

# **Legal environment and space of civil society organisations in supporting fundamental rights and the rule of law**

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# 1 Civic space developments in 2021

<b>1.1 Online surveillance of citizens by the National Coordinator for Counterterrorism and Security (NCTV)</b>	
Area	Safe space & protection
Topic	Surveillance
Impact	Major

On 9 April 2021, Dutch daily newspaper 'NRC' revealed that the National Coordinator for Counterterrorism and Security (NCTV) is tracking hundreds of political campaign leaders, religious leaders and activists with fake accounts on social media.<sup>1</sup> The newspaper reported this on the basis of its own research. According to the newspaper, this practice is illegal. Unlike the National Police and the two intelligence services (AIVD and MIVD), for instance, the NCTV is not authorised to monitor persons extensively. Yet this was done in secret, via fake employee accounts. The head of the NCTV admitted to the newspaper that "the legal basis must be improved".<sup>2</sup> On 9 November 2021, the Minister of Justice and Security and the Minister for Legal Protection sent a bill to the House of Representatives that provides a legal basis for the processing of personal data for the purposes of coordination and analysis in the context of counterterrorism and national security.<sup>3</sup> The bill ensures that a number of tasks of the National Coordinator for Security and Counterterrorism (NCTV) are enshrined in law.<sup>4</sup>

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<sup>1</sup> Kouwenhoven, A., Rosenberg, E. & Van der Poel, R. (2021), 'NCTV volgt heimelijk burgers op sociale media', NRC, 9 April 2021, available at: <https://www.nrc.nl/nieuws/2021/04/09/nctv-volgt-heimelijk-burgers-op-sociale-media-a4039223?t=1639992118>

<sup>2</sup> Kouwenhoven, A., Rosenberg, E. & Van der Poel, R. (2021), 'NCTV volgt heimelijk burgers op sociale media', NRC, 9 April 2021, available at: <https://www.nrc.nl/nieuws/2021/04/09/nctv-volgt-heimelijk-burgers-op-sociale-media-a4039223?t=1639992118>

<sup>3</sup> The Netherlands, Minister of Justice and Security / Minister for Legal Protection (Minister van Justitie en Veiligheid / Minister voor Rechtsbescherming) (2021), Bill on the Coordination and Analysis of Counterterrorism and National Security Act [Wet verwerking persoonsgegevens coördinatie en analyse terrorismebestrijding en nationale veiligheid], available at: <https://www.rijksoverheid.nl/binaries/rijksoverheid/documenten/kamerstukken/2021/11/09/wetsvoorstel-coordinatie-en-analyse-terrorismebestrijding-en-nationale-veiligheid-nr-versie/09.+Wetsvoorstel+co%C3%B6rdinatie+en+analyse+terrorismebestrijding+en+nationale+veiligheid+NR+versie.pdf>

<sup>4</sup> The Netherlands, Ministry of Justice and Security (Ministerie van Justitie en Veiligheid) (2021), 'Bill to provide legal basis for processing of personal data by NCTV sent to House of Representatives', News item, 9 November 2021, available at: <https://www.government.nl/latest/news/2021/11/09/bill-to-provide-legal-basis-for-processing-of-personal-data-by-nctv-sent-to-house-of-representatives>

<b>1.2 Bill for the Transparency Civil Society Organisations Act</b>	
Area	Freedom of association
Topic	Transparency
Impact	Major

From 8 June 2021 to 26 June 2021, a redrafted bill for the Transparency Civil Society Organisations Act <sup>5</sup> has been up for public consultation <sup>6</sup>. The original bill was submitted to House of Representatives in November 2020. <sup>7</sup> This bill met with a strong public reaction and several parliamentary questions. Therefore, the Minister for Legal Protection decided to redraft the bill.

The Bill consists of two parts: an information obligation that will apply to all civil society organisations, and a filing obligation for foundations. The background to these obligations is the prevention of unwanted foreign influence on civil society organisations as a result of received donations. The most relevant changes of this new draft bill compared to the original bill are : (1) potentially unwanted donations now also include those from the Netherlands and within the EU/EEA (previously, only donations from outside the EU/EEA were considered potentially suspicious); (2) the new draft bill clarifies which authorities can take follow-up actions: it is now only up to the Public Prosecutor to determine whether an, if so, what follow-up action are taken; (3) the new draft bill introduces criteria and assessment framework related to what constitutes “undermining of the democratic rule of law”.

In the public consultation, a coalition of civil society organisations raised several concerns about the new draft bill.<sup>8</sup> Their main concern relates to the lack of oversight for the far-reaching powers for the mayor in the bill. The mayor is still given far-reaching powers with a large margin of appreciation without any (parliamentary) oversight for demanding information from CSOs about their

<sup>5</sup> The Netherlands, Minister for Legal Protection (*Minister voor Rechtsbescherming*) (2021), Wetsvoorstel Wet transparantie maatschappelijke organisaties, Concept Nota van wijziging, available at: <https://www.internetconsultatie.nl/nvwwtmo/document/7045>

<sup>6</sup> The Netherlands, Central Government (*Rijksoverheid*) (2021), 'Nota van wijziging Wetsvoorstel transparantie maatschappelijke organisaties', Web page, available at: <https://www.internetconsultatie.nl/nvwwtmo>

<sup>7</sup> The Netherlands, Minister for Legal Protection (*Minister voor Rechtsbescherming*) (2020), Wetsvoorstel Wet transparantie maatschappelijke organisaties, 20 November 2020, available at: <https://www.tweedekamer.nl/downloads/document?id=8dd7395a-01e6-4214-88e6-a346769405b6&title=Voorstel%20van%20wet.pdf>

<sup>8</sup> European Center for Not for Profit Law / Human Security Collective / Justice and Peace The Netherlands Helsinki Committee / Mensen met een Missie / Wo=Men – Dutch Gender Platform (2021), 'Betreft: Nota van wijziging op het wetsvoorstel Transparantie Maatschappelijke Organisaties (WTMO)'. Letter to Minister for Legal Protection, 29 June 2021, available at: <https://ecnl.org/sites/default/files/2021-07/reactieconsortiumnotawijzigingWTMO-final.pdf>

donations and donors when it deems a (potential) threat to the democratic order. Another concern is that CSOs do not have clear legal remedies to challenge the decision of the authorities.

The public consultation round is the first step in the Dutch legislative process. The next step, writing the bill and submitting it to the House of Representatives, had not been taken by the end of 2021.

<b>1.3 Act extending options for banning and dissolving anti-democratic and subversive organisations</b>	
Area	Freedom of association
Topic	Involuntary dissolution
Impact	Major

On 22 June 2021<sup>9</sup>, the Senate passed a bill<sup>10</sup> amending Book 2 of the Dutch Civil Code by adding the option to prohibit organisations that aim to overthrow or abolish the democratic rule of law (*democratische rechtsstaat*). The bill took effect on 1 January 2022.<sup>11</sup> The bill strengthens article 20 of Book 2 of the Dutch Civil Code, which already makes the ban of legal entities possible. The bill lowers the bar for presentation of evidence by the Public Prosecution Service. This makes it easier to prohibit and dissolve organisations that threaten to disrupt society. The bill specifies in more concrete terms what is, or may be, in conflict with public order in the Netherlands. It will be easier for the Public Prosecutors service to prove that an organisation promotes hate and violence or forms a threat to national security, for example. Furthermore, a court would have a stronger position if it were to decide on a request by the Public Prosecution Service to prohibit an organisation. In addition, the bill ensures that this prohibition is more extensive. The leaders of a banned organisation can expect to be disqualified from holding office for three years or more. This prevents them from continuing their

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<sup>9</sup> The Netherlands, Senate (*Eerste Kamer der Staten-Generaal*) (2021), 'Verruiming mogelijkheden tot het verbieden van rechtspersonen', Web page, available at:

[https://www.eerstekamer.nl/wetsvoorstel/35366\\_verruiming\\_mogelijkheden\\_tot](https://www.eerstekamer.nl/wetsvoorstel/35366_verruiming_mogelijkheden_tot)

<sup>10</sup> The Netherlands, Minister for Legal Protection / Minister for Justice and Security (*Minister voor Rechtsbescherming / Minister voor Justitie en Veiligheid*) (2021), 'Wet van 23 juni 2021 tot wijziging van Boek 2 van het Burgerlijk Wetboek ter verruiming van de mogelijkheden tot het verbieden van rechtspersonen', *Staatsblad*, Vol. 2021, Nr 310. Available at:

<https://zoek.officielebekendmakingen.nl/stb-2021-310.html>

<sup>11</sup> The Netherlands, Minister for Legal Protection / Minister for Justice and Security (*Minister voor Rechtsbescherming / Minister voor Justitie en Veiligheid*) (2021), 'Besluit van 12 juli 2021 tot vaststelling van het tijdstip van inwerkingtreding van de wet tot wijziging van Boek 2 van het Burgerlijk Wetboek ter verruiming van de mogelijkheden tot het verbieden van rechtspersonen', *Staatsblad*, Vol. 2021, Nr 346. Available at: <https://zoek.officielebekendmakingen.nl/stb-2021-346.html>

culpable activities unhindered within another organisation. Moreover, the cessation of an organisation's activities during court proceedings. Failure to comply with such an order becomes a criminal offence. The penalty for continuing the activities of an organisation banned by a court is doubled, up to a maximum of two years' imprisonment.

## 2 Examples of civil society contributions to the rule of law

<b>2.1 Lawsuit against municipality of Maastricht because of restrictions imposed on demonstrations</b>	
Topic	Strategic litigation; triggering the judicial review of laws, measures and practices and the enforcement of rulings

On 3 November 2021, the Administrative Jurisdiction Division of the Council of State (*Afdeling Bestuursrechtspraak Raad van State*), the highest administrative law court in the Netherlands, ruled that the municipality Maastricht had wrongly imposed a restriction on demonstrations.<sup>12</sup> This case concerns the demonstrations held on 10 November 2017 and 10 December 2017 against the possible expulsions of an Afghan family. Both protests were restricted by the municipality of Maastricht. Amnesty International initiated a lawsuit against these restrictions. One of these restrictions was the obligation imposed by the municipality Maastricht on the demonstrators to hire qualified traffic controllers.

The other two restrictions imposed by the municipality of Maastricht were a prohibition on making statements that could “shock or disturb” the public and a prohibition on handing out flyers without prior approval. The municipality stated, soon after Amnesty International started its case, that the prohibition on making shocking statements was indeed unlawful.<sup>13</sup> On 24 September 2019, the District Court Limburg ruled that the ban on handing out flyers was also unlawful.<sup>14</sup> The District Court uphold the obligation to hire traffic controllers. This obligation was ruled unlawful by the Council of State in the aforementioned ruling.

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<sup>12</sup> The Netherlands, Administrative Jurisdiction Division of the Council of State (*Afdeling Bestuursrechtspraak Raad van State*) (2021), Case no. 201908028/1/A3 , 3 November 2021, ECLI:NL:RVS:2021:2437, available at: <http://deeplink.rechtspraak.nl/uitspraak?id=ECLI:NL:RVS:2021:2437>

<sup>13</sup> Amnesty International (2021), ‘Amnesty wint rechtszaak over demonstratierecht’, News release, 4 November 2021, available at: <https://www.amnesty.nl/actueel/amnesty-wint-rechtszaak-over-demonstratierecht>

<sup>14</sup> The Netherlands, District Court Limburg (*Rechtbank Limburg*) (2019), Case no. AWB - 18 \_ 742u, 24 September 2019, ECLI:NL:RBLIM:2019:8581, available at: <https://deeplink.rechtspraak.nl/uitspraak?id=ECLI:NL:RBLIM:2019:8581>

## **2.2 Lawsuit against border police because of ethnic profiling**

Topic	Strategic litigation; triggering the judicial review of laws, measures and practices and the enforcement of rulings
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On 22 September 2021, the District Court of The Hague ruled in a case in which a civil society coalition summoned the Dutch state to appear in court for ethnic profiling by the Royal Netherlands Marechaussee (*Koninklijke Marechaussee*) which act as the border police in the Netherlands.<sup>15</sup> The plaintiffs demanded the court to put an end to border control activities which the plaintiffs see as discriminatory. The Court decided in favour of the State. The Court ruled that the use of ethnicity in stop and searches by the Royal Netherlands Marechaussee is not discriminatory. During border control operations, the Royal Netherlands Marechaussee selects people based on their appearance, skin colour or origin (ethnicity), amongst other things. This selection determines whether the authorities will stop an individual against whom there is no individual suspicion of any wrongdoing. According to the Court, ethnicity is allowed to be used for stop-and-search practices during border controls, but ethnicity may never be the only criterion.

In a position paper, written for a round table discussion with members of the Parliament on 24 November 2021, the Royal Netherlands Marechaussee stated that it will stop using ethnicity as a criterion in their stop and search actions.<sup>16</sup> The plaintiffs have indicated that they will continue their appeal.

## **2.3 Lawsuit against the State because of Ultimate Beneficial Owners register**

Topic	Strategic litigation; Accounting and auditing / anti-money laundering / corruption / terrorist financing
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On 18 March 2021, the District Court of The Hague ruled in a preliminary relief proceeding initiated by the foundation Privacy First against the state regarding the

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<sup>15</sup> The Netherlands, District Court The Hague (*Rechtbank Den Haag*) (2021), Case no. C-09-589067-HA ZA 20-235, 22 September 2021, ECLI:NL:RBDHA:2021:10283, available at: <https://uitspraken.rechtspraak.nl/inziendocument?id=ECLI:NL:RBDHA:2021:10283>

<sup>16</sup> The Netherlands, Memorandum Royal Netherlands Marechaussee for the round table discussion on ethnic profiling with the standing committee for the Interior (TK) on 24 November 2021 [Gespreksnotitie Koninklijke Marechaussee ten behoeve van het rondetafelgesprek etnisch profileren met de vaste commissie voor Binnenlandse Zaken (TK) op 24 november 2021], available at: <https://www.tweedekamer.nl/downloads/document?id=8cc84d33-a982-4edc-8ff7-f728a7bbc071&title=Position%20paper%20KMar%20t.b.v.%20rondetafelgesprek%20Etnisch%20profileren%20d.d.%2024%20november%202021.pdf>



Dutch UBO register.<sup>17</sup> UBOs or Ultimate Beneficial Owners are individuals who ultimately benefit from or have an interest in an organisation. Over 1.5 million organisations have to register their UBOs in the Netherlands. This (partly) publicly accessible UBO-register is based on the amended fourth EU Anti-Money Laundering Directive<sup>18</sup> and was implemented in the Netherlands on 27 September 2020.

Privacy First argued in this lawsuit that the UBO-register violates the right to privacy and demanded that the UBO-register should be abolished. The Court rejected the demanded of Privacy First, but it stated that it has its doubts about the legitimacy of the (partly) public accessibility of the UBO-register, considering that this may go beyond what is necessary to realize the objectives of the Directive.

Privacy First appealed the judgment of the District Court. On 16 November 2021, the Court of Appeal of The Hague confirmed the ruling of the District Court.<sup>19</sup> The Court of Appeal does not consider it likely that these UBOs will suffer severe damage in the short term and points out that UBOs who fear that they will be endangered by the disclosure of personal data can immediately shield these data from the general public. Dutch law provides for this possibility.

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<sup>17</sup> The Netherlands, District Court The Hague (*Rechtbank Den Haag*) (2021), Case no. C-09-604682-KG ZA 20-1232, 18 March 2021, ECLI:NL:RBDHA:2021:2457, available at:

<https://deemlink.rechtspraak.nl/uitspraak?id=ECLI:NL:RBDHA:2021:2457>

<sup>18</sup> European Union (2018), Directive (EU) 2018/843 of the European Parliament and of the Council of 30 May 2018 amending Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, and amending Directives 2009/138/EC and 2013/36/EU, available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32018L0843&from=EN>

<sup>19</sup> The Netherlands, Court of Appeal The Hague (*Gerechtshof Den Haag*) (2021), Case no. 200.293.732/01, 16 November 2021, ECLI:NL:GHDHA:2021:2176, available at:

<https://deemlink.rechtspraak.nl/uitspraak?id=ECLI:NL:GHDHA:2021:2176>

## 3 Other relevant developments

### 3.1 Killing of journalist Peter R. de Vries

On 15 July 2021, the prominent crime journalist Peter R. de Vries died, more than a week after he was shot in the head.<sup>20</sup> De Vries was one of the most important investigative journalists in the Netherlands. He had his own TV show for 17 years, working with victims' families, pursuing unsolved cases, and exposing injustices. During his career, De Vries had been subjected to threats from organised crime in connection with several cases. In 2021, he was supporting the key witness in a trial against the leading members of one of the most notorious criminal organisations in the Netherlands (the so-called Marengo trial). The murder of De Vries was a great shock for Dutch society. The Prime Minister described it as an attack on the freedom of the press.<sup>21</sup> Two men are on trial accused of being involved in the murder of Peter R. De Vries.

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<sup>20</sup> Henley, J. (2021), 'Dutch crime reporter Peter de Vries dies after shooting', Guardian, 2021, available at: <https://www.theguardian.com/world/2021/jul/15/dutch-reporter-peter-de-vries-dies-after-shooting>

<sup>21</sup> BBC (2021), 'Peter R de Vries: Dutch crime journalist wounded in Amsterdam shooting', BBC News. 7 July 2021, available at: <https://www.bbc.com/news/world-europe-57743233>