

Piet’.²⁴³ At this moment a Dutch government-appointed, is reviewing the ‘Dutch History Canon’, which is especially used in secondary schools.²⁴⁴ The revision of the Canon is an opportunity for the government to ensure that representative information on the slave trade, enslavement and colonisation is included and to provide teachers with ideas on how to discuss these topics.

Moreover, a study on characters in schoolbooks found that characters with a non-Western backgrounds are less visible in the text of the schoolbooks, disproportionate to the percent of the Dutch population they represent. The study also found that most of the characters’ names in schoolbooks are typical ‘white’ names and that characters with non-western backgrounds were of lower social-economic status.²⁴⁵ As children are sensitive to stereotypes it is important for the government to encourage publishers to ensure that schoolbooks are eliminate stereotypes and include a representative view of society.

XVII. Health and social care

Discontinuation of compensation for interpretation and translation services

In 2011 the Dutch government decided to discontinue compensation for interpretation and translation services in health care despite strong protests by organisations representing health professionals and patients²⁴⁶ and a motion in the House of Representatives.²⁴⁷ The government is only continuing compensation for three groups: victims of human trafficking, asylum seekers, and women in societal care.²⁴⁸

Under the current policy individuals with low Dutch language proficiency are required to rely on informal translation by friends or relatives to receive the necessary health care if they cannot afford to procure a translator themselves. Not only does this pose a risk given the lack of quality assurance, it threatens confidentiality of the doctor-patient relationship, which poses risks to both patients, professionals and organisations in health and social care.²⁴⁹

Analysis of legal and human rights aspects

The policy disproportionately affects individuals of low Dutch proficiency, which can be argued to amount to a prohibited form of indirect discrimination under the General Equal Treatment Act, and the right to non-discrimination under international law.²⁵⁰ Art. 12(1) ICESCR recognizes the right of all to ‘the enjoyment of the highest attainable standard of physical and mental health.’²⁵¹ In General Comment No. 14, the UN

²⁴³ DUO, *Rapportage Integratie op school Meningen, observaties en ideeën vanuit het onderwijs zelf*, February 2017 p. 28 [Report Integration at school Opinions, observations and ideas from the education itself] (available at: <https://www.duo-onderwijsonderzoek.nl/wp-content/uploads/2017/01/Rapportage-Integratie-op-school-1-februari-2017.pdf>).

²⁴⁴ Trouw, Canon van de vaderlandse geschiedenis moet volgens James Kennedy ook schaduwkanten belichten, 2 June 2019 [Canon of national history must, according to James Kennedy, also highlight shadows] (available at: <https://www.trouw.nl/nieuws/canon-van-de-vaderlandse-geschiedenis-moet-volgens-james-kennedy-ook-schaduwkanten-belichten-b42a5318/>).

²⁴⁵ Judi Mesman et al, *Etniciteit in Schoolboeken voor de Brugklas: representatie en stereotypering*, 2019 p. 26-29 [Ethnicity in School Books for Brugklas: representation and stereotyping] (available at: <https://jimdo-storage.global.ssl.fastly.net/file/bd2347d2-ab6c-4fc9-9b4d-49b5adf746e2/mesman%20-%20final%20rapport%20schoolboeken%20etniciteit.pdf>).

²⁴⁶ KNMG *Letter to the Minister of Health, Welfare and Sport by The Royal Dutch Medical Association* (2011) (available at: <https://www.knmg.nl/advies-richtlijnen/dossiers/tolken-in-de-zorg-2.htm>).

²⁴⁷ Parlement, *Kamerstukken* 33 000 XVI, nr. 53, 2011-2012, (available at: <https://zoek.officielebekendmakingen.nl/kst-33000-XVI-53.pdf>)

²⁴⁸ Ibid.

²⁴⁹ KNMG (n 256).

²⁵⁰ Public International Law and Policy Group, *Legal Implications of the Discontinuation of Compensation for Translation and Interpretation Services in the Dutch Health Care System*. (2016) (available at: <https://pilpnjcm.nl/wp-content/uploads/2016/11/PILPG-Legal-Implications-Discontinuation-Compensation-of-Interpretation-in-Dutch-Health-Care-12.08.2016.pdf>)

²⁵¹ UN International Covenant on Economic, Social and Cultural Rights, art. 12(1), Dec. 16, 1966, 993 U.N.T.S. 3 (available at: <https://www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx>).

JOINT ALTERNATIVE REPORT – CERD – MARCH 2020

Committee on Economic, Social and Cultural Rights determines that the right the health contains the following essential and interrelated elements: (i) availability; (ii) accessibility; (iii) acceptability; and (iv) quality.²⁵²

The element of “accessibility” requires all health care facilities, as well as the services and products they offer, to be equally accessible to every person in the jurisdiction of the respective state. Accessibility can be broken down into the following four overlapping principles: (i) non-discrimination; (ii) physical accessibility; (iii) economic accessibility, and (iv) information accessibility.²⁵³

Under the first principle, everyone should have indiscriminate access to health care, especially marginalized and vulnerable groups. There must be no discrimination on any of the prohibited grounds enumerated in Art. 2(2) ICESCR, which include, inter alia, language.²⁵⁴ In addition, the General Assembly of the World Health Organization (hereinafter ‘WHO’) adopted, with reference to ICESCR, the Global Action Plan 2019-2023 ‘Promoting the health of refugees and migrants’. Member States of the WHO, including the Netherlands, are requested to reduce communication barriers in health care.²⁵⁵

On going protest by organisations

In 2014 seven organisations of healthcare professionals and knowledge institution Pharos developed a national quality standard on the use of interpreters in healthcare.²⁵⁶ The government states since then that health and social care professionals are to adhere to this quality standard. This quality standard, healthcare laws²⁵⁷ and a legal case show that health and social care professionals are responsible for communication with their patients.²⁵⁸ The government sticks, however, to the policy that patients are responsible for bridging the language barrier and therefore have to pay for professional interpreter services despite on going protests and questions in parliament.²⁵⁹

The Johannes Wier Stichting²⁶⁰ (JWS) launched in 2019 a petition to the Quality Board of the Dutch National Health Care Institute for the development of a quality standard on language barriers in health and social care that is sustainable with respect to medical ethical legal and financial aspects.²⁶¹ The petition has since then been signed by 35 national organisations, 40 professors and more than 130 other experts. More

²⁵² Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No. 14, The Right to the Highest Attainable Standard of Health*, para. 12, UN Doc. E/C.12/2000/4, (Aug. 11, 2000) (available at: <https://www.refworld.org/docid/4538838d0.html>)

²⁵³ Ibid.

²⁵⁴ Ibid.

²⁵⁵ World Health Organization, *Global Action Plan for Refugee and Migrant Health 2019-2023*, 2019 (available at: https://www.who.int/health-topics/refugee-and-migrant-health#tab=tab_2)

²⁵⁶ KNMG, Pharos et al. *Kwaliteitsnorm tolkgebruik anderstaligen in de zorg*, 2014 (available at <https://www.knmg.nl/advies-richtlijnen/knmg-publicaties/tolken-in-de-zorg-2.htm>)

²⁵⁷ Medical Treatment Contracts Act, WGBO (available at: https://www.eerstekamer.nl/behandeling/20190624/publicatie_wet/document3/f=/vkzln7jc5tvf.pdf); Quality of care act Wkkgz (available at: <https://zoek.officielebekendmakingen.nl/stb-2015-407.html>).

²⁵⁸ ECLI:NL:RBLIM:2017:9987 - Rechtbank Limburg, 18-10-2017 / C/03/229341 / HA ZA 16-720 (Available at: <https://linkeddata.overheid.nl/front/portal/document-viewer?ext-id=ECLI:NL:RBLIM:2017:9987>)

²⁵⁹ Questions regarding the quality standard and financial policies for professional interpreters by L Voortman, Member of the House of Representatives and answers by the Minister of Health 4 April 2014 (available at: <https://zoek.officielebekendmakingen.nl/ah-tk-20132014-1626.html>); During the debate on the budget of the Ministry of Health, Welfare and Sport Kuzu, member of the House of Representatives asked for a solution for the interpreter costs, 30 October 2019 (available at <https://zoek.officielebekendmakingen.nl/h-tk-20182019-14-11.pdf>); Answers by the Minister of Health ref 195505-116940-CZ to Platform Zelfstandig Ondernemers in de Zorg, 11 March 2014 (available at: <https://zoek.officielebekendmakingen.nl/blg-302307.pdf>).

²⁶⁰ An independent human rights organization by and for health care professionals

²⁶¹ Appeal letter by Johannes Wier Stichting to the Quality Board of the National Health Care Institute, December 10, 2019 (available at: <https://www.johannes-wier.nl/wp/wp-content/uploads/2019/12/De-brief-met-de-actuele-lijst-ondertekenaars.pdf>)

JOINT ALTERNATIVE REPORT – CERD – MARCH 2020

than 3000 individuals signed the public campaign.²⁶² JWS has sent the petition to the Minister of Health, Welfare and Sports on February 20, 2020.²⁶³

The government is encouraged to quickly respond to this petition appeal and reconsider its current policy, and ensure that all individuals and all health and social care professionals have access to professional interpreters.

Obstacles of access to medical services for undocumented migrants

There are no official statistics on how many persons are undocumented in the European and Caribbean part of the Netherlands, but according to estimations there are 35.000 undocumented migrants in the European Netherlands and in St Maarten it is estimated that 20% of the population is undocumented.²⁶⁴ Many undocumented migrants cannot access medical and psychological support, as they do not have the option to take out health insurance. Such access is currently granted by a ‘reimbursement system’ for medical professionals and pharmacies. This system does not grant the individuals access to medical care, but reimburses the medical professionals if the patient cannot pay the bill. In this way undocumented migrants have the right to medically necessary care.²⁶⁵

Many undocumented persons as well as medical professionals are often unaware of the reimbursement scheme or think it is only for emergency care. As a result undocumented persons, including children, often experience difficulties in accessing health care, are even turned away at hospitals for lack of insurance or cannot provide for the proper documentation.²⁶⁶ Also undocumented migrants have no entitlement, and thus no access to care that falls under the social support law. Furthermore, the option to request a contribution for the medical costs does not extend to the Caribbean Netherlands. The access to necessary health care is especially limited in Aruba, Curaçao and St Maarten.²⁶⁷ The Committee’s concerns expressed in 2015 on the lack of access to basic health care in Curaçao and Aruba are not elaborated on in the 2019 State Report. Without presenting data about important issues in these countries, it is difficult to know the appropriate measures that are needed to ensure access to medical care.

Obstacles to shelter and food for undocumented migrants

The lack of access to shelter is problematic for most of the undocumented migrants, as they are (temporarily) unable to return to their country of origin.²⁶⁸ Several complains with regard to the destitute situation of

²⁶² Public campaign Johannes Wier Stichting at platform DeGoedeZaak (available at: <https://actie.degoedezaak.org/petitions/taalbarrieres-in-de-zorg-maak-ze-bespreekbaar>)

²⁶³ Letter to the Minister of Health, Welfare and Sport, February 20, 2020 (available at: <https://www.johannes-wier.nl/wp-content/uploads/2020/03/brief.pdf>)

²⁶⁴ Van der Heijden a.o., *Schatting illegaal in Nederland verblijvende vreemdelingen 2012-2013*, 1 September 2015, p. 17 [Estimation of illegally staying aliens in 2012-2013] (available at: https://www.wodc.nl/binaries/2402-volledige-tekst_tem28-73349.pdf).

²⁶⁵ Dutch Alien Act 2000, art 10.

²⁶⁶ Report Dokters van de Wereld, *De deur naar zorg*, July 2019, p. 47 [The door to care] (available at: <https://doktersvandewereld.org/wp-content/uploads/2018/08/De-deur-naar-zorg.-Rapport-Zorgrecht-DvdW-juli-2018.pdf>).

²⁶⁷ Health(e) Foundation, *Refugee Care in the Caribbean*, May 2019 (available at: https://www.healthefoundation.eu/website_page/629/refugee-care-in-the-caribbean).

²⁶⁸ A research report shows that in the Netherlands, 44% of the rejected asylum seekers return to their country of origin. The 56% that does not return can amongst others be explained by the fact that the country of origin refuses to cooperate with the return: Report Onderzoekscommissie *Langdurig verblijvende vreemdelingen zonder bestendig verblijfsrecht*, 3 June 2019 [Foreign nationals who are long-term residents without a permanent right of residence] (available at: <https://www.rijksoverheid.nl/binaries/rijksoverheid/documenten/rapporten/2019/06/04/onderzoekscommissie-langdurig-verblijvende-vreemdelingen-zonder-bestendig-verblijfsrecht/Onderzoeksrapport+langdurig+verblijf+vreemdelingen+definitief+3+juni+2019+%282%29.pdf>); NOS, *Broekers: pogingen om ongewenste vreemdelingen uit te zetten mislukken te vaak*, 18 June 2019 [Broekers: attempts to deport unwanted strangers fail too often] (available at: <https://nos.nl/artikel/2289566-broekers-pogingen-om-ongewenste-vreemdelingen-uit-te-zetten-mislukken-te-vaak.html>); Telegraaf, *Schokkende cijfers: uitzetbeleid liep in vijf jaar 10.000 keer spaak*, 16 June 2019 [Shocking figures: deportation policy