



**D3.4. Right to vote**  
**National report Netherlands**

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## Table of Contents

<b>Acknowledgments</b>	<b><i>i</i></b>
<b>Table of Contents</b>	<b>2</b>
<b>List of Abbreviations</b>	<b>3</b>
<b>List of English Translations Used</b>	<b>4</b>
<b>D3.4 The Right to Vote – National Report Netherlands</b>	<b>5</b>
<b>1. National legal framework</b>	<b>5</b>
1.1. Relevant institutional and procedural aspects	5
1.2. Constitutional protection	6
1.3. General national rules	7
1.4. Special rules targeting selected group	9
1.5. Specific rules concerning citizens of former colonies	13
1.6. Constitutional challenges	13
<b>2. Impact of international and European law</b>	<b>15</b>
2.1. Challenges to national rules based on international instruments	15
2.2. Challenges to national rules based on European (Council of Europe) instruments	20
2.3. Challenges to national rules based on EU law	22
<b>3. Right to vote, justice as representation, and vulnerability</b>	<b>22</b>
<b>Bibliography</b>	<b>28</b>

## List of Abbreviations

CRPD – Convention on the Rights of Persons with Disabilities

ECHR – European Convention on Human Rights

ECtHR – European Court of Human Rights

ICCPR – International Covenant on Civil and Political Rights

SGP – Staatkundig Gereformeerde Partij (*Reformed Political Party*)

UDHR – Universal Declaration of Human Rights

UN – United Nations

## List of English Translations Used

Administrative Renewal and Kingdom Affairs - *Bestuurlijke Vernieuwing en Koninkrijksrelaties*

Central Appeals Tribunal - *Centrale Raad van Beroep*

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

Criminal Code - *Wetboek van Strafrecht*

Council of State - *Raad van State*

Election Act - *Kieswet*

Election Council - *Kiesraad*

Equal Treatment of Disabled and Chronically Ill People Act - *Wet gelijke behandeling op grond van handicap or chronische ziekte*

Extraordinary municipalities - *bijzondere gemeenten*

Frisian National Party - *Fryske Nasjonale Partij*

Legally incompetent - *onbekwaam rechtshandelingen te verrichten*

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

Reformed Political Party - *Staatkundig Gereformeerde Partij* or SGP

Supreme Court - *Hoge Raad*

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

Voting Regulation Aruba – *Kiesverordening Aruba*

Voting Regulation Curacao - *Kiesreglement Curacao*

Voting Regulation Sint Maarten - *Kiesverordening Sint Maarten*

## D3.4 The Right to Vote – 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.<sup>1</sup> 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.<sup>2</sup> 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.<sup>3</sup> 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 constitutional review of international treaties. Article 91(3) of the Constitution of the Netherlands grants

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<sup>1</sup> The Constitution of the Netherlands, Article 93.

<sup>2</sup> The Constitution of the Netherlands, Article 94.

<sup>3</sup> The Constitution of the Netherlands, Article 120.

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 right to vote in Article 4 and Article 54:

#### Article 4 Right to vote

Every Dutch national shall have an equal right to elect the members of the general representative bodies and to stand for election as a member of those bodies, subject to the limitations and exceptions prescribed by Act of Parliament.

#### Article 54

1. The members of the Lower house shall be elected directly by Dutch nationals who have attained the age of eighteen, with the exception of any Dutch nationals who may be excluded by Act of Parliament by virtue of the fact that they are not resident in the Netherlands.
2. Anyone who has committed an offence designated by Act of Parliament and has been sentenced as a result by a final and conclusive judgment of a court of law to a custodial sentence of not less than one year and simultaneously disqualified from voting shall not be entitled to vote.

Article 4 sets out a general right to vote for every Dutch national, while also acknowledging the possibility of limitations and exceptions as prescribed by Act of Parliament. Article 54 details the right to vote for the Lower House of the Netherlands. Article 54(1) gives all Dutch nationals who are at least eighteen years of age the right to vote for the Lower House of the Netherlands. Article 54(1) further specifies that an Act of Parliament may exclude those Dutch nationals who are not resident in the country of the Netherlands.

Moreover, Article 54(2) provides that an individual may be excluded from the right to vote if: (1) the individual has committed an offence that has been qualified by Act of Parliament as an offence that can



lead to exclusion from the right to vote; (2) the individual has been sentenced by a judge to a custodial sentence of not less than one year; and (3) the judge has explicitly noted that the individual shall be excluded from the right to vote. Due to the cumulative nature of these criteria, all three must be met before an individual can be excluded from the right to vote.

Before 1983, the Constitution of the Netherlands excluded broader categories of people from the right to vote, including (but not limited to) all detainees, individuals who had been declared by a judge to be mentally incapacitated and had lost control over their property, people who had been sentenced to a deprivation of liberty for more than a year due to begging, vagrancy or repeated convictions for public drunkenness.<sup>4</sup> All of these categories except one (mentally incapacitated persons) were removed from the Constitution by amendment in 1983.<sup>5</sup> This last category was removed in 2008.<sup>6</sup>

### 1.3. General national rules

The Netherlands Election Act (*Kieswet*) is an Act of Parliament that sets out specific rules for elections in the Netherlands, including a detailed implementation of the right to vote. The current section of this report will set out the relevant provisions of the Election Act.

Article B1 of the Election Act details the requirements for eligibility for voting for the Lower House of the Netherlands. It specifies that all Dutch nationals of at least eighteen years may vote. However, Dutch

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<sup>4</sup> The Constitution of the Netherlands (1917), Article 80(3).

<sup>5</sup> Kamerstukken II 1976/77, 14 223, in regard to article 3.1.5, see also the advice by the Election Council (*Kiesraad*) in *Staatscourant* 5 August 1983, 148, as referred to in G. Leenknecht, 'Commentaar op artikel 54 van de Grondwet' in E.M.H. Hirsch Ballin and G. Leenknecht (eds) *Artikelgewijs commentaar op de Grondwet* (web-edition 2018) footnote 24 <  
<https://www.nederlandrechtsstaat.nl/module/nlrs/script/viewer.asp?soort=commentaar&artikel=54>> accessed 26 November 2018.

<sup>6</sup> See G. Leenknecht, 'Commentaar op artikel 54 van de Grondwet' in E.M.H. Hirsch Ballin and G. Leenknecht (eds) *Artikelgewijs commentaar op de Grondwet* (web-edition 2018) para. 3 <  
<https://www.nederlandrechtsstaat.nl/module/nlrs/script/viewer.asp?soort=commentaar&artikel=54>> accessed 26 November 2018.

nationals who are resident in one of the three Caribbean countries of the Kingdom of the Netherlands (Aruba, Curacao or Sint Maarten) are – in principle – excluded from the ability to vote for the Lower House in the Netherlands. Instead, they are able to vote for the local parliamentary body. The reason for excluding Dutch nationals resident in other countries of the Kingdom of the Netherlands is to prevent them from being able to vote in two countries of the Kingdom of the Netherlands at the same time. The idea is that if they could vote in both the Netherlands and the Caribbean country in which they are resident, these individuals would have a ‘double’ right to vote that would, in principle, give them a stronger vote than other Dutch nationals.<sup>7</sup>

This exclusion for Dutch nationals resident on Aruba, Curacao or Sint Maarten *does not apply* to Dutch nationals who have been a resident of the European part of the Kingdom for at least ten years; nor to Dutch nationals who work for the Netherlands’ public services on Aruba, Curacao or Sint Maarten, nor to his/her Dutch spouse, registered partner, life partner and children, provided these are in a joint household with the Dutch national in the Netherlands’ public services. According to Article 3 of the Voting Regulation Aruba (*Kiesverordening*),<sup>8</sup> Article 3 of the Voting Regulation Curacao (*Kiesreglement Curacao*),<sup>9</sup> and Article 2 of the Voting Regulation Sint Maarten (*Kiesverordening Sint Maarten*)<sup>10</sup> all residents of, respectively, Aruba, Curacao and Sint Maarten with the Dutch nationality who have attained the legal voting age may vote, respectively, for the Parliament of Aruba, the Parliament of Curacao, or the Parliament of Sint Maarten. This seems to indicate that residents of Aruba, Curacao or Sint Maarten who have Dutch nationality *and* have lived more than ten years in the European part of the Kingdom may vote both for

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<sup>7</sup> See G. Leenknecht, ‘Commentaar op artikel 54 van de Grondwet’ in E.M.H. Hirsch Ballin and G. Leenknecht (eds) *Artikelgewijs commentaar op de Grondwet* (web-edition 2018) para. 1 <<https://www.nederlandrechtsstaat.nl/module/nlrs/script/viewer.asp?soort=commentaar&artikel=54>> accessed 26 November 2018, citing Kamerstukken II 1978/79, 14 223, number 6, p. 6 (Nng IIIa, p. 175).

<sup>8</sup> Landsverordening, houdende regelen betreffende het kiesrecht en de verkiezingen van de leden van de Staten van Aruba (*Kiesverordening*), 20 March 2017 <<http://www.gobierno.aw/document.php?m=7&fileid=27265&f=2ab5a5deef20db70dfaee8df0a48b9eb&attachment=0&c=6074>> accessed on 23 February 2019.

<sup>9</sup> Landsverordening van de houdende vaststelling van het kiesreglement Curacao (*Kiesreglement Curacao*), 10 October 2010 <[https://www.gobiernu.cw/files/Wetten/Organieke\\_regelingen\\_in\\_A\\_B\\_s/BIJLAGE\\_D.\\_Kiesreglement\\_Curacao.pdf](https://www.gobiernu.cw/files/Wetten/Organieke_regelingen_in_A_B_s/BIJLAGE_D._Kiesreglement_Curacao.pdf)> accessed on 23 February 2019.

<sup>10</sup> Kiesverordening Sint Maarten, 30 May 2015 <[https://decentrale.regelgeving.overheid.nl/cvdr/xhtmloutput/historie/Sint%20Maarten/157722/157722\\_2.html](https://decentrale.regelgeving.overheid.nl/cvdr/xhtmloutput/historie/Sint%20Maarten/157722/157722_2.html)> accessed on 23 February 2019.

parliament of the country of their residence *and* the Lower House of the Netherlands. This is also the case for those individuals who personally or whose spouse work for the Netherlands' public services on Aruba, Curacao or Sint Maarten.

Article B2 determines who can vote in the elections for the representative body at the provincial level in the Netherlands: the Provincial States. Under this Article, all Dutch nationals who are at least eighteen years of age can vote for the Provincial States in the province in which they are resident. If a Dutch national is not resident in any Province, s/he cannot vote in the Provincial States elections.

Article B2a determines that all those who are at least eighteen years of age can vote for the General Board of the Water Authority in which they are resident. Note here that there is no nationality requirement. For non-Dutch nationals, it is required that the individual be a citizen of another EU state or have a residence permit for the Netherlands.

Article B3 determines that all those resident in a municipality of the Netherlands and who are at least eighteen years of age may vote in the elections for the Municipality Council. Here there is also no nationality requirement. However, for those who are not EU citizens, an additional requirement must be met before one attains the right to vote in municipality elections: the non-EU citizen must have been lawfully resident in the Netherlands for an uninterrupted period of at least five years.

Article Y3 sets out who may vote in the elections for European Parliament. This Article mandates that all those Dutch nationals at least eighteen years of age may vote in the elections for European Parliament. Moreover, non-Dutch nationals who are citizens of another EU-member state also have the right to vote, so long as they are resident in the European part of the Netherlands, are at least eighteen years of age, and are not excluded from the right to vote in the Netherlands or in the country of their citizenship.

### **1.4. Special rules targeting selected group**

#### *A. Convicted Offenders*

As noted above, the Constitution of the Netherlands allows for a select group of convicted offenders to be excluded from the right to vote. Statutory law sets out which crimes can lead to the exclusion from the right to vote. These crimes are not listed in one place but are spread over the Criminal Code (*Wetboek*

*van Strafrecht*) and the Election Act. The government of the Netherlands has described the criterion that should be used to determine which crimes may lead to exclusion from the right to vote as follows:

‘In our opinion, it can be accepted as a general criterion that exclusion from the right to vote must only be possible in the case of criminal acts that, according to their legal definition, seriously undermine the foundations of the Dutch system of government.’<sup>11</sup>

Crimes that may lead to exclusion from the right to vote include, among others, crimes such as treason (Articles 92-103 Criminal Code of the Netherlands), assaulting the King (Article 110 Criminal Code of the Netherlands), bribing public officials (Article 177 Criminal Code of the Netherlands), and election fraud (Articles Z1-Z3 of the Election Act). Article 31 of the Criminal Code determines the length of exclusion from the right to vote that may be imposed. This Article determines that one may only be excluded from the right to vote for life only if the sentence of life-long imprisonment has been imposed. In all other circumstances, the length of exclusion may be no more than five years longer than imprisonment.

Exclusion from the right to vote is very rarely requested by the Public Prosecutor.<sup>12</sup> In 2015, a total of 169 people were known in their municipality as excluded from the right to vote.<sup>13</sup>

In 2017, the government of the Netherlands proposed an amendment to the Criminal Code that would allow for exclusion from the right to vote upon conviction for a new category of crimes, namely those committed with a terrorist aim. The Election Council advised in favor of this bill.<sup>14</sup> By the autumn of 2018, this bill had been adopted by both houses of Parliament.<sup>15</sup>

Unless the cumulative criteria of Article 54(2) of the Constitution of the Netherlands are met, a convicted offender may not be excluded from the right to vote. This means that individuals who are incarcerated or

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<sup>11</sup> Kamerstukken II 1984/1985, 18 973, number 3, p. 7, cited in Melle Bakker, ‘Uitsluiting van kiesrecht’ in Ron de Jong (ed), *Strafbepalingen in het verkiezingsproces: Ontstaan, functioneren en toekomst* (Kiesraad, 2015) p. 98.

<sup>12</sup> Melle Bakker, ‘Uitsluiting van kiesrecht’ in Ron de Jong (ed), *Strafbepalingen in het verkiezingsproces: Ontstaan, functioneren en toekomst* (Kiesraad, 2015), p. 119.

<sup>13</sup> Melle Bakker, ‘Uitsluiting van kiesrecht’ in Ron de Jong (ed), *Strafbepalingen in het verkiezingsproces: Ontstaan, functioneren en toekomst* (Kiesraad, 2015), p. 118.

<sup>14</sup> Kiesraad, ‘Advies concept-wetsvoorstel versterking strafrechtelijke aanpak terrorisme’ 22 December 2016 <<https://zoek.officielebekendmakingen.nl/blg-811781>> accessed 26 November 2018.

<sup>15</sup> Kamerstukken II 2016/2017, 34 746 number 2. The complete file is available at <[https://zoek.officielebekendmakingen.nl/dossier/34746?\\_page=1&sorttype=1&sortorder=4](https://zoek.officielebekendmakingen.nl/dossier/34746?_page=1&sorttype=1&sortorder=4)>. The bill was adopted by the Lower Chamber in February 2018 and was adopted in the Upper Chamber on 25 September 2018.

otherwise serving a sentence that deprives them of their liberty are *not necessarily* excluded from the right to vote. The Election Act provides information on how these individuals may – despite their deprivation of liberty - nevertheless exercise their right to vote. Article B6 of the Election Act provides that these individuals may only exercise their right to vote by granting a third party authorization to vote on their behalf. This limitation on the right to vote in person does not apply to those who are, despite their limited liberty, nevertheless able to personally cast their vote. Additionally, those who have a right to periodical leave are also not subject to this limitation. These individuals can cast their vote in person at the local voting station. There are no specific legal provisions regarding voting in prisons. This is due mainly to the fact that the actually voting does not take place in the prison. As explained above, those in prison may authorize someone to vote on their behalf (at the local voting station) or may make use of possibilities of leave to cast their vote in person at the local voting station.

### *B. Persons with Disabilities*

The Election Act also provides information on the right to vote in relation to those with physical disabilities. As of 1 January 2019, Article J4(2) of the Election Act was amended to require that 100% of the voting bureaus be accessible to those with physical disabilities. If a municipality is unable to ensure 100% coverage, Article J4(3) requires the Mayor to inform the City Council about the reasons for this failure. Until 2019, Article J4(2) held that the Mayor and Aldermen must ensure that at least 25% of the voting bureaus are located and designed so that voters with physical disabilities can – as much as possible – cast their vote independently.

Article J28 mandates that when it becomes known to a voting bureau that a voter requires assistance due to her/his physical state, the voting bureau must allow the voter to be assisted in the voting booth. It is important to note that this assistance in the voting booth is currently only allowed for people with physical disabilities and does not extend to individuals with mental disabilities.

The requirements for accessibility of the voting station are set out in a standard checklist and relate to general accessibility (how well individuals can get to the voting station via the public road), accessibility

of the premises (how well individuals can enter the voting station from the public road) and usability (how well individuals can use the voting facilities present in the voting station).<sup>16</sup>

This checklist can be accessed via the website of the government of the Netherlands and also includes the requirement that voting booths provide magnifying glasses with extra light for those with visual limitations.<sup>17</sup> The Election Act does not require that ballots are provided in Braille. In recent years, some municipalities have experimented with allowing voters with visual disabilities to cast their vote with the assistance of a voting mold and audio assistance.<sup>18</sup> While the Election Act does not require that experts or people with disabilities are consulted about how to best ensure accessibility, such consultation does regularly take place. For example, the accessibility checklist was commissioned by the Minister of Internal Affairs and compiled in 2012 by an engineering consultancy firm based on consultation with the council for those with chronic illness or handicap, 'Ieder(in)'. In September 2018, the checklist was evaluated in consultation with the engineering consultancy firm, Ieder(in), and the Ministry of Internal Affairs, among others.<sup>19</sup>

Article J4a(1) of the Election Act provides for the possibility of mobile voting booths, which can be temporarily stationed at convenient locations. These mobile booths can be stationed at locations that make it easier for those with physical or mental disabilities to vote, such as at a care home. This is, however, not required by the Election Act. Residents of care homes with physical or mental disabilities

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<sup>16</sup> [No author], 'Initial report on the implementation by the Netherlands of the UN Convention on the Rights of Persons with Disabilities' 12 July 2018, p. 82 <[https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&ved=2ahUKEwim\\_\\_bfrefdAhXqCsAKHRePAQcQFjAAegQICRAC&url=https%3A%2F%2Finternet.ohchr.org%2FTreaties%2FCRPD%2FShared%2520Documents%2FNLD%2FCRPD\\_C\\_NLD\\_1\\_8339\\_E.docx&usg=AOvVaw1LaZPG\\_2gZuezfz6gc67\\_D](https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&ved=2ahUKEwim__bfrefdAhXqCsAKHRePAQcQFjAAegQICRAC&url=https%3A%2F%2Finternet.ohchr.org%2FTreaties%2FCRPD%2FShared%2520Documents%2FNLD%2FCRPD_C_NLD_1_8339_E.docx&usg=AOvVaw1LaZPG_2gZuezfz6gc67_D)> accessed 26 November 2018.

<sup>17</sup> Rijksoverheid, 'Checklist toegankelijkheid stemlokalen' version October 2018, p. 18 <<https://www.rijksoverheid.nl/documenten/publicaties/2014/11/01/checklist-toegankelijkheid-stemlokalen>> accessed on 23 February 2019.

<sup>18</sup> See for example this article about voting with a visual limitation in the municipality of Utrecht Heuvelrug, RTV Utrecht, 'Blinden en slechtszienden kunnen nu zelfstandig stemmen: "Dat voelt fijn!"' 15 March 2018 <<https://www.rtvutrecht.nl/nieuws/1742317/>> accessed on 27 February 2019.

<sup>19</sup> Nederlandse Vereniging voor Burgerzaken, 'Nieuwsbrief 1 verkiezingen 2019' 25 September 2018 <<https://nvvb.nl/nl/communicatie/nieuwsberichten/nieuwsbrief-1-verkiezingen-2019/>> accessed on 23 February 2019.

who are not able to leave the home and where no such mobile voting booth is stationed, can only exercise their vote by authorizing another person to cast a vote on their behalf.

### **1.5. Specific rules concerning citizens of former colonies**

Three former colonial territories in the Caribbean are now countries that form part of the Kingdom of the Netherlands (Aruba, Curacao and Sint Maarten). Three other such territories have been granted a status as extraordinary municipalities (Bonaire, Sint Eustatius and Saba). The Kingdom of the Netherlands has only one nationality, the Dutch nationality, and this nationality is held by nationals of all the different countries in the Kingdom. The rules concerning the rights Dutch nationals have who are resident in the Caribbean parts of the Kingdom to vote in elections in the European part of the Kingdom are highly complex and contested. There are two recent cases in which international and European Union law was used to challenge the exclusion of some Kingdom citizens from the right to vote in certain elections. In 2006, the European Court of Justice issued a preliminary ruling concerning the Netherlands law on Dutch nationals living in Aruba being able to vote in European Parliament elections.<sup>20</sup> In 2017, the Council of State ruled on a case dealing with whether Article 3 Protocol 1 of the European Convention on Human Rights (ECHR) and Article 25(b) of the International Covenant on Civil and Political Rights (ICCPR) was violated by the exclusion of Dutch nationals resident in Aruba who had not been resident in the European country of the Netherlands for more than ten years from the right to vote for members of the Lower Chamber of the Netherlands.<sup>21</sup> It is beyond the scope of this report to go into detail on these rulings.

### **1.6. Constitutional challenges**

As mentioned above in section 1.1, the judiciary of the Netherlands is not competent to review Acts of Parliament against the Constitution. There is thus a relative lack of case-law on constitutional challenges

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<sup>20</sup> Case 300/04 *Eman and Sevinger v College van burgemeester en wethouders van Den Haag* [2006] ECR-I 8055.

<sup>21</sup> Council of State (*Raad van State*), 25 January 2017, number 201608732/1/A2.

to legislation. This section will instead focus on the most recent amendment to the Constitution of the Netherlands concerning the right to vote.

In 2008 the Constitution of the Netherlands was amended so as to eliminate the exclusion from the right to vote of those mentally disabled people who had been declared legally incompetent (*onbekwaam rechtshandelingen te verrichten*). Before this amendment was passed, individuals who were declared legally incompetent were automatically excluded from the right to vote. The declaration of someone as legally incompetent could only be issued by a judge.<sup>22</sup> Often, this declaration was sought to protect a mentally disabled individual from being able to make legally binding decisions that would disadvantage their financial interests. This led to a situation in which those mentally disabled individuals with substantial financial interests to protect were more likely to be declared legally incompetent than those with no such financial interests. After this amendment, all mentally disabled people were legally authorized to vote.

This amendment to the Constitution of the Netherlands took place after a ruling by the Council of State. In this ruling, the Council of State held that in some cases the exclusion of mentally disabled people from the right to vote might violate the ICCPR. While the Council of State did not find a violation in this particular case, it indicated that the legislature was the appropriate body to decide how to deal with this potential conflict. Section 2.1 below will give more detail on the Council of State's ruling in this case.

After this ruling, the Minister of Administrative Renewal and Kingdom Affairs (*Bestuurlijke Vernieuwing en Koninkrijksrelaties*) requested advice from the Election Council (*Kiesraad*) on how to implement the Council of State's judgement. The Election Council advised that the developments in public opinion, legislation and case law meant that the general exclusion of those declared legally incompetent due to mental disability was no longer justifiable.<sup>23</sup> According to a summary of this Advice on the website of the

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<sup>22</sup> See the Constitution of the Netherlands (1983) Article 54(2)(b).

<sup>23</sup> Advice Election Council (*Advies Kiesraad*) of 19 July 2004, cited in Melle Bakker, 'Uitsluiting van kiesrecht' in Ron de Jong (ed), *Strafbepalingen in het verkiezingsproces: Ontstaan, functioneren en toekomst* (Kiesraad, 2015), p. 95.



Election Council, this Advice held that the general exclusion of all those declared legally incompetent due to mental disability went against the general trend of stimulating someone declared legally incompetent to as much as possible still conduct their own legal affairs, to the extent they can be assumed to be capable to reasonably appreciate their interests. Moreover, the Election Council deemed it difficult to reconcile the fact that those declared legally incompetent were excluded from the right to vote, while those with comparable mental disabilities who had not been declared legally incompetent were not excluded.<sup>24</sup>

The government then proposed a constitutional amendment that would abolish the exclusion of those declared legally incompetent from the right to vote. In this proposal the government explicitly referred to the important role played by the Council of State's decision.<sup>25</sup> The government also mentioned that this amendment was important so as to bring the situation in the Netherlands more evidently into conformity with international law (specifically the ICCPR) and to address the recommendation made by the Council of Europe (in 'Principles concerning the legal protection of incapable adults'.)<sup>26</sup> The constitutional amendment was adopted by both houses of Parliament according to the relevant procedures on 25 September 2008.<sup>27</sup> The first election in which those declared legally incompetent could vote was the European Parliament elections of 2009.

## 2. Impact of international and European law

### 2.1. Challenges to national rules based on international instruments

In the Netherlands, national law on the right to vote has most clearly been impacted by international law in relation to persons with disabilities. In this section I will discuss two main, recent challenges posed to national law by international law. The first will deal with a legal challenge brought before the Council of State regarding the pre-2008 Constitution of the Netherlands' exclusion from the right to vote of those declared legally incompetent. Whereas section 1.6 detailed the effect the Council of State's ruling in this case had on the Constitution of the Netherlands, this section will focus on how national law was

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<sup>24</sup> Kiesraad, 'Wilsombekwamen mogen stemmen,' 28 July 2008  
<<https://www.kiesraad.nl/actueel/nieuws/2008/07/28/wilsonbekwamen-mogen-stemmen>> accessed 26 November 2018.

<sup>25</sup> See Kamerstukken II 2005/2006, 30 471 number 3, p. 2.

<sup>26</sup> See Kamerstukken II, 2005/2006, 30 471 number 3, p. 7-8.

<sup>27</sup> Staatsblad van het Koninkrijk der Nederlanden, 2008, 405.

challenged by international law in court. The second addresses the implications of the ratification by the Kingdom of the Netherlands of the United Nations Convention on the Rights of Persons with Disabilities.

*A. The Case of Martijn G. and the right to vote of persons with disabilities*

On 29 October 2003, the department of administrative Law of the Council of State issued a judgment on the conformity of Netherlands' constitutional and statutory law with international law. The case was brought by a young man named Martijn G. who had been declared legally incompetent due to mental disability. Due to the then-valid Article 54(2) of the Constitution of the Netherlands and the then-valid Article B5(1)(b) of the Election Act, he was excluded from the right to vote. In this case, the Council of State had to decide whether such exclusion violated Articles 2, 25 and 26 ICCPR and Articles 1 and 7 of the Universal Declaration of Human Rights (UDHR). If such a violation was found, the Netherlands' laws would be ruled inapplicable due to Article 94 of the Constitution of the Netherlands.

The Council of State ruled that Article 2 ICCPR and Articles 1 and 7 of the UDHR were not provisions of international law which may be binding on all persons. Because of this, and in conjunction with Article 93 of the Constitution of the Netherlands, these provisions could not lead to the inapplicability of Netherlands law. However, the Council of State did find Article 25 ICCPR to be a provision of international law that may be binding on all persons. This article grants every citizen the right to vote, 'without any unreasonable restrictions' and 'without any of the distinctions' prohibited in Article 2 of the ICCPR.

In evaluating whether the Netherlands' law on exclusion from the right to vote of those declared legally incompetent due to mental disability was in violation with Article 25 ICCPR, the Council of State took into account the fact that exclusion from the right to vote was imposed automatically after a court ruled that an individual was legally incompetent. There was no further requirement or possibility for the judge to consider whether, in the specific case, the individual declared legally incompetent was nevertheless able to continue to exercise their right to vote.<sup>28</sup> From this, the Council of State concluded that while the exclusion of mentally disabled people who have been declared legally incompetent from the right to vote is not – in general – an unreasonable limitation on the right to vote, in *certain concrete cases* such exclusion may constitute an unreasonable limitation. However, the Council of State subsequently held

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<sup>28</sup> Council of State (*Raad van State*), 29 October 2003, number 200300512/1, §2.6.2.

that it was not for the judge to decide in which cases such an unreasonable limitation might be present or how such an unreasonable limitation could be remedied. According to the Council of State, such decisions touch upon political questions that are most properly decided by legislature. Because of this, the Council of State found no violation of international law.<sup>29</sup>

The Council of State further found that Article 26 ICCPR (the right to equal protection of the law) was not violated by Netherlands law.<sup>30</sup> The Council of State found that one declared legally incompetent due to mental disability could not be considered to be in a similar position as those who were mentally disabled but not declared legally incompetent. The Council of State thus rejected the argument that those mentally disabled individuals who had been declared legally incompetent were being denied equal treatment vis-à-vis those mentally disabled individuals who had not been declared legally incompetent.

Despite the fact that no violation of international law was found, this judgment had a significant political effect. The Minister of Administrative Renewal and Kingdom Affairs requested advice from the Election Council on how to implement the Council of State's judgement. In 2008 this led to an amendment to the Constitution of the Netherlands that abolished the exclusion of those declared legally incompetent due to mental disability from the right to vote (see section 1.6 above for more on this).

#### *B. The Convention on the Rights of Persons with Disabilities and Accessibility of Voting Stations*

On 13 July 2016 the Netherlands ratified the United Nations (UN) Convention on the Rights of Persons with Disabilities (CRPD or the Disabilities Convention) for the European part of the Kingdom.<sup>31</sup> As a

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<sup>29</sup> Council of State (*Raad van State*), 29 October 2003, number 200300512/1, §2.6.3.

<sup>30</sup> Council of State (*Raad van State*), 29 October 2003, number 200300512/1, §2.7.

<sup>31</sup> According to the entry in the United Nations Treaty Collection, the Netherlands' ratification of the UN Disabilities Convention only applied to the 'European Part of the Netherlands'. See note 4 under the Netherlands' listing at <[https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-15&chapter=4&lang=en#4](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-15&chapter=4&lang=en#4)> accessed 26 November 2018. Article 4(1)(b) of the Voting Regulation of Aruba (*Kiesverordening Aruba*) and Article 4(b) of the Voting Regulation of Curacao (*Kiesverordening Curacao*) still contain provisions that allow for exclusion from the

consequence of this ratification, the Netherlands amended the Equal Treatment of Disabled and Chronically Ill People Act (*Wet gelijke behandeling op grond van handicap or chronische ziekte*) and the Election Act. The amended Election Act mandates that all voting stations must be accessible to persons with a physical disability. This law will come into force on 1 January 2019.<sup>32</sup>

The Netherlands government issued a number of declarations upon ratification. One of these declarations related to Article 29 of the Convention. In this article, the Disabilities Convention sets out the requirements for ensuring people with disabilities can participate in political and public life. Part (a)(iii) of Article 29 specifically holds that States Parties shall guarantee the free expression of the will of persons with disabilities by, where necessary, allowing the individual with a disability to be assisted in voting by a person of their own choice. The Netherlands' declaration upon ratification relating to Article 29 reads as follows:

'The Kingdom of the Netherlands is fully committed to ensure the effective and full exercise by persons with disabilities of their right and opportunity to vote by secret ballot. It recognizes the importance of persons with disabilities to have, where necessary, at their request, assistance in voting. To safeguard voting by secret ballot without intimidation, as provided for in article 29 (a) (ii), and to ensure the principle of one vote per person, the Kingdom of the Netherlands declares that it will interpret the term 'assistance' in article 29 (a) (iii) as

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right to vote of those ruled legally incompetent due to mental disability by an irreversible court ruling. The Voting Regulation Sint Maarten (*Kiesverordening Sint Maarten*) does not contain such a provision.

<sup>32</sup> See the letter from the Minister of Internal and Kingdom Affairs to the Chairperson of the Second Chamber of Parliament of 20 March 2018, 2018-0000019728, <<https://www.rijksoverheid.nl/binaries/rijksoverheid/documenten/kamerstukken/2018/03/20/kamerbrief-over-toegankelijkheid-verkiezingsproces/kamerbrief-over-toegankelijkheid-verkiezingsproces.pdf>> accessed 26 November 2018.

assistance only to be effected outside the voting booth, except with regard to assistance required due to a physical disability, in which case assistance may also be permitted inside the voting booth.<sup>33</sup>

In a report of June 2017, the Netherlands Institute for Human Rights (*College voor de Rechten van de Mens*) presented the outcomes of its investigation into the accessibility of elections in the Netherlands for people with a disability. In this report, the Institute recommended that the Election Act be amended to allow those persons with mental disabilities to also be assisted in the voting booth.<sup>34</sup> On 27 June 2018, the Institute wrote a letter to the Second Chamber of Parliament relating the outcome of the Institute's research into accessibility of elections for persons with disabilities. In this letter, the Institute states that the UN Disabilities Convention requires all persons with disabilities be allowed assistance in voting. The Institute states further that the Netherlands law should be expanded to allow everyone with disabilities (not just those with physical disabilities) assistance in voting.<sup>35</sup>

On 20 March 2018, the Minister of Internal and Kingdom affairs wrote to Parliament that she will look into the possibilities of providing assistance to persons with mental disabilities in the voting booth. In this letter, the Minister indicates that such assistance might be best be provided by members of the voting booth and not by a person of the voter's choice, so as to avoid the risk of intimidation or influence. Finally, the Minister notes the impracticality of having the members of the voting booth assess who is mentally

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<sup>33</sup> Declarations and Reservations to the Convention on the Rights of Persons with Disabilities, Netherlands, <[https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-15&chapter=4&lang=en#EndDec](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-15&chapter=4&lang=en#EndDec)> accessed 26 November 2018.

<sup>34</sup> The Netherlands Institute for Human Rights (*College voor de Rechten van de Mens*), 'Onbeperkt stemmen: Rapportage over de toegankelijkheid van verkiezingen voor mensen met een beperking' June 2017, p. 15, <<https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=4&ved=2ahUKewjb7uW9t9jdAhVKCcAKHc29ASwQFjADegQIBBAC&url=https%3A%2F%2Fwww.perssupport.nl%2Fpersbericht%2F8c97343f-2630-45a7-b255-6e37bfff0d67%2Fverkiezingen-onvoldoende-toegankelijk%2Fdownload-attachment%2F68180&usg=AOvVaw22yTvnOaMWRLpgyDza6XUi>> accessed 26 November 2018.

<sup>35</sup> Letter from the Netherlands Institute for Human Rights (*College voor de Rechten van de Mens*) to the Second Chamber of Parliament of 27 June 2018, 2018/AvD/JHD/HvE <<https://mensenrechten.nl/nl/publicatie/38644>> accessed 26 November 2018.

disabled and who is not. She states that it must be investigated whether, because of this, assistance should be given to anyone who asks for it, regardless of disability.<sup>36</sup>

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

It appears that Article 3 Protocol 1 ECHR (the right to free elections) has not played a large role within the national case law of the Netherlands. In the Dutch case law database <uitspraken.rechtspraak.nl> eight cases were found dealing with this provision.<sup>37</sup> None of these cases dealt with the voting rights of convicted offender or disabled persons.

There have been zero cases against the Netherlands on Article 3 Protocol 1 of the ECHR on which the European Court of Human Rights (ECtHR) has issued a substantive judgment. Eight inadmissibility decisions have been issued on cases dealing with this provision of the ECHR in the Netherlands. I will briefly summarize the three decisions that have been issued on this provision with regard to the Netherlands since 1985, to give an idea of the types of cases brought. None of these three cases relates to the rights of disabled people or convicted offenders.

### A. 10 July 2012: Staatkundig Gereformeerde Partij v. the Netherlands

In this case, the Netherlands Reformed Political Party (*Staatkundig Gereformeerde Partij* or SGP) alleged that the government of the Netherlands had violated its rights under Articles 9, 10 and 11 of the ECHR (the rights to freedom of religion, freedom of expression and freedom of association, respectively). The government of the Netherlands had allegedly done so when various courts in the Netherlands had ruled

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<sup>36</sup> See the letter from the Minister of Internal and Kingdom Affairs to the Chairperson of the Second Chamber of Parliament of 20 March 2018, 2018-0000019728, <<https://www.rijksoverheid.nl/binaries/rijksoverheid/documenten/kamerstukken/2018/03/20/kamerbrief-over-toegankelijkheid-verkiezingsproces/kamerbrief-over-toegankelijkheid-verkiezingsproces.pdf>> accessed 26 November 2018.

<sup>37</sup> These eight results were yielded with the search term <'artikel 3 eerste protocol' AND 'evrm'>. Other search terms <'artikel 3 protocol 1' AND 'evrm'> and <'art 3 p 1' AND 'evrm'> yielded zero results.

that the SGP's refusal to allow women to stand for election violated international law on the prohibition of discrimination.<sup>38</sup> The ECtHR declared the case manifestly ill-founded, stating

'For its part, and having regard to the Preamble of the convention and the case-law cited ... above, the Court takes the view that in the terms of the Convention the same conclusion [that the SGP's position is unacceptable] flows naturally from Article 3 of Protocol No. 1 taken together with Article 14.'<sup>39</sup>

### *B. 6 September 2007: Sevinger & Eman v. the Netherlands*

Mr. Sevinger and Mr. Eman were Dutch nationals resident in Aruba. They had been resident in the country of the Netherlands (the European part of the Kingdom of the Netherlands) for a number of years, but less than ten years. They argued that their exclusion from participation in elections for members of the Lower House of the Netherlands violated Article 3 Protocol 1 because, in addition to having legislative powers over the country of the Netherlands, the Lower House also has legislative powers over Kingdom matters (thus also relating to matters in Aruba). Further, they argued that Article 14 ECHR was violated by the fact that other Dutch nationals resident outside of the Kingdom of the Netherlands do have the right to vote for the Lower House.

The ECtHR found both claims manifestly ill-founded and dismissed the application. In regard to the alleged violation of Article 3 Protocol 1 the ECtHR ruled that due to the

'relatively small amount of Kingdom affairs in comparison with the amount of Netherlands internal affairs, the Court is of the opinion that it cannot reasonably be said that Netherlands nationals residing in Aruba are affected by the acts of the Lower House of the Netherlands Parliament to the same extent as Netherlands nationals residing in the Netherlands.'<sup>40</sup>

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<sup>38</sup> For an overview of the domestic legal proceedings, see *Staatkundig Gereformeerde Partij v the Netherlands* App no 58369/10 (ECtHR, 10 July 2012), section B.

<sup>39</sup> *Staatkundig Gereformeerde Partij v the Netherlands* App no 58369/10 (ECtHR, 10 July 2012), para. 77.

<sup>40</sup> *Sevinger and Eman v the Netherlands* App nos 17173/07 and 17180/07 (ECtHR, 6 September 2007), section B.

Because of this, and because of the fact that the Aruban Parliament can send special delegates to the Netherlands Parliament who may express their opinion in respect of Kingdom affairs, and due to the State's wide margin of appreciation in these matters, the ECtHR held that the applicant's lack of entitlement to vote for the Lower House of the Netherlands was not unreasonable or arbitrary and was thus not incompatible with Article 3 Protocol 1.<sup>41</sup> In regard to the alleged violation of Article 14 in conjunction with Article 3 Protocol 1 the ECtHR decided that the difference in treatment was justified.<sup>42</sup>

*C. 12 December 1985: Fryske Nasjonale Partij and others v. the Netherlands*

The applicants, the Frisian National Party (*Fryske Nasjonale Partij*), argued that their rights under Article 3 Protocol 1 and Articles 9 and 10 of the Convention were violated after their submissions to participate in the elections for the Upper House of the Netherlands were rejected due to these submissions not being written in the Dutch language. The Commission ruled that neither Article 3 Protocol 1, 'nor any other provision of the Convention guarantees the right to use a particular language for electoral purposes.'<sup>43</sup> The application was thus rejected.

### 2.3. Challenges to national rules based on EU law

I have not found any relevant cases dealing with the rights of disabled persons or persons convicted of a crime and EU law. In particular, a search for Dutch cases relating to the ruling by the CJEU in *Delvigne*<sup>44</sup> yielded zero results.<sup>45</sup> For challenges relating to the right to vote of Dutch nationals resident in the Caribbean part of the Kingdom of the Netherlands, see section 1.5 above.

### 3. Right to vote, justice as representation, and vulnerability

In my research I have not come across instances of the right to vote being explicitly linked to justice as representation. Nevertheless, I believe that there are a number of defining moments in the development of the right to vote in the Netherlands that provide some insight into how the right to vote is perceived.

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<sup>41</sup> *Sevinger and Eman v the Netherlands* App nos 17173/07 and 17180/07 (ECtHR, 6 September 2007), section B.

<sup>42</sup> *Sevinger and Eman v the Netherlands* App nos 17173/07 and 17180/07 (ECtHR, 6 September 2007), section C.

<sup>43</sup> *Fryske Nasjonale Partij and others v the Netherlands* App no 11100/84 (12 December 1985), section 2.

<sup>44</sup> Case C-650/13 *Delvigne v Commune de Lesparre-Médoc, Préfet de la Gironde* [2015].

<sup>45</sup> A search of the Dutch case law database <uitspraken.rechtspraak.nl> for the search term '*Delvigne*' yielded zero results. A search for the search term 'C-650/13' (the case number of *Delvigne*) also yielded zero results.



In the following I will discuss four such defining moments: (A) The first moment is the constitutional amendment of 1983, when grounds for exclusion from the right to vote were dramatically reduced; (B) The second moment is the constitutional amendment of 2008, when the exclusion of those declared legally incompetent due to mental disability was abolished. It is also in this moment where a link can be perceived between notions of vulnerability and the right to vote; (C) The third moment is when the government decided to expand the groups of crimes for which those convicted may be excluded from the right to vote to include terrorist crimes (2018); (D) Finally, I will discuss the ratification of the UN Disabilities Convention (2016) and the subsequent alignment of Netherlands legislation with the requirements in the Convention regarding the right to vote.

*A. Constitutional amendment 1983 and further use of possibility of exclusion from the right to vote*

Upon discussion of the amendment of the Constitution of the Netherlands to reduce the groups of people who could be excluded from the right to vote, the Lower House of the Netherlands adopted a motion declaring that ‘the right to vote belongs to the fundamental democratic rights.’<sup>46</sup> The government supported that view of the right to vote and took the position that the legislature must be very restrained when deciding which crimes the conviction of which could lead to one being excluded from the right to vote. The government stated:

‘In our opinion, it can be accepted as a general criterion that exclusion from the right to vote must only be possible in the case of criminal acts that, according to their legal definition, seriously undermine the foundations of the Dutch system of government.’<sup>47</sup>

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<sup>46</sup>Kamerstukken II 1984/1985, 18 973, number 3, p. 7 , referring to a motion in Kamerstukken II 1979/1980, 14 223, number 29.

<sup>47</sup> Kamerstukken II 1984/1985, 18 973, number 3, p. 7, cited in Melle Bakker, ‘Uitsluiting van kiesrecht’ in Ron de Jong (ed), *Strafbepalingen in het verkiezingsproces: Ontstaan, functioneren en toekomst* (Kiesraad, 2015), p. 98.

The idea that the exclusion from the right to vote of those convicted of criminal acts must be applied with restraint, is reflected in the fact that such exclusion is rarely ever requested by the Public Prosecution Office.<sup>48</sup> One of the rare cases in which the Public Prosecution Office did request exclusion from the right to vote was the case against Mohammed B. for the murder of Dutch public personality Theo van Gogh and a threat of violence against a sitting member of parliament. In this case, the court refused to impose such an exclusion. Despite the court's conclusion that Mohammed B. was guilty of these crimes and that his motive for these crimes was to instill fear in the population of the Netherlands and/or to disrupt or destroy the political and constitutional system of the Netherlands,<sup>49</sup> the court did not order his exclusion from the right to vote. The court justified its judgment as follows:

‘Exclusion from the right to vote is an additional punishment that aims to exclude someone convicted of a crime from the democratic process. The idea behind the Public Prosecutor’s request for exclusion from the right to vote is that the suspect should, also in this manner, be placed outside society. In his document ‘Constitution of a fundamentalist, part 5,’ the suspect set out how much he believed democracy to violate the laws of Allah. The suspect rejected all facets of the democratic system. Considering what was noted above regarding the suspect’s commitment to his ideology and the life-long sentence that will be imposed on the suspect, the Court does not consider it realistic that the suspect will make use of his active and passive suffrage rights.’<sup>50</sup>

#### *B. Constitutional amendment 2008*

In 2008 the Constitution of the Netherlands was amended to abolish the exclusion from the right to vote of those mentally disabled persons who had been declared legally incompetent. This followed a ruling by the Council of State, in which this exclusion was evaluated in light of international human rights law. This

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<sup>48</sup> Melle Bakker, ‘Uitsluiting van kiesrecht’ in Ron de Jong (ed), *Strafbepalingen in het verkiezingsproces: Ontstaan, functioneren en toekomst* (Kiesraad, 2015), p. 119.

<sup>49</sup> District Court of Amsterdam (*Rechtbank Amsterdam*), 26 June 2005, number 13/129227-04, §8.

<sup>50</sup> District Court of Amsterdam (*Rechtbank Amsterdam*), 26 June 2005, number 13/129227-04, §8.

evaluation focused mainly on the right to vote (set out in Article 25 ICCPR) and the right to equal treatment and equality under the law.

When the government proposed the constitutional amendment, it was discussed that declaring someone legally incompetent due to mental disability is seen as a way of protecting that individual from themselves. In the case that someone is so mentally disabled that they are unable to represent their own interests, they are protected by being declared legally incompetent, which means their legal acts are void. In this way, such persons are offered protection against their (attempted) legal acts that are assumed to be against their own interests.<sup>51</sup> In the Memorandum of Explanation the government provided on the proposal to amend the Constitution, the government points out that, in practice, those who have been declared legally incompetent are often less mentally disabled than many persons who have not been declared legally incompetent.<sup>52</sup>

The government frequently refers to the changing social opinions about the right to vote as such, and the social position of those declared legally incompetent, as giving sufficient reason to amend the Constitution as proposed. As to the changing social opinions about the right to vote, the government explains that whereas in the past the right to vote was seen as central, the government wants to emphasize the *protection of the individual* who has that right to vote. The government places this conviction within a historical context in which the group of persons eligible to vote has steadily been enlarged.<sup>53</sup> The government claims that during these past expansions of those eligible to vote, there have always been concerns about whether those newly enfranchised people will be able to responsibly exercise their right. According to the government, ‘in practice, it has never become apparent that such concerns are

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<sup>51</sup> Kamerstukken II, 2005-2006, 30 471, number 3, p. 1-2.

<sup>52</sup> Kamerstukken II, 2005-2006, 30 471, number 3, p. 2.

<sup>53</sup> Kamerstukken II, 2005-2006, 30 471, number 3, p. 2.

justified.<sup>54</sup> The government goes further to say 'it is not the role of the state to evaluate whether an individual exercises their right to vote in a manner that reflects a sufficient sense of responsibility.'<sup>55</sup> The government further states that the risk that comes with allowing mentally disabled persons to vote (including the risk that others will influence their vote) is relatively small and must not influence the fundamental decision whether to allow mentally disabled persons declared legally incompetent to vote.<sup>56</sup> With regard to changing opinions about the social position of those declared legally incompetent, the government highlights that society has come to see that someone who has been declared legally incompetent should still be facilitated in exercising their (legal) will to the extent that this individual is able to reasonably appreciate his interests.<sup>57</sup> It is interesting to note how the possible vulnerability of the mentally disabled is perceived here. Instead of automatically assuming that all mentally disabled people who have been declared legally incompetent are not able to act in their own interest (as was previously assumed) and thus must be protected from the legal consequences of their acts, the government takes the position that mentally disabled people who have been declared legally incompetent should nevertheless be facilitated in exercising their will as much as possible.

*C. The addition of terrorist crimes to those crimes that can lead to exclusion from the right to vote.*

A change to the law to include terrorist crimes in the list of crimes that may lead to exclusion from the right to vote was recently decided upon by parliament in the Netherlands. The government has justified this change by arguing that terrorist crimes seriously undermine the foundations of the Dutch system of government.<sup>58</sup> The government emphasized that the judge may exercise discretion in deciding whether or not to exclude someone convicted of terrorist crimes from the right to vote. The judge must take into account the seriousness of the offence, the person who committed the offense, the proportionality of the punishment, as well as the possible negative affects exclusion from the right to vote may have for reintegration.<sup>59</sup>

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<sup>54</sup> Kamerstukken II, 2005-2006, 30 471, number 5, p. 3.

<sup>55</sup> Kamerstukken II, 2005-2006, 30 471, number 5, p. 3.

<sup>56</sup> Kamerstukken II, 2005-2006, 30 471, number 3, p. 6.

<sup>57</sup> Kamerstukken II, 2005-2006, 30 471, number 3, p. 3.

<sup>58</sup> Kamerstukken II, 2016-2017, 34 746, number 3, p. 4.

<sup>59</sup> Kamerstukken II, 2016-2017, 34 746, number 3, p. 4.

#### D. Ratification of the UN Disabilities Convention (2016)

After the ratification of the UN Disabilities Convention, the Second Chamber adopted a motion which emphasized that people with disabilities must be able to contribute to democracy in the same way as others. For this to be possible, the correct preconditions need to be created. In the motion, the Minister of the Interior and Kingdom Relations was asked to assess the extent to which people with disabilities have a representative or official position, what the barriers to such positions are and what measures need to be taken to remove barriers to active participation in democracy.<sup>60</sup> The Minister of Internal Affairs and Kingdom Relations frames her efforts to make elections more accessible to individuals with a disability as part of the government's aim to create 'an inclusive society, in which everyone can participate, regardless of talent or disabilities.'<sup>61</sup> The Minister sees it as the role of the government to ensure as much as possible that the voters who are eligible to vote are *factually able* to vote.<sup>62</sup>

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<sup>60</sup> [No author], 'Initial report on the implementation by the Netherlands of the UN Convention on the Rights of Persons with Disabilities' 12 July 2018, p. 84 <[https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&ved=2ahUKEwim\\_\\_bfrefdAhXqCsAKHRePAQcQFjAAegQICRAC&url=https%3A%2F%2Finternet.ohchr.org%2FTreaties%2FCRPD%2FShared%2520Documents%2FNLD%2FCRPD\\_C\\_NLD\\_1\\_8339\\_E.docx&usg=AOvVaw1LaZPG\\_2gZuezfz6gc67\\_D](https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&ved=2ahUKEwim__bfrefdAhXqCsAKHRePAQcQFjAAegQICRAC&url=https%3A%2F%2Finternet.ohchr.org%2FTreaties%2FCRPD%2FShared%2520Documents%2FNLD%2FCRPD_C_NLD_1_8339_E.docx&usg=AOvVaw1LaZPG_2gZuezfz6gc67_D)> accessed 26 November 2018.

<sup>61</sup> See letter from the Minister of Internal and Kingdom Affairs to the Chairperson of the Second Chamber of Parliament of 20 March 2018, 2018-0000019728, <<https://www.rijksoverheid.nl/binaries/rijksoverheid/documenten/kamerstukken/2018/03/20/kamerbrief-over-toegankelijkheid-verkiezingsproces/kamerbrief-over-toegankelijkheid-verkiezingsproces.pdf>> accessed 26 November 2018.

<sup>62</sup> See letter from the Minister of Internal and Kingdom Affairs to the Chairperson of the Second Chamber of Parliament of 20 March 2018, 2018-0000019728, <<https://www.rijksoverheid.nl/binaries/rijksoverheid/documenten/kamerstukken/2018/03/20/kamerbrief-over-toegankelijkheid-verkiezingsproces/kamerbrief-over-toegankelijkheid-verkiezingsproces.pdf>> accessed 26 November 2018.

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