

Appendix 1 to ref. nr. 2011-2000054729

The House of Representatives
hereby sends to the Senate
the Bill passed by it.

The President,

19 April 2011

Establishment of the Netherlands Institute for Human Rights (Netherlands Institute for Human Rights Act)

AMENDED BILL

We, Beatrix, by the grace of God Queen of the Netherlands, Princess of Orange-Nassau,
etc., etc., etc.

Greetings to all who see or hear these presents! Be it known:

Whereas we have considered that – with a view to protecting human rights, including the right to equal treatment, and promoting observance thereof in the Netherlands and also with a view to implementing Resolution A/RES/48/134 of the General Assembly of the United Nations of 20 December 1993 concerning national institutions for the promotion and protection of human rights, Recommendation R (97) 14 of the Committee of Ministers of the Council of Europe of 30 September 1997 on the establishment of independent national human rights institutions, Directive 2000/43/EC of the Council of the European Union of 29

June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin (OJL 180), Directive 2004/113/EC of the Council of the European Union of 13 December 2004 implementing the principle of equal treatment between men and women in the access to and supply of goods and services (OJ L 373) and Directive 2006/54/EC of the European Parliament and the Council of the European Union of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast) (OJ L 204) – it is desirable to establish a national human rights institution that is also responsible for protecting the right to equal treatment, and that it is necessary, having regard *inter alia* to article 79 of the Constitution, to adopt statutory provisions for this purpose;

We, therefore, having heard the Council of State, and in consultation with the States General, have approved and decreed as We hereby approve and decree:

CHAPTER 1. ESTABLISHMENT, DUTIES AND POWERS

Section 1

1. There is a Netherlands Institute for Human Rights (*College voor de rechten van de mens*), referred to below as the Institute.
2. The Institute is the national human rights institution referred to in Resolution A/RES/48/134 of the General Assembly of the United Nations of 20 December 1993 concerning national institutions for the promotion and protection of human rights, and in Recommendation R (97) 14 of the Committee of Ministers of the Council of Europe of 30 September 1997 on the establishment of independent national human rights institutions.
3. The object of the Institute is to protect human rights, including the right to equal treatment, in the Netherlands, to increase awareness of these rights and to promote their observance.

Section 2

This Act, with the exception of chapter 2, also applies in the territories of the public bodies Bonaire, Sint Eustatius and Saba, subject to the proviso that section 3 (a) should be read as follows:

‘(a) to conduct investigations into the protection of human rights;’

Section 3

The duties of the Institute are:

- (a) to conduct investigations into the protection of human rights, including investigating whether discrimination has taken or is taking place and publishing its findings on this as referred to in section 10;
- (b) to report on and make recommendations about the protection of human rights, including annual reporting on the human rights situation in the Netherlands;
- (c) to provide advice as referred to in section 5;
- (d) to provide information and encourage and coordinate education about human rights;
- (e) to encourage research into the protection of human rights;
- (f) to cooperate on a systematic basis with civil society organisations and with national, European and other international institutions engaged in the protection of one or more human rights, for example by organising activities in partnership with civil society organisations;
- (g) to press for the ratification, implementation and observance of human rights treaties and for the withdrawal of reservations to such treaties;
- (h) to press for the implementation and observance of binding resolutions of international organisations on human rights;
- (i) to press for observance of European or international recommendations on human rights.

Section 4

The Institute is independent in the performance of its duties.

Section 5

1. The Institute advises, at the written request of Our Minister concerned or of either House of the States General, on acts, bills, orders in council, draft orders in council, ministerial orders and drafts of ministerial orders that relate directly or indirectly to human rights.
2. The Institute may, on its own initiative, advise Our Minister concerned or either House of the States General on acts, bills, orders in council, draft orders in council, ministerial orders and drafts of ministerial orders that relate directly or indirectly to human rights.
3. The Institute may, in response to a request in writing or on its own initiative, advise an administrative authority concerned or either House of the States General on draft binding

resolutions of European and other international institutions that relate directly or indirectly to human rights and on policy that relates directly or indirectly to human rights.

4. The Institute may, in response to a request in writing or on its own initiative, advise an administrative authority concerned on generally binding regulations and drafts thereof, other than those referred to in subsection 1, that relate directly or indirectly to human rights.

Section 6

1. The Institute and persons designated by it for this purpose may demand all information and documents that may reasonably be considered necessary for the performance of its duties.

2. Everyone is obliged to provide the information and documents demanded pursuant to subsection 1 in full and in accordance with the truth, and to do so in such manner and within such time limit as may be specified by or on behalf of the Institute.

3. Subsection 2 does not apply insofar as the provision of the information and documents concerned would be contrary to the interests of national security or violate a duty of official or professional secrecy. Nor does this obligation apply if, in doing so, the persons concerned would expose either themselves or a relation by blood or marriage in the direct or collateral line in the second or third degree or their present or former spouse or their present or former registered partner to the risk of conviction for an indictable offence.

Section 7

1. The Institute may institute an on-site investigation. It may gain access to all places, other than a dwelling without the consent of the occupant, insofar as this may reasonably be considered necessary for the performance of its duties.

2. Subsection 1 does not apply to places that are designated as prohibited places pursuant to the Protection of State Secrets Act.

Section 8

1. The investigations, reports and recommendations referred to in section 3 (a) and (b) and the advice referred to in section 5 must be published by the Institute.

2. Our Minister concerned must give the Institute the opportunity to discuss with him the investigations, reports, recommendations and advice.

CHAPTER 2. INVESTIGATIONS AND FINDINGS RELATING TO EQUAL TREATMENT

Section 9

A division of the Institute is responsible for performing the duties referred to in this chapter.

Section 10

1. The Institute may, in response to a request in writing, conduct an investigation to determine whether discrimination as referred to in the Equal Treatment Act, the Equal Treatment (Men and Women) Act or article 646, Book 7 of the Civil Code has taken or is taking place, and may publish its findings. The Institute may also conduct an investigation on its own initiative to determine whether such discrimination is systematically taking place and may publish its findings.

2. A request in writing as referred to in subsection 1 may be submitted by:

(a) a person who believes that he/she is a victim of discrimination within the meaning of the Equal Treatment Act, the Equal Treatment (Men and Women) Act or article 646, Book 7 of the Civil Code;

(b) a natural or legal person or competent authority wishing to know whether it is discriminating within the meaning of the Equal Treatment Act, the Equal Treatment (Men and Women) Act or article 646, Book 7 of the Civil Code;

(c) a person responsible for deciding on a dispute concerning discrimination within the meaning of the Equal Treatment Act, the Equal Treatment (Men and Women) Act or article 646, Book 7 of the Civil Code;

(d) a works council or comparable employee participation body which believes that discrimination within the meaning of the Equal Treatment Act, the Equal Treatment (Men and Women) Act or article 646, Book 7 of the Civil Code is taking place in the organisation for which it was appointed;

(e) an association having full legal capacity or a foundation which, in accordance with its constitution, represents the interests of those whose protection is the objective of the Equal Treatment Act, the Equal Treatment (Men and Women) Act or article 646, Book 7 of the Civil Code.

3. If a request in writing as referred to in subsection 2 (d) and (e) names persons who are said to have been disadvantaged, or if an investigation conducted on the Institute's own

initiative relates to such persons, the Institute must inform the persons concerned of the planned investigation. The Institute is not authorised to involve persons as referred to in the previous sentence in the investigation or the evaluation if they have stated in writing that they object to such involvement.

Section 11

1. The Institute institutes an investigation and forwards its findings, in writing and with reasons, to the petitioner, the person found to have discriminated and, if relevant, the victim of discrimination.
2. The Institute may make recommendations when forwarding its findings to a person found to have discriminated.
3. The Institute may forward its findings to such of Our Ministers as may be concerned, and to such organisations of employers, employees, professionals, public servants, consumers of goods and services and relevant consultative bodies as it believes appropriate.

Section 12

1. The Institute may not institute or must terminate an investigation if:
 - (a) the request referred to in section 10, subsection 2 is manifestly unfounded;
 - (b) the interest of the petitioner or the seriousness of the conduct concerned is manifestly insufficient;
 - (c) the time that has elapsed since the discrimination referred to in section 10 took place is such that an investigation can no longer reasonably be conducted.
2. In cases as referred to in subsection 1, the Institute must notify the petitioner of this in writing, giving reasons.

Section 13

1. The Institute may bring a legal action with a view to obtaining a ruling that conduct contrary to the Equal Treatment Act, the Equal Treatment (Men and Women) Act or article 646, Book 7 of the Civil Code is unlawful, requesting that such conduct be prohibited or that the court order that the consequences of such conduct be rectified.
2. No conduct may form the subject of an action as referred to in subsection 1 if the person affected by that conduct objects.

CHAPTER 3. COMPOSITION AND PROCEDURE

Section 14

1. The Institute is composed of a minimum of nine and a maximum of twelve members, including a chair and two assistant chairs. Alternate members may also be appointed.
2. The chair and one of the two assistant chairs must fulfil the requirements laid down by or pursuant to section 5, subsections 1, 2 and 4 of the Judicial Officers (Legal Status) Act governing eligibility for appointment as a judicial officer. In special cases the provisions of the first sentence may be derogated from in relation to the appointment of the chair.
3. The Institute is represented by the chair or, in his/her absence, by an assistant chair.

Section 15

1. There is an advisory council. The council must advise the Institute each year on the Institute's proposed policy plan and advise Our Minister of Security and Justice on the appointment of the members and alternate members of the Institute.
2. The council consists of the National Ombudsman, the chair of the Data Protection Agency, the chair of the Council for the Judiciary and a minimum of four and a maximum of eight members drawn from civil society organisations concerned with the protection of one or more human rights, from organisations of employers and employees and from academia.
3. The members of the council, with the exception of the National Ombudsman, the chair of the Data Protection Agency and the chair of the Council for the Judiciary, are appointed, suspended and dismissed by Our Minister of Security and Justice in agreement with Our Minister of the Interior and Kingdom Relations and after hearing the Institute, the National Ombudsman, the chair of the Data Protection Agency and the chair of the Council for the Judiciary. These members are appointed for a term of not more than four years. They may be reappointed once for not more than four years.
4. The members must appoint a chair from their own number. The council determines its own procedures.
5. Section 13 of the Autonomous Administrative Authorities Framework Act applies *mutatis mutandis* to the members of the council.

Section 16

1. The members and alternate members of the Institute are appointed by Royal Decree on the recommendation of Our Minister of Security and Justice.
2. The council, in agreement with the Institute, advises Our Minister of Security and Justice on the recommendation, taking account of the need for an expert and independent Institute and of the wish to ensure diversity in its membership.
3. A vacancy for a member or alternate member and the selection procedure to be followed must be published by the Institute. The Institute and the council must also draw the vacancy to the attention of civil society organisations concerned with the protection of one or more human rights.

Section 17

1. Sections 46c, 46d, subsection 2, 46f, 46g, 46h, subsections 1 and 2, 46i, with the exception of subsection 1 (c), 46j, 46l, with the exception of subsection 1 (c), 46m, 46n, 46o and 46p of the Judicial Officers (Legal Status) Act apply *mutatis mutandis* to the members and alternate members of the Institute, provided always that:

- (a) the disciplinary measure referred to in section 46c, subsection 1 is to be imposed in relation to the chair of the Institute by the president of The Hague court of appeal and in relation to the other members and alternate members by the chair of the Institute;
- (b) the prohibition referred to in section 46c, subsection 1 (b) on engaging in talk or conversation with the parties or their lawyers or representatives or accepting from them specific information or documents does not apply to members and alternate members of the Institute;
- (c) 'superior' as referred to in sections 46j and 46o, subsection 2 means the chair of the Institute.

2. The members and alternate members are appointed for a maximum term of six years. They may be reappointed with immediate effect.

3. Without prejudice to section 9 of the Autonomous Administrative Authorities Framework Act, public servants subordinate to one of Our Ministers are not eligible for appointment as a member or alternate member.

4. Section 13 of the Autonomous Administrative Authorities Framework Act applies *mutatis mutandis* to the alternate members of the Institute.

5. Without prejudice to section 14, subsection 2 of the Autonomous Administrative Authorities Framework Act, further rules must be laid down by order in council governing the legal status

of the members, including in any event rules governing their swearing-in, holidays, leave, occupational health counselling and sickness and disability benefits, and further rules may be laid down by order in council governing the legal status of alternate members.

Section 18

1. The Institute is assisted in the performance of its duties by an office.
2. The officials who staff the office are appointed, promoted, subjected to disciplinary punishment, suspended and dismissed by the Institute.
3. The powers conferred on the competent authority by the Central and Local Government Personnel Act are exercised by the Institute in relation to the officials who staff the office.
4. Further rules governing the exercise of powers by the Institute in relation to the legal status of the officials who staff the office must be laid down by or pursuant to order in council.

Section 19

Further rules governing the procedures of the division referred to in section 9 must be laid down by order in council, including in any event rules governing:

- (a) the handling of cases;
- (b) the hearing of both parties;
- (c) the public conduct of hearings.

Section 20

1. Sections 12 and 21 of the Autonomous Administrative Authorities Framework Act do not apply.
2. Notwithstanding section 20 of the Autonomous Administrative Authorities Framework Act, the Institute is not obliged to provide information to Our Minister of the Interior and Kingdom Relations and Our Minister of Security and Justice or to allow them to inspect case data and papers relating to the content and handling of investigations being conducted by the Institute as referred to in section 3 (a) and section 10.
3. Notwithstanding section 22 of the Autonomous Administrative Authorities Framework Act, Our Minister of the Interior and Kingdom Relations and Our Minister of Security and Justice may not reverse a decision of the Institute relating to the investigation or the findings referred to in section 10.

CHAPTER 4. ANNUAL REPORT AND REPORT OF FINDINGS

Section 21

1. Without prejudice to section 18 of the Autonomous Administrative Authorities Framework Act the annual report must contain a summary of:

- a) the investigations carried out by the Institute in the previous year;
- b) the advice given by the Institute in the previous year;
- c) the other activities undertaken by the Institute in performing its duties.

2. The annual report must be published. The Institute must also send this report to the National Ombudsman, the Data Protection Agency, civil society organisations concerned with the protection of one or more human rights and such other advisory bodies as may be concerned.

Section 22

Every five years the Institute must draw up a report of its findings on how this Act, the Equal Treatment Act, the Equal Treatment (Men and Women) Act and article 646, Book 7 of the Civil Code operate in practice. The Institute must forward this report to Our Minister of the Interior and Kingdom Relations.

Section 23

Our Minister of the Interior and Kingdom Relations must forward to the States General a report on the operation in practice of this Act, the Equal Treatment Act, the Equal Treatment (Men and Women) Act and article 646, Book 7 of the Civil Code as soon as possible after receiving the report referred to in section 22.

CHAPTER 5. AMENDMENTS TO OTHER ACTS

Section 23a

Section 3 of chapter 15 of the Judicial System (Modernisation) Act is amended as follows:

1. Point (a) reads as follows:

‘(a) the Institute referred to in section 1 of the Netherlands Institute for Human Rights Act;’

2. In point 1^o the words ‘the Commission referred to at (a)’ are replaced by ‘the Institute referred to at (a)’ and ‘that Commission’ by ‘that Institute’.

Section 24

Chapter 2 and section 33 of the Equal Treatment Act are repealed.

Section 24a

If the bill submitted by royal message of 18 July 2009 to amend the Judiciary (Organisation) Act, the Judiciary (Territorial Division) Act, the Code of Civil Procedure and certain other acts in connection with the evaluation of the modernisation of the judicial system and the regulation of the right of complaint in respect of conduct of judicial officers (Modernisation of the Judicial System (Evaluation) Bill, 32 021) becomes or has become law:

(a) and section I, point H of that Act enters or has entered into force, the words ‘section 1a, subsection 4’ in section 26, subsection 7 of the Judiciary (Organisation) Act will be replaced by ‘section 1a, subsection 2’;

(b) and section XII of that Act enters or has entered into force, the words ‘Amendments to other Acts’ in the heading of chapter 5 of this Act will be replaced by ‘Amendments to this Act and other Acts’ and the following will be inserted after section 17:

‘Section 17a

Sections 13a to 13g of the Judiciary (Organisation) Act apply *mutatis mutandis* to conduct of members and alternate members of the Institute, provided always that:

(a) for the application *mutatis mutandis* of these sections the words ‘the court management board concerned’ are deemed to mean ‘the chair of the Institute’;

(b) for the application *mutatis mutandis* of section 13b, subsection 1 (b) and (c), the words ‘a complaint in accordance with sections 26 or 75’ are deemed to mean a complaint.’

Section 24b

1. If the bill referred to in section 24a becomes or has become law and section XVI of that Act enters into force before section 23a of this Act, the latter section will be repealed.

2. If the bill referred to in section 24a becomes or has become law and section 23a enters into force before section XVI of that Act, the latter section will be repealed.

Section 25

The Higher Education and Research Act is amended as follows:

A

In sections 9.32, subsection 4 and 9.34, subsection 3 (j), the words ‘section 12, subsection 2, opening words and (d) of the Equal Treatment Act’ are replaced by ‘section 10, subsection 2, opening words and (d) of the Netherlands Institute for Human Rights Act’.

B

In sections 10.19, subsection 4 and 10.22 (j), the words ‘section 12, subsection 2, opening words and (d) of the Equal Treatment Act’ are replaced by ‘section 10, subsection 2, opening words and (d) of the Netherlands Institute for Human Rights Act’.

Section 26

The Central and Local Government Personnel Act is amended as follows:

A

In section 2, subsection 1 the words ‘– the members of the Equal Treatment Commission referred to in the Equal Treatment Act’ are replaced by ‘– the members and alternate members of the Netherlands Institute for Human Rights’.

B

Section 125g, subsection 3 will read:

‘3. The Institute referred to in section 1 of the Netherlands Institute for Human Rights Act may investigate whether discrimination as referred to in this section has taken or is taking place. Sections 10, 11, 12, 13, 22 and 23 of the Netherlands Institute for Human Rights Act apply *mutatis mutandis*.’

C

Section 125h, subsection 4 will read as follows:

‘4. The Institute referred to in section 1 of the Netherlands Institute for Human Rights Act may investigate whether discrimination as referred to in subsection 1 has taken or is taking place. Sections 10, 11, 12, 13, 22 and 23 of the Netherlands Institute for Human Rights Act apply *mutatis mutandis*.’

Section 27

Paragraph 4 of articles 648 and 649 of Book 7 of the Civil Code will read as follows:

‘4. The Institute referred to in section 1 of the Netherlands Institute for Human Rights Act may investigate whether discrimination as referred to in paragraph 1 has taken or is taking place. Sections 10, 11, 12, 13, 22 and 23 of the Netherlands Institute for Human Rights Act apply *mutatis mutandis*.’

Section 28

Section 14 (and its heading) of the Equal Treatment in Employment (Age Discrimination) Act will read as follows:

‘Institute for Human Rights

Section 14

The Institute referred to in section 1 of the Netherlands Institute for Human Rights Act may investigate whether discrimination as referred to in this Act has taken or is taking place. Sections 10, 11, 12, 13, 22 and 23 of the Netherlands Institute for Human Rights Act apply *mutatis mutandis*.'

Section 29

Section II, subsection 3 of the Act of 7 November 2002 implementing Council Directive 1999/70/EC of 28 June 1999 concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP (Bulletin of Acts and Decrees 560) will read as follows:

'3. The Institute referred to in section 1 of the Netherlands Institute for Human Rights Act may investigate whether discrimination as referred to in this section has taken or is taking place. Sections 10, 11, 12, 13, 22 and 23 of the Netherlands Institute for Human Rights Act apply *mutatis mutandis*.'

Section 30

Section 12 of the Equal Treatment of Disabled and Chronically Ill People Act will read as follows:

'Section 12

The Institute referred to in section 1 of the Netherlands Institute for Human Rights Act may investigate whether discrimination as referred to in this Act has taken or is taking place and whether section 2 of this Act is being infringed. Sections 10, 11, 12, 13, 22 and 23 of the Netherlands Institute for Human Rights Act apply *mutatis mutandis*.'

Section 31

In section 15, subsection 3 (b) of the Education Participation Act 1992 the words 'section 12, subsection 2, opening words and (d) of the Equal Treatment Act' are replaced by 'section 10, subsection 2, opening words and (d) of the Netherlands Institute for Human Rights Act'.

Section 32

Point 2 of part B of the Annexe to the General Administrative Law Act will read as follows:

'2. The Netherlands Institute for Human Rights Act, with the exception of sections 14 to 18.'

Section 33

Section 1a of the National Ombudsman Act is amended as follows:

1. Subsection 3 will read as follows:

'3. This Act applies to conduct of the Institute as referred to in section 1 of the Netherlands Institute for Human Rights Act only insofar as the conduct is that of an official on the staff of the office referred to in section 18 of that Act.'

2. Subsection 4 is renumbered as subsection 2.

Section 34

Section III, subsection 3 of the Act of 3 July 1996 amending the Civil Code and the Central and Local Government Personnel Act in connection with the prohibition on discrimination between employees on the grounds of their working hours (Bulletin of Acts and Decrees 391) will read as follows:

'3. The Institute referred to in section 1 of the Netherlands Institute for Human Rights Act may investigate whether discrimination as referred to in subsection 1 has taken or is taking place. Sections 10, 11, 12, 13, 22 and 23 of the Netherlands Institute for Human Rights Act apply *mutatis mutandis*.'

CHAPTER 6. TRANSITIONAL AND CONCLUDING PROVISIONS

Section 35

1. Notwithstanding section 16, the appointments of the members and alternate members of the Equal Treatment Commission, including the chair and two assistant chairs, are converted by operation of law into appointments of the members and alternate members of the

Netherlands Institute for Human Rights. Section 17, subsection 3 applies *mutatis mutandis*. The date of appointment to the later post will be deemed to be the date of appointment to the earlier post.

2. When the members and alternate members as referred to in subsection 1 are transferred, they will have the same legal status as each of them had in the Equal Treatment Commission.

Section 36

1. From the date of entry into force of section 1 of this Act the persons who staff the office of the Equal Treatment Commission referred to in section 17 of the Equal Treatment Act will staff the office of the Netherlands Institute for Human Rights.

2. When the persons referred to subsection 1 are transferred as referred to in subsection 1, they will have the same legal status as each of them had in the Equal Treatment Commission.

Section 37

Investigations in response to a written request as referred to in section 12, subsection 1 of the Equal Treatment Act which have not been completed when section 1 of this Act enters into force will be continued by the Netherlands Institute for Human Rights.

Section 38

The records and archive of the Equal Treatment Commission are transferred by operation of law to the Netherlands Institute for Human Rights.

Section 39

1. The sections of this Act will enter into force on a date to be set by Royal Decree, which may differ for the different sections or points thereof.

2. Insofar as sections 15 and 16 enter into force before section 1, the Equal Treatment Commission will replace the Institute for the purposes of sections 15, subsection 3, and 16, subsections 2 and 3 until the entry into force of section 1.

Section 40

This Act may be cited as the Netherlands Institute for Human Rights Act.

We order and command that this Act be published in the Bulletin of Acts and Decrees and that all ministries, authorities, bodies and officials whom it may concern diligently implement it.

Done at

Minister of the Interior and Kingdom Relations

Minister of Security and Justice