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National report Netherlands**

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List of Abbreviations

CJEU - Court of Justice of the European Union

CRC - Convention on the Rights of the Child

CRPD - Convention on the Rights of Persons with Disabilities

ICCPR - International Covenant on Civil and Political Rights

ECHR - European Convention on Human Rights

UN - United Nations

List of English Translations Used

Aliens Employment Act - *Wet arbeid Vreemdelingen*

Central Appeals Tribunal - *Centrale Raad van Beroep*

Charter of the Kingdom of the Netherlands - *Statuut voor het Koninkrijk der Nederlanden*

Collaboration units - *samenwerkingsverbanden*

Compulsory Education Act - *Leerplichtwet 1969*

Constitution of the Netherlands - *Grondwet voor het Koninkrijk der Nederlanden*

Council of State - *Raad van State*

Dispute Committee Tailored Education - *Geschillencommissie passend onderwijs*

Education Council - *Onderwijsraad*

Effective accommodations - *doeltreffende aanpassingen*

Equal Treatment of Disabled and Chronically Ill People Act - *Algemene wet gelijke behandeling handicap of chronische ziekte*

Expert Centre Act - *Wet op de Expertise Centra*

Extraordinary municipalities - *bijzondere gemeenten*

Foreigners Act - *Vreemdelingenwet 2000*

Green Left party - *GroenLinks*

Higher Education and Academic Research Act - *Wet op het hoger onderwijs en wetenschappelijk onderzoek*

Linking Act - *Koppelingswet*

Ministerial Decree Implementing the Aliens Employment Act - *Besluit uitvoering Wet arbeid Vreemdelingen*

Netherlands Institute for Human Rights - *College voor de Rechten van de Mens*

Primary Education Act - *Wet op het primair onderwijs*

ETHOS

Right to learn - *leerrecht*

School struggle - *schoolstrijd*

Secondary Education Act - *Wet op het voortgezet onderwijs*

Special schools - *bijzondere scholen*

Specialized schools - *speciaal onderwijs*

Starting qualification - *startkwalificatie*

Support plan - *ondersteuningsplan*

Support profile - *ondersteuningsprofiel*

Supreme Court - *Hoge Raad*

Tailored Education Act - *Wet passend onderwijs*

Teachable - *leerbare*

Trade and Industry Appeals Tribunal - *College van Beroep voor het bedrijfsleven*

Vocational education - *middelbaar beroepsonderwijs*

D3.6 The Right to Education – National Report Netherlands

1. National legal framework

1.1. Relevant institutional and procedural aspects

The Kingdom of the Netherlands is a constitutional monarchy, comprised of four separate countries: the Netherlands, Aruba, Curaçao and Sint Maarten. Within the country of the Netherlands, there are three extraordinary municipalities (*bijzondere gemeenten*), which are the three overseas territories of Bonaire, Sint Eustatius and Saba. These overseas territories do not form part of any province of the Netherlands and are not part of Schengen. Dutch nationality is granted to those living in the Netherlands, Aruba, Curaçao and Sint Maarten according to the same rules. The relationship between the different countries in the Kingdom are regulated in the Charter of the Kingdom of the Netherlands (*Statuut voor het Koninkrijk der Nederlanden*) This report will focus mainly on the European territory of the country of the Netherlands.

The country of the Netherlands' Constitution stipulates that provisions of treaties by international institutions which may be binding on all persons become part of the law of the Netherlands after ratification by Parliament and upon publication.¹ Further transposing of the laws into legislation is not necessary. The Constitution holds that statutory law that conflicts with provisions of treaties by international institutions that are binding on all persons shall not be applicable.² In practice, this means that the judiciary may invalidate statutory law if this law is found incompatible with a provision of international law which may be binding on all persons. Interestingly, the judiciary of the Netherlands is *not* competent to review the conformity of Acts of Parliament with the Constitution of the Netherlands, nor is the judiciary competent to review the conformity of international treaties with the Constitution of the Netherlands.³ Thus, while the judge may use international law to invalidate Acts of Parliament, the judge may not engage in constitutional review of such Acts of Parliament. Nor may the judge engage of

¹ The Constitution of the Netherlands, Article 93.

² The Constitution of the Netherlands, Article 94.

³ The Constitution of the Netherlands, Article 120.

constitutional review of international treaties. Article 91(3) of the Constitution of the Netherlands grants Parliament the power to ratify treaties that conflict with the Constitution, provided at least two-thirds of the votes cast in Parliament are in favor.

The judiciary of the country of the Netherlands is comprised of four highest courts: the Supreme Court (*Hoge Raad*), the Council of State (*Raad van State*), the Central Appeals Tribunal (*Centrale Raad van Beroep*) and the Trade and Industry Appeals Tribunal (*College van Beroep voor het bedrijfsleven*). The Supreme Court deals with all matters related to civil, criminal and tax law. The other three courts deal with administrative law issues. All four courts issue binding decisions.

1.2. Constitutional protection

The Constitution of the Netherlands protects the freedom of education in Article 23. This article contains the most detailed social right present in the Constitution.⁴

Article 23

1. Education shall be the constant concern of the Government.
2. All persons shall be free to provide education, without prejudice to the authorities' right of supervision and, with regard to forms of education designated by law, their right to examine the competence and moral integrity of teachers, to be regulated by Act of Parliament.
3. Education provided by public authorities shall be regulated by Act of Parliament, paying due respect to everyone's religion or belief.
4. The authorities shall ensure that primary education is provided in a sufficient number of public-authority schools in every municipality. Deviations from this provision may be permitted under rules to be established by Act of Parliament on condition that there is opportunity to receive the said form of education, whether in a public-authority school or otherwise.

⁴ Heringa, Van der Velde, Verhey & Van der Woude, *Staatsrecht* (Deventer, Twelfth Edition, Wouters Kluwer 2015) p. 485.

5. The standards required of schools financed either in part or in full from public funds shall be regulated by Act of Parliament, with due regard, in the case of special schools, to the freedom to provide education according to religious or other belief.
6. The requirements for primary education shall be such that the standards both of special schools fully financed from public funds and of public-authority schools are fully guaranteed. The relevant provisions shall respect in particular the freedom of special schools to choose their teaching aids and to appoint teachers as they see fit.
7. Special primary schools that satisfy the conditions laid down by Act of Parliament shall be financed from public funds according to the same standards as public-authority schools. The conditions under which special secondary education and pre-university education shall receive contributions from public funds shall be laid down by Act of Parliament.
8. The Government shall submit annual reports on the state of education to the States General.

Article 23 of the Constitution of the Netherlands sets out the dual nature of education in the Netherlands. On the one hand, there are public schools organized by the government and the government has the duty to consider education as a constant concern.⁵ Article 23(4) further tasks the government with actively ensuring that sufficient public primary schools are available in every municipality. On the other hand, special schools (*bijzondere scholen*) are allowed and will also receive funded from the government. Whereas public schools must be neutral with regards to religious education, special schools are explicitly based on a religious or philosophical worldview. Parents are able to freely choose between sending their children to a public or special school. In regard to both public and special schools, the government must show restraint toward how the schools actually arrange the provision of education. Both types of schools have a certain freedom to do so according to their own convictions.⁶

The constitutional framework thus allows for public funding of both public and special schools and is referred to as the dual system of education. This public funding of special schools stems from the history of the school struggle (*schoolstrijd*) between confessional and liberal parties in the Netherlands at the end

⁵ Article 23(1) Constitution of the Netherlands.

⁶ Education Council (*Onderwijsraad*), 'Artikel 23 Grondwet in maatschappelijk perspectief: Nieuwe richtingen aan de vrijheid van onderwijs' April 2012, p. 10.

of the 19th century. The confessional parties wanted religious schools to receive public funding, while the secular (mainly liberal) parties were not in favor of this. This tension was resolved with a constitutional amendment in 1917, which allowed public funding for special schools. In return, the liberal parties won support for the general enfranchisement of all male citizens. According to the Education Council (*Onderwijsraad*),

‘the establishment of the dual system in 1917 was the principled acknowledgment that the Netherlands was comprised of different demographic groups with diverse beliefs about raising children and education. [...] The Constitutional legislator chose for inclusivity, not for exclusivity.’⁷

Special schools may be founded upon a religious or philosophical conviction. The Supreme Court has defined this conviction as follows: ‘a fundamental orientation, derived from a well-defined religious conviction or life philosophy.’⁸ According to the Education Council, for a school to be founded upon a religious or philosophical conviction, it is necessary that the particular type of religious or philosophical conviction be visible in social life. If a religious or philosophical concept is not sufficiently visible in society, it will not count as a ground for the founding of a special school. For example, in 2012 the Education Council did not consider Buddhism sufficiently visible in society to justify the founding of a special Buddhist school. While there was a Buddhist broadcasting network, there were no Buddhist hospitals or convalescent homes. For the Education Council this was proof of lack of visibility in society.⁹

Since the adoption of the constitutional right to freedom of education in 1917, it has remained a topic of debate. For example, in 2017 the Dutch Green Left party (*GroenLinks*) published an election platform that included the proposed amendment of Article 23 of the Constitution so as to abolish public funding for special schools.¹⁰

⁷ Education Council (*Onderwijsraad*), ‘Artikel 23 Grondwet in maatschappelijk perspectief: Nieuwe richtingen aan de vrijheid van onderwijs’ April 2012, p. 18.

⁸ Supreme Court (*Hoge Raad*), 6 July 2010, ECLI:NL:HR:2010:BL6719.

⁹ Education Council (*Onderwijsraad*), ‘Artikel 23 Grondwet in maatschappelijk perspectief: Nieuwe richtingen aan de vrijheid van onderwijs’ April 2012, p. 11.

¹⁰ GroenLinks, ‘Tijd voor Verandering,’ Election Programme GroenLinks 2017-2021, §11, p. 26.

1.3. General national rules

The main laws relevant to primary and secondary education in the Dutch system are the Primary Education Act (*Wet op het primair onderwijs*), the Secondary Education Act (*Wet op het voortgezet onderwijs*), and the Compulsory Education Act (*Leerplichtwet 1969*).

Article 46(2) of the Primary Education Act and Article 42(2) Secondary Education Act mandate that all public schools are accessible for all children without distinction as to religion or belief. Article 46(3) Primary Education Act and Article 42(3) Secondary Education Act set out that public education is given with respect for everyone's religion or belief. Both laws dictate that both public schools and special schools that receive public funding must 'among others, assume that students are growing up in a pluriform society,' must 'among others, focus on promoting active citizenship and social integration' and must 'among others, focus on students gaining knowledge about and encountering different backgrounds and cultures of their age mates.'¹¹

The Compulsory Education Act is considered to be based on and to effectuate the international law right to education.¹² This Act mandates that those with custody over a child have the legal duty to ensure the child is registered at and attends a school once the child is five years of age.¹³ As of age twelve, the student

¹¹ Primary Education Act (*Wet op het primair onderwijs*), Article 8 and Secondary Education Act (*Wet op het voortgezet onderwijs*), Article 17.

¹² Supreme Court (*Hoge Raad*), 30 May 1989, number 84334, §8.1 and §8.3. See further Education Council (*Onderwijsraad*), 'Artikel 23 Grondwet in maatschappelijk perspectief: Nieuwe richtingen aan de vrijheid van onderwijs' April 2012, p. 81; D. Mentink, B.P. Vermeulen & P.J.J. Zoontjes, 'Commentaar op artikel 23 van de Grondwet,' in E.M.H. Hirsch Ballin and G. Leenknecht (eds) *Artikelsgewijs commentaar op de Grondwet* (web-edition 2018) p. 33, available at <<https://www.nederlandrechtsstaat.nl/grondwet/artikel.html?artikel=23&categorie=&auteur=&trefwoord=&1=1##artikel23>> accessed 27 November 2018; and Education Inspection (*Inspectie van het Onderwijs*), 'Staat van het onderwijs,' 2008 (cited in Ruud van der Aa, Susan van Geel, Pieter Huisman, 'Onderwijs op een andere locatie dan de school: Een inventarisatie,' 12 June 2015, p. 17 <<https://www.ingrado.nl/assets/uploads/Eindrapport.pdf>> accessed 27 November 2018.

¹³ Compulsory Education Act (*Leerplichtwet 1969*), Article 3.

her/himself also has an independent duty to attend school.¹⁴ The duty to attend school applies to children of all nationalities living in the Netherlands, regardless of whether they have lawful residence or not. The duty to attend school ends at 18 or as soon as the child has earned a starting qualification (*startkwalificatie*), which is a diploma that is considered the minimal necessary qualification required to access the labour market.¹⁵

Article 5 and 5a of the Compulsory Education Act set out a limited number of exceptions to the general duty to attend school. A student may be exempted from the duty to attend school: if the student is, due to physical or psychological reasons, not suited for admission to a school;¹⁶ if those who exercise custody over a child have serious objections to the religious or philosophical worldview of all schools within a reasonable distance from their place of residence (or, if they have no fixed place of residence, all schools within the Netherlands);¹⁷ if the student is registered at a school outside of the Netherlands and regularly attends this school.¹⁸ Article 5a allows for exceptions from the duty to attend school for those people who lead a traveling life (for example because the student's guardian is employed in a carnival or circus).

1.4. Special rules targeting selected groups

A. Persons with disabilities

Exemptions for the duty to attend school

As mentioned above in section 1.3, Article 5 of the Compulsory Education Act allows for a select group of students to be exempted from the duty to attend school due to physical or psychological problems. Article 7 of the Compulsory Education Act sets out the conditions that must be met before such a student and

¹⁴ Compulsory Education Act (*Leerplichtwet 1969*), Article 2(3).

¹⁵ Compulsory Education Act (*Leerplichtwet 1969*), Article 4b.

¹⁶ Compulsory Education Act (*Leerplichtwet*) Article 5(a).

¹⁷ Compulsory Education Act (*Leerplichtwet*) Article 5(b).

¹⁸ Compulsory Education Act (*Leerplichtwet*) Article 5(c).

his/her guardians may be granted this exemption. This article stipulates that an exemption may be granted if the student has a declaration from a specially appointed doctor or other medical professional that shows the student is not suited to be admitted to a school. The doctor may not be the child's general practitioner and the declaration may not be older than three months.

There has been recent political attention to the growing numbers of children who are exempted from the duty to attend school because of medical or psychological reasons.¹⁹ In 2010 there were 3100 children who were granted an exception on physical or psychological grounds.²⁰ In 2012 there were 3.840 exceptions granted due to physical or psychological reasons. In the school year 2013-2014 there were 4.444 such exceptions.²¹ In 2015 there were 5.000 exemptions.²² In 2014, the Lower House of Parliament adopted a motion requesting specific tailor-made solutions for the group of children who were exempted from the duty to attend school, even though they were teachable (*leerbare*).²³ In cases where such an exemption is granted, there is currently no provision for a duty of care from the government or other authority for

¹⁹ Ruud van der Aa, Susan van Geel, Pieter Huisman, 'Onderwijs op een andere locatie dan de school: Een inventarisatie,' 12 June 2015, p. 5 <<https://www.ingrado.nl/assets/uploads/Eindrapport.pdf>> accessed 27 November 2018.

²⁰ NOS, 'Dekker bezorgd over vrijstelling leerplicht,' 3 June 2016 <<https://nos.nl/artikel/2108864-dekker-bezorgd-over-vrijstelling-leerplicht.html>> accessed 27 November 2018.

²¹ Ruud van der Aa, Susan van Geel, Pieter Huisman, 'Onderwijs op een andere locatie dan de school: Een inventarisatie,' 12 June 2015, p. 18 <<https://www.ingrado.nl/assets/uploads/Eindrapport.pdf>> accessed 27 November 2018.

²² NOS, 'Dekker bezorgd over vrijstelling leerplicht,' 3 June 2016 <<https://nos.nl/artikel/2108864-dekker-bezorgd-over-vrijstelling-leerplicht.html>> accessed 27 November 2018.

²³ See Ruud van der Aa, Susan van Geel, Pieter Huisman, 'Onderwijs op een andere locatie dan de school: Een inventarisatie,' 12 June 2015, p. 17 <<https://www.ingrado.nl/assets/uploads/Eindrapport.pdf>> accessed 27 November 2018 and Kamerstukken II 2014/2015, 31 497, number 145.

the quality of education.²⁴ In 2017, the government indicated its intention to investigate how a right to learn (*leerrecht*) can be legally implemented in Dutch law.²⁵

Tailored Education Act

On 9 October 2012, the Tailored Education Act (*Wet passend onderwijs*) was adopted. The most important part of this law, the duty of care for schools, entered into force on 1 August 2014. The aim of this law is to ensure that all students with specific educational needs in primary and secondary education, as well as in vocational education (*middelbaar beroepsonderwijs*), are able to receive education that is as tailored to their needs as possible. The point of departure is that each student who needs extra support will receive education within the general school system, to the extent this is possible. If such extra support cannot be provided within the general school system, the student can attend a specialized school (*speciaal onderwijs*)²⁶ where this support can be offered.²⁷ Interestingly, during the parliamentary debates on this Act, no mention was made to international treaties that mandate accessibility of education.²⁸

²⁴ Ruud van der Aa, Susan van Geel, Pieter Huisman, 'Onderwijs op een andere locatie dan de school: Een inventarisatie,' 12 June 2015, p. 48 <<https://www.ingrado.nl/assets/uploads/Eindrapport.pdf>> accessed 27 November 2018.

²⁵ [No author], 'Vertrouwen in de toekomst: Regeerakkoord 2017-2021,' p. 9 <<https://www.rijksoverheid.nl/binaries/rijksoverheid/documenten/publicaties/2017/10/10/regeerakkoord-2017-vertrouwen-in-de-toekomst/Regeerakkoord+%27Vertrouwen+in+de+toekomst%27.pdf>> accessed 27 November 2018.

²⁶ Note that these specialized schools (*speciaal onderwijs*) are different than the special schools (*bijzondere scholen*). The former offer specialized support to children with extra educational needs; the latter are based on religious or philosophical worldviews.

²⁷ Huisman et al., *Basisboek onderwijsrecht: Een inleiding op de onderwijswet- en regelgeving in primair en voortgezet onderwijs* (The Hague, Sdu Publishers 2017) p. 170.

²⁸ Pieter Huisman, 'Verwezenlijking en doorwerking van het (internationale) grondrecht op onderwijs,' in Janneke Gerards and Carla Sieburgh (eds) *Fundamentele rechten: De invloed van fundamentele rechten op het materiële recht* (Deventer, Kluwer 2013) p. 367.

The Tailored Education Act imposes a number of duties on schools. Firstly, schools in a region must work together to form collaboration units (*samenwerkingsverbanden*), within which a uniform basic level of support is offered for students with special needs. Moreover, each school must develop a support profile (*ondersteuningsprofiel*) in which the school specifies what possibilities and facilities it has to fulfil the different educational and support needs students might have. Further, each individual school within the collaboration unit has been tasked, by law, with a duty of care towards students with special needs. This duty of care has two elements. First, when a student with special needs registers at a school, the school is bound to investigate whether the student's special needs can be met if the school were to make effective accommodations (*doeltreffende aanpassingen*) for those needs. If so, the second part of the duty of care is applicable, which entails that the school must make such effective accommodations, to the extent that they do not pose an unreasonable burden. If the school cannot meet the special needs of the student, the school must find another school within the regional collaboration unit that the student can attend.²⁹ This may be a school within the general educational system or a specialized school.

The decision to refer a student to a specialized school can be taken if the level of necessary support for a student is greater than what a general school can offer. If a parent does not agree with a school's decision to refuse to admit their child based on the child's special support needs, the parent may appeal the decision at the Dispute Committee Tailored Education (*Geschillencommissie passend onderwijs*). The decisions of this Dispute Committee are not binding.³⁰

According to Article 2(1) of the Expert Centre Act (*Wet op de Expertise Centra*), specialized education is meant for children for whom it has been ascertained that a particular orthopedagogical or orthodidactic

²⁹ Huisman et al., *Basisboek onderwijsrecht: Een inleiding op de onderwijswet- en regelgeving in primair en voortgezet onderwijs* (The Hague, Sdu Publishers 2017) p. 177.

³⁰ Huisman et al., *Basisboek onderwijsrecht: Een inleiding op de onderwijswet- en regelgeving in primair en voortgezet onderwijs* (The Hague, Sdu Publishers 2017) p. 173.

approach is predominantly appropriate. There are four different clusters of specialized education: 1. visually handicapped children; 2. education for deaf, hearing-impaired, or speech-impaired children; 3. education for chronically ill children with a physical handicap, physically handicapped children or children with a severe learning disability and a physical handicap; and 4. chronically ill children who do not have a physical handicap and children with a severe behavioural disorder.

Each regional collaboration unit makes agreements in its support plan (*ondersteuningsplan*) with its participating schools about when a student will be referred to a specialized school.³¹ This plan also sets out what the basic level of support is that is offered by all schools in the collaboration unit. The collaboration units are obliged to discuss these support plans with the municipality, with the aim of finding agreement. According to Article 40(6) Primary Education Act and Article 17a Secondary Education Act, the collaboration unit is, among other tasks, responsible for budgeting and dividing funds for special support needs among the general and specialized schools within the unit. The collaboration unit's support plan also sets the unit's criteria for this division of funds.

Equal Treatment of Disabled and Chronically Ill People Act

The Equal Treatment of Disabled and Chronically Ill People Act (*Algemene wet gelijke behandeling handicap of chronische ziekte*) was passed in 2003 as the Dutch implementation of the EU Directive on Equal Treatment in Employment and Occupation.³² Whereas the Act initially only prohibited discrimination based on disability or chronic illness in situations related to labour and vocational training, it has been since extended to also apply to housing, education and public transport. Since the Dutch ratification of the United Nations (UN) Convention on the Rights of Persons with Disabilities (CRPD or

³¹ See Primary Education Act (*Wet op het primair onderwijs*) Article 18a(7) and (8) and Secondary Education Act (*Wet op het voortgezet onderwijs*) Article 17a(7) and (8).

³² Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation.

Disabilities Convention), the Equal Treatment of Disabled and Chronically Ill People Act has been amended to apply to all situations where goods and services are offered.

Article 2 of the Act mandates all providers of goods and services (including education) to make effective accommodations that are necessary to ensure quality education for students with disabilities or chronic illness. An accommodation will be seen as effective if it is suited to and necessary for solving the limitations flowing from the handicap or chronic disease.³³ A school can only refuse to make such accommodations if they present an unreasonable burden to the school. The assessment whether accommodations present such a burden must be made on a case-by-case basis and must take into account the circumstances of the individual case.³⁴

The Netherlands Institute for Human Rights (*College voor de Rechten van de Mens*) is tasked with the responsibility of deciding on cases brought by individuals who believe their rights under the Equal Treatment of Disabled and Chronically Ill People Act have been violated. The Institute's decisions are not binding.

B. Refugees/Undocumented Persons/Third Country Nationals

All children (up to 18 years of age) present in the Netherlands have, under Dutch law, the right to attend school. Regardless of citizenship or residence status, every child has a right to be registered at a school in the Netherlands. This means that undocumented children have the same rights and duties in regard to education as any child with Dutch nationality. This is confirmed by Article 10(2) of the Foreigners Act (*Vreemdelingenwet 2000*), which explicates that even undocumented residents can have a right to education.

Once a child turns 18, the situation becomes more complicated. In principle, adult non-Dutch citizens present in the Netherlands may only access education if they have a legal right of residence or are currently going through a procedure to determine their status as a refugee. Adult non-Dutch citizens

³³ See for example the decision of the Netherlands Institute for Human Rights (*College voor de Rechten van de Mens*), 26 July 2018, number 2018-81, §6.5.

³⁴ Huisman et al., *Basisboek onderwijsrecht: Een inleiding op de onderwijswet- en regelgeving in primair en voortgezet onderwijs* (The Hague, Sdu Publishers 2017) p. 185.

without a legal right of residence (including asylum seekers whose request to asylum has been denied) may not access Dutch education.

There is, however, an exception to this general rule. If an individual registered to obtain a degree at a vocational school or institute of higher education when s/he was under 18 years of age (which is allowed by law regardless of residence status), s/he may continue education at that institution after s/he becomes an adult until the degree has been completed, even if s/he is not legally resident in the Netherlands.³⁵ Moreover, in 2013 and after a court ruling that will be discussed below in section 2.2, the Minister of Social Affairs and Labour amended the Ministerial Decree Implementing the Aliens Employment Act (*Besluit uitvoering Wet arbeid Vreemdelingen*) with Article 1f(1)(c) to also allow such students the possibility to do an internship, provided that the internship is a mandatory requirement for obtaining the student's degree.³⁶ Before this amendment, the Aliens Employment Act (*Wet arbeid Vreemdelingen*) was implemented as prohibiting undocumented students from doing an internship, and thus made it impossible for students pursuing a degree for which such an internship was a mandatory requirement to complete their degree.

1.5. Specific rules concerning citizens of former colonies

This study has not found any specific rules concerning citizens of former colonies in regard to the right to primary or secondary education.

³⁵ See Higher Education and Academic Research Act (*Wet op het hoger onderwijs en wetenschappelijk onderzoek*) Article 7.32(5)(e) and Education and Vocational Education Act (*Wet educatie en beroepsonderwijs*) Article 8.1.1(1)(d).

³⁶ On 8 December 2012, the Minister announced his intention to amend the Ministerial Decree, see Kamerstukken II 2012/2013, 32 144, number 21. This amendment was subsequently made on 20 September 2013, see *Staatsblad van het Koninkrijk der Nederlanden*, 2013, 360.

1.6. Constitutional challenges

As mentioned above (under 1. National Framework), the Dutch judiciary is not competent to review Acts of Parliament against the Constitution. A survey of the eight cases in which Article 23 of the Constitution of the Netherlands was used to challenge administrative decisions or executive actions showed that there were no significant cases relevant to the vulnerable groups studied here.³⁷

2. Impact of international and European law

2.1. Challenges to national rules based on international instruments

Most international law provisions on the right to education lack direct effect within the Dutch legal order.³⁸ According to the Education Council's 2012 interpretation of the Supreme Court's case law, Article 2 of Protocol 1 of the European Convention on Human Rights (ECHR) is the only international treaty provision on the right to education that has direct effect in the Dutch legal order.³⁹ The question is whether this is still the case after the ratification of the UN Disabilities Convention. While this is a question only the Dutch judiciary can answer, the government indicated in the Explanatory Memorandum

³⁷ This search was conducted at <uitspraken.rechtspraak.nl> on 28 November 2018 with the search term 'artikel 23 Grondwet' ('Article 23 Constitution'). This search yielded eight cases. There was one case that dealt with a school's refusal to request approval for a student with Down Syndrome to follow a specialized form of education that serves to replace vocational education for students not able to meet the standards for that type of education. The Court held that the school's refusal to do so went beyond the discretion afforded the school by the Secondary Education Act and/or by Article 23 of the Constitution of the Netherlands, see Court of Appeals of Arnhem (*Gerechtshof Arnhem*), 11 January 2011, number ECLI:NL:GHARN:2011:BO9844, §3.6. However, due to the Court's non-existent explanation of this conclusion with regard to Article 23 of the Constitution of the Netherlands, I do not focus on this case in depth.

³⁸ The District Court of the Hague has been explicit that Article 23 and 28 of the Convention on the Rights of the Child lack direct effect, see District Court of The Hague (*Rechtbank Den Haag*), 2 May 2012, number ECLI:NL:RBSGR:2012:BW5856 and District Court of The Hague (*Rechtbank Den Haag*), 13 November 2013, number ECLI:NL:RBDHA:2013:15232, respectively.

³⁹ Education Council (*Onderwijsraad*), 'Artikel 23 Grondwet in maatschappelijk perspectief: Nieuwe richtingen aan de vrijheid van onderwijs' April 2012, p. 80.

submitted to Parliament when the Convention was ratified, that it views Article 24 of the Convention as lacking direct effect.⁴⁰

According to the Education Council, in 2002, the 'direct influence of international law on the future development of the Dutch education relations and the Dutch education policy is not easy to say. From the case law it cannot be derived that international law has an important or decisive role to play.'⁴¹ In 2012 the Education Council reiterated this position.⁴² The Education Council did take care to note that there are exceptions to this general conclusion, and these exceptions relate particularly to the application of anti-discrimination norms to education.⁴³ This part will set out the effect international law provisions from the Convention on the Rights of the Child (CRC) and the UN Disabilities Convention on the right to education have had on Dutch law. It limits itself to focusing on the rights of persons with disabilities and migrants. I end this section with a brief description of a case in which other international law provisions on the right to education were invoked.

1. *Right to Education in the Convention on the Rights of the Child (Article 28)*

Studies by Dutch jurists show that Article 28 CRC is rarely invoked in Dutch litigation.⁴⁴ Moreover, when it is invoked it rarely leads to clear results due to its (supposed) lack of direct effect.⁴⁵ Here I will discuss two

⁴⁰ Kamerstukken II, 2013/2014, 33 992 (R2034), number 3, p. 9.

⁴¹ Education Council (*Onderwijsraad*), 'Vaste grond onder de voeten' (Den Haag 2002) 37.

⁴² Education Council (*Onderwijsraad*), 'Artikel 23 Grondwet in maatschappelijk perspectief: Nieuwe richtingen aan de vrijheid van onderwijs' April 2012, pp. 79-80.

⁴³ Education Council (*Onderwijsraad*), 'Artikel 23 Grondwet in maatschappelijk perspectief: Nieuwe richtingen aan de vrijheid van onderwijs' April 2012, p. 79.

⁴⁴ See J.H. de Graaf, M.M.C. Limbeek, N.N. Bahadur & N. van der Meij, *De toepassing van het Internationaal Verdrag inzake de Rechten van het Kind in de Nederlandse Rechtspraak* (Nijmegen, Ars Aequi Libri 2012) pp. 66, 151, 204 and 223, cited in W.A. Huisman, 'Verwezenlijking en doorwerking van het (internationale) grondrecht op onderwijs,' in H. Gerards & C.H. Sieburgh (eds.), *De invloed van fundamentele rechten op het materiële recht* (Deventer, Kluwer 2013) p. 364.

⁴⁵ W.A. Huisman, 'Verwezenlijking en doorwerking van het (internationale) grondrecht op onderwijs,' in H. Gerards & C.H. Sieburgh (eds.), *De invloed van fundamentele rechten op het materiële recht* (Deventer, Kluwer 2013) p. 364.

of the cases in which Article 28 CRC was invoked and did lead to legal results. The first case relates to the rights of undocumented minors and the second to children with disabilities.

In 2008, the District Court of Amsterdam ruled on a case which dealt with whether an undocumented minor had a right to the provision of health care services, if the denial of these services meant the minor could not attend school.⁴⁶ The applicant relied on a number of international law provisions, including Article 28 CRC. The Court rejected all arguments based on other international law provisions but held that Article 28 CRC gave the government a duty to take into account the child's right to education in its decision. Since the government's decision had not taken this into account, the Court declared the government's decision void and ordered a new decision be taken that sufficiently took this right to education into account. Interestingly, the Court did not discuss whether Article 28 CRC had direct effect. Some scholars have assumed the Court treated this article as if it did,⁴⁷ while others see this decision as an example of convention-compliant interpretation.⁴⁸ In 2013, the District Court of The Hague ruled that Article 28 CRC does not have direct effect.⁴⁹

In 2014 the Council of State ruled on a case concerning the relationship between the CRC and the system of Tailored Education (described above in section 1.4.A). In this case, the Council of State held that a child may be exempted from the duty to attend school if there is no school that can offer the child education tailored to the special needs of the student. However, the Council of State also held that the duty to attend school (here the Court refers both to Dutch law and Article 28(1)(a) CRC) means that the rights of the parents set out in Article 5 CRC are not absolute. If tailored education is available, the child must attend school, regardless of the parent's objections to the suitability of this education.⁵⁰

2. *UN Convention on the Rights of Persons with Disabilities*

⁴⁶ District Court of Amsterdam (*Rechtbank Amsterdam*), 3 December 2008, number ECLI:NL:RBAMS:2008:BG6962.

⁴⁷ Comment on District Court of Amsterdam, 3 December 2008, number ECLI:NL:RBAMS:2008:BG6962, by mr. J. Hallie, RZA 2009, 13.

⁴⁸ W.A. Huisman, 'Verwezenlijking en doorwerking van het (internationale) grondrecht op onderwijs,' in H. Gerards & C.H. Sieburgh (eds.), *De invloed van fundamentele rechten op het materiële recht* (Deventer, Kluwer 2013) p. 364.

⁴⁹ District Court of The Hague (*Rechtbank Den Haag*), 13 November 2013, number ECLI:NL:RBDHA:2013:15232.

⁵⁰ Council of State (*Raad van State*), 5 November 2014, number ECLI:NL:RVS:2014:3953, with comment by J. Sperling, Gst. 2015/19.

Shortly after the Netherlands' ratification of the UN Disabilities Convention in 2016, a case was brought before the Netherlands Institute for Human Rights which challenged a school's decision to exclude a child from general educational facilities due to special needs. A child with Down Syndrome had attended the school for a number of years, during which the school was able to make accommodations to meet his special needs. However, at a certain point, the school decided that the accommodations were no longer sufficient. Further accommodations were necessary to fulfil the child's needs and the school decided it was unable to take these measures. For this reason, the school requested a specialized school admit the child. Once a specialized school was found that agreed to admit the child, the former school decided to deregister the child. The child's parents argued that the school did not take necessary accommodations. Further, the parents argued that while the Dutch law (the Equal Treatment of Disabled and Chronically Ill People Act) allows for the possibility of specialized educational facilities for children with special needs, this leads to a form of segregation that violates international law. Here the parents referred explicitly to the UN Disabilities Convention. The parents argued that the international law standards of inclusive education means that the school had a heavier duty to try to accommodate the child's needs within the normal educational facilities.

While the Netherlands Institute for Human Rights is not able to directly apply the UN Disabilities Convention, it can rule on the application of the Equal Treatment of Disabled and Chronically Ill People Act, which was amended to implement the UN Disabilities Convention. In this case, the Netherlands Human Rights Institute ruled that the measures taken by the school fulfilled the school's obligation to take accommodations. The Institute rejected the international law-based arguments the parents made, holding as follows. First, the Institute noted that the UN Disabilities Convention was only ratified *after* the period during which the child was a student at the school. To the extent the parents also referenced 'international law developments' that had taken place before ratification, the Institute held that even if these developments should lead to a heavier duty to attempt to offer inclusive education, this duty cannot be placed on individual educational facilities. The Institute noted that the current Dutch education system and Dutch legislation are based on the idea that as many children as possible should be able to attend general educational facilities, regardless of disability. The Institute found that a stricter interpretation of the Equal Treatment of Disabled and Chronically Ill People Act's duty to take effective accommodations

would be inappropriate in light of the larger educational system. Such an interpretation would affect the system as a whole and go beyond the level of the individual school.⁵¹

In the same period, a case invoking UN Disabilities Convention was brought before the Dispute Committee Tailored Education. In this case, a child's mother argued that a school's decision to exclude her child from general educational facilities violated Article 24 of the UN Disabilities Convention. The Dispute Committee held that this article could not be seen as having effect between citizens and the school. Instead, the Committee decided that this article should be read as obliging the States Parties to take measures to implement the rights set out in the Convention.⁵²

3. Other international law provisions and the right to education

International law on the right to education also played an important role in two cases that I will discuss here. The first regards the right to primary education in a language other than Dutch. Although this case does not deal specifically with the rights of non-citizens, I include it here due to the fact that the case was brought by a number of organizations whose aim it is to specifically represent the interests of Turkish migrants living in the Netherlands.⁵³ The second case deals with discrimination based on nationality within Dutch higher education.

In 2013, the District Court of the Hague ruled on a case addressing the Dutch State's amendment of the Primary Education Act, the Secondary Education Act and the Expert Centre Act in 2004 to end the public

⁵¹ Netherlands Institute for Human Rights, (*College voor de Rechten van de Mens*), 4 April 2017, number 2017-41, §4.2.

⁵² Dispute Committee Tailored Education (*Geschillencommissie passend onderwijs*), 4 April 2017, number 107566, p. 5.

⁵³ The following organizations were plaintiffs in the case and addressed issues related to Turkish or North-African migrants: Hollanda Türkiyeli Isçiler Birliği, Stichting Euro-Mediterraan Centrum Migratie & Ontwikkeling, Stichting Informatie en Onderwijs voor Turken.

financing of education given in a foreign language. The applicants argued that the lack of financing for primary education in the mother tongue of Turkish immigrants in the Netherlands violated a number of provisions under international law, namely Articles 3 and/or 28 and/or 29 of the Convention on the Rights of the Child; and/or Articles 14 and/or 24 of the Charter of Fundamental Rights of the European Union; and/or Articles 13 and/or 14 and/or 15 of the International Covenant of Economic, Social and Cultural Rights; and/or Article 26 of the Universal Declaration of Human Rights; and/or Article 3 of Directive 77/486; and/or Article 15 of the European Convention on the Legal Status of Migrant Workers; and/or Article 9 of the Association Decision EEC/Turkey no. 1/80; and/or other rules of written or unwritten law.⁵⁴ In its decision, the District Court of the Hague rejects all of the applicants' arguments, finding no evidence that any of these international law provisions entail a duty for the State to finance or facilitate education in a child's mother tongue.⁵⁵ This decision was appealed to the Court of Appeals of The Hague⁵⁶ and eventually to the Supreme Court.⁵⁷ The District Court's decision was upheld by both courts.

In 2010, the District Court of the Hague ruled on a case dealing with the exclusion of Iranian citizens from eligibility to follow certain parts of the master programmes at technical universities in the Netherlands that could relate to knowledge of nuclear power, as a consequence of the EU sanctions on Iran as implemented by the Dutch ministers of foreign affairs and education. The plaintiffs in this case (three individual students with Dutch and Iranian nationality as well as an action-group representing Iranian students) argued that the implementation of the sanctions by the Netherlands violated Article 1 of the Constitution of the Netherlands, Article 1 of the Twelfth Protocol of the ECHR, Article 26 of the

⁵⁴ District Court of The Hague (*Rechtbank Den Haag*), 13 November 2013, number ECLI:NL:RBDHA:2013:15232, §3.1.

⁵⁵ District Court of The Hague (*Rechtbank Den Haag*), 13 November 2013, number ECLI:NL:RBDHA:2013:15232, §4.26.

⁵⁶ Court of Appeals of The Hague (*Gerechtshof Den Haag*), 24 February 2005, number ECLI:NL:GHDHA:2015:2002.

⁵⁷ Supreme Court (*Hoge Raad*), 14 October 2016, number ECLI:NL:HR:2016:2341.

International Covenant on Civil and Political Rights (ICCPR), Article 12 of the Treaties of the European Communities, and Article 2 of the First Protocol of the ECHR in combination with Article 14 ECHR by making a direct distinction based on nationality, which led to the exclusion of students with Iranian nationality from the possibility to follow certain (parts) of educational programmes in the Netherlands. The District Court of the Hague ruled in favour of the applicants, holding that the blanket exclusion of all Iranian students was not justified by objective and reasonable grounds, since the measure was inappropriate and disproportionate to the (in principle) legitimate aim it pursued.⁵⁸ The Court thus found a violation of Article 26 ICCPR and declared the measure taken by the Dutch State void. The Court declined to further review the measure against on the other challenges brought by the plaintiffs.⁵⁹ The Court of Appeals of the Hague upheld this decision.⁶⁰

2.2. Challenges to national rules based on European (Council of Europe) instruments

The Constitution of the Netherlands' right to freedom of education does not, according to the Education Council, provide the legal basis for many of the current developments relating to education. The right to education however, *based on the ECHR*, does.⁶¹

One of the biggest areas in Dutch law where the right to education as set out in Article 2 Protocol 1 ECHR has played a role is with regard to the right to education of undocumented persons. In 1998, the Dutch government adopted the so-called Linking Act (*Koppelingswet*), which amended a number of laws so as make access to social services conditional upon (linked to) the possession of a legal residence status. The aim of this act was to discourage undocumented persons from remaining in the Netherlands, by making it impossible for them to gain access to social services such as housing allowances, non-urgently necessary

⁵⁸ District Court of The Hague (*Rechtbank Den Haag*), 3 February 2010, number ECLI:NL:RBSGR:2010:BL1862, §4.10.

⁵⁹ District Court of The Hague (*Rechtbank Den Haag*), 3 February 2010, number ECLI:NL:RBSGR:2010:BL1862, §4.11.

⁶⁰ Court of Appeals of The Hague (*Gerechtshof Den Haag*), 26 April, 2011, number ECLI:NL:GHSGR:2011:BQ4781.

⁶¹ Education Council (*Onderwijsraad*), 'Artikel 23 Grondwet in maatschappelijk perspectief: Nieuwe richtingen aan de vrijheid van onderwijs' April 2012, p. 83.

medical care, and welfare. However, the law specifically lists three social services for which an exception will be made to the necessary link between access and possession of a legal residence status: education, medical care which is urgently necessary or necessary for public health, and access to legal aid.⁶² The government decided to allow access to education to children, even if undocumented. Undocumented adults, however, do not have access to education. In this Act's preparatory documents, it is clear that the decision to allow undocumented children access to education is seen as a *necessary result* of Article 2 Protocol 1 ECHR.⁶³

Article 2 Protocol 1 ECHR also played a role in the case law that has subsequently dealt with attempts to expand access of undocumented persons in the Netherlands to higher education.⁶⁴ Because these cases deal with access to higher education, which falls outside the main scope of this report, I will use the rest of this section to only briefly discuss these cases. I did not find evidence that Article 2 Protocol 1 ECHR plays a large role in cases about the right to education for individuals with a disability.

In 2012 the District Court of The Hague issued a decision that led to a significant increase in access to education for undocumented persons. This case dealt with an undocumented student who had registered for a vocational degree program while the individual was still a minor. Because he had registered while a minor, the Dutch law allowed this individual access to education while completing his degree (even when he was no longer a minor). One of the requirements for completing his degree was the completion of an internship. For non-Dutch citizen students, a work permit was required to conduct such an internship. However, the Dutch law prohibited undocumented students from receiving such a work permit and, as such, the student was not able to conduct an internship and was thus unable to complete his degree. The issue at hand in this case was whether Article 2 Protocol 1 ECHR required the Dutch state to allow this student to conduct an internship since it was a mandatory requirement for completing his degree. The Court ruled that while the State was pursuing a legitimate aim in its prohibition of work permits for

⁶² See Foreigners Act (*Vreemdelingenwet 2000*), Article 10(2) as amended by the Linking Act (*Koppelingswet 1998*).

⁶³ Kamerstukken II 1995/96, 24 233, number 6, p. 52-53.

⁶⁴ It is interesting to note that the cases I will discuss here relating to undocumented persons (as well as the case discussed above on nationality-based discrimination of Iranian students) were all brought by the same lawyer, Jelle Klaas. Jelle Klaas is well-known in the Netherlands as a lawyer for civil and social rights and is currently the director of a project to promote human rights strategic litigation in the Netherlands. See 'Staff,' at The Public Interest Litigation Project <<https://pilpnjcm.nl/over-pilp/medewerkers/>> accessed on 28 November 2018.

undocumented students, namely the reduction of services (including the right to work) for undocumented residents, it was in this case a disproportionate measure. The Court decided that by preventing this student from following an internship which was a mandatory part of his degree, the State limited the effectiveness of the student's education. Despite the State's significant margin of appreciation in this area of higher education, the Court ruled that the prevention of this student from following an internship was disproportionate to the aim of excluding undocumented persons from state services.⁶⁵ The Court thus held the State in violation of Article 2 Protocol 1 ECHR.

Following this decision, the State amended the Ministerial Decree Implementing the Aliens Employment Act with Article 1f(1)(c) to allow undocumented students registered in a higher educational degree programme the possibility to do an internship, provided that the internship is a mandatory requirement for obtaining the student's degree.⁶⁶

Two other recent cases used Article 2 Protocol 1 ECHR to attempt to expand undocumented person's access to education. In 2011, the Central Appeals Tribunal heard a case in which two students argued that their right to education under the ECHR was violated by the Dutch State's decision according to the Linking Act not to grant these students financial aid. The Central Appeals Tribunal ruled against the students, holding that the states party to the ECHR have a significant margin of appreciation when it comes to decisions on how to spend public funds. For these types of decisions, the State may prioritize certain spending goals over others and may give significant weight to whether the person requesting government funds has a right of legal residence.⁶⁷ In 2014, an adult undocumented persons sued the Dutch State for preventing him from registering at an institution of vocational education. The applicant argued that the

⁶⁵ District Court of The Hague (*Rechtbank Den Haag*), 2 May 2012, number ECLI:NL:RBSGR:2012:BW4736, §4.9-4.11.

⁶⁶ On 8 December 2012, the Minister announced his intention to amend the Ministerial Decree, see Kamerstukken II 2012/2013, 32 144, number 21. This amendment was subsequently made on 20 September 2013, see *Staatsblad van het Koninkrijk der Nederlanden*, 2013, 360.

⁶⁷ Central Appeals Tribunal (*Centrale Raad van Beroep*), 27 May 2011, number ECLI:NL:CRVB:2011:BQ6891, §5.3.5.

Dutch law prohibiting adult undocumented persons from registering for education violated his rights under Article 2 Protocol 1 ECHR. The District Court of The Hague held that the State was pursuing a legitimate aim in limiting the applicant's right to education, namely the aim of limiting the access to State services for those living in the Netherlands without a right of residence.⁶⁸ The Court subsequently found that the limitation had been proportionate, because a fair balance had been made between the State's interest and the right to education in general, for example by allowing undocumented minors access to education.⁶⁹

2.3. Challenges to national rules based on EU law

Article 14 and 24 of the EU Charter of Fundamental Rights have not played a significant role in challenging national rules with regard to the right to primary and secondary education for the vulnerable groups studied here. EU law has played a larger role when it comes to access to higher education. For example, in 2012 the Court of Justice of the European Union ruled against the Netherlands in a case brought by the Commission regarding the Netherlands' imposition of a residency requirement on migrant workers who wish to be eligible to receive funding for higher education pursued outside of the Netherlands. Based on the Court's interpretation of Article 45 TFEU and Article 7(2) of Regulation No. 1612/68 on freedom of movement for workers within the Community, the Court held that the Netherlands' residency requirement violated EU law.⁷⁰ However, since this report focuses primarily on the right to primary and secondary education, I will not go into this case law further.

It should be noted that the Dutch law on the Equal Treatment of Disabled and Chronically Ill People Act was passed in 2003 as the Dutch implementation of the EU Directive on Equal Treatment in Employment

⁶⁸ District Court of The Hague (*Rechtbank Den Haag*), 11 June 2014, number ECLI:NL:RBDHA:2014:9084, §4.10.

⁶⁹ District Court of The Hague (*Rechtbank Den Haag*), 11 June 2014, number ECLI:NL:RBDHA:2014:9084, §4.11.

⁷⁰ Case C-542/09 *European Commission v Kingdom of the Netherlands* [2012] number ECLI:EU:C:2012:346.

and Occupation.⁷¹ In 2016, the Netherlands Institute for Human Rights referred to EU law to facilitate the interpretation of the terms ‘disability and ‘chronic disease’ in the Equal Treatment of Disabled and Chronically Ill People Act. These terms are not defined in the Equal Treatment of Disabled and Chronically Ill People Act, nor in the parliamentary documents dealing with this law. The Institute for Human Rights thus referred to a decision from the Court of Justice of the European Union (CJEU), in which the CJEU followed the definition given to the term ‘disability’ in the UN Disabilities Convention.⁷²

3. Right to education, justice as recognition and vulnerability

The principle of recognition underlies the Dutch dual system of allowing and publicly funding both public and special schools. In section 1.2, above, it was described that special schools are schools based on a particular religious or philosophical belief. The rationale for the equal right of existence and equal funding has to do with recognizing the different religious beliefs present in the Netherlands.

As mentioned above (in section 1.2) the Education Council writes in reference to the dual system,

‘the establishment of the dual system in 1917 was the principled acknowledgment that the Netherlands was comprised of different demographic groups with diverse beliefs about raising children and education. [...] The Constitutional legislator chose for inclusivity, not for exclusivity.’⁷³

Further, according to the Education Council, it is necessary that the particular type of religious or philosophical conviction is visible in social life. If a religious or philosophical concept is not sufficiently visible in society, it will not count as a ground for the founding of a special school. For example, in 2012

⁷¹ Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation.

⁷² C-354/13 *Fag og Arbejde v Kommunernes Landsforening* [2014] number ECLI:EU:C:2014:2463, § 59, cited by the Netherlands Institute for Human Rights (*College voor de Rechten van de Mens*), 21 January 2016, number 2016-6, §3.3.

⁷³ Education Council (*Onderwijsraad*), ‘Artikel 23 Grondwet in maatschappelijk perspectief: Nieuwe richtingen aan de vrijheid van onderwijs’ April 2012, p. 18.

the Education Council did not consider Buddhism to sufficiently visible in society to justify the founding of a special school. While there was a Buddhist broadcasting network, there were no Buddhist hospitals or convalescent homes. For the Education Council this was proof of lack of visibility in society.⁷⁴

Both the Primary Education Act and Secondary Education Act dictate that both public schools and special schools that receive public funding must ‘among others, assume that students are growing up in a pluriform society,’ must ‘among others, focus on promoting active citizenship and social integration’ and must ‘among others, focus on students gaining knowledge about and encountering different backgrounds and cultures of their age mates.’⁷⁵ This seems to reflect acknowledgment of the importance of recognizing and respecting differences.

It is unclear to what extent recognition plays a role in the new system of Tailored Education. Despite criticism that this new system was mainly intended to cut costs and reduce the total budget available for education of students with special needs⁷⁶ (and the government’s reference to the new system of financing this law introduces⁷⁷), the government mainly framed this system in terms of ensuring all students with special educational needs receive education that is as tailored to these needs as possible.⁷⁸ Instead of the previous system’s emphasis on labelling students with a specific medical diagnosis and letting that determine the assistance the students receive, Tailored Education aims to focus more on the individual student’s needs.⁷⁹ There seems to be some link to a principle of recognition of a student’s special needs.

⁷⁴ Education Council (*Onderwijsraad*), ‘Artikel 23 Grondwet in maatschappelijk perspectief: Nieuwe richtingen aan de vrijheid van onderwijs’ April 2012, p. 11.

⁷⁵ Primary Education Act (*Wet op het primair onderwijs*), Article 8 and Secondary Education Act (*Wet op het voortgezet onderwijs*), Article 17.

⁷⁶ See for example Lisa Waddington and Andrea Broderick, ‘Disability law and reasonable accommodation beyond employment: A legal analysis of the situation in EU Member States,’ European network of legal experts in gender equality and non-discrimination, p. 132 <<https://www.equalitylaw.eu/downloads/3795-disability-law-and-reasonable-accommodation-beyond-employment>> accessed on 28 November 2018.

⁷⁷ Kamerstukken II, 2011/2012, 33 106, number 3, p. 10 and Kamerstukken II, 2011/2012, 33 106 number 2, p. 1.

⁷⁸ Kamerstukken II, 2011/2012, 33 106, number 3, p. 1. See also Kamerstukken II, 2011/2012, 33 106 number 2, p. 1.

⁷⁹ Kamerstukken II, 2011/2012, 33 106, number 3, p. 10.

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