

Discrimination and housing in The Netherlands

Context: Housing crisis in The Netherlands

The Netherlands is experiencing a severe housing crisis. This affects many groups of people in The Netherlands, including young 'starters' and people with middle income who are not eligible for social housing. Housing prices are soaring, rental prizes in the private sector are increasing quickly. Availability housing is very limited.

Specific groups in vulnerable situations are hit hardest by the housing crisis. In general, they are poor and/or have low income. People with a migrant background and people with disabilities are disproportionately affected by poverty.

Direct and indirect discriminatory practices, as well as Government policies, in the field of housing, labour, health care and education, amongst others, increase the negative impact of the housing crisis for these groups and/or fail to address the negative impact.¹ Specific barriers to the realisation of the right to housing are: discrimination in accessing housing, affordability of housing, quality of housing, physical accessibility of housing, security of tenure and housing evictions, and homelessness. Social-economic background or poverty is not considered a discrimination ground in the Netherlands.

Affordable housing and social housing: access to housing for people with low income

The number of affordable social housing units has diminished. Government policies and legislation have contributed to an increase in rent and a reduction of available affordable housing in the social housing sector and little incentive to build new housing units. Affordability and availability of housing for people with low income has become a serious problem.

Effect of choices in legislation

Since the new Housing Law of 2015 housing corporations are only allowed to build and cater for people with (very) low income. The income threshold for social housing is very low. This means that only people with low income can access social housing (€40.024). The rental threshold for social housing is €752,33 per month. When houses pass this threshold, they can be 'liberalised' which means they are sold or let within the liberalised sector. Because of legislative choices many houses in the social housing stock were 'liberalised', meaning social housing corporations could sell them. By selling of housing stock or putting it in the 'liberalised' rental sector, the number of affordable social housing units has decreased.² The then Minister for Housing, current Minister of Foreign Affairs Blok, actively sought to interest private investors in The Netherlands indicating that cheap social housing stock would soon become available to them because of the new Housing Law.³

¹ For a general overview of the links between right to housing, right to education, rights to an adequate standard of health and right to work, with poverty and social inclusion, see: Netherlands Institute for Human Rights, *Armoede, sociale uitsluiting en mensenrechten: Jaarlijkse rapportage 2016 (Poverty, Social exclusion and Human Rights: annual report 2016)*, Netherlands Institute for Human Rights, 2017.

² Kullberg, J. and Ras, M., "Wonen" in *Sociale Staat van Nederland 2020*, Sociaal Cultureel Planbureau, 2020; Hochstenbach, C., & Gent, W. van (2018). *Betaalbaar wonen verder weggedrukt: de sociale en ruimtelijke implicaties van de Woningwet 2015*. Essay written for the evaluation of the Housing Law 2015, evaluation done for by the Commission Van Bochove, for Aedes.

³ Amongst others: Griffioen, R., "Te koop: de sociale huurwoningen van Nederland (prijs: meer ongelijkheid)", De Correspondent, June 22nd 2015.

As the provision of social housing has come under pressure waiting lists for social housing have increased substantially in the last few years. Recent figures show that the waiting time for social housing is more than 7 years in a quarter of all municipalities.⁴

Effect of tax policy

Also, social housing corporations were forced to pay considerable extra tax (“verhuurderheffing”). This tax was introduced as a crisis measure since 2013, but has since become a permanent tax measure. The Dutch association of social housing providers (Aedes) and the Dutch tenant’s association (de Woonbond) have been advocating for the abolishment of this tax, indicating that tenants indirectly pay for this extra tax through their rents and it hampers social housing provider’s efforts to increase their stock of affordable social housing.⁵

Municipal housing policy: “diversification” of neighbourhoods

Selling of social housing stock, liberalisation of social housing stock to be rented in the liberalised sector, and destruction of affordable housing has led to a decrease in affordable housing for people with low income. In certain municipalities this has been further exacerbated by housing policies and programmes designed to ‘diversify’ neighbourhoods. In essence this means limiting availability of affordable social housing for low income groups, in favour of more expensive private rental sector and home ownership.

The municipality of Rotterdam is currently destroying neighbourhoods and evicting people from social housing to be replaced by for private sector housing (to let and ownership), as part of a development policy in South of Rotterdam.⁶ In the Tweebos neighbourhood. 535 social housing units will be destroyed. Only 130 new social housing units will be rebuilt. Some 300 new houses will be available to buy or in the private rental sector. The explicit goal of the overarching policy is to create a more social-economic diverse population.⁷

Most appeals against eviction were unsuccessful. In one case, there was success. The judge indicated, amongst others, the housing corporation had failed to consult people threatened by eviction and highlighted that availability of affordable housing was under severe threat. Destroying social housing stock without replacing it would not be in line with obligations under the right to housing as formulated in the Dutch Constitution (art. 22). The appeal by the social housing provider is pending. However, in April 2021, the social housing provider (Vestia) started the destruction of houses.⁸

Housing costs

The burden of housing-related costs for poor households is increasingly high. Figures show that poor households average share of housing expenditure as a proportion of disposable income is on average 46,7%. For the total population this is 23,4%.⁹

⁴ Research done by NOS, “Sociale huurwoning? In zeker een kwart van de gemeenten wacht je meer dan 7 jaar”, NOS, 2021.

⁵ See, for example: Lijzenga, J., Wissink, J., Pijpers, R. and Smit, S, *Effecten van de verhuurderheffing op wonen in Nederland: een evaluatie 2013 tot 2020 (Effects of the tax on housing providers on housing in The Netherlands: an evaluation from 2013 to 2020)*, Companen and Thésor, for Woonbond, Aedes and VNG, 2020.

⁶ “Nationaal Programma Rotterdam Zuid”, Municipality of Rotterdam. Each phase of the plan has plans of action spanning several years. The latest is for the period 2019 – 2022. The implementation of the plan is done, amongst others, the Municipality, Social Housing providers and with financial support of the central Government.

⁷ “Woonvisie Rotterdam: koers naar 2030, agenda tot 2020”, Municipality of Rotterdam, 2016.

⁸ ECLI:NL:RBROT:2020:125 - Rechtbank Rotterdam, 10-01-2020

⁹ Feantsa and Fondation Abbé Pierre, “Fifth Overview of Housing exclusion in Europe 2020”, Feantsa and Fondation Abbé Pierre, 2020.

People living on social benefits are disproportionately affected by poverty. A recent report published by the association of social housing providers and the national tenants association shows that an important underlying problem is limited income. People on benefits, especially social assistance benefits, increasingly live in poverty. Their social benefits are not high enough to cover all expenses, including housing related expenses. While there is a system of allowances, this system is extremely complicated. Rent increases have exacerbated the problem of affordability.¹⁰

Legislation and policy has led to segregation.

Legislation and policy has led to a heavy concentration of people in very vulnerable situations in certain neighbourhoods. At the same time, efforts to increase social housing stock in other (new) neighbourhoods are limited in scope. Local government often does not provide sufficient funds to support these neighbourhoods. Housing corporations have little room to increase liveability in the neighbourhoods themselves. Aedes published research in 2020 indicating too little is done by all actors to spread social housing throughout municipalities and increase liveability in neighbourhoods.¹¹

Homelessness as an indicator for problems with access to housing

Homelessness and inadequate housing has increased in The Netherlands. Though this affects many groups in society (and increasingly so), homelessness and inadequate housing affects certain groups more than others. Homeless people are also discriminated against limiting their access to adequate housing. Policies and legislation negatively, directly, or indirectly, either increase homelessness or hamper its reduction. Not enough is done to address underlying causes of homelessness, such as inequality, poverty, discrimination on the labour market, problems with access to (health) care, unequal access to high quality education and availability of affordable housing for the most vulnerable groups.

Since 2009 homelessness has more than doubled from 18.000 homeless in 2009 to almost 40.000 homeless 2018.¹² Though recent figures indicate this may have stagnated¹³, all indicators point to a new increase post-Covid 19.¹⁴ These figures relate to a limited number of categories of homeless people. People who have access to the homeless service shelter system are not considered homeless and/or counted as such. Approximately 70.000 people are in this institutionalised setting for homeless people (excluding those in protective housing).¹⁵ This number has increased continuously. At the same time waiting lists to access these shelters has increased as well and only a very limited number of people access permanent adequate housing. The number of people in marginalised (or inadequate) housing and at risk of homelessness is unclear. This data is not collected and monitored in a structural manner. However, research indicates there are tens of thousands who live involuntarily in holiday parks, boats and garden sheds.¹⁶

Discrimination as a cause of homelessness

¹⁰ Bos, J. And Verberk, M., *Ontwikkeling financiële positie kwetsbare huurders: een onderzoek naar de ontwikkeling van de inkomsten en uitgaven 2010-2020*, Nibud, for Woonbond and Aedes, 2021.

¹¹ Leidelmeijer, K., Frissen, J. And Iersel, J., "Veerkracht in het corporatiebezit", In Fact Research, Circusvis, Rigo, for Aedes, 2020.

¹² CBS, "Aantal daklozen sinds 2009 meer dan verdubbeld", CBS, 2019.

¹³ CBS, "Stijging van het aantal daklozen tot stilstand gekomen", CBS, 2021.

¹⁴ Valente, "Dakloosheidscijfers CBS over 2019 onverminderd hoog", Valente, 2021.

¹⁵ Federatie Opvang (now: Valente), "Meer mensen dan ooit in daklozenopvang en beschermd wonen", Federatie Opvang, 2018

¹⁶ Lupi, T., Velden, J. van der, Ooms, M. and Louwerse D., "Wonen in de luwte. Een verkennend onderzoek naar bewoning van vakantieparken op de Veluwe", Platform31, 2018.

People who live in poverty are much likelier to become homeless. Most research indicates most homeless people previously lived on benefits and have debts. There is an increase of people with a job who become homeless. A job as such does not provide enough income and certainty to be able to provide housing.¹⁷

More than half of the registered homeless people have a non-western background. At the same time there are large numbers of so-called undocumented people (residing in The Netherlands illegally) who are not registered in official statistics.¹⁸

Many homeless people and those who are institutionalised in shelters have a mental disability. There is more awareness about the impact of mental disability within the shelter and support system and efforts are underway to support them per their needs.¹⁹ Underlying structural problems are not addressed sufficiently. One of these may also be budgetary cuts to mental health care and a trend to deinstitutionalise the mental care system without adequate ambulant support.²⁰ Other root causes include barriers to access the labour market, education and dependence on limited social benefits.²¹

As the previous Special Rapporteur on the Right to Housing, Leilani Farha, recalled discrimination is a root cause for homelessness. At the same time, homeless people are discriminated against due to their homelessness. In the Netherlands, this discrimination, based on the stigma of homelessness is a barrier to realise their right to adequate housing. Examples of this are:

- People are still fined for sleeping rough, increasing the debts of financially overburdened people.²² Certain municipalities, such as Amsterdam and Rotterdam indicate they are willing to stop this²³;
- Social benefits are reduced for certain groups of homeless persons in a number of municipalities. The rationale behind reducing social benefits is that homeless persons do not have housing costs. Their homelessness is thus a reason to limit their right to social benefits and their right to an adequate standard of living;²⁴

¹⁷ Raad Volksgezondheid en Samenleving, *Herstel begint met een huis: dakloosheid voorkomen en verminderen*, RvS, 2020.

¹⁸ CBS, "Stijging van het aantal daklozen tot stilstand gekomen", CBS, 2021.

¹⁹ See, for example: Straaten, van B., *Licht verstandelijke beperking onder cliënten van een Rotterdamse Opvang*, IVO, 2018; Everdingen, c. van, *De Utrechtse nachtopvang en crisisopvang in beeld*, EverdingenConsult for the Municipality of Utrecht, 2016; Laere I van, Slockers, M. & Muijsenbergh M van den., "Gezondheidsproblemen bij daklozen", in Huisarts en Wetenschap, 2017; Everdingen, C. Van, Peerenboom, P. B., Velder, K. Van der, and Delespaul, P. Deslespaul., "Helath Patterns Reveal Interdependent Needs of Dutch Homeless Service Users", *Front Psychiatry*, 25th of March, 2021.

²⁰ NOS, "Noodkreet grote steden over aantal daklozen: 'De grens is bereikt', 2019.

²¹ Netherlands Institute for Human Rights, "Submission to the committee on the Rights of Persons with Disabilities Concerning the initial report of the Netherlands", 2018;

²² See, for example, "Boeteregen daalt neer op daklozen: 'Stel kreeg in maand tijd 34 boetes voor het slapen onder een brug'" (Large number of fines for homeless people: "One couple gets 34 fines for sleeping under a bridge"), *Algemeen Dagblad*, 18th of January 2021;

²³ Bureau Straatjurist, *Jaarverslag 2020* (Annual report 2020), Bureau Straatjurist, April 2021. Bureau Straatjurist intervened in the Municipal council to signal that despite earlier promises the practice of fining people for sleeping rough was still a regular occurrence. The mayor indicated she was shocked and supported change. See: "Halsema vindt beboeten van slapende daklozen 'beschamend'" (Halsema believes fines for rough sleeping are "shameful"), *AT5*, January 7th 2021.

²⁴ See, for example: MDHG, "Hoogte Bijstandsuitkering voor dak- en thuislozen die geen gebruik maken van de nachtopvang of maatschappelijke opvang" (Level of social benefits for homeless people who do not use night shelters or institutionalised shelters), MDHG, March 2020.

- Access to social housing is often only possible when a care /support provider is willing to take on the rental contract with the social housing provider. Getting security of tenure is possible when the ex-homeless person has proven good behaviour for a certain amount of time. Care/support providers take on this role to support access to housing for their clients (“omklapcontracten”). This is positive and in certain limited situations such a contract could be just. Yet, this practice does highlight the level of stigma and discrimination faced by homeless persons and the effect on security of tenure. Thus, limiting the realisation of their right to housing.²⁵

Limiting access to housing for people with disabilities

Access to housing for people with disabilities is under severe pressure. Firstly, because many people with disabilities live in poverty or only have limited income. They depend largely on social housing. Availability of social housing is more and more limited. Existing available housing is often not accessible to them. Whereas there is no explicit obligation for new housing projects to consider accessibility.²⁶ Making alterations to houses to increase accessibility is excessively burdensome. If people with disabilities, especially people with chronic diseases, are in the position to buy a house they find it difficult to get a mortgage. One of the conditions to get a mortgage is to have a life insurance. For people with chronic diseases this is very difficult and very expensive.

Also, there is no clear obligation for municipalities and housing developers to make sure new housing development plans consider accessibility of housing for people with disabilities. Though nationally accessibility of the ‘living environment’, including housing and the surrounding infrastructure, is considered by the National Government of national interest in their recent vision document on ‘living environment’ in the Netherlands.²⁷ A move applauded by one of the main representatives of people with physical disabilities, Ieder(In).²⁸

Limiting access to housing based on race and ethnicity

Positive measures

The national government has indicated its intention to implement measures to curb discrimination in the private rental sector. This follows up on national research on discrimination in access to housing in the rental sector, especially focused on race and ethnicity.²⁹ Proposed measures include measures on: raising awareness about discrimination among owners and intermediaries; a system of permits for intermediaries; mystery guests; and sanctions.³⁰ The measures especially provide a regulatory and legislative basis for municipalities to take action. Some municipalities have indicated they are going to enhance their struggle against these discriminatory practices following specific research in those municipalities (such as, Rotterdam and Utrecht).³¹

²⁵ See, for an example of this policy, “Tien werkafspraken ‘Thuis in de Wijk’” (Ten working-agreements “At home in the neighbourhood”), Municipality of Amsterdam, 2020. For further background see: Beuzenberg, V. And Lupi, T., “Met zorg verhuurd: handreiking intermediaire verhuur voor woningcorporaties en zorginstellingen”, Aedes and Platform31, 2017.

²⁶ Ieder(In), Landelijk Platform GGZ, and Patiëntenfederatie Nederland, “Wonen voor iedereen: Slagen mensen met een beperking of aandoening erin om goed zelfstandig te wonen”, 2016; Netherlands Institute for Human Rights, “Submission to the committee on the Rights of Persons with Disabilities Concerning the initial report of the Netherlands”, 2018.

²⁷ Ministry of Interior, “Nationale Omgevingsvisie: duurzaam perspectief voor onze leefomgeving”, 2020.

²⁸ Ieder(In), “Nationale Omgevingsvisie verschenen, mét aandacht voor inclusive”, 2020.

²⁹ Hoogenbosch, A. and Fiere, B., “Gelijke kansen op een huurwoning in Nederland: monitor discriminatie bij woningverhuur”, Art. 1/RADAR, fort he Ministry of the Interior, February 2021.

³⁰ Ministry of Interior, Letter to Parliament on the issue of discrimination in the rental sector: results of research and follow-up. Letter of 23d of April 2021, no. 2021-0000215787.

³¹ Hoogenbosch, A. and Dibbitts, A., “‘Normale verhuurders willen gewoon normale huurders’: veldverkenning discriminatie bij woningverhuur in Rotterdam”, Art.1/RADAR, December 2019; and Andriessen, I. And

These efforts are positive. However, without a integral policy that also focuses on direct and indirect discrimination by the State their impact will be very limited.

Rotterdamwet

Inner City Problems (Special Measures) Act limits access to housing in certain areas of cities to people with low income.³² It was implemented in 2005. Municipalities can apply for permission to institute the Act on specific areas of the municipality for a period of 4 years. People who want to move in a house in a designated area need to apply for a housing permit. If you have a low income and have not lived in the area for 6 or more years you do not get a housing permit. Other articles of the Act make it possible for a municipality to favour people with a certain level of education or profession to access housing (art. 9) and forbid people who have been the subject of complaints of nuisance to access housing in those areas (art. 10).

The goal of implementing the act is to improve living conditions in those areas. Concretely, this means limiting the number of people with low income and creating possibilities for economic-social diversification of the population. In applying for permission from the Minister of Interior municipalities use indicators from the “Leefbarometer” (a set of indicators to capture the liveability in a neighbourhood). When an area has low scores on this ‘Leefbarometer’ it may be subject to application of the Act. One of the indicators is: number of people with a migrant background. The higher the proportion of people with a migrant background the lower the score on the “Leefbarometer”. Number of people living on social benefits is also a key indicator. In fact, a decrease in that number is considered a positive result of the application of the Act.

The Act or parts of the Act are now enacted by 10 municipalities in The Netherlands. If a municipality wants to extend the period of the implementation of the Act it must ask the Minister of Interior for permission. In doing so it must provide information that indicates the measures are needed. Different evaluations, including assessments by municipalities themselves (as part of their extension) have indicated there are no clear positive results stemming from the implementation of the policy. It does not improve living conditions in those areas.³³

In the Rotterdam area in particular access to affordable housing for people with low income has come under severe pressure, partly due to the Act. It has not only been implemented in Rotterdam, but also in surrounding municipalities.

The Act is clearly discriminatory towards people living in poverty. Many of these have a migrant background pointing to indirect discrimination. This point is highlighted in the Garib case that was brought to the European Court for Human Rights. The Grand Chamber judged the Act not to be a violation of art. 2 of Protocol 4 ECHR (freedom of movement). However, the Grand Chamber declined to consider art. 14 ECHR (prohibition of discrimination). The decision was heavily criticised with 5

Wittebrood, K., “Discriminatie op de woningmarkt: een praktijkgericht onderzoek naar de aanpak van discriminatie op de particuliere huurwoningmarkt”, Verwey-Jonker, Utrecht, February 2021.

³² Wet Bijzondere Maatregelen Grootstedelijke Problematiek, also known as the ‘Rotterdamwet’, as it was first implemented there as a local regulation.

³³ The most recent comprehensive evaluations were done in 2015 and 2017 in Rotterdam. Other ‘evaluations’ were not carried out by external evaluators and their quality was extremely limited. Yet they do provide the basis for extension both at a local level, and by extension, on national level. Hochstenbach, C., Uitermark, J., and Gent, W. van, “Evaluatie effecten Wet bijzondere maatregelen grootstedelijke problematiek (“Rotterdamwet”) in Rotterdam”, Amsterdam: AISSR, University of Amsterdam, 2015; Lauwerier, R., Wever, E., and Colenbrander, S., “Evaluatie toepassing art. 8 Rotterdamwet, Gemeente Rotterdam”, Twynstra Gudde, November 2017.

judges subscribing to 3 highly critical dissenting opinions. One of the very critical dissenting opinions is by Pinto de Albuquerque and Vehabovic. They highlight the direct and indirect discriminatory nature of the Act.³⁴

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³⁴ Grand Chamber ECHR, Case of Garib v. The Netherlands, Application no. 43494/09, 6th of November 2017.