



**THE NETHERLANDS – SOGI LEGISLATION COUNTRY REPORT**  
**PRODUCED: MARCH 2013**

Please note: This document was prepared by law students and highlights publicly-accessible information about legislation available at the time it was prepared. It is not exhaustive, nor is it updated on a regular basis. The information provided here is not a substitute for legal advice or legal assistance, and the International Human Rights program at the University of Toronto Faculty of Law cannot provide such advice or assistance.

***Summary***

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The [\*Constitution of the Kingdom of the Netherlands\*](#) prohibits discrimination on “the grounds of religion, belief, political opinion, race or sex or on any other grounds whatsoever”. “Other grounds” has been interpreted by courts to include sexual orientation. The prohibition of discrimination on the ground of sex has been interpreted to include gender identity.

The [\*Equal Treatment Act\*](#) prohibits discrimination on a number of grounds including “hetero- or homosexual preference” in areas including employment, vocational education, union membership, social security and health care, social advantages, education, and access to goods and services including housing. It also establishes an Equal Treatment Commission to address complaints of discrimination.

The [\*Dutch Penal Code\*](#) prohibits incitement of hatred, discrimination, or violence based on “heterosexual or homosexual orientation.” Homophobic discrimination is also considered an aggravating factor in sentencing.

Same-sex sexual activity is legal, and the age of consent is the same for same-sex and opposite-sex sexual activity ([\*Dutch Penal Code\*](#)).

Under the [\*Dutch Civil Code\*](#), same-sex marriage is legal; same-sex registered partnerships are also recognized. Marriages and registered partnerships are also options for opposite-sex couples, and there are no differences in benefits extended to same-sex couples versus opposite-sex couples.

Same-sex couples can adopt jointly or adopt a spouse's children under the [\*Dutch Civil Code\*](#).

The [Dutch Civil Code](#) allows a legal change of gender and first name, but only after sex reassignment surgery that renders the person sterile.

The [Aliens Decree](#), 2000 treats opposite-sex partners and same-sex partners the same for immigration purposes.

Individuals persecuted for their sexual orientation may claim asylum in the Netherlands, according to the *Aliens Circular*.

## ***Legal Provisions***

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### **ANTI-DISCRIMINATION**

**[Constitution of the Kingdom of the Netherlands](#)**: Persons are guaranteed equal treatment in equal circumstances, and discrimination on sex or “on any other grounds” is prohibited. Case law indicates that “other grounds” include sexual orientation (“4.7 *De Grondwet bepaalt in artikel 1 dat allen die zich in Nederland bevinden in gelijke gevallen gelijk behandeld worden, en voorts: "Discriminatie wegens godsdienst, levensovertuiging, politieke gezindheid, ras, geslacht of op welke grond ook, is niet toegestaan." Sexuele gerichtheid wordt daarbij niet uitdrukkelijk genoemd doch is wel inbegrepen, COC v Simonis, Gerechtshof Amsterdam (Amsterdam Court of Appeal), 10.12.1987, NJCM-Bulletin 1989, 315.* <http://hdl.handle.net/1887/4078>)

*Article 1*: All persons in the Netherlands shall be treated equally in equal circumstances. Discrimination on the grounds of religion, belief, political opinion, race or sex or on any other grounds whatsoever shall not be permitted.

<http://www.dutchcivillaw.com/constitution.htm>

The prohibition of discrimination on the ground of sex is interpreted to include all forms of discrimination on the ground of gender identity (see e.g. Voortgangsbrief discriminatie 2012, Ministerie van Sociale Zaken en Werkgelegenheid, I&S/2012/18020)

**[Equal Treatment Act \(Algemene Wet Gelijke Behandeling\), 1994](#)**: Discrimination on the basis of “hetero- or homosexual preference” is prohibited in all aspects of employment. Unequal treatment is also prohibited “in the supply of goods and services” including education, housing, and healthcare. The Act also establishes an Equal Treatment Commission to address incidences of discrimination.

*Section 1*: For the purposes of this Act and the provisions based upon it the following definitions apply:

a. discrimination: direct and indirect discrimination;

- b. direct discrimination: discrimination between persons on the grounds of religion, belief, political opinion, race, sex, nationality, heterosexual or homosexual orientation or civil status;
- c. indirect discrimination: discrimination on the grounds of characteristics or behaviour other than those referred to under (b), resulting in direct discrimination.

*Section 5(1):* It is unlawful to discriminate in or with regard to:

- a. advertisements for job vacancies and procedures leading to the filling of vacancies;
- b. job placement;
- c. the commencement or termination of an employment relationship;
- d. the appointment and dismissal of civil servants;
- e. terms and conditions of employment;
- f. permitting staff to receive education or training during or prior to employment;
- g. promotion;
- h. working conditions.

*Section 7(1):* It is unlawful to discriminate in offering goods or services, in concluding, implementing or terminating agreements thereon, and in providing educational or careers guidance if such acts of discrimination are committed:

- a. in the course of carrying on a business or practising a profession;
- b. by the public sector;
- c. by institutions which are active in the fields of housing, social services, health care, cultural affairs or education, or
- d. by private persons not engaged in carrying on a business or practising a profession, insofar as the offer is made publicly.

## **HATE CRIMES**

**Dutch Penal Code (Wetboek van Strafrecht), 1881 (as amended in 1991):** The following are punishable by imprisonment or fine: the making of public defamatory statements about a group of persons on grounds including their “hetero- or homosexual orientation” (Article 137c); incitement of hatred, discrimination, or violence against person or property on grounds including their “hetero- or homosexual orientation” (Article 137d); making public statements that are offensive to a group of persons on grounds including their “hetero- or homosexual orientation” (Article 137e); participation in, or provision of financial/material support to, activities aimed against persons on grounds including their “hetero- or homosexual orientation” (Article 137f).

### *Artikel 137c*

1. Hij die zich in het openbaar, mondeling of bij geschrift of afbeelding, opzettelijk beledigend uitlaat over een groep mensen wegens hun ras, hun godsdienst of levensovertuiging, hun hetero- of homoseksuele gerichtheid of hun lichamelijke,

psychische of verstandelijke handicap, wordt gestraft met gevangenisstraf van ten hoogste een jaar of geldboete van de derde categorie.

2. Indien het feit wordt gepleegd door een persoon die daarvan een beroep of gewoonte maakt of door twee of meer verenigde personen wordt gevangenisstraf van ten hoogste twee jaren of geldboete van de vierde categorie opgelegd.

#### *Artikel 137d*

1. Hij die in het openbaar, mondeling of bij geschrift of afbeelding, aanzet tot haat tegen of discriminatie van mensen of gewelddadig optreden tegen persoon of goed van mensen wegens hun ras, hun godsdienst of levensovertuiging, hun geslacht, hun hetero- of homoseksuele gerichtheid of hun lichamelijke, psychische of verstandelijke handicap, wordt gestraft met gevangenisstraf van ten hoogste een jaar of geldboete van de derde categorie.

2. Indien het feit wordt gepleegd door een persoon die daarvan een beroep of gewoonte maakt of door twee of meer verenigde personen wordt gevangenisstraf van ten hoogste twee jaren of geldboete van de vierde categorie opgelegd.

#### *Artikel 137e*

1. Hij die, anders dan ten behoeve van zakelijke berichtgeving:

1°. een uitlating openbaar maakt die, naar hij weet of redelijkerwijs moet vermoeden, voor een groep mensen wegens hun ras, hun godsdienst of levensovertuiging, hun hetero- of homoseksuele gerichtheid of hun lichamelijke, psychische of verstandelijke handicap beledigend is, of aanzet tot haat tegen of discriminatie van mensen of gewelddadig optreden tegen persoon of goed van mensen wegens hun ras, hun godsdienst of levensovertuiging, hun geslacht, hun hetero- of homoseksuele gerichtheid of hun lichamelijke, psychische of verstandelijke handicap;

2°. een voorwerp waarin, naar hij weet of redelijkerwijs moet vermoeden, zulk een uitlating is vervat, aan iemand, anders dan op diens verzoek, doet toekomen, dan wel verspreidt of ter openbaarmaking van die uitlating of verspreiding in voorraad heeft;

wordt gestraft met gevangenisstraf van ten hoogste zes maanden of geldboete van de derde categorie.

#### *Artikel 137f*

Hij die deelneemt of geldelijke of andere stoffelijke steun verleent aan activiteiten gericht op discriminatie van mensen wegens hun ras, hun godsdienst, hun levensovertuiging, hun geslacht, hun hetero- of homoseksuele gerichtheid of hun

lichamelijke, psychische of verstandelijke handicap, wordt gestraft met gevangenisstraf van ten hoogste drie maanden of geldboete van de tweede categorie.

Unofficial Translation:

*Article 137c: (1)* A person who publicly, either orally or in writing or by image, intentionally makes a defamatory statement about a group of persons on the grounds of their race, religion or personal beliefs, or their hetero- or homosexual orientation or their physical, mental or intellectual disability, is liable to a term of imprisonment of not more than one year or a fine of the third category.

*(2)* If the offense is committed by professional or habitual offender, or by an organised group of two or more persons, the person will be liable to a term of imprisonment that will not exceed two years or to a fine of fourth category.

*Article 137d: (1)* Anyone who publicly, orally or in writing or image, incites hatred of or discrimination against persons or violence against their person or property on the grounds of their race, religion or personal beliefs, their sex or their heterosexual or homosexual orientation, or their physical, mental or intellectual disability shall be punished with imprisonment not exceeding one year or fine of the third category.

*(2)* If the offense is committed by professional or habitual offender, or by an organised group of two or more persons, the person will be liable to a term of imprisonment that will not exceed two years or to a fine of fourth category.

*Article 137e: 1.* A person who, for any reason other than that of giving factual information:

*(1)* makes public a statement which he knows or should reasonably suspect to be offensive to a group of persons on the grounds of their race, religion or personal beliefs, or their hetero- or homosexual orientation, or incites hatred of or discrimination against people or violence against their person or property on the grounds of their race, religion or personal beliefs, their sex, or their hetero- or homosexual orientation or their physical, mental or intellectual disability;

*(2)* disseminates an object which he knows or should reasonably suspect to contain such a defamatory statement or has such in stock for public disclosure or for dissemination;

is liable to a term of imprisonment of not more than six months or a fine of the third category.

*Article 137f:* A person who takes part in activities, or who extends financial or other material support to activities, aimed at discrimination against persons on the grounds of their race, religion, personal beliefs, their sex, or their hetero- or homosexual orientation or their physical, mental or intellectual disability, is liable to a term of imprisonment of not more than three months or a fine of the second category.

Based on the translation in Louise Rayar and Stafford Wadsworth, *The American Series of Foreign Penal Codes* (Rothman & Co, 1997).

*Note: The sentencing process also considers discrimination as an aggravating factor. The most recent Universal Periodic Review to the United Nations states: "When someone is prosecuted for an offence which also involves discrimination, the Public Prosecution Service counts the discriminatory aspect as an aggravating factor when deciding what sentence to demand. Since 2009, discrimination is defined as an aggravating factor warranting a 50% increase in the sentence. This figure previously was 25%. As from May 2011, another aggravating factor has been incorporated for such offences, warranting a 100% increase in the sentence demanded. The public prosecutor can apply for this latter increased sentence in case of serious criminal offences motivated by discriminatory factors."*

<http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G12/126/48/PDF/G1212648.pdf>

## **SEXUAL ACTIVITY AND AGE OF CONSENT**

**[Dutch Penal Code \(Wetboek van Strafrecht\)](#), 1881:** The age of consent is the same for same-sex and opposite-sex sexual activity.

<https://secure.interpol.int/Public/Children/SexualAbuse/NationalLaws/CsaNetherlands.pdf>

## **MARRIAGE**

**[Dutch Civil Code \(Burgerlijk Wetboek\)](#), 1838 (as amended in 2001):** The *Dutch Civil Code* was amended in 2001 to permit same-sex marriage. No distinction is made between marriages and registered partnerships of same-sex couples and opposite-sex couples in most areas. The single legal difference is that parentage of children by both partners is not automatic (see section below on Access to Reproductive Technology, Adoption, and Parenting).

*Article 1(30).1:* A marriage may be entered into by two persons of a different or of the same gender (sex).

<http://www.dutchcivillaw.com/civilcodebook01.htm>

## **PARTNERSHIP RECOGNITION AND BENEFITS**

**[Dutch Civil Code \(Burgerlijk Wetboek\)](#), 1838 (as amended in 1998):** Registered civil partnerships are recognized (since 1998), and can be entered into by couples of the same sex or opposite sex. No distinction is made between registered partnerships of same-sex couples and opposite-sex couples.

*Article 1(80).1:* A person may, at the same time, only be united in a registered partnership with one other person, either of the same or of another gender.

<http://www.dutchcivillaw.com/civilcodebook01.htm>

## **ACCESS TO REPRODUCTIVE TECHNOLOGY, ADOPTION, AND PARENTING**

***Dutch Civil Code (Burgerlijk Wetboek), 1838 (as amended in 2001):*** The Dutch Civil Code was amended in 2001 to permit same-sex couples the right to adopt as a couple, or to adopt a partner's children. No distinction is made between adoptions made by same-sex couples and opposite-sex couples. Couples may adopt jointly only if they have lived together for at least three consecutive years prior to filing the adoption request. A three-year cohabitation requirement also applies when one partner seeks to adopt the other partner's child.

*Article 1(227).1:* The adoption of a child is effected by a decision of the District Court upon a joint request of two persons or upon a request of one person alone. A joint request cannot be filed by two persons who, pursuant to Article 1:41, are not allowed to enter into a marriage with each other.

*Article 1(227).2:* A joint request by two persons may be filed only if these persons have lived together for at least three consecutive years immediately preceding the filing of the request. A request of an adopter who is the spouse, registered partner or other life companion of the parent of the child to be adopted, may be filed only if this adopter has lived together with that parent for at least three consecutive years immediately preceding the filing of the request. The requirement referred to in the second sentence does not apply if the child is or will be born from the personal relationship between the adopter and that parent.

***Dutch Civil Code (Burgerlijk Wetboek), 1838:*** Under the *Civil Code*, the single legal difference between same-sex and opposite-sex marriage is that there is no automatic parentage presumption for same-sex partners. The legal mother of a child is its biological mother (Article 1:198), and the father is the man she is married to when the child is born; the father must be a man (Article 1:199). The other partner in a female-female marriage may become a legal mother only through adoption. Both female spouses obtain parental authority automatically only when a biological father does not become a parent (for example, in the case of sperm donation) (Article 1:253sa).

*Article 1:198: Mother of a child*

The woman who has given birth to a child or who has adopted a child is the mother of that child.

*Article 1:199: Father of a child*

The father of a child is the man:

a. who, at the time of birth of the child, is married to the woman who has given birth

- to that child, unless the provision under point (b) is applicable;
- b. whose marriage to the woman who has given birth to the child, has been dissolved because of his death within a period of 306 days before the birth of the child, even if the mother has remarried; if, however, the woman was legally separated from her husband since the 306th day before the birth of the child or if she and her husband lived separately since that moment, then the woman may, within one year after the birth of the child, declare before the Registrar of Civil Status that her deceased husband is not the father of the child, which declaration will be written down in a certificate of civil status; in such event the man with whom the woman is married at the time of birth shall be the father of the child;
  - c. who has officially recognized paternity of the child;
  - d. whose legal paternity has been established, or
  - e. who has adopted the child.

*Article 1:253sa: Joint authority of a parent together with another person by operation of law*

1. Where a child is born during a marriage or registered partnership, its parent and this parent's spouse or registered partner, who himself is not the parent of the child, shall jointly exercise authority over it, unless the child also stands in a legal familial relationship to its other parent.

<http://www.dutchcivillaw.com/civilcodebook01.htm>

## **GENDER IDENTITY RECOGNITION**

***Dutch Civil Code (Burgerlijk Wetboek), 1838 (as amended in 1985):*** Individuals may legally change their gender following sex reassignment surgery that results in sterilization. The person may then change their first name. The gender change has no impact on legal family relationships, including marriages.

*Article 1(28):* Every person of Dutch nationality who is convinced he is of another gender than marked on his birth certificate and who is physically adjusted to the desired gender insofar this is possible and acceptable from a medical and psychological point of view, may request the District Court to order a change of the description of his gender on his birth certificate, if this person is marked on the birth certificate as a male and he is definitely incapable of procreating children or if he is marked on his birth certificate as a female and he is definitely incapable of giving birth to children.

*Article 1(28a).1:* When filing the request referred to in the previous Article the following documents must be submitted at the same time:

- a true copy of the birth certificate;
- an expert report, collectively signed by experts designated for this purpose by Order in Council, which report has been issued at the latest six months before the date on which the request was filed, and from which appears:



- a. the conviction of the applicant that he is of another gender than the one described in his birth certificate and the opinion of a to this end skilled expert that this conviction may be regarded as being permanent, considering the period in which the applicant has lived as such and, where possible, other facts and circumstances to be mentioned in this respect;
- b. whether, and if so, to what extent the applicant has been adjusted physically to the desired gender insofar this is possible and acceptable from a medical and psychological point of view;
- c. that the applicant, if he is marked on the birth certificate as a male, is definitely incapable of procreating children or, if he is marked on the birth certificate as female, is definitely incapable of giving birth to children.

*Article 1(28b).2:* If the District Court honours the request to change the description of gender on the birth certificate, it may, if asked for, also order a change of the forenames of the applicant.

*Article 1(28c).2:* The change of the description of gender shall not affect the familial relationships existing on the date referred to in paragraph 1, nor any rights, powers and duties resulting from Book 1 of the Civil Code on account of these familial relationships.

<http://www.dutchcivillaw.com/civilcodebook01.htm>

*Note: In 2007, the Dutch Supreme Court upheld decisions by lower courts denying a Dutch citizen's application to have his birth certificate amended to suppress the information about his sex, since he identified as "belonging to no sex" ("niet gesekueerd"). In rejecting his application, the Supreme Court held that it was in the interests of society at large to register every individual as being either male or female (Supreme Court (Hoge Raad), LJN AZ5686 (March 30, 2007)).*

<http://www.hrw.org/reports/2011/09/13/controlling-bodies-denying-identities-0>

## **IMMIGRATION AND ASYLUM**

***Aliens Decree (Vreemdelingenbesluit), 2000:*** Same-sex couples are treated the same as opposite-sex couples for immigration purposes. Family members of both partners are also permitted to immigrate under this decree.

*Article 3(15):* The Order in Council referred to in section 14, subsection 2, shall provide that the residence permit for a fixed period as referred to in section 14 may be issued, subject to a restriction connected with family reunion and family formation, to members of the family of Netherlands nationals and aliens who are lawfully resident as referred to in section 8, at (a) to (e) and (l).

<http://www.legislationline.org/documents/action/popup/id/4680>

*Note: "Art. 3.13 to 3.17 of the [Aliens Decree 2000](#) (Vreemdelingenbesluit 2000, Staatsblad 497, in force since 1 April 2001) allow for the immigration of married, registered and unmarried/unregistered partners, provided that they live together and have a joint household. One of the conditions is that the 'receiving' partner has a sufficient income, i.e. 100% of the official minimum wage (art. 3.22 and 3.74; until 1 April 2004, 70% of the official minimum wage was considered sufficient for most married or registered partners; but not for informal cohabitants). [ ... ] Until 1 April 2001 the right to immigration of partners was contained in policy guidelines (Vreemdelingencirculaire), which since 1975 recognized informally cohabiting different-sex and same-sex partners of Dutch citizens".*

<https://openaccess.leidenuniv.nl/bitstream/handle/1887/12585/More-or-less-together12-Netherlands.pdf?sequence=14>

***Aliens Circular (Vreemdelingencirculaire):*** Individuals persecuted for their sexual orientation may claim asylum in the Netherlands.

*Note: "It is standing policy and standing case law in the Netherlands that the definition of being persecuted for reasons of membership of a particular social group in the sense of Article 1A of the UN Convention relating to the Status of Refugees includes being persecuted for reasons of sexual orientation (Vreemdelingencirculaire [Aliens Circular] C2/2.10.2)".*

[http://fra.europa.eu/sites/default/files/fra\\_uploads/1363-LGBT-2010\\_thematic-study\\_NL.pdf](http://fra.europa.eu/sites/default/files/fra_uploads/1363-LGBT-2010_thematic-study_NL.pdf)