¹⁹ and sought to restrict access to Immigration and Naturalisation Service (IND) work instructions to prevent asylum lawyers from being able to “use them *again*”.²⁰ Immigration lawyers are often viewed as profiting from the ‘asylum industry’ rather than simply acting in their client’s best interest. In one case, the Dutch Prosecutor’s Office unlawfully prosecuted two immigration lawyers for fraud and human trafficking based on their legitimate legal assistance to Turkish migrants and asylum seekers.²¹ Media coverage characterised the lawyers’ activities as “legal tricks”²² and falsely accused the lawyers of “unethical behaviour”,²³ as later rebutted by the President of the Dutch Bar Association.²⁴

Lawyer-client confidentiality also faces increasing pressure. The 2023 amended bill to the Penitentiary Principles Act, aimed at combatting organised crime, proposed visual supervision of lawyer-client meetings in high-security prisons and limits the number of lawyers per client to two.²⁵ While the Council of State deemed a proposed Parliamentary amendment to the bill that would allow

¹⁷ NOS: *Lawyer Spong: Cyber-attack linked to supporting Tarwekamp-suspect* (Advocaat Spong: Cyberaanval vanwege bijstand aan Tarwekamp-verdachte), NOS, 14 December 2024, <https://nos.nl/artikel/2548276-advocaat-spong-cyberaanval-vanwege-bijstand-aan-tarwekamp-verdachte>.

¹⁸ Jesper Roele and Olaf Heyblom, *Explosion at law firm Spuistraat: ‘Extremely loud bang’* (Explosie bij advocatenkantoor Spuistraat: ‘Niet normaal harde knal’), Het Parool, 14 October 2024, www.parool.nl/amsterdam/explosie-bij-advocatenkantoor-in-spuistraat-niet-normaal-harde-knal~b6e405d9/; NOS: *Explosion at law firm in The Hague* (Explosie bij advocatenkantoor in Den Haag), NOS, 22 October 2024, <https://nos.nl/artikel/2541762-explosie-bij-advocatenkantoor-in-den-haag>.

¹⁹ House of Representatives (The Netherlands), *Plenary report 41st meeting* (Plenair Verslag 41e vergadering), 13 February 2024, contribution to the debate by Mr. De Roon, Member of the Dutch Parliament (PVV; *Party for Freedom*), www.tweedekamer.nl/kamerstukken/plenaire_verslagen/detail/2023-2024/41.

²⁰ House of Representatives (The Netherlands), *Plenary report 66th meeting* (Plenair verslag 66e vergadering), 17 April 2024, contribution to the debate by Mr. Brekelmans, Member of the Parliament (VVD; *Party for Freedom and Democracy*), www.tweedekamer.nl/kamerstukken/plenaire_verslagen/detail/2023-2024/66.

²¹ Court Amsterdam (The Netherlands), Judgment of 7 June 2022, ECLI:NL:RBAMS:2022:3127, (Seizure of physical files and data carriers under lawyer as suspect), <https://uitspraken.rechtspraak.nl/details?id=ECLI:NL:RBAMS:2022:3127&showbutton=true&keyword=mensenhandel,immigratie,IND,Turks&idx=3>

²² Andreas Kouwenhoven, Romy van der Poel, Martin Kuiper, *Suddenly two lawyers are suspects. ‘I could only think of one thing: what in god’s name has the Public Prosecutor started?’* (Ineens zijn twee advocaten verdachten. ‘Ik dacht maar één ding: waar is het OM in godsnaam aan begonnen?’), NRC, 26 April 2024, www.nrc.nl/nieuws/2024/05/20/een-advocaat-is-partijdig-en-onafhankelijk-a4199369.

²³ NRC, *Litigation as a cover-up is unethical behaviour* (Procederen als dekmantel is onethisch gedrag), NRC, 1 May 2024, www.nrc.nl/nieuws/2024/05/01/procederen-als-dekmantel-is-onethisch-gedrag-a4197562.

²⁴ President of the Dutch Bar Association, Robert Crinle le Roy, *A lawyer is subjective and objective* (Een advocaat is partijdig én onafhankelijk), NRC, 20 May 2024, www.nrc.nl/nieuws/2024/05/20/een-advocaat-is-partijdig-en-onafhankelijk-a4199369.

²⁵ Minister for Legal Protection (the Netherlands), *Bill amending the Penitentiary Principles Act in connection with additional measures against organised crime during detention* (Wijziging van de Penitentiaire beginselenwet in verband met aanvullende maatregelen tegen georganiseerde criminaliteit tijdens detentie), 3 June 2023, www.tweedekamer.nl/kamerstukken/wetsvoorstellen/detail?cfg=wetsvoorsteldetails&qry=wetsvoorstel%3A36372#wetgevingsproc.es.

for auditory monitoring unconstitutional and incompatible with European standards,²⁶ a revised proposal excluding auditory monitoring remains under government consideration.²⁷ When answering prejudicial questions in March 2024, the Dutch Supreme Court addressed gaps in statutory provisions for lawyer-client confidentiality during large-scale data requisition, such as from email inboxes, and introduced new guidelines.²⁸

⇒ *Other*

A critical issue concerning judicial independence is the need for a separate budget for the judiciary, distinct from the broader justice budget.²⁹ Under the current arrangement, the judiciary's financial dependence on the justice budget raises practical concerns, such as whether cases should be adjudicated by a single judge or a panel of three. This financial dependency undermines the judiciary's autonomy, restricting judges' independence in determining how to manage cases.³⁰

Another noteworthy issue is that certain elements of the legal status framework for members of the Administrative Jurisdiction Division of the Council of State—such as appointment procedures, disciplinary measures, and dismissal—do not fully meet the requirements for judicial independence. Additionally, the relationship between the Administrative Jurisdiction Division and the Advisory Division remains a point of concern. According to the Venice Commission, separating the Administrative Jurisdiction Division from the Council of State is recommended.³¹

Quality of justice

⇒ *Accessibility of courts (e.g. court fees, legal aid, language)*

²⁶ Council of State (The Netherlands), *Advice on amended bill to amend the Penitentiary Principles Act (Advies over geamendeerde wetsvoorstel om de Penitentiaire beginselenwet te wijzigen)*, 24 April 2024, www.raadvanstate.nl/actueel/nieuws/april/advies-penitentiaire-beginselenwet.

²⁷ Minister for Legal Protection (The Netherlands), *Response to amendments to the Bill to amend the Penitentiary Institutions Act in connection with additional measures against organised crime during detention (Parliamentary doc. 363721) (Reactie op de amendementen bij het Voorstel van wet tot wijziging van de Penitentiaire beginselenwet in verband met aanvullende maatregelen tegen georganiseerde criminaliteit tijdens detentie)* (Kamerstuk 36372), 24 May 2024, www.tweedekamer.nl/kamerstukken/brieven_regering/detail?id=2024Z08975&did=2024D21089.

²⁸ Supreme Court (The Netherlands), *Judgement of 12 March 2024, ECLI:NL:PHR:2023:112 (Prejudicial decision on question posed in ECLI:NL:GHSHE:2023:2816)*, <https://uitspraken.rechtspraak.nl/details?id=ECLI:NL:HR:2024:375>.

²⁹ Camiel Driessen, *Politics can exert too much influence on the judiciary, say scientists: 'A malicious minister has all the buttons to turn' (Politiek kan te veel invloed op rechterlijke macht uitoefenen, zeggen wetenschappers: 'Een kwaadwillende minister heeft alle knoppen om aan te draaien')*, NRC Next, 24 October 2024, [Politiek kan te veel invloed op rechterlijke macht uitoefenen, zeggen wetenschappers: 'Een kwaadwillende minister heeft alle knoppen om aan te draaien' - NRC](https://www.nrc.nl/nieuws/2024/10/24/politiek-kan-te-veel-invloed-op-rechterlijke-macht-uitoefenen-zeggen-wetenschappers-een-kwaadwillende-minister-heeft-alle-knoppen-om-aan-te-draaien)

³⁰ Pointer, *Is our judicial independence at risk? (Staat onze rechterlijke onafhankelijkheid op de tocht?)*, KRO-NCRV, 27 January 2024, <https://pointer.kro-ncrv.nl/staat-onze-rechterlijke-onafhankelijkheid-op-de-tocht>

³¹ Paul Boven'd'Eert, *Strengthening the Rule of Law. Better guarantees for judicial independence (Versterking van de Rechtsstaat. Betere waarborgen voor rechterlijke onafhankelijkheid)*, Nederlands Juristenblad, 22 January 2024, [https://www.inview.nl/document/ide48536d91a144e6c9892f6ec8df20b50/nederlands-juristenblad-versterking-van-de-rechtsstaat-betere-waarborgen-voor-rechterlijke-onafhankelijkheid?ctx=WKNL_CSL_85&tab=tekst](https://www.inview.nl/document/ide48536d91a144e6c9892f6ec8df20b50/nederlands-juristenblad-versterking-van-de-rechtsstaat-betere-waarborgen-voor-rechterlijke-onafhankelijkheid?ctx=WKNL_CSL_85&tab=tekst;); Paul Boven'd'Eert, *Constitutional Law Conference #6: The Independence of the Judge. Adequately guaranteed in parts, but there are also certain risks (Staatsrechtconferentie #6: De onafhankelijkheid van de rechter. Op onderdelen afdoende gewaarborgd, maar er zijn ook zekere risico's)*, Nederland Rechtstaat, <https://www.nederlandrechtstaat.nl/staatsrechtconferentie-6-de-onafhankelijkheid-van-de-rechter-op-onderdelen-afdoende-gewaarborgd-maar-er-zijn-ook-zekere-risicos/>

Court fees

The introduction of the 'Court Fees in Civil Matters Act' (Wgbz) in 2010 created obstacles to accessing the courts. Research indicated that the associated increase in court fees led to approximately 20% fewer commercial cases being brought before the courts between 2009 and 2012.

The relatively high fees, particularly for lower claims, led applicants to either not pursue their claims or opt for cheaper, out-of-court online debt collection procedures. In response to widespread complaints about the high court fees, court fees for low-value claims were reduced as of January 1, 2022.³² However, despite this reduction, current court fees remain significantly higher than they were before the implementation of the Wgbz in 2010.

In their recommendation letter on new government policy addressed to the House of Representatives, the Council for the Judiciary emphasised the need for affordable court fees and cautioned against implementing only minor reductions. While the short-term financial gains from smaller fee reductions might seem attractive, the Judiciary warns of significant long-term negative consequences for citizens if access to justice becomes restricted or more challenging.³³

Subsidised legal aid

The Netherlands Bar Association (Nederlandse Orde van Advocaten, NOvA) highlights the growing need for additional funding for subsidised legal aid in a letter addressed to the party spokespeople of the House of Representatives concerning the budget debate of the Ministry of Justice and Security. The NOvA urges the government to allocate funds in the short term to address this need and advocates for a new budgeting framework that ensures the ongoing funding of the subsidised legal aid system as a standard practice without requiring repeated political decisions. Last year, the House of Representatives passed a motion on this matter.³⁴

⇒ *Resources of the judiciary (human/financial/material)*

Over the past years, the government has substantially cut financial resources for the judiciary.³⁵ This resulted in increased backlogs and a higher workload for the judges and staff.

³² M.J. ter Voert and M.J. Dubelaar, *Access to the courts in a resilient democratic constitutional state (Toegang tot de rechter in een weerbare democratische rechtsstaat)*, Nederlands Juristenblad, 2023 afl. 39, p. 3400, https://www.njb.nl/media/eafb5nml/njb39_toegang-tot-de-rechter-in-een-weerbare-democratische-rechtsstaat.pdf.

³³ Raad voor de Rechtspraak (Netherlands), *Recommendations for Government Policy – The Judiciary (Aanbevelingen kabinetsbeleid – De Rechtspraak)*, 28 March 2024, pp. 2-3, <https://www.rechtspraak.nl/SiteCollectionDocuments/Brief%20Rvdr%20aan%20informatie%202024.pdf>.

³⁴ Nederlandse Orde van Advocaten (Netherlands), *NOvA Input for the Budget Debate on Justice and Security (Inbreng NOvA voor begrotingsbehandeling Justitie en Veiligheid)*, 14 November 2024, <https://www.advocatenorde.nl/nieuws/inbreng-nova-begrotingsbehandeling-justitie-en-veiligheid>.

³⁵ See for example De Rechtspraak (Netherlands), *Inconsistent Financial Policies Risky for Police, Prosecution Service and Judiciary (Wisselend financieel beleid risicovol voor politie, OM en rechtspraak)*, 4 May 2021, <https://www.rechtspraak.nl/Organisatie-en-contact/Organisatie/Raad-voor-de-rechtspraak/Nieuws/Paginas/Wisselend-financieel-beleid-risicovol-voor-politie-OM-en-Rechtspraak.aspx> and A. Smolders, *Judging Under Political Pressure: €35.21 Per Decision (Rechtspreken onder politieke druk: € 35,21 per uitspraak)*, 1 February 2023, <https://www.groene.nl/artikel/35-21-per-uitspraak>.

The new government plans to invest an additional €22.8 million in family and juvenile law, aiming at enabling the juvenile court judges to make fair and proper decisions in child protection cases and ensuring justice for children and parents.³⁶

While this investment is welcomed, it is considered insufficient to cover the estimated costs for the judiciary to properly function. In their recommendation letter on new government policy addressed to the House of Representatives, the Council for the Judiciary stated that, in order to continue meeting society's demand for an independent, impartial, and professional judiciary in the future, the next government must increase the planned investment by at least €60 million. This amount includes the previously mentioned investments in family and juvenile law. Additionally, funds are needed to reduce the high workload within the judiciary (€30 million) and to address cascading effects resulting from a financial claim made by the police (€10 million), should it be granted.³⁷

Almost every court in the Netherlands is facing a shortage of legal staff, particularly judges. This also applies, to a lesser extent, to other staff groups (administrative and operational personnel). The shortage of judges primarily results from a lack of funding, which has led to insufficient hiring and training of new judges to replace those retiring. In recent years, additional funding has become available to address this shortage, allowing courts to significantly expand their training efforts for new judges. However, this has placed additional pressure on the available capacity to handle cases, as experienced judges are also needed to serve as trainers.³⁸

The shortage of human resources within the judiciary results in cases not being concluded in a timely manner. Currently, it is estimated that the judiciary is unable to conclude about half of the cases within the prescribed time frame.³⁹

Another concerning development is the increase in numbers of 'appeals against delayed decisions' (beroepen tegen niet tijdig beslissen) - a legal challenge available to applicants when governmental institutions fail to make a decision on an application or request within the prescribed time. Over the past years, the volume of these appeals has grown to the point where it is consuming court resources and hindering the processing of substantive cases.⁴⁰

⇒ *Digitalisation (e.g. use of digital technology, particularly electronic communication tools, within the justice system and with court users, including resilience of justice systems in COVID-19 pandemic)*

Following the failure of the digitalisation program 'Quality and Innovation of the Judiciary' (Kwaliteit En Innovatie rechterlijke macht), which aimed at enabling digital litigation by 2018 but ended up

³⁶ Governing Cabinet (Netherlands), *Implementation of the Outline Agreement by the Government (Uitwerking van het hoofdlijnenakkoord door het kabinet)*, 13 September 2024, p. 84, <https://open.overheid.nl/documenten/rnl-f525d4046079b0beabc6f897f79045ccf2246e08/pdf>.

³⁷ Raad voor de Rechtspraak (Netherlands), *Recommendations for Government Policy – The Judiciary (Aanbevelingen kabinetsbeleid – De Rechtspraak)*, 28 March 2024, p. 4, <https://www.rechtspraak.nl/SiteCollectionDocuments/Brief%20Rvdr%20aan%20informatie%202024.pdf>.

³⁸ Visitatiecommissie (Netherlands), *Quality of the Judiciary: Strengthening Through Collaboration (Kwaliteit van rechtspraak: versterking door samenwerken)*, *Visitatierapport 2022-2023*, p. 35.

³⁹ *Idem*, p. 36.

⁴⁰ De Rechtspraak (Netherlands), *Annual Report 2023 (Jaarverslag 2023)*, pp. 13 and 37.

exceeding costs by over €200 million,⁴¹ the judiciary has in recent years made significant progress in digitalisation.

The COVID-19 pandemic has accelerated the adoption of digital tools, such as the possibility to hold online court hearings.⁴² Moreover, in 2023, an increasing number of parties in legal proceedings were given the opportunity to litigate through the judiciary's web portal.⁴³ The judiciary's website has a dedicated section that provides updates on digitalisation for each area of law.⁴⁴

In 2022 the Council for the Judiciary and the Minister for Legal Protection agreed regarding the judiciary's budget for the period 2023-2025, which includes investments to enhance digital accessibility and to improve its online services. The aim is to ensure that the judiciary can meet future societal demands. The funds are intended for innovation as well as to ensure proper ICT security.⁴⁵

Moreover, the recent government's coalition program announced plans to encourage institutional renewal within the judiciary. This includes measures to promote innovation in working methods, personnel policy, and the use of innovative technology. These measures will focus on increasing the use of experienced legal professionals and legal support, as well as deploying innovative technology to help alleviate the judiciary's workload.⁴⁶

Finally, the judiciary also appears to be open to exploring the potential of Artificial Intelligence (AI) and other technological advancements. For example, the Council for the Judiciary dedicated one of their periodical scientific publications to technology, featuring articles on topics such as the impact of AI on the judiciary and the use of algorithms to assess the risk of recidivism.⁴⁷

We welcome the judiciary's openness to exploring the use of digital technologies but also note that the integration of AI into legal processes should be approached with caution as AI poses several risks and dilemmas. There are concerns about biases in AI algorithms, the potential for decision-making to become less accountable and the need for clear regulatory frameworks to govern its use. These challenges should be considered before embracing AI in legal proceedings.

⁴¹ NOS: *Digitalisation of the Judiciary a Failure: "Minister Must Intervene"* (Digitalisering rechtspraak uitgelopen op drama: "Minister moet ingrijpen"), NOS, 17 July 2018, <https://nos.nl/nieuwsuur/artikel/2241989-digitalisering-rechtspraak-uitgelopen-op-drama-minister-moet-ingrijpen>.

⁴² Visitatiecommissie (Netherlands), *Quality of the Judiciary: Strengthening Through Collaboration (Kwaliteit van rechtspraak: versterking door samenwerken)*, *Visitatierapport 2022-2023*, p. 33.

⁴³ De Rechtspraak, *Annual Report 2023 (Jaarverslag 2023)*, p. 29.

⁴⁴ De Rechtspraak (website), *Digitalisation by Legal Area (Digitalisering per rechtsgebied)*, <https://www.rechtspraak.nl/Organisatie-en-contact/Rechtspraak-in-Nederland/digitalisering-rechtspraak#:~:text=Digitalisering%20per%20rechtsgebied&text=Sinds%2017%20juni%202024%20is,en%20voor%20advocaten%20en%20gemachtigden..>

⁴⁵ De Rechtspraak (website), *Over €155 Million for Additional Judges, Organised Crime Cases and Digitalisation (Ruim 155 miljoen voor extra rechters, behandeling ondermijningszaken en digitalisering)*, 11 July 2022, <https://www.rechtspraak.nl/Organisatie-en-contact/Organisatie/Raad-voor-de-rechtspraak/Nieuws/Paginas/Ruim-155-miljoen-voor-extra-rechters-behandeling-ondermijningszaken-en-digitalisering.aspx#:~:text=De%20Rechtspraak%20krijgt%20jaarlijks%20ruim,voor%20de%20periode%202023-2025>.

⁴⁶ Governing Cabinet (Netherlands), *Implementation of the Outline Agreement by the Government (Uitwerking van het hoofdlijnenakkoord door het kabinet)*, 13 September 2024, p. 84, <https://open.overheid.nl/documenten/ronl-f525d4046079b0beabc6f897f79045ccf2246e08/pdf>

⁴⁷ Raad voor de Rechtspraak (Netherlands), *Law and Technology (Recht en tech)*, *Rechtstreeks*, 27 February 2024

⇒ *Other*

The new government's coalition agreement includes plans to restrict appeal options in certain legal cases, such as asylum procedures, specifically by eliminating the second, higher appeal. The president of the Council for the Judiciary expressed his concerns about this plan, stating that limiting access to the courts does not align with the rule of law.⁴⁸ The NJCM shares these concerns, as eliminating a second appeal removes an important safeguarding function that ensures lower court rulings are subject to additional scrutiny and reduces the risk of unjust outcomes.

Closed youth care:

Freedom-restricting measures can only be applied in the context of closed youth care and open youth care with conditional authorisation. According to the Youth Care Act, measures included in a personal care plan (hulpverleningsplan) may be used. It is only possible to deviate from them in an emergency situation. The Compulsory Mental Health Care Act (Wvggz) and the Care and Coercion Act for Psychogeriatric and Mentally Disabled Clients (Wzd) also offer options for applying measures that affect a person's health against the will of a child, young person or the person who exercises authority over him or her. This is also possible if the child or young person receives youth care in an open group or home. The Wvggz mentions compulsory care, while the Wzd addresses involuntary care.

The Legal Status of Closed Youth Care Act has been in effect since 1 January 2024.⁴⁹ This law clearly establishes the rights of children staying in an institution for closed youth care. To reduce the use of freedom-restricting measures, strict conditions are attached. The starting point is 'no, unless'. The Inspectorate for Health and Youth concludes that insufficient appropriate help is provided in closed youth care (JeugdzorgPlus).⁵⁰ The inspectorate also sees that freedom-restricting measures are sometimes used because preconditions are lacking.

In 2024, the policy towards placement in closed youth care centres fundamentally changed. The ministries of Health, Welfare, Education, Justice, and Youth Care Netherlands and the Council of Municipalities (VNG) have made concrete agreements about the dismantling and conversion of closed youth care. The intention is to complete the process by 2030 at the latest.⁵¹ Instead, youth care providers are developing small-scale alternatives with a different pedagogical approach. The Inspectorate for Health and Youth has concerns, concluding that it is not possible to provide

⁴⁸ Mr. Online: *Restricting Access to the Courts Does Not Align With the Rule of Law (Toegang tot rechter beperken past niet binnen een rechtsstaat)*, Mr. Online, 18 September 2024, <https://www.mr-online.nl/toegang-tot-rechter-beperken-past-niet-binnen-een-rechtsstaat/>.

⁴⁹ Ministry of Health, Welfare and Sport (the Netherlands), [Stb. 2023, 182](#)), Act of 17 May 2023 amending the Youth Act in connection with strengthening the legal position of young people who are admitted to closed accommodation (Legal Status of Closed Youth Care Act) (*Wet van 17 mei 2023 tot wijziging van de Jeugdwet in verband met het versterken van de rechtspositie van jeugdigen die worden opgenomen in een gesloten accommodatie (Wet rechtspositie gesloten jeugdhulp)*),

⁵⁰ Inspectie Gezondheidszorg en Jeugd (IGJ) (the Netherlands): *Insufficient proper support in Youth Care (Onvoldoende passende hulp in de JeugdzorgPlus)*, February 2024

⁵¹ Nji: *Agreements about phasing out closed youth care (Afspraken over afbouw gesloten jeugdhulp)*, 26 June 2024 <https://www.nji.nl/nieuws/afspraken-over-afbouw-gesloten-jeugdhulp>; VNG: *A major step has been taken in phasing out closed youth care (Grote stap gezet in afbouwen gesloten jeugdhulp)*, 19 June 2024, <https://vng.nl/nieuws/grote-stap-gezet-in-afbouwen-gesloten-jeugdhulp>

appropriate help in a timely manner. The Inspectorate emphasises that freedom-restricting measures should never be used because there are no options for a different approach, but notes that this is now happening.

Open youth care:

As a consequence of the new approach, more children will be placed in open facilities in 2025. The Youth Act does not yet provide a legal basis for the application of freedom-restricting measures in open youth care. For this reason, the Dutch Youth Institute published a guide on dilemmas concerning freedom restrictions for professionals working in open youth care.⁵²

The Council for the Administration of Criminal Justice and Youth Protection (RSJ) also concludes that there are currently no necessary preconditions or legal guarantees for the use of freedom-restricting measures within open youth care. Based on current legislation and regulations, the use of freedom-restricting measures is not permitted there. When a child is placed in an institution where deprivation of liberty is applied, a court order is needed. The RSJ advises combining all legislation for care and support for children and young people in residential youth care into one law and strengthening their legal position.

In October 2024, the State Secretary clarified not to follow up on the RSJ recommendations. Although legal guarantees and legal protection for young people subject to freedom-restricting measures are important, preference is given to an amendment to the Youth Act to enable the application of freedom-restricting measures in open youth care.⁵³

The NJCM concludes that a transforming change of culture towards closed facilities is taking place. However, legal safeguards and a child-oriented approach are not fully implemented in policy and practice. This means children in open youth care institutions still risk deprivation of liberty and freedom restrictions, lacking sufficient legal safeguards. The NJCM reiterates to assure that policy makers and institutions set the ambition to use freedom-restricted measures as a last resort, assuring sufficient well-trained staff and aiming to close isolation cells.

⇒ *Respect for fair trial standards including in the context of pre-trial detention*

Inequality in juvenile justice and criminal law⁵⁴

⁵² A. Addink, C. van 't Spijker, E. Mourits, H. Bergenhenegouwen, *Dealing with dilemmas surrounding restrictions on freedom in open youth care with residence. A guide for youth professionals (Omgaan met dilemma's rond vrijheidsbeperking in open jeugdhulp met verblijf)*, Nederlands Jeugdinstituut en Kenniscentrum Kinder- en Jeugdpsychiatrie, 2024, niji.nl/uploads/2024-05/Omgaan-met-dilemmas-rond-vrijheidsbeperking-in-open-jeugdhulp-met-verblijf.pdf

⁵³ Raad voor de Strafrechtstoepassing en Jeugdbescherming (RSJ) (Netherlands), *Policy Response to RSJ Advice on "Freedom-Restricting Measures in Open Residential Youth Care"* (Beleidsreactie RSJ-advies "Vrijheidsbeperkende maatregelen in de open residentiële jeugdhulp), 16 October 2024, <https://www.rsj.nl/documenten/beleidsreactie/2024/10/16/beleidsreactie-rsj-advies-vrijheidsbeperkendemaatregelen-in-de-open-residentiele-jeugdhulp>.

⁵⁴ Romy van der Burgh, Belia Heilbron and Anouk Kootstra, *Low-educated people with a migration background are almost three times more likely to be sentenced to prison (Laagopgeleiden met migratieachtergrond bijna drie keer vaker celstraf)*, de Groene Amsterdammer, 9 October 2024, <https://www.groene.nl/artikel/laagopgeleiden-met-migratieachtergrond-bijna-drie-keer-vaker-celstraf>

Investico, NOSop3 and De Groene Amsterdammer have analysed the differences in sentencing between suspects with a high and a low social status based on data from the Central Bureau for Statistics (CBS). The research platforms investigated 1.2 million decisions taken by the Public Prosecution Service, more than 500,000 court rulings and more than 200,000 prison sentences imposed between 2013 and 2022. To map unequal treatment in criminal law, the researchers asked for two characteristics of suspects: educational level and migration background. The researchers compared the extremes of this: how do highly educated suspects without a migration background fare compared to poorly educated suspects with a migration background? This combination has never been investigated in this way before.

According to the research of these three journalistic research platforms, these are some of the findings:

- For the same crime, a poorly educated suspect with a migration background is worse off in criminal law than highly educated persons without a migration background: the Public Prosecution Service prosecutes the former more often, and the judge finds them guilty more often and sends them to prison more often.
- The research shows the chance that a poorly educated suspect with a migration background will end up in prison is one in four. If the suspect of a crime is highly educated without a migration background, the chance that this suspect will end up in jail is one in twelve.
- Another finding is that a pre-vocational secondary education suspect with a migration background, is three and a half times more likely to be sentenced to prison if this suspect is suspected of assault, than if the suspect has a higher vocational education or university education and does not have a migration background.
- The risk is more than three times greater for driving under the influence. And if the suspect is suspected of 'simple theft', such as shoplifting or pickpocketing, the risk is more than two and a half times greater. Even if murder or manslaughter is suspected, the chance of ending up in prison is almost one and a half times greater.
- If the suspect is poorly educated with a migration background, the Public Prosecution Service is more than one and a half times more likely to prosecute. If the suspect has to appear in court, this suspect is more often found guilty. And if convicted, the suspect ends up in prison almost twice as often.
- All these decisions add up. At the end of the day, a poorly educated suspect with a migration background is almost three times as likely to receive a prison sentence as someone without a migration background who has completed a higher vocational or university education.

This same pattern is visible in fifteen separate crimes the research platforms investigated.

The figures provide insight into the outcomes of decisions by the Public Prosecution Service and judges, but they do not show the reasons why people with a low status are punished more severely. The cause of the large differences cannot be deduced from the figures. For example, it is not known whether some suspects have previously been convicted of the same crime, which is one of the aggravating factors that judges look at.

Lawyers immediately recognise the differences in treatment in the courtroom. Investico surveyed 2,500 Dutch criminal lawyers and received 247 responses. More than 70% of the lawyers who responded indicated that they suspected that a client was disadvantaged in court as a result of his low education level, migration background or low socio-economic position.

Interviews with prosecutors and judges show how it is possible that suspects from a 'good background' fare better in criminal cases. For example, some judges have the explicit belief that if you are 'higher' on the social ladder, you have more to lose and, therefore, deserve a lower sentence. And that imprisonment for people at the bottom of the ladder is less drastic, and they can, thus, receive a higher sentence.⁵⁵ Education, in particular, appears to be important: the lower the education, the greater the chance of imprisonment.

⇒ *Other*

The advisory division of the Council of State has given a consultation of two legislative proposals: the Asylum Emergency Measures Act and the Two-Status System Act. The Council of State only had one week to review the proposals, which is insufficient for a full review and it differs from the regular law-making proceedings.

In its review, the Council of State expresses significant concerns about the potential impact of these proposals on the judiciary. It highlights that changes, such as reducing the validity period of asylum permits, abolishing indefinite permits, and introducing a two-status system, will lead to a substantial increase in the workload of both the Immigration and Naturalisation Service (IND) and the judiciary. These measures are expected to result in more appeals, legal challenges, and inefficiencies in court procedures, particularly regarding decisions on asylum applications and family reunification. The letter emphasises that the increased workload comes at a time when the judiciary is already facing staffing shortages, further straining its capacity to handle cases. Additionally, the implementation of the European Migration Pact, required by 2026, may exacerbate these challenges, as it could lead to overlapping legal issues and procedural delays.

The Council of State strongly advises against the introduction of the legislative proposals prior to the implementation of the Migration Pact. It recommends that the opportunity, feasibility, and cost of these proposals be evaluated in conjunction with the implementation of the Pact. Such an approach would facilitate a more comprehensive assessment of the collective impact of the proposals on the protection and legal safeguards of the individuals concerned.

ANTI-CORRUPTION FRAMEWORK

General assessment

It is wrongly assumed that the Netherlands has little corruption. We have a blind spot for influence trading and conflicts of interest. Although the Netherlands has been a party to the UN Convention against Corruption since 2006, we still do not comply with several provisions of that convention, including Article 18. That article states that countries must criminalise 'trading in influence'. This is not explicitly illegal in the Netherlands, with the argument that it can be prosecuted under the bribery article. In practice, no one is ever prosecuted in the Netherlands for influence trading under this article. According to the European Commission, of the 25 EU member states investigated, only two

⁵⁵ Romy van der Burgh, Belia Heilbron and Anouk Kootstra, *Higher on the ladder means a lower sentence (Hoger op de ladder, lagere straf)*, de Groene Amsterdammer, 9 October 2024, <https://www.groene.nl/artikel/hoger-op-de-ladder-lagere-straf>

do not criminalise influence trading: the Netherlands and Germany. And even in Germany, this will soon be criminalised with a new law to combat bribery in the public sector, which has just been approved by the German Parliament.

It is well past time for 'trading in influence' to be criminalised in the Netherlands, as agreed upon in the UNCAC treaty. The lack of compliance with the UNCAC has real world consequences. Experts note that it would probably have been possible to successfully prosecute Richard de Mos, a former alderman for Heart for the Hague (*Hart voor Den Haag*) in the city of the Hague. The Public Prosecution Service stated that the political party Heart for the Hague eventually became the largest party in The Hague, partly due to donations from entrepreneurs in the Hague.⁵⁶ Thanks to those donations and a good relationship, they influenced the policy of the municipality of The Hague and were favoured in new projects. That is trading in influence in its purest form. Another good example of where no action was taken against this form of corruption is the Sywert van Lienden face mask deal. Minister Hugo de Jonge and former minister Martin van Rijn granted van Lienden a lucrative deal to provide the government with face masks during the Covid-19 crisis⁵⁷. The deal was granted partly to silence him as a critic of the cabinet. According to Transparency International Nederland and other anti-corruption experts, the actions of the former ministers fall under the definition of 'trading in influence'.⁵⁸

There are several reasons for the Netherlands' weakness in fighting financial crimes such as corruption and money laundering. First, the Netherlands has a fairly repressed anti-corruption culture. People often turn a blind eye to suspicious situations, especially when they take place abroad. In international corruption cases, the Public Prosecutor's Office is often reluctant to prosecute and waits to see what other countries do.

Another weakness is the Dutch tendency to settle corruption cases instead of prosecuting the individuals responsible for the corruption. In the Netherlands, people are almost never individually prosecuted for their role in corruption. Throughout Dutch history, only one person has been individually prosecuted for corruption: a director of Ballast Nedam received a suspended sentence of 6 months for accepting bribes in Saudi Arabia.

When the public prosecutor settles corruption cases with companies, the punishment is usually lower than in other countries. Also, the settlement agreements are opaque, and there are no clear rules for returning forfeited amounts of corruption proceeds to the country of origin of the victims of corruption.⁵⁹

⁵⁶ Public Prosecution Service (Openbaar Ministerie): *Prosecutor demands prison sentence against former alderman in The Hague because of bribery and corruption (OM eist gevangenisstraf tegen Haagse oud wethouders vanwege omkoping en corruptie)*, 01 February 2024, <https://www.om.nl/actueel/nieuws/2023/02/01/om-eist-gevangenisstraffen-tegen-haagse-oudwethouders-en-ondernemers-vanwege-omkoping-en-corruptie>

⁵⁷ NOS. Van Lienden en de mondkapjesdeal: een Tijdlijn, 16 september 2022. <https://nos.nl/artikel/2444786-van-lienden-en-de-mondkapjesaffaire-een-tijdlijn>

⁵⁸ Follow the Money: *Hugo de Jonge, Sywert and the face maskdeal: in any other country this would be called corruption (Hugo de Jonge, Sywert en de mondkapjesdeal: in het buitenland zou dit corruptie heten)*, 15 April 2022, https://www.ftm.nl/artikelen/hugo-de-jonge-integriteit?utm_campaign=LukasKotkamp&utm_source=article&utm_medium=link&share=VVC0KZvfpZOiyiuUZx6ceus0eNLQXBI%2BEAk6n%2BD3zXOSogRDgl2r25xnqrcd14%3D

⁵⁹ Transparency International Nederland: *Foreign bribery by Dutch companies remains unsanctioned (Buitenlandse omkoping door Nederlandse bedrijven blijft onbestraft)*, 19 February 2024, <https://www.transparency.nl/nieuws/2024/02/buitenlandse-omkoping-door-nederlandse-bedrijven-blijft-onbestraft/>

⇒ *Integrity framework including incompatibility rules (e.g.: revolving doors).*

In the Fifth Round Evaluation, GRECO recommended introducing clear rules on post-employment after a top-executive function, as the limited measures in place in the Netherlands were insufficient. It mentioned: a cooling-off period or restriction on certain types of activity over a period of time; a dedicated mechanism through which top executives must gain approval with respect to new activities following government service; and regulation providing transparency, oversight and enforcement. Six years later, this recommendation still has not been implemented sufficiently. The EU Commission also recommended the Netherlands should “complete the revision of rules on revolving doors involving former ministers and state secretaries, including a two-year cooling-off period and restrictions on paid activities.”⁶⁰

Two years ago, the government started the legislative process for this cooling-off period, called the Law on post-employment for ministers and state secretaries (*Wet regels vervolgfuncties bewindspersonen*), previously known as *Wet regels gewezen bewindspersonen*.⁶¹ This February, the Council of State published its opinion⁶² on the bill, after which it was submitted to the House of Representatives (Tweede Kamer) in March. However, since then, the bill has been disregarded and is not on the parliamentary agenda either. There have been no revisions to the bill that was issued, and it does not follow international best practices. The current proposal includes advice on post-term employment that is non-binding and based on ‘naming and shaming’. This mechanism is dependent on individual responsibility and outsources sanctioning to the public. We argue, therefore, that the bill should include a mandatory cooling-off period with adequate sanctions to deter undue influence and prevent conflict of interest through the revolving door. Binding rules set a clear standard and also reduce ambiguity. Furthermore, the body of oversight, the Commission on the Rules for Political Officials (Commissie Rechtsregels Politieke Ambtsdragers or CPRA), is dependent on the information public officials provide. This one-sided information position should be addressed by giving the advisory board sufficient investigative capacities. GRECO’s second compliance report has underlined that the proposed legislation fails to meet their requests and is not up to par with international best practices.

One important loophole deserves emphasis. The *Wet gewezen bewindspersonen* contains an exemption clause that enables ministers to provide lenience with regard to the lobby prohibition (het lobbyverbod) and the revolving door rules (draaideur). However, if the minister deems it necessary to provide this leniency, we think that the advice from CPRA should be binding. It should not be possible for a minister to make this decision unilaterally. Currently, involving the CPRA is optional.

⇒ *General transparency of public decision-making (including public access to information such as lobbying, asset disclosure rules and transparency of political party financing)*

⁶⁰ European Commission, Rule of Law report 2024, 24 July 2024, https://commission.europa.eu/publications/2024-rule-law-report-communication-and-country-chapters_en

⁶¹ Ministry of Interior, Parliamentary Papers II, 2023/24, 36549, no. 1., Law on post-employment for ministers and state secretaries (Wetsvoorstel regels vervolgfuncties). <https://wetgevingskalender.overheid.nl/Regeling/WGK013683>

⁶² Council of State, Opinion on the Law on post-employment for ministers and state secretaries (Advies wetsvoorstel regels gewezen bewindspersonen), Parliamentary Papers II, 2023/24, 36549, nr. 4, 26 February 2024, <https://www.raadvanstate.nl/adviezen/@138505/w04-23-00208/>

In the fifth round of evaluation,⁶³ Greco recommended that the government take further steps in regulating the contact between ministers/state secretaries and lobbyists. GRECO concluded that there is no definition of lobbying, no register of lobbyists targeting top executives, no requirement to declare contacts with lobbyists and no supervision of lobbyists' contacts with officeholders or civil servants. In the second compliance report,⁶⁴ GRECO concluded the recommendation to be only partially implemented, as measures by the government were insufficient. The European Commission came to a similar conclusion in the 2023 Rule of Law Report. The Dutch government concluded, based on a research report⁶⁵ - which they commissioned - that instead of introducing a lobbying register, it was better to further improve the publication of public officials' agendas and include a lobbying paragraph in each bill.⁶⁶ The government wrongfully⁶⁷ argued that it was not able to effectively define the term 'lobbyist' and that a mandatory lobbying register would lead to an unwanted restriction of access for normal citizens to public officials. Therefore, a stricter implementing directive was introduced to improve the registration of public officials.

However, in practice, the government does not adhere to the current transparency rules. Research by the Open State Foundation (OSF) revealed that only 12% of registered meetings from the previous administration were published⁶⁸ in compliance with existing regulations (Uitvoeringsrichtlijn openbare agenda's),⁶⁹ while this was only 13% for the newly elected cabinet (Kabinet Schoof). After OSF notified the administration, this number barely improved to 21% of meetings.⁷⁰ This method remains unsatisfactory in achieving its purpose: transparency on third parties and the detection of undue influence. In addition, OSF found that 11 cabinet members had mentioned meetings on X that were not registered in their public agendas. Ministers and state secretaries are individually responsible for adherence, as no sanctioning mechanism exists.

The Ministry of Interior has commissioned a new report assessing the effectiveness of public agendas and the lobby paragraph, the outcome of which will determine if a lobby paragraph is necessary after all. The report is finished but is yet to be published by the ministry.

⁶³ Group of States against Corruption (Council of Europe): *Fifth Evaluation Report*, 20 March 2017, <https://www.coe.int/en/web/greco/evaluations/netherlands>

⁶⁴ Group of States against Corruption (Council of Europe): *Second Compliance Report (Fifth Evaluation Round)*, 17 October 2023, <https://rm.coe.int/fifth-evaluation-round-preventing-corruption-and-promoting-integrity-i/1680acf3dc>

⁶⁵ Celesta Braun & Bert Fraussen: *Framework for Weighing Legitimate Representation of Interests (Afwegingskader Legitieme Belangenvertegenwoordiging)*, Institute for Public Administration, Leiden University, December 2022, <https://open.overheid.nl/documenten/ronl-6e3c979866c0dd78b1d27d4c5805dafab73e490a/pdf>

⁶⁶ Minister of Interior: *Letter on improving public agendas of top-executives*, 7 July 2023, <https://www.rijksoverheid.nl/documenten/kamerstukken/2023/07/07/kamerbrief-verbetering-openbare-agenda-s-bewindspersonen-en-paragrafen-in-memories-van-toelichting>

⁶⁷ Transparency International Nederland: *Ten questions about the lobbyregister answered (Tien vragen over het lobbyregister beantwoord)*, 9 May 2024, <https://www.transparency.nl/nieuws/2024/05/we-moeten-het-hebben-over-een-verplicht-lobbyregister/>

⁶⁸ Open State Foundation, *OSF reveals: agendas of ministers have become less transparent (OSF wijst uit: agenda's van ministers zijn minder transparant geworden)*, 15 November 2023, <https://openstate.eu/nl/2023/11/onderzoek-open-state-wijst-uit-agendas-van-ministers-zijn-minder-transparant-geworden/>

⁶⁹ Counsel of Secretary-Generals: *Implementation guideline: Public agendas top-executives (Uitvoeringsrichtlijn Openbare agenda bewindslieden)*, 28 June 2023, <https://www.communicatierijk.nl/vakkennis/openbare-agenda-bewindslieden/uitvoeringsrichtlijn-openbare-agenda-bewindslieden>

⁷⁰ Open State Foundation: *Follow-up research: Despite improvement cabinet-Schoof scores insufficiently on transparency (Vervolgonderzoek Open State Foundation: Ondanks verbetering scoort kabinet-Schoof nog steeds onvoldoende op transparantie)*, 14 November 2024, <https://openstate.eu/nl/2024/11/english-vervolgonderzoek-open-state-ondanks-verbetering-scoort-kabinet-schoof-nog-steeds-onvoldoende-op-transparantie/>

Besides their malfunctioning, public agendas are not an adequate alternative to a lobby register. According to Greco,⁷¹ any alternative mechanism should guarantee public access to information on lobbying activities and ensure equivalent levels of accessibility and transparency. This is not the case for the public agendas. The purpose of a lobby register is to warrant a transparent administrative decision-making process with equal accessibility for all stakeholders. A lobby register offers background information about organisations,⁷² such that it becomes clear what organisations are involved in the policy-making process. Registration should be mandatory for meetings with public officials.⁷³ The public agendas do not mention any information except the interlocutor and subject of the meeting, which is not enough to ensure accessibility and transparency. Public agendas can be a useful control mechanism. It allows third parties to compare the registered meetings of public officials with that of lobbyists and detect any inconsistencies. Therefore, we emphasise the urgent need for a lobby register and dedicated supervisory authority.

⇒ *Rules on preventing conflicts of interest in the public sector*

There is an urgent need for additional integrity standards in the Senate (Eerste Kamer). The absence of an adequate sanctioning mechanism for integrity violations in the Senate is worrying, especially in light of recent events. Membership to the Senate is a part-time occupation, so ancillary functions of its members are inherent to its character. Based on the code of conduct (Gedragcode integriteit), senators must report their ancillary functions and personal interests. The process of reporting is, however, the responsibility of the senators themselves. Currently, 40% of senators (29 of 75) have incomplete declarations of ancillary functions; research on the resemblance between the register of ancillary functions of senators and the register of the Dutch Chamber of Commerce found.⁷⁴ The oversight is currently in the hands of the Presidium of the Senate, which is too small and has too little investigative capacity to investigate violations of the integrity standards. We would also recommend making public affairs and lobbying positions incompatible in the Senate. In 2024, a pressing example came up. Senator Gert-Jan Oplaat is the chairman of the agricultural committee in the Senate for the party Farmer Citizens Movement (Boer Burger Beweging or BBB). Yet, at the same time, he is chairman of Nepluvi, an interest group of Dutch poultry butchers, and chairman of AVEC poultry, the European umbrella organisation of the poultry industry. Other senators have warned that this raises a conflict of interest and questioned this dual role - even officials of the Ministry of Agriculture have

⁷¹ Council of Europe, CM/Rec(2017)2, 22 March 2017, <https://search.coe.int/cm?i=0900001680700a40>

⁷² Transparency International Nederland: *Ten questions about the lobbyregister answered (Tien vragen over het lobbyregister beantwoord)*, 9 May 2024, <https://www.transparency.nl/nieuws/2024/05/we-moeten-het-hebben-over-een-verplicht-lobbyregister/> and Transparency International Nederland: *Lifting the lid on Lobbying*, 1 February 2023, <https://www.transparency.nl/wp-content/uploads/2023/02/Lifting-the-Lid-on-Lobbying-Formatted-31-01-2023.pdf>

⁷³ Ibid.; and Transparency International Nederland: *Lifting the lid on Lobbying*, 1 February 2023, <https://www.transparency.nl/wp-content/uploads/2023/02/Lifting-the-Lid-on-Lobbying-Formatted-31-01-2023.pdf>

⁷⁴ Volkskrant: *Senators struggle with registering their ancillary functions: 'Do I have to report something like that?' (Senatoren worstelen met het opgeven van hun nevenfuncties: 'Moet ik zoiets ook melden?)*, 30 April 2024, <https://www.volkskrant.nl/politiek/senatoren-worstelen-met-het-opgeven-van-hun-nevenfuncties-moet-ik-zoiets-ook-melden~bc30124e/>

raised their concerns.⁷⁵ The code of conduct⁷⁶ prescribes that members should refrain from activities that create the appearance of a conflict of interest, which is the case for Oplaat. Therefore, we recommend rules that make a lobbying position incompatible with being a senator, instituting an independent oversight body at an appropriate distance from day-to-day politics. This body should be able to administer sanctions and investigate breaches provided by citizens.

The Law for Political Parties (*Wet op de politieke partijen*, or WPP) is a bill containing rules on the financing of political parties and transparency rules regarding their internal organisation, finances and political advertisements, which is currently waiting to be submitted to the Parliament after the Council of State recently issued their opinion on the bill⁷⁷. This is especially important in light of Russia's recent operation to influence European politics, which was discovered by the Czech Intelligence Service. Payments to Dutch Parliament members were made by the Czech website Voice of Europe.⁷⁸ Measures that prevent these types of bribes are needed, and we therefore consider the WPP as good progress.

We argue that the Authority on the Law for Political Parties (Autoriteit Wet op de politieke partijen) that is to be installed with the adoption of the WPP should proactively seek ways to disclose all information in formats readable by computers. The government already publishes donations to political parties in Excel Format, and this should also apply to other information on political parties. An Application Programming Interface (API) should be connected to the information to make political finances easily accessible to the public. Furthermore, the government should involve relevant actors in the area of open data, investigation and the fight against corruption from civil society and academics in the implementation of the law. A drawback of the current law is that the UBO registers have been closed following a ruling by the ECJ.⁷⁹ This will likely mean, in practice, that the UBO cannot be traced. It remains to be seen in practice to what extent donations from legal entities will be prohibited in that case.

⇒ *Measures in place to ensure whistleblower protection and encourage reporting of corruption*

There is a loophole in the new Whistleblower Protection Act (*Wet bescherming klokkenluiders*), namely the requirement that there must be a "public interest" at stake before someone has the right to receive whistleblower protection. This completely unnecessary provision creates uncertainty and undermines the law in various ways. For example, how does a whistleblower know in advance

⁷⁵ Follow the Money: *Public officials on dual function of BBB-senator and poultry lobbyist Oplaat: 'Don't feel free to discuss things with him' ('Ambtenaren over dubbele pet van BBB-senator en pluimveelobbyist Oplaat: 'Voel me niet vrij om dingen met hem te bespreken')*, 12 January, 2024, <https://www.ftm.nl/artikelen/onrust-onder-ambtenaren-over-dubbelrol-bbb-senator-en-pluimveelobbyist-oplaaat?share=T2geOyvGt2Md3EPKQIXcDux5O3yjrHPxb9D7BcJkeCktRUPbeD2G1Sb6Gy0a7g%3D%3D>

⁷⁶ First Chamber (Eerste Kamer der Staten-Generaal), Code of Conduct (Gedragcode Integriteit), 11 June 2019, https://www.eerstekamer.nl/id/vkz9gbzhm5wp/document_extern/gedragcode_integriteit_geldend/f/vkz9gcg6q4oi.pdf

⁷⁷ Council of State (Raad van State): *Advise on the Law of political parties (Advisering Wet op de politieke partijen)*, 18 October 2024, <https://www.raadvanstate.nl/adviezen/@143141/w04-24-00070/>

⁷⁸ NRC: *What can the House of Representatives do against bribery of Dutch parliamentarians? (Wat kan de Tweede Kamer doen tegen omkoping van Nederlandse parlementariërs?)*, 1 April 2024, <https://www.nrc.nl/nieuws/2024/04/01/ongeruste-kamer-staat-met-lege-handen-in-debat-over-russische-omkoping-a4194788>

⁷⁹ Transparency International, *EU court ruling on beneficial ownership registers: One year on, need for harmonised approach is clear*, 22 november 2023, <https://www.transparency.org/en/blog/eu-court-ruling-on-beneficial-ownership-registers-legitimate-access>

whether something will be labelled as a 'wrongdoing with public interest'? Isn't every case of corruption or abuse a wrongdoing? It is precisely on this point that the court now also seems to be siding with us. In October, the court of appeal in Den Bosch ruled that a whistleblower in a nursing home had been wrongfully dismissed on the spot. Previously, the subdistrict court judge had found this to be correct because there was no 'patron', ergo, no 'public interest', so no whistleblower case and protection. The court of appeal in Den Bosch has now confirmed that the whistleblower was wrongfully dismissed. The whistleblower suspected a homicidal offence, and the court of appeal found that this is, by definition, a public interest, even if it is not structural.⁸⁰ While the purpose of the Whistleblower Protection Act (*Wet bescherming klokkenluiders*) is to give whistleblowers certainty, the public interest requirement does exactly the opposite and creates uncertainty for (potential) whistleblowers and, therefore, an unnecessary burden on courts. In order to provide much-needed certainty to potential whistleblowers and to not miss out on any opportunity to prevent or solve issues at an early stage, Transparency International Nederland recommends broadening the legal definition of wrongdoing by removing the restrictive requirement that the public interest must be at stake.

Following an adopted amendment by Dutch Parliamentarian Pieter Omtzigt to enable anonymous reporting of suspicions of wrongdoing, the government published a proposal in spring 2024. However, that proposal does not fully implement the amendment. Transparency International Nederland believes that the government must provide safeguards so that those who report wrongdoing have more guarantees that their report can truly remain anonymous and respond critically to the government's proposal. This enables people to actually stand up against wrongdoing without fear of negative consequences. This significantly increases the chance that wrongdoing will be addressed, which will benefit everyone.⁸¹

Under the current law, an employer cannot be sanctioned for harming a whistleblower, while the whistleblower can be sanctioned by the employer for breach of confidentiality or libel or slander when spreading incorrect information. We emphasise the importance of dissuasive sanctions for organisations that harm whistleblowers and for organisations that have failed to establish an internal reporting procedure or have set up an incomplete one in breach of the law. After all, if there are no dissuasive sanctions, the law is pointless.⁸²

In line with the EU Whistleblower Directive (in Art. 23), which calls on Member States to take effective sanctions, competent authorities should be given the power to impose sanctions. This is also in line with the new OECD guidelines, which recommend “providing effective, proportionate and dissuasive sanctions for those who retaliate against whistleblowers”. The Dutch government should comply with all requirements of the EU Whistleblower Directive and give the Dutch Whistleblowers

⁸⁰ Court of Appeal 's-Hertogenbosch (Gerechtshof 's-Hertogenbosch): *Whistleblowers nursing hom unfairly fired (Klokkenluiders verpleegtehuis onterecht ontslagen)*, 10 October 2024, <https://www.rechtspraak.nl/Organisatie-en-contact/Organisatie/Gerechthoven/Gerechtshof-s-Hertogenbosch/Nieuws/Paginas/Klokkenluiders-verpleegtehuis-onterech-ontslagen.aspx>

⁸¹ Transparency International Nederland: *TI-NL calls on government to enable truly anonymous reporting of wrongdoing (TI-NL roept regering op écht anonieme melding van misstand mogelijk te maken)*, 15 July 2024, <https://www.transparency.nl/nieuws/2024/07/ti-nl-roept-regering-op-echt-anonieme-melding-van-misstand-mogelijk-te-maken/>

⁸² Transparency International Nederland: *How well does the Netherlands protect its whistleblowers in comparison to other EU countries? (Hoe goed beschermt Nederland haar klokkenluiders tegenover andere EU-landen?)*, 8 November 2023, <https://www.transparency.nl/nieuws/2023/11/hoe-goed-beschermt-nederland-haar-klokkenluiders-tegenover-andere-eu-landen/>

Authority, without further delay, the sanctioning power to impose administrative sanctions on those who break or fail to comply with the Whistleblower Protection Act.⁸³

⇒ *List the sectors with high-risks of corruption in your country and list the relevant measures taken/envisaged for preventing corruption and conflicts of interest in these sectors. (e.g. public procurement, healthcare, other)*

All Dutch branches of the Big Four accounting firms — EY, Deloitte, KPMG, and PwC — have been implicated in exam fraud. This type of fraud is particularly problematic because these firms, among other things, check whether large companies and institutions have their accounts in order to uncover carelessness, corruption and fraud. The fraud case involved employees in the Netherlands who shared answers to mandatory tests among themselves. In response, these firms have introduced measures to prevent such malpractice, including eliminating the reuse of identical exam questions. Beyond the Big Four, two additional accounting firms operating in the Netherlands, BDO and Mazars, are also under investigation for potential exam fraud.⁸⁴

Corruption and fraud in the Dutch healthcare sector remain pressing issues. In a recent interview, the Public Prosecution Service (PPS) said it is unable to combat the increasing crime in healthcare. According to the PPS, €10 billion is defrauded annually.⁸⁵ Last year, we drew the Commission's attention to a whistleblower case in the Dutch healthcare sector.⁸⁶ A recent report uncovered that the hospital in question has still not taken sufficient action to prevent this type of fraud in the future.⁸⁷ In addition, at the beginning of 2024, a case involving a cardiologist who supposedly received bribes also gained widespread attention.⁸⁸ It shows that the healthcare sector remains prone to fraud and corruption.

⇒ *Any other relevant measures to prevent corruption in public and private sector*

As a result of a European Court of Justice ruling⁸⁹ in November 2022, the Dutch Beneficial Ownership (BO) registers closed. Since September 2024, these registers have only been partially accessible to financial institutions. Access to supervised institutions is being restored in stages, but many are still unable to consult the BO register as part of their customer due diligence obligations under the Money

⁸³ Idem.

⁸⁴ Volkskrant: *Cheating at tests at all major accounting firms: EY also discloses exam fraud (Gesjoemel met toetsen bij alle grote accountantskantoren: ook EY maakt examenfraude bekend)*, 1 November 2024, <https://www.volkskrant.nl/economie/gesjoemel-met-toetsen-bij-alle-grote-accountantskantoren-ook-ey-maakt-examenfraude-bekend~bbf6e00e/>

⁸⁵ Pointer: *20% profit, hours in health sector falsely billed an year healthcare fraud remains difficult to prove (20 procent winst, zorguren vals in rekening brengen en toch blijft fraude in zorgsector moeilijk te bewijzen)*, 12 November 2024, <https://pointer.kro-ncrv.nl/zorgverzekeraars-fraude-zorgsector-moeilijk-opsporen-bewijzen>

⁸⁶ Omroep West: *Research: top LUMC knew about fraud for years but did nothing (Onderzoek: top LUMC wist al jaren van fraude maar deed niks)*, 11 November 2024, <https://www.omroepwest.nl/nieuws/4775713/onderzoek-top-lumc-wist-al-jaren-van-fraude-maar-deed-niks>

⁸⁷ National Broadcaster (NOS): *LUMC does too little against fraud, academic status at risk (LUMC doet te weinig tegen fraude, academische status in gevaar)*, 26 January 2024, <https://nos.nl/artikel/2506299-lumc-doet-te-weinig-tegen-fraude-academische-status-in-gevaar>

⁸⁸ NRC: *Corruption research on cardiologists and German cardiac equipment expands (Corruptieonderzoek naar cardiologen en Duitse hartapparatuur breidt zich uit)*, 24 January 2024, <https://www.nrc.nl/nieuws/2024/01/24/corruptieonderzoek-naar-cardiologen-en-duitse-hartapparatuur-breidt-zich-uit-a4188052#/krant/2024/01/25/%23102>

⁸⁹ Transparency International, *EU court ruling on beneficial ownership registers: One year on, need for harmonised approach is clear*, 22 november 2023, <https://www.transparency.org/en/blog/eu-court-ruling-on-beneficial-ownership-registers-legitimate-access>

Laundering and Terrorist Financing (Prevention) Act (Wet witwassen en terrorismefinanciering). This poses significant challenges, as financial institutions play a critical gatekeeping role in combating money laundering and adhering to the Sanctions Act through BO investigations.⁹⁰

Together with Malta and Cyprus, the Netherlands is the only country within Europe whose BO register is still not fully accessible two years after the European Court of Justice ruling. The register is now entirely off-limits to journalists and civil society organisations, despite the court's explicit recognition that these groups have a legitimate interest in accessing BO information. Such access is deemed essential for investigations into money laundering and terrorist financing. However, the Dutch government has consistently denied access to these groups, even when they demonstrate their legitimate interest. This refusal severely hampers their ability to conduct thorough investigations into issues like money laundering or tax evasion. In this context, the Dutch government should fully implement the strengthened EU rules on anti-money laundering without further delay and specifically grant journalists and activists generalised access to information about real estate ownership (BO register).⁹¹

Investigation and prosecution of corruption

⇒ *Criminalisation of corruption and related offences*

There is no clear definition of “foreign bribery”; strictly speaking, the law makes no distinction between bribery and facilitation payments. Although both are punishable, the Public Prosecution Service does not consider it necessary to focus its investigation and prosecution policy, in addition to bribery, on tackling facilitation payments. Companies are generally not prosecuted for this. Furthermore, when ratifying the UN Anti-Corruption Convention, in which influence peddling is punishable, the Netherlands has negotiated an exception for trading in influence. As a result, this was never included in the Criminal Code, with the argument that the existing definition of bribery is sufficient to prosecute influence trading. However, the opposite is true. Although it occurs very regularly in the Netherlands, where there is a strong lobby culture, it has never been criminally prosecuted. Influence trading should be criminalised; it is now almost impossible to prosecute.⁹²

⇒ *Effectiveness of investigation and application of sanctions for corruption offences (including for legal persons and high level and complex corruption cases) and their transparency, including as regards to the implementation of EU funds. Please provide data where available.*

The Netherlands has been criticised by the OECD Working Group on Bribery and several others for an inadequate level of investigative activity and a low level of enforcement of corruption, particularly given the size and risk profile of the Dutch economy.⁹³ Exporting Corruption, a bi-annual report of

⁹⁰ Transparency International Nederland, *TI-NL calls for improved access Ultimate Beneficial Owner-register (TI-NL roept op tot verbeterde toegang UBO-register)*, 16 May 2024,

<https://www.transparency.nl/nieuws/2024/05/ontwikkelingen-omtrent-wetgeving-ubo-register/>

⁹¹ Idem.

⁹² Transparency International Nederland, *Position Paper: European Anti-Corruptionpackage (Position Paper: Europees anti-corrupatiepakket)*, 25 January 2024, <https://www.transparency.nl/wp-content/uploads/2024/01/Position-paper-Reactie-TI-NL-op-NL-standpunt-m.b.t.-EU-anti-corrupatiepakket.pdf>

⁹³ OECD Anti-Bribery Convention: *The Netherlands Phase 4 Monitoring Report*, 19 October 2022, https://www.oecd.org/en/publications/implementing-the-oecd-anti-bribery-convention-phase-4-follow-up-report-netherlands-phase-4-two-year-follow-up-report_8035e87a-en.html

Transparency International that looks into the levels of enforcement against foreign bribery, confirms this: the Netherlands has a notoriously poor track record when it comes to prosecuting Dutch companies involved in bribery abroad.⁹⁴ Prosecutions rarely or never take place, despite international treaties to which our country has committed itself. The Netherlands has committed itself to the OECD obligation to actively combat bribery abroad but does so only to a very limited extent. Last year, two Dutch companies (Philips and Frank International) were prosecuted in the United States for bribery, partly because enforcement in the Netherlands is too weak.

⇒ *Potential obstacles to investigation and prosecution of high-level and complex corruption cases (e.g. political immunity regulation)*

Between 75% and 90% of all bribery and corruption occurs via intermediaries.^{95 96} However, this appears to be quite difficult to prosecute in the Netherlands because the Public Prosecution Service must demonstrate that a third party is deliberately used to be able to bribe, and that is not easy. This is clear in cases such as Damen Shipyards and IHC.⁹⁷ This is where improvement is needed in the Netherlands.

Not only bribery by management or employees, who are allowed to represent the company, should be prosecutable. Bribery by any employee should be prosecutable. A real game-changer for combating corruption is the personal liability of managers. Making top management liable would lead to more anti-corruption action as the CEO or CFO risks going to jail or receiving a large personal fine. For example, the previous CEO of the Dutch SBM Offshore was sent to jail in the United States, not in the Netherlands, because our country had no jurisdiction due to the foreign nationality of the CEO and the fact that the bribery took place abroad. In the Netherlands, not a single CEO or CFO has gone to jail. Tackling individuals is important because someone is less likely to choose the conscious corrupt or corrupting act if there is a serious chance of individual prosecution. Moreover, the fact that there are virtually no personal consequences in the Netherlands for involvement in bribery demotivates companies to invest in an effective compliance program and, therefore, has an inhibiting effect on the prevention and combating of corruption.⁹⁸

What would help is the obligation to have an 'accurate system of internal (accounting) controls' as in the Foreign Corrupt Practices Act (FCPA) of the United States, the 'failure to prevent bribery/adequate procedures' from the UK Bribery Act of the United Kingdom or having an anti-

⁹⁴ Transparency International Nederland: *Historic low in fight against foreign bribery, Netherlands stagnates (Historisch dieptepunt in strijd tegen buitenlandse omkoping, Nederland stagneert*, 11 October 2022,

<https://www.transparency.nl/nieuws/2022/10/historisch-dieptepunt-in-strijd-tegen-buitenlandse-omkoping-nederland-stagneert/>

⁹⁵ OECD, OECD Foreign Bribery Report, 2 December 2014, <https://www.oecd.org/corruption/oecd-foreign-bribery-report-9789264226616-en.htm>

⁹⁶ White & Case LLP, *Global compliance risk benchmarking survey: Third-party management*, 13 June 2023, <https://www.whitecase.com/insight-our-thinking/2023-global-compliance-third-party-management>

⁹⁷ Transparency International Nederland: *Research focusses on suspicion corruption intermediaries Damen Shipyards (Onderzoek richt zich op verdenking corruptie tussenpersonen Damen Shipyards)*, 24 October 2018, <https://www.transparency.nl/nieuws/2018/10/onderzoek-mogelijke-corruptie-tussenpersonen-damen-shipyards/>

⁹⁸ For a full review see: Transparency International Nederland: *Position Paper: European Anti-Corruptionpackage (Position Paper: Europees anti-corruptiepakket)*, 25 January 2024, <https://www.transparency.nl/wp-content/uploads/2024/01/Position-paper-Reactie-TI-NL-op-NL-standpunt-m.b.t.-EU-anti-corruptiepakket.pdf>

corruption program as in the Loi Sapin II in France.^{99 100 101} That makes it a lot easier to tackle companies that pay suspiciously high commissions in high-risk countries and cannot explain why they do so and what measures they have taken to prevent corruption. It is easier to argue and prove that in that case their control measures/compliance program are/is inadequate.

Having such a program should not only apply to a legal entity established in the Netherlands; the Dutch head office should also roll it out globally and be held accountable if the compliance program (especially in certain high-risk countries) does not work. In 2023, for example, Philips NV (for bribery in China) and Frank International NV - two Dutch companies - were prosecuted by the US authorities for bribery abroad. Not by the Netherlands because the Dutch anti-corruption legislation is inadequate for this. If the Dutch head office is unaware of the bribery, has not been involved, and no Dutch people are involved, then the Netherlands has no jurisdiction. The Netherlands believes this should be prosecuted in the relevant foreign country, but this often does not happen. In the United States, the United Kingdom and France, however, one can argue that the control measures/compliance program from the head office apparently did not work well enough or that there is an error in the consolidated annual accounts.¹⁰²

⇒ *Other*

The European Anti-Corruption Package offers the ultimate opportunity to take a major step forward in the fight against corruption, as it can provide a better legal basis for combating corruption, stronger enforcement with dissuasive sanctions, more effective cooperation of anti-corruption activists in Europe through harmonised rules and encouragement for governments to take an active and leading role. Instead of watering down anti-corruption measures, we call on the government to work hard for, among other things:¹⁰³

- Strengthening the legal basis for combating corruption, including appropriate instruments;
- Strong enforcement of corruption with dissuasive sanctions;
- Harmonisation of rules and definitions within the EU and effective international cooperation;
- Sound whistleblower protection for effective combating of corruption;
- A leading role for governments in combating corruption with the establishment of a central anti-corruption authority.

⁹⁹ U.S. Department of Justice, *the FCPA Resource Guide*, consulted on 12 december 2024, p. 38:

<https://www.justice.gov/criminal/criminal-fraud/fcpa-resource-guide>

¹⁰⁰ Government of France, *Notice on the French Anti-Corruption Agency Guidelines to help Public and Private Sector Entities to Prevent and Detect Bribery, Influence Peddling, Extortion by Public Officials, Illegal Taking of Interest, Misappropriation of Public Funds and Favouritism*, consulted on 12 december 2024: <https://www.agence-francaise-anticorruption.gouv.fr/files/files/French%20AC%20Agency%20Guidelines%20.pdf>

¹⁰¹ U.K. government, *guidance on UK Bribery Act*, consulted on 12 december 2024, p. 15:

<https://www.justice.gov.uk/downloads/legislation/bribery-act2010-guidance.pdf>

¹⁰² Transparency International Nederland: *Position Paper: European Anti-Corruptionpackage (Position Paper: Europees anti-corruptiepakket)*, 25 January 2024, <https://www.transparency.nl/wp-content/uploads/2024/01/Position-paper-Reactie-TI-NL-op-NL-standpunt-m.b.t.-EU-anti-corruptiepakket.pdf>

¹⁰³ For full list of recommendations see: Transparency International Nederland: *Position Paper: European Anti-Corruptionpackage (Position Paper: Europees anti-corruptiepakket)*, 25 January 2024, <https://www.transparency.nl/wp-content/uploads/2024/01/Position-paper-Reactie-TI-NL-op-NL-standpunt-m.b.t.-EU-anti-corruptiepakket.pdf>

MEDIA PLURALISM AND MEDIA FREEDOM

⇒ *Existence and functions of media councils or other co- and self-regulatory bodies*

The main self-regulatory body for the media is the Council for Journalism (Raad voor de Journalistiek). This is an independent body to which interested parties can submit complaints about journalistic activities. The Council assesses whether a journalist has done his work carefully and whether a publication has exceeded the boundaries of journalistic ethics. The Council can only provide an opinion; they do not have the ability to impose rectifications or sanctions.

The council was criticised by several media outlets for “juridification” and being abused by some complainants as a “gateway” for a real trial.¹⁰⁴ To address these concerns, in November 2023, the Council announced that they will no longer handle complaints from parties that also go to court or have started other legal procedures. These rules were enforced in 2024. For example, in October 2024, a complaint against GooiTV and its editor-in-chief was not reviewed by the Council as the complainant also filed a police complaint and sent a demand letter.¹⁰⁵ Nonetheless, some concerns about “juridification” remain. In 2024, there are still several instances where lawyers accompany complainants to the Council.

⇒ *Levels of market concentration*

On a yearly basis, the Dutch Media Authority publishes a Media Monitor. In 2023, the Dutch Media Authority already signalled that there is an increasing market share with fewer media companies, a trend which continued into 2024. Together with RTL Nederland and Talpa Network, the public broadcasting system holds over three-quarters of the television market.¹⁰⁶ The online news offering is highly concentrated among websites owned by DPG Media, Mediahuis and RTL Nederland.¹⁰⁷ According to the Media Monitor, media companies see consolidation as a solution that offers resistance to large international players such as Google and Meta.

Rules governing and safeguarding the pluralistic media market, and their application (including regulating mergers, acquisitions and other ownership changes)

At the end of 2023, DPG Media announced its intention to acquire RTL Group. RTL Nederland is still the largest private broadcasting company, with a market share of 25.1%.¹⁰⁸ This raises concern about the highly concentrated media landscape in the Netherlands, as this acquisition would lead to even further media concentration. On 17 May 2024, the Dutch Authority for Consumers and Markets (*Autoriteit Consument & Markt*) decided to further investigate the acquisition of RTL Nederland by DPG Media, indicating that based on market research, the size, quality and pluriformity of media outlets to consumers could be negatively affected. The acquisition could lead DPG Media to reduce

¹⁰⁴ Council for Journalism (Raad voor de Journalistiek) (Netherlands), *Raad voor de Journalistiek wordt minder ‘juridisch’*. 21 november 2023. <https://www.rvdj.nl/over-de-raad/berichten/raad-voor-de-journalistiek-wordt-minder-juridisch>

¹⁰⁵ Council for Journalism (Raad voor de Journalistiek) (Netherlands), *Ruling 2024/29 (Uitspraak 2024/29)*, <https://www.rvdj.nl/2024/29>

¹⁰⁶ Dutch Media Regulator, *Mediamonitor 2024*, p. 8

¹⁰⁷ Dutch Media Regulator, *Mediamonitor 2024*, pp. 8-9

¹⁰⁸ Dutch Media Regulator, *Mediamonitor 2024*, p. 8

the quality and accessibility of news outlets, for example by spreading the same news across several channels or reducing unpaid news. Also, it would render it more cumbersome for other media companies to compete with DPG Media when it comes to advertising. Furthermore, DPG Media's position vis-a-vis the General Dutch Press Agency (*Algemeen Nederlands Persbureau*) could be such that it could effectively influence the press agency's media range and, henceforth, the news supply generally. Finally, the acquisition could negatively influence their journalists' position versus their employer.¹⁰⁹ The Dutch Journalist Association (*Nederlandse Vereniging van Journalisten*) has repeated its concerns, particularly for journalists' job security and bargaining power.¹¹⁰

⇒ *Fairness and transparency of licencing procedures (including allocation of licences, fines and penalties)*

Following the public broadcasting system's request to revoke Ongehoord Nederland's license, which the Ministry of Culture declined in December 2023, two fines that were imposed for insufficient collaboration and lack of adherence to journalistic standards were withdrawn in March 2024. A prior fine for lack of adherence to journalistic standards was not withdrawn.¹¹¹

⇒ *Other*

The president of the board of Ongehoord Nederland, Arnold Karskens, was forced to resign in October 2024 following an internal investigation carried out by the media outlet itself.¹¹² This investigation concluded, inter alia, that Karskens had expressly ordered the outlet to refrain from any critical reporting vis-a-vis the four political parties that were in the process of forming a government (e.g. political interference). Furthermore, Karskens intervened in the editorial process by removing critical references to Geert Wilders and Prime Minister Dick Schoof.¹¹³

Furthermore, in May 2024, the Coalition government published their policy agreement announcing a VAT increase from 9% to 21% on print and online media, which would make news a lot more expensive. Independent research into the effect of this measure showed that it would have serious consequences for access to independent information, as turnover from subscriptions and single-copy sales would shrink by 10%, meaning that 270,000 households would end their news subscriptions. Declining subscriber numbers will also have an impact on employment, which means that, collectively, news organisations will have to shrink by approximately 377 full-time employees. Moreover, this VAT increase would be at odds with developments in the broader European region,

¹⁰⁹ Editors, *Further Research Needed on RTL Takeover by DPG (Meer onderzoek nodig naar overname RTL door DPG)*, 17 May 2024, Authority Consumer & Market (Autoriteit Consument & Markt) <https://www.acm.nl/nl/publicaties/acm-meer-onderzoek-nodig-naar-overname-rtl-door-dpg>

¹¹⁰ Nederlandse Vereniging van Journalisten (NVJ), *NVJ Warns About Media Concentration Consequences in RTL Takeover by DPG Media (NVJ waarschuwt voor gevolgen mediaconcentratie bij overname RTL Nederland door DPG Media)*, 2024, <https://nvj.nl/actueel/nvj-waarschuwt-gevolgen-mediaconcentratie-overname-rtl-nederland-dpg-media>

¹¹¹ NOS: *NPO Withdraws Two Fines for Ongehoord Nederland (NPO trekt twee boetes voor Ongehoord Nederland in)*, NOS Nieuws, 28 March 2024, <https://nos.nl/artikel/2514588-npo-trekt-twee-boetes-voor-ongehoord-nederland-in>

¹¹² Gudo Tienhoven & Leon van Wijk, *Dismissed Broadcaster Boss Karskens Also Accused of Sexual Misconduct: "Nice Bum, Right?" (Ontslagen omroepbaas Karskens ook beschuldigd van seksueel wangedrag: 'Lekker kontje hè?')*, Algemeen Dagblad (AD), 11 October 2024, <https://www.ad.nl/show/ontslagen-omroepbaas-karskens-ook-beschuldigd-van-seksueel-wangedrag-lekker-kontje-he~afdc70285/>

¹¹³ SVISION B.V. (External Investigation Report), *"Unheard: Silence Around Unwanted Workplace Behaviour" at ON! ('Ongehoord: Het Zwijgen Rond Ongewenst Gedrag op de Werkvloer' bij ON!)*, pp. 121, 125, <https://ongehoordnederland.tv/wp-content/uploads/2024/10/Rapport-en-bevindingen-ON-extern-onderzoek-final.pdf>

as in most countries, there is a zero VAT rate in order to stimulate journalism. Bulgaria is the only country in the EU where a high VAT rate is applicable to print and online media.

The Council of State (*De Raad van State*) strongly criticised the proposed VAT increase, noting that the consequences of the VAT measure for citizens are hardly substantiated. The Council of State stated that the cabinet did not pay sufficient attention to the negative side effects of this measure, such as on the plurality of the press. The Council of State explicitly mentions the risks to freedom of expression and information, as laid down in the Constitution and the ECHR.¹¹⁴

Opposition parties filed a motion asking the government to reverse the decision, which was accepted by a majority of Parliament. In the coming months, the cabinet, in consultation with Parliament, will have to find an alternative to the VAT increase. If that process were to fail for whatever reason, the VAT increase would still go ahead.

⇒ *The transparent allocation of state advertising (including any rules regulating the matter)*

The Dutch Media Authority (Commissariaat voor de Media) annually allocates broadcasting time to political parties represented in the House of Representatives (Tweede Kamer) or the Senate (Eerste Kamer) to ensure a fair and balanced distribution. An independent notary oversees the lottery process for scheduling, while the NPO (Dutch Public Broadcasting) provides time slots, technical support, and subtitles. There are two types of broadcasting time: regular airtime for parties with seats in Parliament, and election airtime for parties participating in at least 19 electoral districts during national or European elections. This process supports media independence, diversity, and freedom of information.¹¹⁵

⇒ *Independence of public service media from governmental interference*

In October 2024, Coalition party BBB (*Boer Burger Beweging*) submitted Parliamentary questions about the journalistic integrity and impartiality of “government-funded media”. These questions inquired how the government monitored whether media content conflicted with the Constitution and asked the Minister of Education, Culture and Science if he was willing to request the Dutch Media Authority to assess the journalistic standards and independence of the reporting of the public broadcaster NOS. BBB also asked the Minister to request the Dutch Media Authority to investigate the objectivity of public broadcasters and possible violations of the Media Act regarding reporting on Israel. On 2 December of 2024 BBB representative Claudia van Zantem emphasised she considers a “one sided view” to prevail within the public news media, and that the current system does not “reflect society.”¹¹⁶

In response to these parliamentary questions, the Minister stated that the government should not interfere in any way with the content of the reporting by the NOS, or other media, and underlined the independence of the Dutch Media Authority. Furthermore, the Minister referred to Freedom of Expression and Freedom of Speech as fundamental pillars of media independence, stating that

¹¹⁴ Raad van State (Netherlands), *Further Report on Tax Plan 2025 (Nader rapport wetsvoorstel Belastingplan 2025)*, 17 September 2024, <https://www.rijksoverheid.nl>

¹¹⁵ Commissariaat voor de Media, *Broadcasting time for political parties (Zendtijd politieke partijen)*, <https://www.cvdm.nl/voor-medi makers/regelgeving/mediawet/zendtijd-politieke-partijen/>

¹¹⁶ Dutch House of Representatives, *Uncorrected Stenogram Media (Ongecorrigeerd Stenogram Media)*, 2024D47377, 2 December 2024, <https://www.tweedekamer.nl/kamerstukken/verslagen/detail?id=2024D47377&did=2024D47377>

editorial standards and prior supervision of the content of media expression are not permitted in the Netherlands.¹¹⁷

Although the Minister's response to these questions is adequate and underlines the principles of the rule of law, this incident is indicative of a broader trend in the Netherlands, where prominent politicians and (government) parties use their positions to question the independence of media and to curtail Freedom of Expression.

For example, in July 2024, the PVV (*Partij voor de Vrijheid*) and FvD (*Forum voor Democratie*) attempted to condemn the contents of a newspaper article on behalf of the Provincial Council of Overijssel by submitting a motion claiming the article contained disinformation.¹¹⁸ The article in local newspaper Tubantia refuted the position of these parties on the wind energy policy of the province. Moreover, in November, BBB stated that the account of CestMocro, a popular Dutch Instagram account with over a million followers, should be prohibited because the account "incites anti-Semitism". Experts pointed out that such a blanket prohibition is a very far-reaching measure that would curtail freedom of expression, and could pave the way for the prohibition of newspapers. NSC (*Nieuw Social Contract*) questioned the "proportionality" of a report by PowNed. In response to these events, the Dutch Media Authority stated that parliamentarians and cabinet members should not "try to influence the content of the media through the government, [...] Media services must always be able to operate independently of politics, in light of the constitutional prohibition of censorship".

⇒ *Editorial standards (including diversity and non-discrimination)*

Editorial standards in the Netherlands are generally robust and adequate. However, two instances where these standards faltered highlight the challenges of maintaining these values in fast-moving and politically or emotionally charged situations.

In November 2024, riots broke out after the Ajax-Maccabi Tel Aviv football match in Amsterdam. The media storm following the riots shows that not all media were equally diligent in their reporting. The news spread rapidly, and many major news media immediately embraced the frame that Jewish supporters were the victims of Muslim youth and antisemitism. Only after more journalists published their own eyewitness accounts did it become clear that the context of the riots was more complex. Photographer Annet De Graaf published photos of Maccabi supporters molesting passers-by in Amsterdam, but several media sources suggested that the photos showed the opposite. This was rectified only after she refuted this framing. This framing was reinforced by Prime Minister Schoof during a press conference, even before the Amsterdam triad (mayor Femke Halsema, the Public Prosecution Service and the police) had presented a factual overview. In times when emotions run high and framing can have a powerful impact, it is essential that the media rely on facts and show all sides of a story. Independent and unbiased journalism is possible, even in tense situations. In cases where multiple groups are involved in a conflict, it is crucial to prioritise facts over interpretation. Media must take their societal responsibility very seriously in this regard.

¹¹⁷ House of Representatives (Netherlands), *Parliamentary Questions Regarding Media Matters (Kamervragen inzake mediakwesties)*, 2024, <https://www.tweedekamer.nl/kamerstukken/kamervragen/detail?id=2024Z15183&did=2024D41932>

¹¹⁸ ANP: *Overijssel PVV Labels Article on Wind Energy as "Disinformation" and Submits Motion (Overijsselse PVV noemt krantenartikel over windenergie 'desinformatie' en dient een motie in)*, 17 July 2024, <https://www.trouw.nl/politiek/overijsselse-pvv-noemt-krantenartikel-over-windenergie-desinformatie-en-dient-een-motie-in~bfe6ba9f/>

Another example where the media followed dominant framing without diligently checking the facts is the recent reporting on the peace organisation PAX. An article in the *Jerusalem Post*, drawing on a report from Israel's Ministry of Diaspora Affairs and Combating Antisemitism, levelled false accusations against a Dutch staff member of PAX, insinuating that the organisation, as well as other Dutch organisations and human rights defenders, are part of an antisemitic and pro-Hamas network. Without investigation or consultation, Dutch newspapers *De Telegraaf* and *De Limburger* echoed these false accusations.

⇒ *Financing (including transparency of financing)*

The current government has announced cuts to the budget allocated to the public broadcasting network, totalling €116.6 million per year, starting in 2027. Similarly, regional broadcasters will receive less financial support.¹¹⁹ Further cuts of €50 million euros were approved in December of 2024.¹²⁰ Extra cuts have been announced since then (going up to €1.1 billion).¹²¹ The budget cuts on public service media are highly concerning for the public's access to information, and the pluriformity and independence of the media sector in the Netherlands.

When it comes to the regulation of advertising on public news channels, the media regulator (*Commissariaat voor de Media*) has passed a new policy, replacing the one dating from 2019, in 2024.¹²² The new policy contains the following:

- Social media posts are also part of the public media assortment
- Max 15% of posts on the social media of a public media institution are allowed to consist of advertising and teleshopping messages
- No advertising and teleshopping messages may be included around national public media offerings

Furthermore, the Minister of Education, Culture and Science has expressed his intention to present a draft bill that should support local and regional news media, as he acknowledges the societal importance of local and regional news (and as a crucial force to uphold the rule of law). Many local and regional news providers suffer financial issues. The bill should reinforce such media by assuring central funding (instead of regional), an additional annual investment of €16 million, scaling-up, better coordination by the NLPO, and clearer allocation rules per geographical area.¹²³

¹¹⁹ Het Parool: *Minister of Education cuts 361 million on (amongst other things) gym classes, secondary vocational education and public broadcasting (Onderwijsminister bezuinigt 361 miljoen op onder andere gymlessen, mbo en publieke omroep)*, Het Parool, 24 October 2024 <https://www.parool.nl/nederland/onderwijsminister-bezuinigt-361-miljoen-op-onder-andere-gymlessen-mbo-en-publieke-omroep~b95512cc/?referrer=https://www.google.com/>

¹²⁰ Villamedia: *NPO-cuts possibly not able to be paid out of commercials (NPO-bezuiniging mogelijk niet te betalen uit reclame)*, Villamedia, 13 December 2024, <https://www.villamedia.nl/artikel/npo-bezuiniging-mogelijk-niet-te-betalen-uit-reclame>

¹²¹ Arno Kersten, *AOb: political deal on cuts unacceptable, prepare for strike (AOb: politieke deal over bezuinigingen onacceptabel, voorbereiden op staking)*, AOB, 12 December 2024, <https://www.aob.nl/actueel/artikelen/aob-politieke-deal-over-bezuinigingen-onacceptabel-voorbereiden-op-staking/>

¹²² Dutch Media Authority, *Consultation Policy Rule Advertising Public Media Institutions 2024 (Consultatie Beleidsregel reclame publieke media-instellingen 2024)*, 2024, <https://www.cvdm.nl/voor-medi makers/regelgeving/beleidsregels/consultatie-beleidsregel-reclame-publieke-media-instellingen-2024/>

¹²³ Minister Bruins, *Letter to the House of Representatives (Brief aan de Tweede Kamer)*, 25 October 2024, <https://open.overheid.nl/documenten/dpc-fc98724b27ef30be9829c9570f0a9eb58d6a0e80/pdf>

Safety and protection of journalists and other media actors

⇒ *Frequency of verbal and physical attacks*

In the period 2020-2023, a total of 722 reports were received by PersVeilig. The majority of these concerned 'threats' (58%), followed by 'physical violence' (19%) and 'stalking/harassment/intimidation' (10%). Almost two-thirds of the reports were made by freelance journalists. PersVeilig reported 439 incidents in 2024, a marked increase compared to 2022 and 2023.¹²⁴ The incidents consisted of 99 threats, 72 incidents of discrimination or intimidation, and 56 of physical violence.¹²⁵ Photojournalists, in particular, were especially vulnerable in 2024, with a high number of physical attacks recorded.

2024 was marked by a large number of protests, especially due to the war in Gaza. This led to several incidents threatening the safety of journalists. For example, during the protests at the University of Amsterdam in May 2024, several journalists were threatened, attacked, and intimidated.¹²⁶ In addition, on 10 November 2024, the police arrested a photographer during the banned pro-Palestinian demonstration on Dam Square in Amsterdam. The woman photographer was making film recordings for her work at the School of Journalism when she was arrested and detained for nine hours despite presenting a valid press card. On 14 November 2024, the Dutch Association of Journalists (NVJ) announced it would file a complaint with the police.¹²⁷

⇒ *Rules and practices guaranteeing journalist's independence and safety*

The Ministry of Education, Culture and Science decided to turn the temporary €500,000 yearly subsidy to PersVeilig into a permanent subsidy. Persveilig monitors and surveils journalists' safety. Furthermore, in 2025, the Ministry will grant a one-off subsidy of EUR 300,000 to PersVeilig's initiative Balie Persvrijheid, which offers legal support to journalists.¹²⁸ Balie Persvrijheid offers free legal advice to journalists whose (future) publications are legally challenged.¹²⁹ More than half of the advice and support provided between 2021-2023 by De Balie Persvrijheid related to freedom of press

¹²⁴ Persveilig, *249 incidenten gemeld bij PersVeilig in 2024*, Pers Veilig, 5 January 2025, <https://persveilig.nl/artikelen/249-incidenten-gemeld-bij-persveilig-in-2024>

¹²⁵ Persveilig (Netherlands), *249 incidenten gemeld bij PersVeilig in 2024 (Overzicht Meldingen)*, 5 January 2025 <https://persveilig.nl/artikelen/meldingen-2023>

¹²⁶ Nederlandse Vereniging van Journalisten (NVJ), *Protestors Must Leave Journalists Alone, UvA Demonstration (Demonstranten UvA blijf van journalisten af)*, 8 May 2024, <https://www.nvj.nl/nieuws/nvj-%E2%80%98demonstranten-uva-blijf-journalisten-af%E2%80%99>

¹²⁷ Jesper Roele: *Journalist Arrested at Dam Demonstration, Police Claims She Was Protesting (Journalist zondag aangehouden bij demonstratie op de Dam, politie zegt dat ze aan het demonstreren was)*, Het Parool, 13 November 2024, <https://www.parool.nl/amsterdam/journalist-zondag-aangehouden-bij-demonstratie-op-de-dam-politie-zegt-dat-ze-aan-het-demonstreren-was~b41ff1e3/>

¹²⁸ Rijksoverheid (Netherlands), *Additional Investments in Press Safety (Extra investeringen in persveiligheid)*, 27 November 2024, <https://www.rijksoverheid.nl/actueel/nieuws/2024/11/27/extra-investeringen-in-persveiligheid>

¹²⁹ Nederlandse Vereniging van Journalisten (NVJ), *Free Legal Advice for Journalists (Gratis juridisch advies voor of na je publicatie)*, <https://nvj.nl/diensten/persvrijheid>

issues (53%), followed by unlawful publication (28%), criminal law, WOB-procedures and image rights.

The project PersVeilig (set up in 2019) has been evaluated in 2024. The evaluation concluded that PersVeilig has achieved a number of its key objectives: journalists have confirmed that they value the existence of PersVeilig's hotline, knowledge and skills sharing (as accommodated by PersVeilig) have reinforced journalists' position, journalists' are now granted preferential treatment by law enforcement in case of aggression, prosecutors now apply heavier sentence guidelines in case of aggression and violence against journalists, clearer process for each type of aggression against journalists, and finally the general awareness of aggression against journalists has been improved.¹³⁰ The evaluation report also contains a number of recommendations to improve PersVeilig further going forward.¹³¹

In June 2024, initiated by the Authors Union and the General Publishers Group and hosted by PersVeilig, the new platform SchrijversVeilig was launched. This platform aims to strengthen the position of writers against violence, aggression, and intimidation.

⇒ *Law enforcement capacity to ensure journalists' safety and to investigate attacks on journalists and media activists*

Law enforcement's capacity to ensure journalists' safety and investigate attacks on journalists and media activists has seen some progress but remains inconsistent. A notable example occurred on 5 December 2023, when three journalists from the media platform PowNed were assaulted while covering the celebration of Sunneklaas on Ameland. Following this incident, legal action was taken, and the journalists involved are now being prosecuted, raising concerns about the prioritisation of protecting journalists versus prosecuting them.¹³²

Furthermore, in December 2024, Jan Roos was arrested after publicly inciting violence against journalists who were set to cover the 2024 Sunneklaas celebrations. This arrest demonstrates the willingness of law enforcement to address threats of violence against journalists.¹³³ However, these incidents highlight a broader challenge: while authorities are taking steps to investigate and, in some cases, prevent violence, the overall safety of journalists and the ability to report freely without fear of intimidation, assault, or legal repercussions remains a point of concern.

⇒ *Lawsuits and prosecutions against journalists (including SLAPPs) and safeguards against abuse*

¹³⁰ PersVeilig (Netherlands), *Evaluation Report: Towards a Sustainable Organisation (Evaluatie PersVeilig: naar een toekomstbestendige organisatie en financiering)*, 28 May 2024, <https://open.overheid.nl/documenten/dpc-77dfd2e3e1df16d8bfc76caf8354c8b737d8ca31/pdf>

¹³¹ Idem., p. 5

¹³² NOS: 'PP prosecutes two people from Ameland for harrassing journalists during Sunneklaas (OM vervolgt twee Amelanders voor belagen journalisten tijdens Sunneklaas)', 11 July 2024, <https://nos.nl/artikel/2528438-om-vervolgt-twee-amelanders-voor-belagen-journalisten-tijdens-sunneklaas>

¹³³ JOOP BNNVARA: 'Bully vlogger Jan Roos arrested for call to violence regarding Sunneklaas at Ameland (Treitervlogger Jan Roos aangehouden om oproep tot geweld rond Sunneklaas op Ameland)', 29 November 2024, <https://www.bnnvara.nl/joop/artikelen/treitervlogger-jan-roos-aangehouden-om-oproep-tot-geweld-rond-sunneklaas-op-ameland>

In April 2024, Free Press Unlimited published a research report investigating the impact of legal pressure on Dutch journalism.¹³⁴ The research shows that increasing legal pressure on media and individual journalists in the Netherlands leads to self-censorship, and psychological and financial pressure on freelance journalists and smaller media outlets. The legal pressure was, in some cases, severe: penalty payments of tens of thousands of euros and threats to seize a journalist's house.

The research shows that the impact of legal pressure is strongest among freelancers, local media and small titles. These groups are most vulnerable to the possible effects and are, therefore, more likely to resort to self-censorship. Journalists and titles of large publishers also experience the consequences of legal pressure. Despite the protection that larger titles offer, journalists experience many unspoken concerns about the coverage of legal costs if, for example, they retire or end up on sick leave.

In addition to the financial implications and the time investment, the research shows that the psychological impact on the individual journalist is underestimated. Journalists indicated that legal pressure can cause severe stress, anxiety and psychological burden. Journalists also indicate that they often feel like they are on their own and that they experience little solidarity from colleagues.

The report concludes that current Dutch legislation does not provide sufficient protection against SLAPP cases and recommends creating special provisions in Dutch law to protect targets of SLAPPs.

⇒ *Confidentiality and protection of journalistic sources (including whistleblower protection)*

In August of 2024, a journalist was summoned to be questioned as a witness in a criminal case against one of his sources. The case involved a journalist from the media outlet Zembla. The examining magistrate summoned Zembla investigative journalist Roelof Bosma to be heard as a witness in the criminal case against former Dordrecht municipal councillor Ruben Schilt. Bosma refused, citing the importance of source protection.¹³⁵

In general, regardless of this specific case, legally and publicly addressing sources and/or experts will always entail the risk of a chilling effect, making it more difficult for the media to find experts willing to speak out publicly about cases where legal action is threatened or expected. Journalists cannot effectively execute their role as the watchdogs of power when they cannot credibly protect the confidentiality of their sources. Sources and whistleblowers should be confident that journalists will treat the identity of the source and background information they share with journalists with care and, where necessary, confidentiality.

In October 2023, it was revealed that journalists from De Correspondent were wiretapped in 2022 by the Public Prosecution Office (OM) during a conversation with Sywert van Lienden and his business partners, who were being investigated by the OM. As a result of the scandal, the Public Prosecution office (OM) adjusted their rules around the wiretapping of suspects in conversation with journalists

¹³⁴ Free Press Unlimited: *An Underestimated Problem: Legal Pressure on Dutch Journalism (Een onderschat probleem: disproportionele juridische druk op de Nederlandse journalistiek)*, 10 April 2024, <https://www.freepressunlimited.org/sites/default/files/documents/Een%20onderschat%20probleem%2C%20disproportionele%20juridische%20druk%20op%20de%20Nederlandse%20journalistiek.pdf>

¹³⁵ VillaMedia: *Zembla Journalist Refuses Testimony to Protect Sources (Zembla-journalist weigert getuigenverhoor om bronnen te beschermen)*, VillaMedia, 20 August 2024, <https://www.villamedia.nl/artikel/zembla-journalist-roelof-bosma-wil-bronnen-beschermen-en-weigert-getuigenverhoor>

to always require prior permission from an Examining Magistrate.¹³⁶ In the case at hand, the examining magistrate had only approved the wiretapping of the location, and was uninformed that journalists would be present. The new rule became effective on the 1st of May 2024.

De Correspondent started a case against the Public Prosecution office (OM), which embarked on 9 December 2024. They argue that the OM's actions violated their journalistic source protection.¹³⁷ Although the OM argues that the wiretapping was incidental and targeted the suspect rather than journalists themselves, *De Correspondent* argues that the OM's actions contribute to a broader chilling effect by discouraging sources from coming forward, therefore hindering investigative reporting.

⇒ *Access to information and public documents*

Freedom of information is mentioned in article 110th of the Dutch Constitution but not guaranteed. The Open Government Act (Wet open overheid), which came into effect in 2022, provides the legal basis for the release of government information. The law recognises that all citizens have a right to government information without cause. In practice, however, access to information is obstructed by several factors. The government usually exceeds the deadline for processing Freedom of Information (FOI) requests. Investigations by NGOs show that the average response time by authorities at the level of the central government is 172 days, where the legal maximum is 42 days, including a 14-day extension from the initial period of 28 days.¹³⁸ The reasons for the delay are varied. The government points to outdated information management, but multiple NGO's also point to a culture within ministries. Civil servants are hesitant to share information, and FOI requests often go through multiple legal and political checks before release. Departments are afraid that releasing information might lead to difficult political questions for the leadership.¹³⁹

Concerns raised in a 2023 study to evaluate the functioning of The Open Government Act have not yet been adequately addressed. The results highlight some important concerns of journalists. They have indicated that active disclosure has not yet improved and that government cooperation is not satisfactory when it comes to Woo requests. Furthermore, journalists expect deliberate, politically motivated delays when the legal deadline to process a Woo request is not met and believe that the government does not always apply grounds for exception correctly.

We believe that independent entities within ministries should review the FOI-requests and that political considerations should be taken out of the process. This would not only speed up the process but would also make for a more objective application of the grounds for refusal. Recent years saw various attempts by government authorities to keep internal advice given by government officials

¹³⁶ NU Nieuwsredactie, *OM adjusts policy after wire-tapping Sywert van Lienden and Journalists* (OM pas beleid aan na afluisteren Sywert van Lienden en journalisten), Nu.nl, 29 April 2024, <https://www.nu.nl/binnenland/6310967/om-past-beleid-aan-na-afluisteren-sywert-van-lienden-en-journalisten.html>

¹³⁷ Rob Wijnberg, *We were wiretapped. This is on the line in our case against the Public Prosecutor (Wij zijn afgeluisterd. Dit staat er op het spel in onze rechtszaak tegen het Openbaar Ministerie)* *De Correspondent*, 2 December 2024, <https://decorrespondent.nl/15735/wij-zijn-afgeluisterd-dit-staat-er-op-het-spel-in-onze-rechtszaak-tegen-het-openbaar-ministerie/1490c6c3-ab74-088f-0de7-c08360a3233b>

¹³⁸ Instituut Maatschappelijke Innovatie, Open State Foundation and the University of Amsterdam: *Leaves on the Track – Analysis of the Handling of Woo Requests 2023 (Blaadjes op het Spoor - Analyse afhandeling Woo-verzoeken 2023)*, February 2023, <https://www.imi.nu/userfiles/imi.nu/files/Blaadjes-op-het-spoor-rapport.pdf>

¹³⁹ Ibid

out of the public's reach. For instance, the documents are classified as drafts, unripe, personal opinions or a threat to the unity of the cabinet¹⁴⁰. Governments should stop playing these legal and semantic games and give insight into the objective information on which political decisions are based.

⇒ *Other*

In February 2024, the Commission of Inquiry into Behaviour and Culture of Broadcasters (Onderzoekscommissie Gedrag en Cultuur Omroepen (OGCO), also known as the Van Rijn Committee) released its report on misconduct at public broadcasters.¹⁴¹ The main conclusion of the report is that misconduct is widespread in the national public broadcasting system, contributing to an unsafe working environment. More than 1,484 employees (3 out of 4) indicated that they have been confronted with misconduct in the past year as either a target or a witness. Furthermore, the report concludes that broadcasters and the Dutch Public Broadcaster (NPO) did not respond effectively when receiving worrying signals about this. In March, the NPO launched a plan of action to address misconduct.¹⁴² The Dutch Journalist Union (NVJ) welcomed the swift action by the NPO but argued that more is needed to ensure a safer working environment and formulated several recommendations.¹⁴³ The minister of education sought to allocate 3.6 million euros to support the efforts of the NPO to address the issues, but the funding was blocked by the House of Representatives following a resolution by the BBB.¹⁴⁴

Furthermore, we see that the political rhetoric towards journalists and media is hardening, with politicians verbally attacking (individual) journalists or questioning their integrity. The most well-known example is that PVV leader Geert Wilders called journalists “scum of the earth” via X (former Twitter) in 2021. During the formation period in early 2024, when Wilders was one of the potential candidates to become Prime Minister, he refused to retract this statement. The normalisation of this rhetoric is worrying, and journalists indicate that they feel less safe to carry out their work.

Another example occurred when the Dutch Minister of Justice and Security, Dilan Yeşilgöz, posted critical tweets in response to journalist Tim Hofman's call on X for evidence of police brutality. Hofman, in the context of widespread pro-palestinian protests at Dutch universities, had asked his followers to provide accounts and evidence of police brutality and mistreatment during demonstrations. The minister responded scathingly, questioning Hofman's journalistic integrity. Her comments prompted a flurry of online hate and intimidation towards Hofman, who had been subjected to a murder attempt months earlier.¹⁴⁵ The incident drew criticism from various opposition

¹⁴⁰Woo Expertisecentrum, *Uitspraak conceptenprocedure: i-grond zonder betekenis bij concepten*, 24 juli 2024, <https://expertisecentrumspoon.nl/blog/uitspraak-conceptenprocedure-i-grond-zonder-betekenis-bij-concepten/>

¹⁴¹ Onderzoekscommissie Gedrag en Cultuur Omroepen: *Nothing Seen, Nothing Heard, Nothing Done – The Disappearing Responsibility (Niets gezien, niets gehoord en niets gedaan - De zoekgemaakte verantwoordelijkheid)*, January 2024, <https://ogco.nl/actueel/niets-gezien-niets-gehoord-niets-gedaan-de-zoekgemaakte-verantwoordelijkheid>

¹⁴² NPO: *Comprehensive Action Plan on Social Safety in Public Broadcasting – Towards a Different Workplace Culture (Overkoepelend plan van aanpak sociale veiligheid publieke omroep, naar een andere omgangscultuur)*, 28 March 2024, https://media.prod.cc.bijnpo.nl/Plan_van_Aanpak_2024_3b406b71e2.pdf

¹⁴³ Nederlandse Vereniging van Journalisten, *NVJ: NPO Action Plan is a Start (NVJ: plan van aanpak NPO is een begin)*, 28 March 2024, <https://www.nvj.nl/nieuws/nvj-plan-aanpak-npo-begin>

¹⁴⁴ <https://boerbeweging.nl/fractienieuws/kamer-steunt-bbb-motie-en-blokkeert-extra-miljoenen-npo-slecht-gedrag-niet-belonen/>

¹⁴⁵ RTL nieuws: *‘Tim Hofman receives many hate responses after criticism Yesilgöz on X (Tim Hofman ontvangt veel haatreacties na kritiek op X)* RTL nieuws, 15 mei 2024, <https://www.rtl.nl/nieuws/artikel/5450526/tim-hofman-ontvangt-veel-haatreacties-na-kritiek-yesilgoz-op-x>
BNN Vara: *Minister of Justice Dilan Yeşilgöz starts hounding against Tim Hofman*,

party members, who pointed out that as Minister of Justice and Security, Yeşilgöz is responsible for the safety of journalists like Tim Hofman.¹⁴⁶ State secretary of Culture and Media, Fleur Gräper, responded to the affair that “Journalists should be able to freely do their work and ask all the questions they want.”¹⁴⁷ The incident prompted questioning of the minister in the Dutch house of Representatives, to which Yeşilgöz responded that she was in agreement with Gräper’s statement and that she disapproves of violence towards journalists.¹⁴⁸

Furthermore, we see that the political rhetoric towards journalists and media is hardening, with politicians verbally attacking (individual) journalists or questioning their integrity. The most well-known example is that PVV leader Geert Wilders called journalists “scum of the earth” via X (former Twitter) in 2021. During the formation period in early 2024, when Wilders was one of the potential candidates to become Prime Minister, he refused to retract this statement. The normalisation of this rhetoric is worrying, and journalists indicate that they feel less safe to carry out their work.

Another example occurred when the Dutch Minister of Justice and Security, Dilan Yeşilgöz, posted critical tweets in response to journalist Tim Hofman’s call on X for evidence of police brutality. Hofman, in the context of widespread pro-palestinian protests at Dutch universities, had asked his followers to provide accounts and evidence of police brutality and mistreatment during demonstrations. The minister responded scathingly, questioning Hofman’s journalistic integrity. Her comments prompted a flurry of online hate and intimidation towards Hofman, who had been subjected to a murder attempt months earlier.¹⁴⁹ The incident drew criticism from various opposition party members, who pointed out that as Minister of Justice and Security, Yeşilgöz is responsible for the safety of journalists like Tim Hofman.¹⁵⁰ State secretary of Culture and Media, Fleur Gräper, responded to the affair that “Journalists should be able to freely do their work and ask all the questions they want.”¹⁵¹ The incident prompted questioning of the minister in the Dutch house of Representatives, to which Yeşilgöz responded that she was in agreement with Gräper’s statement and that she disapproves of violence towards journalists.¹⁵²

In early October 2024, the Ministry of Justice and Security published the draft law for implementing the European Anti-SLAPP Directive. The proposed implementation law does not provide sufficient

¹⁴⁶ Nikki Verbeek: *Dilan Yesilgöz lashes out fiercely to Tim Hofman and is reprimanded by colleagues (Dilan Yesilgöz haalt fel uit naar Tim Hofman en wordt op haar vingers getikt door collega’s)*, Metro 25, 14 May 2024,

<https://www.metronieuws.nl/in-het-nieuws/binnenland/2024/05/dilan-yesilgoz-tim-hofman/>

¹⁴⁷ ANP: *Criticism from Yeşilgöz on journalist Tim Hofman does not sit well with colleague Gräper (Kritiek van Yeşilgöz op journalist Tim Hofman valt niet goed bij collega Gräper)* Trouw, 15 May 2024, <https://www.trouw.nl/politiek/kritiek-van-yesilgoz-op-journalist-tim-hofman-valt-niet-goed-bij-collega-graper~b2fdc2bb7/?referrer=https://www.google.com/>

¹⁴⁸ Dutch House of Representatives, Responses parliamentary questions about the message ‘Yeşilgöz haalt uit naar Tim Hofman na X-bericht over ME’ (Antwoorden Kamervragen over het bericht ‘Yeşilgöz haalt uit naar Tim Hofman na X-bericht over ME’) Doc nr. 2 0 24Z08238,25 June 2024, <https://open.overheid.nl/documenten/dpc-436dba7b10c243769e5d37475f5d059d1205493a/pdf>

¹⁴⁹ RTL nieuws: *‘Tim Hofman receives many hate responses after criticism Yesilgöz on X (Tim Hofman ontvangt veel haatreacties na kritiek op X)* RTL nieuws, 15 mei 2024, <https://www.rtl.nl/nieuws/artikel/5450526/tim-hofman-ontvangt-veel-haatreacties-na-kritiek-yesilgoz-op-x>

BNN Vara: *Minister of Justice Dilan Yeşilgöz starts hounding against Tim Hofman*,

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<https://www.metronieuws.nl/in-het-nieuws/binnenland/2024/05/dilan-yesilgoz-tim-hofman/>

¹⁵¹ ANP: *Criticism from Yeşilgöz on journalist Tim Hofman does not sit well with colleague Gräper (Kritiek van Yeşilgöz op journalist Tim Hofman valt niet goed bij collega Gräper)* Trouw, 15 May 2024, <https://www.trouw.nl/politiek/kritiek-van-yesilgoz-op-journalist-tim-hofman-valt-niet-goed-bij-collega-graper~b2fdc2bb7/?referrer=https://www.google.com/>

¹⁵² Dutch House of Representatives, Responses parliamentary questions about the message ‘Yeşilgöz haalt uit naar Tim Hofman na X-bericht over ME’ (Antwoorden Kamervragen over het bericht ‘Yeşilgöz haalt uit naar Tim Hofman na X-bericht over ME’) Doc nr. 2 0 24Z08238,25 June 2024, <https://open.overheid.nl/documenten/dpc-436dba7b10c243769e5d37475f5d059d1205493a/pdf>

protection for victims of SLAPPs in the Netherlands. In some respects, the minimum standards outlined in the Directive are not met, let alone the best practices recommended by the Council of Europe. This is concerning, as research by Free Press Unlimited earlier this year highlighted that legal pressure and SLAPPs also affect journalists in the Netherlands, leading to self-censorship.¹⁵³

The most pressing concerns with the Draft Implementation Act are the following:

- The definition and indicators to assess a SLAPP have not been included in the draft Act. By not including SLAPP indicators in the law, Dutch judges are given little guidance when assessing potential SLAPP cases - a significant issue given the limited case law on this topic. In the interest of legal certainty, this guidance is crucial. The criteria from the Directive introduce indicators of a SLAPP that do not align with current Dutch jurisprudence on abuse of procedural law (Article 3:13 BW), further underscoring the need to enshrine them in law.
- With the exception of the provision on securities, the Explanatory Memorandum states that the safeguards for early dismissal and full compensation for costs as outlined in the Directive are already provided for in Dutch law. However, by not making specific safeguards available for SLAPP targets, the Draft Act does not offer effective access and hereby does not meet the minimum standards of the Directive.
 - Regarding early dismissal, the Draft Act creates a barrier to effective access to this remedy. The Explanatory Memorandum states that no legal change is needed in Dutch law because SLAPP targets can start separate summary proceedings to request the dismissal of the case. This does not align with the Directive's mandate, as this would increase the costs for SLAPP targets. A specific legal provision for (an expedited handling of) a request for early dismissal in the same procedure in cases of SLAPPs would better reflect the Directive.
 - Secondly, the effective access to the full compensation for costs is concerning as the Explanatory Memorandum states that it is already possible to recover the full costs of legal representation. However, this remedy is rarely awarded, even when courts do find abuse of process. Only statutory fees are awarded in the vast majority of cases, which is problematic as the gap between the actual costs and the awarded costs can be very large. Without a specific remedy for full compensation in SLAPP cases, there are strong concerns about the effective access to this safeguard and, therefore, compliance with the Directive.
- The draft Act focuses solely on cross-border cases. While the European Directive targets cross-border SLAPPs, the EU encourages member states to extend these safeguards to domestic SLAPP cases as well (in line with the Council of Europe's anti-SLAPP recommendations). The fact that the draft Act does include domestic cases is highly concerning, as many SLAPP cases

¹⁵³ Free Press Unlimited: *FPU Research: Increasing Legal Pressure on Dutch Media Underestimated (Onderzoek FPU: toenemende juridische druk op Nederlandse media wordt onderschat)*, 10 April 2024, <https://www.freepressunlimited.org/nl/actueel/onderzoek-fpu-toenemende-juridische-druk-op-nederlandse-media-wordt-onderschat>

in the Netherlands lack a cross-border element, meaning these safeguards will not apply to such cases.¹⁵⁴

⇒ *Support of the defendant by associations, organisations, trade unions or other entities also interested in the protection of public participation*

In June 2024, the supervisory authority for the legal profession opened a reporting point for journalists who are victims of legal intimidation and SLAPPs. The reporting point is seated with the local bar president of Amsterdam. The reporting point is available to both lawyers and directly affected parties who suspect they are targeted with a SLAPP. The purpose of the reporting point is to provide information and to document reports. Where necessary, further investigation into a report can be conducted. If the report concerns a lawyer from another district, this will be done in consultation with the relevant bar president.¹⁵⁵

CHECKS AND BALANCES

⇒ *Rules and use of fast-track procedures and emergency procedures (for example, the percentage of decisions adopted through emergency/urgent procedure compared to the total number of adopted decisions)*

In September 2024, the Minister of Asylum and Migration proposed declaring an asylum crisis to activate emergency powers under the Dutch Aliens Act, which would allow her to limit family reunification and end indefinite asylum grants. Such emergency measures can lead to misuse, as seen historically with authoritarian regimes. State emergency law should only be invoked when a vital interest is threatened, and normal legal powers are insufficient. The Dutch parliament and judiciary must rigorously scrutinise the necessity and proportionality of the proposed measures to ensure that they align with constitutional principles and do not undermine the rule of law. To prevent the misuse of emergency powers is the importance of the parliament's oversight and the potential judicial review.

After much public push-back, the Minister has changed proceedings from invoking state emergency law towards fast-track proceedings. In the beginning of December 2024, the Council of State had one week to review the fast-tracked Asylum Emergency Measures Act and the Two-Status System Act.

⇒ *Regime for constitutional review of laws*

The government is preparing a constitutional amendment proposal to establish a constitutional court that can review laws, regulations, and decisions against the Constitution by partially lifting the prohibition in Article 120 of the Dutch Constitution, allowing for the constitutional review of laws

¹⁵⁴ Free Press Unlimited: *FPU Research: Increasing Legal Pressure on Dutch Media Underestimated (Onderzoek FPU: toenemende juridische druk op Nederlandse media wordt onderschat)*, 10 April 2024, <https://www.freepressunlimited.org/nl/actueel/onderzoek-fpu-toenemende-juridische-druk-op-nederlandse-media-wordt-onderschat>

¹⁵⁵ *Advocatenblad. Dekens openen meldpunt voor juridische intimidatie journalisten.* 20 June 2024. <https://www.advocatenblad.nl/2024/06/20/dekens-openen-meldpunt-voor-juridische-intimidatie-journalisten/>

against fundamental rights provisions. The framework for this court will be outlined and a legislative proposal is expected in 2025. The government is also considering whether inter-institutional provisions will be subject to review. The previous cabinet had excluded inter-institutional provisions from its plans.¹⁵⁶

⇒ *Transparency of administrative decisions and sanctions (including their publication and the availability and publicity of data concerning administrative decisions)*

NJCM has responded in a letter to the government regarding an online consultation about the increasing use of algorithms by the government. The letter addresses whether it is necessary and desirable to legally establish certain standards for algorithmic decision-making in the Dutch General Administrative Law Act (Awb). In the letter, NJCM advocates for a fundamental reconsideration of the Awb in light of the impact of algorithmic decision-making and artificial intelligence on administrative law and emphasises the importance of effective legal protection and transparency in government actions, highlighting that the general principles of proper administration are currently not guaranteed when algorithms are applied in administrative decision-making. NJCM advises equipping citizens, judges, and lawmakers with (technological) tools and resources to challenge or limit algorithmic decision-making early on, thereby enhancing effective legal protection. Furthermore, the group asserts the necessity of a right to human intervention in algorithmic decision-making by administrative bodies, in line with Recital 71 of the General Data Protection Regulation (GDPR). The NJCM considers the protection of human rights in the context of increasing algorithmic decision-making to be of paramount importance and calls for ensuring that the legal framework provides sufficient safeguards for legal protection and transparency.¹⁵⁷

ENABLING ENVIRONMENT FOR CIVIL SOCIETY

⇒ *Financing framework for CSOs, including availability of and access to public funding, rules on fundraising, rules on foreign funding, tax regulations (e.g. tax advantages for organisations with charitable or public benefit status, eligibility to receive donations via citizens' allocation of income tax to charitable causes, eligibility to use public amenities at low or no cost, etc)*

WTMO

As reported previously, the draft law on transparency of civil society organisations (*Wet Transparantie en tegengaan ondermijning door Maatschappelijke Organisaties*, or WTMO¹⁵⁸) is still on the parliamentary agenda. Despite widespread criticism, including from the Council of State, the law was included in the new government's coalition agreement. While the law has been revised

¹⁵⁶ Ministry of Internal Affairs and Ministry of Justice (The Netherlands), Letter to the Second Chamber of Parliament on the Framework for Constitutional Review (Brief toetsingskader constitutionele toetsing), number 2024-0000194928, 2 april 2024.

¹⁵⁷ NJCM: Letter *Algorithmic decision making and the Awb (Algoritmische besluitvorming en de Awb)*, 30 april 2024, <https://njcm.nl/wp-content/uploads/2024/05/Internetconsultatie-Algoritmische-besluitvorming-en-de-Awb-Reactie-Nederlands-Juristen-Comite-voor-de-Mensenrechten-NJCM-30-april-2024-1.pdf>

¹⁵⁸ Tweede Kamer (The Netherlands), *Transparency and Countering Undermining by Civil Society Organisations Act (Wet transparantie en tegengaan ondermijning door maatschappelijke organisaties)*, 20 November 2020, 35646, <https://www.tweedekamer.nl/kamerstukken/wetsvoorstellen/detail?cfg=wetsvoorsteldetails&qry=wetsvoorstel%3A35646>

based on earlier criticism and the debate on the law has been rescheduled multiple times, the criticism and concerns raised both by civil society as well as the Council of State remain.

The law can oblige organisations to publish information on funding coming from third countries when there is a suspicion that a CSO implements activities that undermine the rule of law. However, the necessity of the law in addition to already existing legislation in place related to countering money laundering, terrorism financing and malign influence is not sufficiently justified and the law could disproportionately infringe on freedom of association and right to privacy.

The draft law does not offer sufficient safeguards against the risk of selective implementation and stigmatisation of CSOs due to vague and unclear definitions. For example, when a CSO undermines the rule of law, it is unclear. If organisations do not comply, far-reaching sanctions can be imposed, such as fines, or the public prosecutor can even request the suspension of activities for up to 2 years. For many CSOs, this would jeopardise the existence of the whole organisation, and it is unclear how CSOs can appeal against these decisions. The law also increases the administrative burden on CSOs as they are required to save a lot of additional information about donations, which can also include volunteering for up to 7 years. This also includes personal data, raising concerns around privacy and cybersecurity. This can also have a chilling effect on the willingness of people to donate or volunteer.

Budget cuts and additional restrictions on state-funding affecting funding for civil society

The new government has announced plans to significantly cut the budgets for civil society in different sectors. A massive cut of 70% of the development aid budget will have a significant effect on the civil society sector in the Netherlands. Even more so, this will be combined with a new requirement that NGOs can only apply for funding from these budgets if at least 50% of their income comes from sources other than state funding. In an already shrinking funding landscape, this is posing immense pressure on many organisations.

The Minister is arguing that the 50% restriction is necessary to make CSOs less dependent on the government and push them towards raising other income, such as direct donations from citizens.

However, at the same time, the government has tried to reduce the tax benefits on corporate and individual donations in their new tax plan and is trying to introduce new rules around funding from third countries through a transparency act. Different parties in parliament have also been attacking the National Postcode Lottery and important funder of CSOs in the Netherlands because of some of the organisations they supported, putting pressure on them to stop funding relations with certain CSOs.

Although the Parliament voted against the reduction in tax benefits for donations, all of these actions put together can lead to a dangerous cocktail that could significantly restrict access to funding for CSOs in the Netherlands. At the same time, we see a shift in the political narrative on the role of CSOs. Where traditionally these were seen as partners, often playing a significant role in the execution of the foreign policy of the Netherlands, they are now often presented as a source of concern to the Netherlands' interests.

Moreover, it's not just the cuts for internationally operating NGOs. Cuts in the education, cultural and health care budgets will also affect the funding of CSOs that are providing important services, especially those providing services and advocating for the rights of certain underrepresented groups such as undocumented migrants, people without housing and people who use drugs.

⇒ *Access to justice, including rules on legal standing, capacity to represent collective interest at court, and access to legal aid*

WAMCA

As reported in previous years, the adoption of the Act on Collective Damages in Class Actions (*Wet afwikkeling massaschade collectieve actie*, or WAMCA) in January 2020 has introduced the possibility to institute collective class actions. The provisions regarding collective actions have been amended, which has led to more obstacles for non-governmental organisations and public interest initiatives. More specifically, a more stringent admissibility regime is sometimes used with respect to public interest proceedings; the introduction of the requirement of representation for public interest proceedings has created an extra obstacle to public interest litigation; and the final authority of a judgement extends to individuals that were involved in the collective action.¹⁵⁹ Although inadvertent, these restrictions place a heavier burden on non-governmental organisations to launch a collective action, as these proceedings have become more complex, costlier, and lengthier.¹⁶⁰ In our written submission of 27 March 2024 we voiced our concern with the parliamentary motion to introduce even stricter criteria.

In the country chapter of the 2024 Rule of Law Report, the following is mentioned on page 30 regarding the concern of civil society organisations: *“They also expressed fear that their access to the court system will be made more difficult in the future due to the imposition of stricter admissibility require.”* In our view, this does not do justice to the significance of the problem that would be posed by introducing more stringent criteria in the WAMCA.

With a national government ready to use emergency legislation in certain areas, local governments more and more relying on algorithms and profiling in combating ‘fraud’ and the right to demonstrate being curtailed, civil society organisations play a crucial role in upholding the rule of law through collective legal action. In turn, this is exactly why the government seeks to introduce obstacles to those (successfully) challenging the legality of state action.

The plan to introduce new obstacles to public interest proceedings in the WAMCA would cause more than a mere nuisance to civil society organisations. It is a key indicator of the government’s attitude towards checks and balances and the rule of law.

Hence, we call upon the drafters of the Rule of Law Report 2025 and the EU to recommend to the Netherlands not to introduce any additional obstacles to those challenging the legality of its actions individually or collectively via WAMCA proceedings.

Legal Aid

¹⁵⁹ P. Veerman, L. Bryk, M.B. Hendrickx, *The obstacles of the WAMCO for idealistic actions (De obstakels van de WAMCA voor ideële acties)*, Bureau Clara Wichmann/Stichting PILP: Amsterdam 2024 <https://pilp.nu/wp-content/uploads/2024/10/De-Obstakels-van-de-WAMCA-voor-Ideele-Acties- BCW_PILP_Rapport_2024.pdf>.

¹⁶⁰ Ibid.

In the 2024 country chapter on the Netherlands, the persistent calls to make the Dutch system of legal aid viable and sustainable are recognised. As the Bar Association has pointed out many times, the fee structure, as well as the age of most lawyers providing legal aid, lead to more and more lawyers quitting the legal assistance system. As of now, the system is barely working. In a Fact sheet published in November 2024, the Bar Association stresses that the number of lawyers providing legal aid continues to decrease and that there is a real shortage of lawyers in a number of provinces, leading to citizens being unable to find a lawyer that will take their case.¹⁶¹ In fact, this means that the measures taken by the government are insufficient and that the government must structurally and substantially increase funding to keep the system from collapsing

⇒ *Rules on transparency*

See reply to question “*Financing framework for CSOs, including the availability of and access to public funding, rules on fundraising, rules on foreign funding, tax regulations (e.g. tax advantages for organisations with charitable or public benefit status, eligibility to receive donations via citizens’ allocation of income tax to charitable causes, eligibility to use public amenities at low or no cost, etc)*” for information on this.

⇒ *Rules on organisation, authorisation of and participation to assemblies*

The freedom of peaceful assembly in the Netherlands is generally well-regulated in accordance with human rights treaties. But in practice, numerous mayors (the competent authorities) seem to violate this right. As the National Ombudsman already said in 2018.¹⁶²

In April 2024, the Dutch Ministers of Internal Affairs and of Justice and Security announced an investigation into the right to freedom of peaceful assembly, more specifically into the question of whether the legal framework concerning the right to demonstrate still corresponds to current developments.¹⁶³ Especially disruptive demonstrations and demonstrations which endanger national security or the rights of others are the main subjects of this investigation. Explicit references are made to the roadblocks of Extinction Rebellion and farmers’ protests, as well as protests “in the context of the Israel-Palestine conflict”.¹⁶⁴ The motive behind this study is to investigate “the possibilities of strengthening the action perspective of all parties involved and the durability of the legal framework” to strengthen and maintain the right to demonstration.¹⁶⁵

¹⁶¹ Dutch Bar Association (Netherlands), *Fact Sheet on Shortage of Social Lawyers: Access to Justice at Risk (Fact Sheet Tekort Aantal Sociaal Advocaten, Toegang tot het Recht in Gevaar)*.

¹⁶² Nationale Ombudsman (the Netherlands), *Research Demonstrating a Frictional Fundamental Right (Demonstreren: een schurend grondrecht)*, 14 March 2018, <https://www.nationaleombudsman.nl/publicaties/onderzoeken/2018015-demonstreren-een-schurend-grondrecht>

¹⁶³ Rijksoverheid (the Netherlands), *Cabinet Orders Independent Investigation into Right to Protest (Kabinet laat onafhankelijk onderzoek doen naar demonstratierecht)*, 19 April 2024, <https://www.rijksoverheid.nl/actueel/nieuws/2024/04/19/kabinet-laat-onafhankelijk-onderzoek-doen-naar-demonstratierecht>>.

¹⁶⁴ Ministry of Internal Affairs (the Netherlands), *Consolidated Letter on the Right to Protest (Verzamelbrief demonstratierecht)*, 19 April 2024, <https://open.overheid.nl/documenten/14d4c321-0294-430a-bcd6-0ab0bc0fdb06/file>>.

¹⁶⁵ Idem, p. 19.

Amnesty International reports that this security-oriented focus on the right to demonstration endangers compliance with international human rights standards. Shocking expressions and non-criminal protest signs are often banned, which constitutes a form of censorship; restrictive measures are imposed on the organisation of protests to avoid traffic disruptions, which is not a lawful restriction of the right to demonstrate; notification procedures before the municipality can be unnecessarily complicated and differ per municipality.¹⁶⁶ Furthermore, emergency legislation (*noodwetgeving*) is sometimes used to prohibit or disband protests, while this is not the object and purpose of this legislation; participants in a demonstration are often asked to identify themselves without an actual need to do so, and protesters are arrested or subjected to unlawful and excessive violence.¹⁶⁷

⇒ *Bans on protests*

The municipality of Amsterdam effected a week-long general ban on protests: after the riots that took place in Amsterdam on 7 November 2024, the municipality instituted a week-long ban on all demonstrations in the city. Legal experts agree that this measure interferes with relevant provisions of the Dutch Constitution and the European Convention on Human Rights.¹⁶⁸

Similarly, the organisers of a university protest in Utrecht cancelled their demonstration after the municipality of Utrecht informed them that there were indications that the protest would be overshadowed by (violent) pro-Palestine protesters. According to some organisers, it was unclear what precise risks were predicted and which (groups of) people would come to disrupt their manifestation.¹⁶⁹

⇒ *Bans on the use of symbols/slogans in protests*

There have been examples of bans on symbols and slogans in the past. The most recent example was a very small Extinction Rebellion protest in the city of Hengelo where the restriction was that no mention was to be made of the “developments in the Middle East” The restriction was withdrawn by the mayor after it came in the media.¹⁷⁰

⇒ *Policing practices, including dispersion of protests, use of force*

¹⁶⁶ Amnesty International, *Right to Protest Under Pressure: Rules and Practices in the Netherlands Need Improvement (Demonstratierecht onder druk: regels en praktijk in Nederland moeten beter)*, 2022, https://www.amnesty.nl/content/uploads/2022/11/AMN_22_33_demonstratierecht-onder-druk.pdf?x84346

¹⁶⁷ Ibid.

¹⁶⁸ Frank Rensen, *Extension of Amsterdam Protest Ban Likely to be Overturned, Experts Say (Verlenging Amsterdams demonstratieverbod houdt waarschijnlijk geen stand, denken experts)*, *De Volkskrant*, 11 November 2024.

¹⁶⁹ See Landelijke Studenten Vakbond (Netherlands), *Statement on Cancellation of Protest on 14 November: An Alternative for Students to Protest (Statement Landelijke Studenten Vakbond Aflazen Protest 14 Nov: Er Komt Voor Studenten Een Alternatief Om Alsnog Te Protesteren)*, 13 November 2024, <https://lsvb.nl/2024/11/13/statement-landelijke-studentenvakbond-afblazen-protest-14-nov-er-komt-voor-studenten-een-alternatief-om-alsnog-te-protesteren/>.

¹⁷⁰ 1Twente: *Ban on Discussing Gaza During Climate Activists' Flyer Action in Hengelo Found to Be an Error in Municipality's Letter (Verbod om over Gaza te praten bij flyeractie klimaactivisten XR Twente in Hengelo blijkt fout in brief van de gemeente)*, 27 June 2024, <https://www.1twente.nl/artikel/4486764/verbod-om-over-gaza-te-praten-bij-flyeractie-klimaactivisten-xr-twente-in-hengelo-blijkt-fout-in-brief-van-de-gemeente>.

Excessive use of force after a pro-Palestine demonstration in Amsterdam occurred on 17 November 2024. Protesters who participated in a pro-Palestine demonstration reported excessive violence used by police task forces, both in the city centre as well as at a remote dock area after having been administratively displaced. An investigation into this incident has been launched after online footage circulated on social media.¹⁷¹

Excessive use of water guns (*waterkanonnen*) to break up demonstrations can constitute excessive violence. Water guns are only to be used to break up a group and are not to be used against individuals. Furthermore, they are only to be used if there are no other suitable means to disperse a crowd of protesters.¹⁷²

⇒ *Criminalisation of protesters*

Among many other European countries, the Netherlands has used criminal measures against protesters. Several members of Extinction Rebellion have been preventively arrested before the start of a climate demonstration and were eventually prosecuted for sedition.¹⁷³

⇒ *Surveillance of protests*

Amnesty has written a report on this.¹⁷⁴ There has also been surveillance of Extinction Rebellion protesters: the Dutch police infiltrated in group chats of Extinction Rebellion in order to prosecute these activists for sedition (see above).¹⁷⁵

⇒ *Imposition of fines and other administrative sanctions*

“Bestuurlijk verplaatsen” (so-called ‘administrative moving’) could be seen as a potential violation of the right to freedom and security. The mayor of Haarlem tried to use a specific fine system to keep climate justice activists from further peaceful civil disobedience actions. The activists were fined for thousands of euros. The district court decided these fines violated the Right to protest and the Wom.¹⁷⁶

¹⁷¹ Steven Ramdharie, *Investigation into Police Violence Against Protesters in Amsterdam: "These Images Look Serious"* (Onderzoek naar politiegeweld tegen betogers in Amsterdam: ‘Deze beelden zien er ernstig uit’), *De Volkskrant*, 14 November 2024

¹⁷² Amnesty International (Netherlands), *Police Violence in the Netherlands (Politiegeweld in Nederland)*, <https://www.amnesty.nl/politiegeweld-in-nederland>.

¹⁷³ Mandula van den Berg, *Is Climate Activism Being Criminalised in Europe? (Wordt klimaatactivisme in Europa gecriminaliseerd?)*, NRC, 1 August 2023.

¹⁷⁴ Amnesty International, *Unchecked Power: ID Checks and Collection of Data from Peaceful Protesters in the Netherlands (Unchecked Power: ID Checks and Collection of Data from Peaceful Protesters in the Netherlands)*, 31 March 2023, <https://www.amnesty.org/en/documents/eur35/6650/2023/en/>

¹⁷⁵ David van Benthem, Freyan Bosma, Simon Dequeker, Daphne ten Klooster, Sophie Polm, *Police Secretly Monitored Chat Groups of Extinction Rebellion (Politie keek heimelijk mee in chatgroepen van Extinction Rebellion)*, *Investico*, 22 March 2023, <https://www.platform-investico.nl/onderzoeken/onderzoek-demonstratierecht-in-de-knel/politie-keek-heimelijk-mee-in-chatgroepen-van-extinction-rebellion>.

¹⁷⁶ Rechtbank Noord-Holland (the Netherlands), Judgment of 12 August 2024, (*No Fine or Penalty for Extinction Rebellion Protesters in Haarlem (Geen last onder dwangsom voor demonstranten Extinction Rebellion in Haarlem)*), <https://www.rechtspraak.nl/Organisatie-en-contact/Organisatie/Rechtbanken/Rechtbank-Noord-Holland/Nieuws/Paginas/Geen-last-onder-dwangsom-voor-demonstranten-Extinction-Rebellion-in-Haarlem.aspx#:~:text=Geen%20last%20onder%20dwangsom%20voor%20demonstranten%20Extinction%20Rebellion%20in%20Haarlem,-Haarlem%2C%2015%20augustus&text=De%20burgemeester%20van%20de%20gemeente,oordeelt%20de%20rechtbank%20Noord%20Holland.>

⇒ *Rules on hate speech and their enforcement*

On 12 November 2024, the bill “Wet toezicht informeel onderwijs” (Law on Supervision of Informal Education) went under consultation. With the law, the government wants to protect children from 4 to 17 years old from lessons that incite them to hatred, discrimination or violence. The government wants to be able to intervene if things go wrong at institutions of informal education. Examples of informal education include: tutoring institutes, Chinese weekend schools, Koranic schools, youth clubs and Sunday schools.

The bill allows suspected abuses to be reported to the “*Onderwijs Inspectie*” (Education Inspectorate). The inspection can eventually visit the institution and observe. If there are legitimate concerns and an institution violates the law, the minister can impose a designation and, for example, ban specific teaching materials or close the organisation in question.

The positive development of this bill is that the law is intended to curb excesses, which is good for the fight against hate speech and disinformation. The downside is that the broad scope of the bill can open the door to unwanted surveillance of ordinary activities of these institutions, which seriously infringes on the freedom of religion, education and association. It is, therefore, logical that there is great concern that this law sets a dangerous precedent, with institutions of informal education losing the freedom to inform children of their beliefs without reservation.

The bill fits within the thinking of several governing parties that religion should be behind the front door and does not belong in public life. This is worrisome and goes against the human right of freedom of religion.

⇒ *Criminalisation of speech*

Some speakers have been refused entry into the Netherlands because the authorities thought they would spread messages of hate. This happened to an Islamic preacher from Australia,¹⁷⁷ a famous conspiracy theorist,¹⁷⁸ and a Palestinian radical activist.¹⁷⁹ All speakers were able to speak to crowds through digital means, so the question can be raised about what effect the banning of these people had.

⇒ *Intimidation / negative narratives / smear campaigns / disinformation campaigns*

The political discourse surrounding watchdog organisations, NGOs, civic activists, and protest groups is becoming increasingly negative. Instead of being recognised as essential contributors to a healthy democracy, critical NGOs are often portrayed as adversaries advancing foreign or political agendas.

¹⁷⁷ NOS: Controversial Islamic preacher denied entry to the Netherlands (Omstreden islamitische prediker toegang tot Nederland geweigerd), 18 January 2024, <https://nos.nl/artikel/2505407-omstreden-islamitische-prediker-toegang-tot-nederland-geweigerd>

¹⁷⁸ Rechtspraak: David Icke's entry ban remains in force (Inreisverbod David Icke blijft van kracht), 26 September 2023, <https://www.rechtspraak.nl/Organisatie-en-contact/Organisatie/Rechtbanken/Rechtbank-Noord-Holland/Nieuws/Paginas/Inreisverbod-David-Icke-blijft-van-kracht.aspx#:~:text=De%20staatssecretaris%20van%20Justitie%20en,vormt%20van%20de%20openbare%20orde.>

¹⁷⁹ NOS: Banned pro-Palestinian activist Khatib speaks via video connection in Wageningen (Geweerde pro-Palestijnse activist Khatib spreekt via video in Wageningen), 25 November 2024, <https://nos.nl/artikel/2545940-geweerde-pro-palestijnse-activist-khatib-spreekt-via-video-in-wageningen>

Their legitimacy is frequently questioned by politicians, including ministers and Members of Parliament.

The Minister of Development Aid, for instance, has repeatedly raised doubts about NGOs engaging in strategic litigation and advocacy. Geert Wilders, leader of the PVV party, has called for halting state funding to NGOs in response to specific actions, such as a lawsuit opposing the delivery of F-35 jet parts to Israel. Despite their longstanding partnership with the Dutch Ministry of Foreign Affairs and their valuable expertise, these organisations face growing challenges to their credibility.

Some politicians and media outlets exacerbate these issues by fuelling or initiating smear campaigns against NGOs and individual activists. For example, misinformation spread by Forum for Democracy MPs about a sexual education week in primary schools led to intimidation against Rutger Institute staff.¹⁸⁰ Similarly, baseless accusations against a PAX staff member, stemming from an Israeli state report, were uncritically echoed by Dutch political parties and media, enabling an unprecedented attack on local NGOs by a foreign state.¹⁸¹

These developments coincide with the increasing criminalisation of peaceful protests, signalling a shift toward suppressing dissent and narrowing the space for independent and critical civil society voices. Instead of supporting civic activism, the narrative now favours selective approval of certain perspectives while undermining others.

Intimidation: On 7 October 2023, the mayor of Amsterdam received a death threat after facilitating a pro-Israeli commemoration and a pro-Palestinian counter-demonstration that escalated. Following the death threat, the mayor filed a police report.

Other systemic issues

On July 2, 2024, the Schoof cabinet was sworn in. This new cabinet consists of right-wing (and partly extremist) parties¹⁸². The cabinet's coalition agreement includes a proposal for a temporary asylum crisis law to address the influx of asylum seekers and the reception crisis for a maximum duration of two years.¹⁸³ With this law, the cabinet aimed to tackle overcrowding in asylum shelters and regain control over the situation. This proposal would result in the strictest asylum regime the Netherlands has ever known. For example, the law would allow the government to deviate from the Immigration Act through emergency legislation.¹⁸⁴

In October 2024, UNICEF warned that emergency legislation could harm children in asylum shelters, recalling how children's interests were neglected during the COVID-19 pandemic. This risk could

¹⁸⁰ KRO-NCRV: *How misinformation fuelled the online hate machine against the Week of Lentekriebels (Hoe misinformatie de online haatmachine tegen de Week van de Lentekriebels op gang trok)*, 23 March 2023, <https://pointer.kro-ncrv.nl/hoemisinformatie-de-online-haatmachine-tegen-de-week-van-de-lentekriebels-op-gang-trok>

¹⁸¹ PAX, *Criticism on Israel should be allowed*, 12 November 2024, <https://paxforpeace.nl/news/criticism-on-israel-should-be-allowed/>

¹⁸² Parties including the Party for Freedom (PVV), the People's Party for Freedom and Democracy (VVD), New Social Contract (NSC), and the Farmer–Citizen Movement (BBB).

¹⁸³ Central government website (Rijksoverheid), (Netherlands), *'Ruleproblem cabinet-Schoof' (Regeerprogramma kabinet-Schoof)*, 2024, <https://www.rijksoverheid.nl/regering/regeerprogramma/2-grip-op-asiel-en-migratie>

¹⁸⁴ Central government website (Rijksoverheid), (2024). *'Minister Faber. The Netherlands will receive the strictest asylum policy ever' (Minister Faber: Nederland krijgt strengste asielregime ooit)* <https://www.rijksoverheid.nl/actueel/nieuws/2024/09/13/minister-faber-nederland-krijgt-strengste-asielregime-ooit#:~:text=De%20minister%20van%20Asiel%20en,herhaalde%20asielaanvragen%20worden%20strenger%20getoetst>

resurface, further destabilising vulnerable refugee children.¹⁸⁵ Ultimately, the initiative did not proceed, as the Senate refused to approve using state emergency law to tighten asylum policy.¹⁸⁶ These developments, however, illustrate that the current cabinet intends to implement strict measures which appear to come at the expense of vulnerable groups such as refugee children.

The Netherlands is also currently facing significant challenges in providing adequate shelter for refugee children, both with and without families. An October 2024 report by the Kinderrechtencollectief, revealed that the number of children in emergency shelters increased by 65% within a year, reaching a total of 5,566 children.¹⁸⁷ Despite warnings from government inspections and children's rights organisations, including the Working Group Kind in AZC, children continue to suffer in emergency shelters. Overcrowded regular reception centres, long waiting times, and budget cuts have forced thousands of asylum seekers, including children, into substandard emergency shelters.

Children in emergency shelters face violations of their rights, including multiple relocations, lack of education, and insufficient privacy and safety. These shelters often fail to meet basic needs, such as rest, space, and adequate medical and psychological care, hindering children's development.¹⁸⁸

The Hague Court of Appeal previously criticised the government for insufficient reception conditions for unaccompanied minors in emergency shelters in Ter Apel. The ruling, based on reports from the Health and Youth Care Inspectorate and the Justice and Security Inspectorate, highlighted inadequate care due to the high influx of minors, overburdening the COA and Nidos. The living conditions in the reception facilities at the registration centre in Ter Apel were found to be substandard.¹⁸⁹ This was made clear during a visit to the decentralised reception facility in Ter Apel by the Health and Youth Care Inspectorate and the Justice and Security Inspectorate on September 8, 2022.¹⁹⁰

A solution seems to lie in the Spreidingswet (also known as the Municipal Duty Act) that has come into effect since 1 February 2024. The goal of this law is to create sufficient reception places and

¹⁸⁵ UNICEF. (2024). 'UNICEF warns: emergency legislation poses a major risk for children' (UNICEF waarschuwt: noodwetgeving asiel vormt groot risico voor kinderen) 22 October 2024,

<https://www.unicef.nl/nieuws/2024-10-22-unicef-waarschuwt-noodwetgeving-asiel-vormt-groot-risico-voor-kinderen>

¹⁸⁶ NOS: First Chamber against the use of emergency law for asylum measures (Eerste Kamer tegen gebruik van noodrecht voor asielmaatregelen), 9 October 2024,

<https://nos.nl/artikel/2540112-eerste-kamer-tegen-gebruik-van-noodrecht-voor-asielmaatregelen>

¹⁸⁷ Kinderrechtencollectief: Children's Rights Collective: 65% more children in emergency care is unacceptable

(Kinderrechtencollectief: 65% meer kinderen in noodopvang is onacceptabel), 22 October 2024,

<https://www.kinderrechten.nl/kinderrechtencollectief-65-meer-kinderen-in-noodopvang-is-onacceptabel/#:~:text=Ondanks%20alle%20onderzoeken%20en%20oproepen,twee%20jaar%20meer%20dan%20verdubbeld>

¹⁸⁸ Nji: More children in asylum emergency shelters (Meer kinderen in asielnoodopvang), 23 October 2024,

<https://www.nji.nl/nieuws/meer-kinderen-in-asielnoodopvang#:~:text=Kinderen%20krijgen%20in%20de%20noodopvang,voor%20kinderen%20in%20de%20noodopvang>

¹⁸⁹ Court The Hague (the Netherlands), Judgment of 20 December 2022, ECLI:NL:GHDHA:2022:2429,

<https://uitspraken.rechtspraak.nl/details?id=ECLI:NL:GHDHA:2022:2429>

¹⁹⁰ Inspectorate Justice and Safety (the Netherlands): Letter Children in emergency shelter and crisis shelter (Brief Kinderen in de noodopvang en crisisnoodopvang), 19 April 2024,

<https://www.inspectie-jenv.nl/binaries/inspectie-venj/documenten/brieven/2023/05/03/brief-kinderen-in-de-noodopvang-en-crisisnoodopvang/Brief+Kinderen+in+de+noodopvang+en+crisisnoodopvang.pdf>

ensure a more balanced distribution of asylum reception across provinces and municipalities.¹⁹¹ The previous government sought to reduce COA's reliance on voluntary municipal cooperation for reception centres, while municipalities called for more opportunities to implement small-scale reception facilities.¹⁹² However, the current government announced in its coalition agreement that it intends to repeal the Distribution Act as part of its strategy to address the reception crisis differently.¹⁹³

¹⁹¹ Rijksoverheid (Netherlands), *Spreidingswet to Come into Effect on 1 February (Spreidingswet treedt per 1 februari in werking)*, 31 January 2024,

<https://www.rijksoverheid.nl/actueel/nieuws/2024/01/31/spreidingswet-treedt-per-1-februari-in-werking>.

¹⁹² House of Representatives (Netherlands), *Distribution Law (Spreidingswet)*, 2023,

<https://www.tweedekamer.nl/kamerstukken/wetsvoorstellen/detail?gry=wetsvoorstel%3A36333&cfg=wetsvoorsteldetails>.

¹⁹³ House of Representatives (Netherlands), *Coalition Agreement, Elaboration of the Outline Agreement by the Cabinet*, 13 September 2024, *Chapter 2, Point 2. Asylum Crisis Act (Regeerprogramma, Uitwerking van het hoofdlijnenakkoord door het kabinet*, 13 September 2024, *Hoofdstuk 2, punt 2. Asielcrisiswet*), p. 20, *Tweede Kamer der Staten-Generaal*, [tweedekamer.nl](https://www.tweedekamer.nl).