
Observations of ASSEDEL on the Opinion 1138\2023 of the Venice Commission about the Independence of the Judiciary in the Netherlands

October 2023

ASSEDEL attaches great importance to contributing to opinions written by the Venice Commission. Venice Commission Opinion No. 1138\2023 is about the independence of the judiciary in the Netherlands. ASSEDEL is of the opinion that this independence is the most significant barrier for liberties in democratic countries, and submits this letter to the Venice Commission in which it expresses its views on the subject.

The independence of law in a country depends on how much the rule of law is protected by institutions and society. For this reason, we think that it is appropriate to evaluate the independence of law in a broader context rather than evaluating it only as the executive's intervention in the judiciary. The independence of the law is not a phenomenon that is achieved in a short time, and the loss of the independence of the law may occur over a period. Even though there is little concern about the independence of law in the Netherlands, as mentioned above, we find it very important to evaluate the issues of events, considering that the loss of independence of law is a long process. This is because the executive and legislative bodies of a country do not want to interfere with the independence of the judiciary without any obvious interest. At this point, we will talk about how the legislation passed or tried to be enacted by the Dutch legislature or some of the extra-legal practices of the executive may harm judicial independence and invite the Dutch cabinet to take the necessary measures.

The Netherlands, one of the countries that come to mind when it comes to the rule of law, consistently ranks among the top five in the world in this index almost every year.¹ The Netherlands is one of the countries where the legal system works best. However, this does not mean that the system always functions properly. When we look at the examples we will mention below, it will be seen that in some cases, the executive and the legislature have moved away from human-centered policies, causing many people to suffer.

The measures taken following the fiasco regarding discrimination in child benefits at the state tax authority in 2011 and beyond have not reached the required level. Currently, traces of discrimination emerge day by day. The fact that the truth came to light after a long time and the process of restoring rights took a long-time reduced trust in the law and the state.

¹ <https://worldjusticeproject.org/rule-of-law-index/country/2020/Netherlands/>

Dutch Tax Authorities have launched a series of studies to investigate individuals they suspect of tax evasion. While carrying out these studies, they determined certain criteria and identified possible suspects through these criteria. The most striking of these criteria is that those who have Dutch citizenship as well as another nationality are directly counted as usual suspects. Tax Authorities have engaged in ethnic profiling at the level of government agencies over the past decade, causing many people to suffer. Many people were blacklisted just because they were dual citizens, and they suffered great victimization due to account errors. After a change in the law in 2015, information about second nationality was no longer included in the Personal Records Database (BRP). However, after this scandal, everything is not completely fixed. Research shows that Tax Authorities still use old citizen information in their database. Research conducted by PwC, an accounting firm commissioned by the Ministry of Finance, shows that Tax Authorities consider not having a western appearance, in addition to the old criteria, as a sufficient reason to blacklist citizens.²

In a social state like the Netherlands, where democratic values are at the highest level, it may not always be possible to recognize and eliminate human grievances in a short time. The main reason for this is the difficulty of the executive mechanisms in detecting a wrong application. In a place where many systems operate properly, minor problems are likely to be ignored.

Another issue is that parties are seeking more nationalist and less inclusive policies to win the November 2023 elections. The surprising results of the Dutch provincial elections in 2022 show that it is more important to protect national interests than universal values. Many parties, including the parties forming the coalition for the upcoming elections, argue that environmental regulations are not indispensable and that people's material well-being takes precedence over social consensus. In particular, there has been a retreat from proposals to encourage farmers to use greener systems in the name of reducing nitrogen emissions. Even if these examples are not directly related to the rule of law, they are an indication of the upward trend of populist policies. Long-term and people-oriented policies, on the other hand, are less emphasized. It is clear that populist politics and the desire to retain power in some form will challenge legal independence in the future, as in the case of Turkey.

Another issue is the massive influx of refugees. Dutch authorities see the increasing influx of refugees as a major problem. Last year, the number of refugees entering the country in 2022 was well above the average, causing a crisis in the Netherlands in terms of hosting refugees. In a country where there is also a housing crisis, refugees are forced to sleep on the streets or, in good conditions, in gyms. The refugee reception centers, where a humanitarian tragedy is unfolding, have not received the necessary and prompt assistance from the government and municipalities. The inability of the coalition parties that make up the government to agree on many issues related to the refugees and the constant politicization of the refugee issue has attracted the attention of the public. Thus, public opinion has been created that there is a huge refugee problem in the country and that this problem should be solved, and that the influx of refugees should be reduced in some way.

² <https://www.nu.nl/economie/6180204/belastingdienst-schatte-frauderisico-regelmatig-in-op-uiterlijk-of-nationaliteit.html>

However, a bill that could have solved the problem of accommodation for refugees, which was drafted over the objections of the main coalition party, seems to have been shelved for the time being due to the fall of the government. On the other hand, the Dutch leadership wants to conclude an agreement with Tunisia to prevent the arrival of refugees to the European Union, contrary to the ECHR.³ This will prevent the flow of refugees into Europe. Furthermore, it is against the law to start legal proceedings against refugees even before they enter the borders of the European Union.

In the light of the above examples, it will be seen that the rule of law is an issue that needs to be addressed in a much broader scope. We believe that a country like the Netherlands, which values democratic values, will take the necessary steps.

³ <https://nos.nl/artikel/2483065-europese-unie-sluit-migratiedeal-met-tunesie>