

PRESENTATION ON RECENT ELECTIONS IN THE NETHERLANDS

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Introduction

2006 and 2007 were busy election years for the Netherlands. Local elections were held in the spring of 2006, and the fall of the government in the autumn led to unplanned dissolution elections to the House of Representatives. These elections were followed in 2007 by elections to Provincial Councils in March and the Senate in May. Two subjects concerning these elections are addressed below. The first of them is the current debate in the Netherlands on the subject of voting machines. The second responds to the meeting's theme by considering the disputes and appeals related to these elections.

I. The voting machine issue

Looking back it is fair to say that the recent elections will be regarded as a turning point for those professionally involved in elections in the Netherlands. The situation where election activities took place behind the scenes was brought to an abrupt end when the 'Wij vertrouwen stemmachines niet' ['We do not trust voting machines'] foundation was established following the most recent elections. This is a very resourceful pressure group in terms of both expertise and money. It has successfully highlighted the weaknesses in the Dutch election procedure. The then minister (for Government Reform and Kingdom Relations) responded by taking various additional measures aimed at guaranteeing (as much as possible) a fair electoral process in the run up to the elections to the House of Representatives in November of last year. Those measures included the inspection and sealing of all voting machines, tightening up physical security for voting machines in the municipalities and inspecting the voting machines being used prior to and during election day. Additionally, the minister decided against using certain types of voting machines for these elections. The local authorities using those machines switched to a different type of voting machine or resorted to the 'traditional' ballot and red pencil.

II. The OSCE and the Advisory Committee on the structure of election procedures

The elections to the House of Representatives held in November of last year were the first Dutch elections to be monitored by an international observer mission of the OSCE. The report published by the OSCE contained notable recommendations regarding the organisation and monitoring of the elections. The report suggests – among other things:

- improving the e-voting regulation;
- introducing an e-voting verification procedure;
- having an independent authority monitor the e-voting;
- improving regulation on political party and campaign funding;
- improving the transparency of campaign funding and observation of the electoral process;
- enhancing the EC's role.

This report demonstrates once again that being a well established democracy does not necessarily mean that a country's regulations and practices are in all respects up to standard.

A committee instituted by the Minister for Government Reform and Kingdom Relations is currently looking into the future of the election procedure in the Netherlands. Its report is due for publication on 27 September. Also, a Decision-making Committee on Voting Machines was instituted in 2006. This committee has analysed the position and method of the various bodies that have in the past been involved in the decision-making process on voting machines. The combination of these three reports is likely to form the precursor to significant changes being made to the Dutch election procedure.

III. Appeals under administrative and criminal law

The Dutch election procedure makes provision for roughly two forms of judicial review. An administrative appeal can be lodged against a number of decisions specified in the Dutch Elections Act on the one hand, and a number of offences under electoral law are summarised in the Elections Act and the Dutch Penal Code on the other. We now turn to a more detailed discussion of both types of legal dispute. It is important to start by pointing out that in contrast to the situation in many other countries, it is not possible in the Netherlands to lodge an appeal against the result of an election at a court of law. Under Dutch electoral law the result of elections to the House of Representatives is ratified by the Electoral Council in its capacity as the central electoral committee. After that the decision on the validity of the vote and the admission of the members is a matter for the representative body. These decisions are not open to appeal at a court of law. It is however possible for voters to raise irregularities at various points during and after the vote. That can be done at the polling station and during the public session to ratify the result of the principal electoral committee or the central electoral committee. Finally, voters can report irregularities to the representative body itself.

Administrative procedures relating to registration and nomination

In the run up to the House of Representatives elections various administrative appeals were lodged under electoral law. Although issues to do with electoral

law can arise at any time, they tend to concentrate during the preparations for an election in two periods. Most of the cases have arisen in the time following closure of the period for the registration of appellations and after nominations. The court with competent jurisdiction, the Administrative Jurisdiction Division of the Council of State, pronounced rulings in seven cases following the period for the registration of an appellation for elections to the House of Representatives in November. These cases were instituted by political groupings whose registration applications were for various reasons rejected or declared inadmissible by the Electoral Council. Five cases concerning nomination were instituted at the Council of State. These cases had to do with the (late) submission of nomination documents or the method used to announce candidates on the list of candidates.

Criminal proceedings around the date of the election

The Electoral Council reported a Dutch radio station to the authorities around the date for elections to the House of Representatives. This radio station had called on voters not planning to vote to send their signed polling cards to them. They then went on to share these polling cards among especially enthusiastic voters, who were able to fill in their names in order to vote by proxy. The Dutch system allows a voter to authorise someone else to vote on their behalf. However systematically calling on voters to surrender their polling card is unlawful. One of the accused has since been acquitted for lack of evidence. The Public Prosecutions Service has offered an out-of-court settlement to the other.

During the local elections in March 2006 a political party offered homeless people 10 euros to sign a declaration of support for it. Touting for declarations of support is punishable under Dutch Electoral Law. The court considered it proven that the suspects had committed a criminal offence and sentenced them both to three to six months' imprisonment, partly suspended and with an operational period of two years. The offenders lodged an appeal, which has since been rejected. Touting for declarations of support and the surrender of polling cards is a recurring issue at all Dutch elections, especially municipal council elections. The Electoral Council is due to publish its report on the prevention and punishment of touting for declarations of support during nominations and for proxy votes.

After the municipal council elections there was a commotion concerning the result of the elections in the municipality of Landerd. This culminated in another landmark dispute under criminal law. It turned out during the count that a candidate had received substantially more votes at a certain polling station than at all the others. The candidate was a member of the polling station team and operated the voting machine at that station, which was also the one where he was himself entitled to vote. However the court found that there was insufficient proof of fraud. The accused was acquitted by the court of committing fraudulent practices in elections. The Public Prosecutions Service has appealed against that ruling, but the appeal has not yet been heard.

IV. Voting rights for Dutch nationals living abroad

Finally, it is worth mentioning at this point the two Eman-Sevinger cases. The first was instituted by two Dutch nationals living on Aruba – Messrs Eman and Sevinger – who wanted to vote in the elections to the European Parliament. The authorities refused them permission to register as voters because the Elections Act only grants voting rights for the European Parliament to Dutch nationals living in Aruba and the Netherlands Antilles if they have lived in the Netherlands for ten years, which was not the case. The case was referred to the Court of Justice of the European Union, which ruled that if the Netherlands allows Dutch nationals living outside of Europe to vote in the European elections, which is the case, the principle of equality is at issue. The Court ruled that it is untenable that Dutch nationals living outside the Kingdom *do* have voting rights, even if they have never resided in the Netherlands, while Arubans and Antilleans only have voting rights if they have resided in the Netherlands for at least 10 years. The Court ruled that these Dutch nationals living abroad are in a comparable situation to Arubans and Antilleans. In its ruling dated 21 November 2006, the Division responded by upholding the appeals of Messrs Eman and Sevinger. The ball is now in the legislator's court.

In the second case instituted by Messrs Eman and Sevinger, they claimed that they should also enjoy voting rights for the House of Representatives. The Division ruled that there was a difference here between the Dutch nationals in Aruba and the Netherlands Antilles and other Dutch nationals living abroad, reasoning that residents of Aruba and the Netherlands Antilles have voting rights for their own Parliament and are able to influence its formation via the state legislative procedure.

V. Conclusion

The outcomes of the appeals, under criminal law on the one hand and administrative law on the other, justify the conclusion that virtually all of the electoral authorities' decisions stand up to scrutiny. It is proving difficult to tackle fraud cases and related problems concerning offences under electoral law owing to the frequent occurrence of technical evidence issues on the one hand and the failure in some cases of the police and the Public Prosecution Service to give them priority on the other. That underlines the importance of structuring the system in a way that minimises the chance of fraud. In that context, the Electoral Council recently recommended the introduction of mandatory proof of identity for voting.