

‘Charter Flights Full of Homosexuals’

*The Changing Rights of Homosexual Immigrants in the Netherlands, 1945-1992*¹

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Abstract

This article seeks to explain changes in Dutch policies regarding the rights of homosexual immigrants. In the period 1945-1992 policies changed fundamentally. As this article will show, existing theories do not fully explain why policies regarding homosexual foreigners changed. The most striking aspect of the policy changes was the casualness with which decisions were taken, and the long time that passed before the consequences of decisions sank in. Although the number of homosexual foreigners coming to the Netherlands was never large, their migration was always highly contested: response to their claims was a key part of how the nation defined itself, both now and in the past. This article shows how discussions about the right to refugee status for homosexual foreigners evolved from debates about the right of homosexual migrants to come within the framework of labour migration or family migration (right to live with your partner). Policies changed – this article argues – because this issue was not at the heart of policy fields (labour migration, family migration, refugee migration) but rather at the points where policy fields intersected, which made foreseeing consequences more difficult.

Introduction

When in 2001, Dutch authorities allowed homosexuals to marry, the Netherlands was the first country in the world to do so. In 1981, the Netherlands also was the first country in the world to grant refugee

¹ This article is partly based on the Master thesis in History written at Leiden University by the second author.

status to homosexuals.² Rather surprisingly, the Netherlands was also the first country to move towards 'homonationalism', which means that gay right claims are combined with nationalistic, xenophobic and racist claims.³ In 2001, the openly gay, right-wing Dutch politician Pim Fortuyn started to use this combination. Before him, anti-immigrant or racist parties had not been pro-gay rights. Fortuyn claimed that the Netherlands would have to redo its gay emancipation if 'Islamization' of Dutch society was not stopped.⁴ Later Geert Wilders (Freedom Party PVV), appropriated this idea and added that also the women's emancipation would have to be redone. Populist, anti-Islam and anti-immigrant parties throughout Europe and in the US copied the idea.⁵ When in 2016 Wilders spoke in the US at a 'Gays for Trump rally', an American journalist wrote that 'the Dutch pioneered the use of pro-gay rhetoric as a means for bashing Muslim immigration'.⁶

Since 1945, there have been important changes in Dutch immigrant policies towards homosexuals. This article starts in 1945 when the idea of moral rearmament was introduced and ends in 1992, when the 1981 policy changes regarding refugee status were tested. We seek to answer the question why these immigration policies changed and connect debates on policy change to those about homosexuality. The article starts with an overview of the Dutch historiography on homosexuality and the ways policies changed, followed by a short methodological section and a brief overview of the relevant migration laws and treaties. The analysis of the source material is broken down into six sections. The first section ends with the authority's decision to see (homo)sexuality as irrelevant. The second section covers the moral panic in the 1960s about increasing numbers of homosexual foreigners. The third section

2 G. Hekma, *Homoseksualiteit in Nederland* (Amsterdam 2004); P. Koenders, *Tussen christelijk réveil en seksuele revolutie. Bestrijding van zedeloosheid in Nederland, met nadruk op de repressie van homoseksualiteit* (Amsterdam 1996); H. Warmerdam and P. Koenders, *Cultuur en ontspanning. Het COC 1946-1966* (Utrecht 1987).

3 J. Puar, *Terrorist assemblages. Homonationalism in queer times* (Durham 2007); See also: G. Hekma and J.W. Duyvendak, 'Queer Netherlands. A puzzling example', *Sexualities* 14:6 (2011) 625-631; G. Hekma and J.W. Duyvendak, 'The Netherlands. Depoliticization of homosexuality and homosexualization of politics', in: M. Tremblay, D. Paternotte and C. Johnson (eds.), *The lesbian and gay movement and the state. Comparative insights into a transformed relationship* (Aldershot 2011) 103-117; See also: <https://www.vox.com/2016/7/21/12238048/rnc-party-milo>; K. Jungar and S. Peltonen, 'Acts of homonationalism: Mapping Africa in the Swedish media', *Sexualities* 20:5-6 (2017) 715-737.

4 A. Shield, *Immigrants in the sexual revolution. Perceptions and participation in Northwest Europe* (Cham 2017).

5 S.R. Farris, *In the name of women's rights. The rise of femonationalism* (Durham/London 2017).

6 <https://www.vox.com/2016/7/21/12238048/rnc-party-milo>.

deals with the possibilities for homosexual foreigners to come as labour migrants, provided a scandal was avoided, while the fourth section describes how these policies were relaxed in later years. The new possibilities were severely restricted shortly afterwards when labour recruitment was stopped in 1975. It meant that family formation (described in the fifth section) and refugee migration (described in section six) became important as alternatives.

Homosexuality, migration and policy changes

Overall, the literature about the (Dutch) history of homosexuality is more about men, than about women. Publications can be broken down into three clusters: exclusion, colonialism and policy. Firstly, the history of exclusion has been addressed by Dirk Jaap Noordam and Theo van der Meer, who wrote on the persecution of 'Sodomites' in the Netherlands in the seventeenth century.⁷ Gert Hekma published a long history of homosexuality in the Netherlands since 1730,⁸ while Anna Tijseling wrote about the persecution of homosexuals during World War II.⁹ Geertje Mak showed how the definition of hermaphrodites intersected with definitions of heterosexuality and homosexuality.¹⁰ Andrew Shield wrote about homo-emancipation in the Netherlands in the 1960s and 1970s, as well as on the development of Dutch homonationalism.¹¹ That last subject has also been addressed by Stefan Dudink and Éric Fassin, who connected the current idea that homosexuality is key to Dutch identity to older definitions of the nation, which exclud-

7 D.J. Noordam, 'Sodomy in the Dutch Republic, 1600-1725', *Journal of Homosexuality* 16 (1988) 207-228; T. van der Meer, *De wesenlijke sonde van sodomie en andere vuyligheden. Sodomietenvervolgingen in Amsterdam 1730-1811* (Amsterdam 1984); See also: D.J. Noordam, *Riskante relaties. Vijf eeuwen homoseksueel gedrag in Nederland, 1233-1733* (Hilversum 1995).

8 G. Hekma, *Homoseksualiteit in Nederland van 1730 tot de moderne tijd* (Amsterdam 2004); G. Hekma and T. van der Meer (eds.), *Bewaar me voor de waanzin van het recht. Geschiedenis van 100 jaar homoseksualiteit en strafrecht in Nederland* (Diemen 2011).

9 A. Tijseling, *Schuldige seks. Homoseksuele zedendelicten rondom de Duitse bezettingstijd* (Utrecht 2009).

10 G.A. Mak, 'Conflicting heterosexualities. Hermaphroditism and the emergence of surgery around 1900', *Journal of the History of Sexuality* 24:3 (2015) 402-427; G.A. Mak, 'So we must go behind even what the microscope can reveal'. The hermaphrodite's "Self" in medical discourse at the start of the twentieth century', *GLQ: A Journal of Lesbian and Gay Studies* 11:1 (2005) 65-94.

11 A. Shield, 'Suriname – Seeking a lonely, lesbian friend for correspondence'. Immigration and homo-emancipation in the Netherlands, 1965-79', *History Workshop Journal* 78 (2014) 246-264; Shield, *Immigrants in the sexual revolution*.

ed those who were considered 'unadaptable'.¹² According to Dudink homosexuals were excluded by portraying them as deviant, non-reproductive and nervous; this was similar to how for instance Jews were excluded.¹³ George Mosse showed how, in general, European nationalism in the early twentieth century was based on the construction of a 'macho' masculinity.¹⁴ Currently, acceptance of homosexuality is presented as a core Western European characteristic, which needs to be 'exported' by Non-Governmental Organizations (NGOs) to – amongst other – new EU countries, according to Carl Stychin.¹⁵ These countries define their national identity by excluding groups (such as homosexuals) similarly to what other nations did around 1900. In the light of the earlier exclusion of homosexuals, post-1945 changes to immigration policies are surprising.

Secondly, there is the literature on homosexuality and colonialism.¹⁶ In the nineteenth and early twentieth century, the idea that 'backward' societies were permissive towards homosexuality was used to justify colonial projects. There was a widespread belief that homosexuality was endemic in the non-European world. Homosexual men from France, Germany, the Netherlands and England fled to the colonies seeking to evade persecution and disapproval.¹⁷ There was a fascination with the 'Orient' and with everything that was permitted under the colonial sun. Novelists like Oscar Wilde and André Gide moved to the colonies, seeking sexual freedom. The phrase '*faire passer son brevet colonial*' was used to describe people who had been introduced to homosexuality in the colonial setting.¹⁸ Before 1945 homosexuality was

12 A. Jaunait and S. Dudink, 'Sexual nationalisms and the racial history of homosexuality', *Raisons Politiques* 49:1 (2013) 43–54.

13 S.P. Dudink, 'Homosexuality, race, and the rhetoric of nationalism', *History of the Present* 1:2 (2011) 259–264; S.P. Dudink, 'A queer nodal point. Homosexuality in Dutch debates on Islam and multiculturalism', *Sexualities* 20:1–2 (2017) 3–23; E. Fassin, 'The rise and fall of sexual politics in the public sphere. A transatlantic contrast', *Public Culture* 18:1 (2006) 79–92; E. Fassin, 'National identities and transnational intimacies. Sexual democracy and the politics of immigration in Europe', *Public Culture* 22:3 (2010) 507–529; Jaunait and Dudink, 'Sexual nationalisms', 43–54.

14 G.L. Mosse, *The image of man. The creation of modern masculinity* (New York 1996); See also: C.F. Stychin, 'Same-sex sexualities and the globalization of human rights discourse', *McGill Law Journal* 49 (2004) 951–986.

15 Stychin, 'Same-sex sexualities', 951–986.

16 L.A. Stoler, *Race and the education of desire. Foucault's history of sexuality and the colonial order of things* (Durham 1995) 129–196.

17 R. Aldrich, *Colonialism and homosexuality* (London 2003).

18 J. Massad, 'Edward W. Said and Joseph Boone's the homoerotics of orientalism', *Cultural Critique* 98:Winter (2018) 237–261.

strongly associated with everything Europeans were not (or should not be). It was foreign, exotic and barbaric. After 1945 this changed.

Thirdly, some scholars have looked into the way in which ideas regarding sexuality and restrictions resulting from this influenced the regulation of migration.¹⁹ Eithne Luibhéid documented the restrictions on the admission of foreign women to the USA: authorities sought to keep out women who did not fit norms about gender and sexuality.²⁰ Connie Oxford followed up on this and analysed policies towards homosexual immigrants in the USA.²¹ According to the 1917 Immigration Act, immigrants who were 'constitutional psychopathic inferiors', or having 'abnormal sexual instincts' could be excluded. In 1951, Donald Cory's book *The Homosexual in America* provided a sympathetic depiction of homosexuality and encouraged homosexuals to organize. The Mattachine Foundation tried to do that, seeking to influence policies via legal, medical, and psychiatric professionals. However, it campaigned mostly for rights for those already in the US, rather than for more liberal immigration policies.²² In 1952, the McCarran-Walter Act continued the exclusion of homosexuals, labelling them 'psychopathic personalities'. In 1965, the new Immigration and Nationality Act used the term 'sexual deviants' to refuse homosexuals and prevent naturalization. In the 1970s, the American singer Anita Bryant started a fierce anti-gay rights campaign, which led to protests world-wide. Several men in response, contested US immigration restrictions by, upon arrival in the US, openly declaring to immigration authorities that they were homosexuals. From the mid-1980s onwards, the outbreak of AIDS frustrated the nascent campaigns for more lenient immigration policies for homosexuals. AIDS led to strong anti-gay sentiments and death decimat-

19 M.J. Alexander, 'Not just (any) body can be a citizen. The politics of law, sexuality, and postcoloniality in Trinidad and Tobago and the Bahamas', *Feminist Review* 48 (1994) 5-23; E. Luibhéid, *Entry denied. Controlling sexuality at the border* (Minneapolis/London 2002); E. Luibhéid, *Queer migrations. Sexuality, U.S. citizenship, and border crossings* (Minneapolis/London 2005); M.F. Manalansan IV, 'Queer intersections. Sexuality and gender in migration studies', *International Migration Review* 40 (2006) 224-249.
20 Luibhéid, *Entry denied*. See also: E. Luibhéid, "'Looking like a lesbian". The organization of sexual monitoring at the United States-Mexican border', *Journal of the History of Sexuality* 8:3 (1998) 477-506; J.L. Carro, 'From constitutional psychopathic inferiority to AIDS. What is the future for homosexual aliens?', *Yale Law and Policy Review* 7 (1989) 201-228; W.T. Reynolds, 'The Immigration and Nationality Act and the rights of homosexual aliens', *Journal of Homosexuality* 5:1 (1979) 79-86.

21 C. Oxford, 'Queer asylum. US policies and responses to sexual orientation and transgendered persecution', in: M. Schrover and D.M. Moloney (eds.), *Gender, migration and categorisation. Making distinctions between migrants in Western countries, 1945-2010* (Amsterdam 2013) 127-148.

22 M. Meeker, 'Behind the mask of respectability. Reconsidering the Mattachine Society and male homosexual practice, 1950s and 1960s', *Journal of the History of Sexuality* 10:1 (2001) 78-116.

ed activism in the gay community. By 1995, ten per cent of the men in the USA aged 25-44 who identified as gay had died. According to the 1965 US Immigration Law those afflicted with any dangerous contagious disease could be denied entry. AIDS was put on the list of dangerous and communicable diseases. Changes in the USA were to some measure similar to those in the Netherlands, as will be described below.

As a rule, authorities group migrants into four major categories: labour migrants, refugees, (post-) colonial migrants and family migrants. Policy fields, which are based on this categorization, seldom overlap, although the categorization is largely artificial.²³ This is reflected in the literature on policies regarding migration and homosexuality, which also seldom looks across policy fields. There is a rather large literature on gay asylum seekers, and changes in that policy field since the 1990s.²⁴ Éric Fassin and Manuela Salcedo have paid attention to the construction of the category of 'the homosexual' in immigration policies, but without addressing actual policy changes.²⁵ Tracy Simmons and Carl Stychin focussed on recent changes regarding family migration, and the rights of homosexual migrants.²⁶ Saskia Bonjour and Sarah van Walsum discussed changes in Dutch family migration policies and how this affected the immigration of homosexuals.²⁷ As will be discussed below, each of them provided different explanations for changes

23 M. Schrover, 'Labour migration', in: M. van der Linden and K. Hofmeester (eds.), *Handbook global history of work* (Oldenbourg 2017) 443-478.

24 See for instance: R. Foss, 'The demise of the homosexual exclusion. New possibilities for gay and lesbian immigration', *Harvard Civil Rights-Civil Liberties Law Review* (1994) 439-477; W. Turner, 'Lesbian/Gay rights and immigration policy. Lobbying to end the medical model', *Journal of Policy History* 7:2 (1995) 208-223; S. Somerville, 'Notes toward a queer history of naturalization', *American Quarterly* 57:3 (2005) 659-675; J. Millbank, 'A preoccupation with perversion. The British response to refugee claims on the basis of sexual orientation, 1989-2003', *Feminist Legal Studies* 16:2 (2008) 141-167; P. Heller, 'Challenges facing LGBT asylum-seekers. The role of social work in correcting oppressive immigration processes', *Journal of Gay & Lesbian Social Services* 21:2-3 (2009) 294-308; S. Jansen and T. Spijkerboer, *Fleeing homophobia* (Amsterdam 2011).

25 E. Fassin and M. Salcedo, 'Becoming gay? Immigration policies and the truth of sexual identity', *Archives of Sexual Behavior* 44:5 (2015) 1117-1125.

26 T. Simmons, 'Sexuality and immigration. UK family reunion policy and the regulation of sexual citizens in the European Union', *Political Geography* 27:2 (2008) 213-230; T. Simmons, '"Akin to marriage". Sexual citizenship, heterosexism and immigration in the UK: A thesis submitted in partial fulfilment of the requirements of The Nottingham Trent University for the degree of Doctor of Philosophy, September 2003; C.F. Stychin, 'Closet cases: "Conscientious objection" to lesbian and gay legal equality', *Griffith Law Review* 18:1 (2009) 17-38; See also: C.F. Stychin, 'Being gay', *Government and Opposition* 40:1 (2005) 90-109.

27 S. Bonjour, *Grens en gezin. Beleidsvorming inzake gezinsmigratie in Nederland, 1955-2005* (Maastricht 2009); S. van Walsum, G. Jones and S. Legêne, 'Belonging and membership. Postcolonial legacies of colonial family law in Dutch immigration policies', in: Schrover and Moloney (eds.), *Gender, migration and categorisation*, 149-174, 155-159.

that occurred. Overall, the literature about policy changes regarding homosexual migrants is limited, it does not cover a long period, and it usually deals with one category of migrants only and not with the connections between categories, as this article does.

Generally, theories on policy change can be broken down into two categories.²⁸ On the one hand, there is the *structuralist* view, which sees policy change as the authorities' reply to structural changes and shifts in power relations.²⁹ An economic downturn or an increase in the number of immigrants – both commonly labelled a crisis – can be used to argue in favour of policy changes.³⁰ A crisis creates a window of opportunity for policy change.³¹ However, sometimes policies do *not* change, despite structural changes and some issues remain on the political agenda for decades. Not all policy changes can be explained from this perspective. On the other hand, there is the *postmodern* approach, in which problematization plays a key role: what is seen as the problem, and who or what is labelled as its cause? Policy change is seen as a response to claim makers (for instance gay-rights organizations), who manage to get their issue on the agenda. This theory does not explain why in some cases claim makers are successful while in other cases they are not. In the case of Dutch policies regarding homosexuals, changes occurred over a long period of time: they were revolutionary in nature, but not in speed.

28 P. John, 'Theories of policy change and variation reconsidered. A prospectus for the political economy of public policy', *Policy Sciences* 51:1 (2018) 1-16; See also: M. Schrover and S. Bonjour, 'Public debate and policy-making on family migration in the Netherlands, 1960-1995', *Journal of Ethnic and Migration Studies* 41:9 (2015) 1475-1494; M. Schrover, 'The deportation of Germans from the Netherlands 1946-1952', *Immigrants & Minorities* 33:3 (2015) 264-271; M. Schrover, 'Family in Dutch migration policy 1945-2005', *The History of the Family* 14 (2009) 191-202.

29 F.B. Alink, *Crisis als kans? Over de relatie tussen crisis en hervormingen in het vreemdelingenbeleid van Nederland en Duitsland* (Amsterdam 2006) 13-15.

30 Bonjour, *Grens en gezin*.

31 D.A. Rein and M. Schön, *Frame reflection. Toward the resolution of intractable policy controversies* (New York 1994); J.W. Kingdon, *Agendas, alternatives and public policies* (New York 1995); R.A.W. Rhodes, *Understanding governance. Policy networks, governance, reflexivity and accountability* (Buckingham 1997); V. Chhotray and G. Stoker, *Governance theory and practice. A cross-disciplinary approach* (Glasgow 2009); P. Scholten, *Framing immigrant integration. Dutch research-policy dialogues in comparative perspective* (Amsterdam 2011).

Source material and migration regulation

This article tests which theory – structuralist or postmodern – explains changes best. It does so by looking at which structural changes occurred in general and more specifically in migration and its regulation, who the claim makers were, which arguments they used when advocating policy changes, how they identified or labelled ‘the problem’ and which solutions they suggested. We used material from government archives, archives of gay rights organizations and newspaper articles.

The Dutch Ministry of Justice created several large files on homosexual migrants.³² They include material produced by civil servants and policy makers, the COC (The Culture and Recreation Centre), lawyers, and advisors. The COC, founded in 1946, was the most important claim maker. It was a gay rights organization, not an immigrant rights organization. Initially – and similar to its US counterpart – activities were geared towards the rights of homosexuals in the Netherlands. They did want to change immigration policies.

We used 148 newspaper articles on homosexuals and immigration. There were 15,000 articles about homosexuality in Dutch digitized newspapers, 1500 of which were about ‘immigration’ and ‘homosexuals’.³³ We excluded 320 articles from before 1945, which dealt with the large ‘vice scandals’, for instance in The Hague in 1915, 1920 and 1936, and in the Dutch East Indies in 1939. These scandals included high ranking civil servants, artists and a few foreigners. In the Dutch East Indies about 200 Dutch and other European men were arrested for abusing native boys.³⁴ We excluded 400 articles from the 1980s because they were about the position of homosexuals in Iran, while 450 articles were excluded because they were about homosexuals in the USA. The position of homosexuals in both countries was used in Dutch newspapers to portray the Netherlands as a liberal country. The 148 articles that

32 National Archive The Hague (NA), Immigration and Naturalization Department (IND) 931 ‘Toelatingsbeleid betreffende homoseksuele- en niet-huwelijkse relaties, 1964-1983’; NA-IND 2608 ‘Homofiele/heterofiele relaties tussen vreemdelingen en Nederlander, 1973-1983’; NA-IND 2658 ‘Situatie homoseksuelen, 1979-1983’; NA-IND 1379 ‘Transsexuelen, 1956-1971’.

33 <https://www.delpher.nl/>. The website contains 11 million digitized newspaper pages. Not all Dutch newspapers have been digitized, but most major papers have. The site stops in 1995. Search terms were Homoseksualiteit, homoseksualiteit, homose*, homofiel*, gay, homorechten, 248bis, buitenland*, vreemdelingen, zedenschandaal.

34 See for instance: *De Tijd* 11 October (1915); *Bataviaasch Nieuwsblad* 14 May (1920); *Delftsche Courant* 28 May (1936); *Provinciale Geldersche en Nijmeegsche Courant* 28 May (1936); *Limburgsch Dagblad* 11 January (1939); *Bredasche Courant* 9 February (1939).



Illustration 1 Demonstration in favour of the abolition of article 248bis (source: photo Jac. de Nijs Anefo, National Archives CC0, 2.24.01.05 922-0285).

were selected explicitly addressed the position of homosexual foreigners in the Netherlands after 1945.

Before proceeding, it is important to briefly highlight five laws, which are relevant for this research. Firstly, there was the 1849 Dutch Aliens Law, which could be used to stop immigrants on grounds of turpitude (such as prostitutes and pimps). This law was still in place after 1945.³⁵ Secondly, there was article 248bis of the 1911 Penal Code, which prohibited homosexual relations between adult men and boys below the age of 21. In a heterosexual relationship the youngest partner had to be 16 or older. During the German occupation (1940-1945), article 248bis was replaced by a ban on homosexual relationships, but after the war article 248bis returned. The 'Seduction Theory', or 'Dracula Theory' was the key idea behind article 248bis.³⁶ In prisons and army barracks, on ships and in boarding schools, large groups of men lived for long periods of time in all-male communities. Older men or older boys in these communities were believed to teach homosexual practices to novices.³⁷ Authorities felt that boys had to be protected against

35 C. van Eijl and M. Schrover, 'Inleiding', in: M. Schrover (ed.), *Bronnen betreffende de registratie van vreemdelingen in Nederland in de negentiende en twintigste eeuw* (Den Haag 2002) 7-33.

36 Tijsseling, *Schuldige seks*, 18, 41-42.

37 Hekma, *Homoseksualiteit in Nederland*, 44-45.

these practices. Thirdly, there is the 1951 Refugee Convention (which became part of Dutch Law). It defines refugees as persons who have a well-founded fear of persecution because of their political opinion, nationality, race, religion, or because they belonged to a particular social group. When homosexuals in the 1970s started to apply for refugee status, they referred to the open concept of a 'social group' as will be shown below. Fourthly, there was article 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms (adopted by the Council of Europe in 1950). According to article 8, family members (including partners) have the right to live together. Lastly, there was the right to the free movement of workers based on the Treaty of Rome (1957) which allowed workers (and later all people) to move freely between the countries that had signed the Treaty (this means countries that were part of the EU's predecessors).³⁸

The immediate after-war period: Ignoring the inclination

In 1945, there was consensus that Dutch society needed to be morally rearmed. The number of convictions based on article 248bis was higher than ever before.³⁹ A National Committee for Public Moral Health argued in favour of a continuation of the Nazi ban on homosexuality, but local police forces – especially in Amsterdam – disagreed. They believed that homosexuality should only be criminalized if young men ran the risk of being 'turned' into homosexuals.⁴⁰ The Amsterdam police preferred homosexuals to be concentrated in Amsterdam rather than living scattered across the country.⁴¹

In the USA this period was characterized by the so-called 'Lavender Scare': the Republican Senator Joseph McCarthy had said that homosexuals were likely to be communist spies because they could be blackmailed. In his view they should be purged from government service; 91 employees were indeed dismissed on these grounds.⁴² In 1951, in the Netherlands a gang was arrested, which blackmailed homosexuals by

38 M. Schrover and H. Obdeijn, *Komen en gaan. Immigratie en emigratie in Nederland vanaf 1550* (Amsterdam 2008) 270.

39 M. Zeegers and J. Krul-Stekete, 'Het onheil van artikel 248bis', *Tijdschrift voor Psychiatrie* 22 (1980) 606-617, 608.

40 Koenders, *Tussen christelijk réveil en seksuele revolutie*, 510, 534-535.

41 Hekma, *Homoseksualiteit in Nederland*, 100-102.

42 D.K. Johnson, *The Lavender Scare. The Cold War persecution of gays and lesbians in the federal government* (Chicago 2004); Hekma, *Homoseksualiteit in Nederland*, 102.

threatening to reveal their 'abnormality'.⁴³ There were however no government purges like in the USA.

Homosexuality was generally considered a problem. In 1948, for instance, the new law on the penitentiary system suggested to separate homosexuals from other inmates because they were 'unsocial elements'.⁴⁴ In addition, the Catholic Senator Ch. Ruijs de Beerenbrouck, when discussing the budget for Dutch colony New Guinea, said it was a savage country, where murder and homosexuality were rampant.⁴⁵ In his eyes, homosexuality was exotic and barbarous. Interpol in this period put homosexuality on the agenda at several of its conferences. According to the Dutch delegation at the 1952 Interpol conference, American, Polish and Canadian liberators in the Netherlands had lowered moral standards: their accommodation and that of others in single-sex housing led to homosexuality, pederasty and masturbation.⁴⁶

The 1957 Interpol conference was dedicated exclusively to homosexuality. The Dutch delegate at this conference proudly said that in the Netherlands youngsters were protected, while homosexuality was not criminalized. It did, however, not mean that homosexual foreigners were welcome. In June 1956, authorities tried to avert the arrival of an American soldier, who was labelled a homosexual and who had had a sex change operation. He was seen as a threat to public morals.⁴⁷ The argument was based on the 1849 Alien Law. In 1955, a German homosexual man who defined himself as a refugee was evicted.⁴⁸ The Secretary-General of the Ministry of Justice listed several other cases in which he considered admission problematic. In 1950, naturalization of a Hungarian man, who had arrived in the Netherlands in 1940, was refused. The president of the Amsterdam High Court and others wrote letters in his support. Member of Parliament Jan Meulink (Christian Party ARP) looked into his case. The Hungarian man lived in the same house as two Dutch 'known homosexuals'.⁴⁹ He was regarded as a 'notorious homosexual', because that was defined as either living with other

43 *Leeuwarder Courant* 13 October (1951).

44 Minutes Parliament 1948-1949, Annex 1189.3, 9.

45 Minutes Senate 1954-1955, 1 June 1955, 598.

46 Koenders, *Tussen christelijke réveil en seksuele revolutie*, 616-617.

47 NA-IND 1379, telephone note PR to HV&G, dd. 15 June 1956; NA-IND 1379, telephone note HV&G to PR, dd. 20 June 1956.

48 T. Walaardt, 'Het Paard van Troje. Het verlenen van asiel door Nederland in de periode 1945-1955', *Tijdschrift voor Sociale en Economische Geschiedenis* 6 (2009) 63-93, 86.

49 NA-IND 931, note SG to Minister of Justice, 2 November 1964, 1.

homosexuals or being a member of an organization for homosexuals.⁵⁰ Notorious homosexuals were not eligible for naturalization, because they were unassimilable, according to the Secretary-General. The request of the Hungarian man was denied.

The Secretary-General also mentioned the case of a 59-year old German man, who lived almost his entire life in the Netherlands. He lived with two younger homosexual men and he was a member of the – at that time not yet officially recognized – COC. He was also labelled a ‘notorious homosexual’ and thus ineligible for naturalization.⁵¹ Furthermore, there was a Malaysian man, who joined his partner, who had become Dutch via naturalization. The Dutch man was a ‘repatriate’ from the Dutch East Indies, who had first opted for Indonesian citizenship but later regretted his choice, regained Dutch citizenship and moved to the Netherlands.⁵² His Malaysian partner could only stay in the Netherlands if he could obtain a work permit. Homosexuals could not yet immigrate as a partner or refugee. He tried to get a work permit in 1958, in 1959 (twice), in 1960 and again in 1964 (twice), but he was rejected each time because income or housing did not seem to be guaranteed. Overall, in the immediate post-war period, homosexuality was ground to deny both entry and naturalization.

Ideas did change, albeit slowly. In 1961, the COC openly celebrated its fifteenth anniversary. The influential Catholic psychiatrist Cees Trimboos discussed homosexuality in positive terms on national radio.⁵³ Shortly afterwards Dutch Catholic doctors paid positive attention to homosexuality at their large annual conference: nobody was to blame they said, nobody should be ashamed and homosexuals deserved support, not exclusion and scorn. The Catholic doctors had made progress since their 1939 conference, *de Volkskrant* (a large national Catholic newspaper) wrote: in 1939 Catholic doctors had still discussed homosexuality very negatively.⁵⁴

50 NA-IND 931, note HV&G to SG, dd. 28 July 1964; Ibid., note SG to Minister of Justice, 2 November 1964, 1.

51 NA-IND 931, note HV&G to SG, dd. 28 July 1964; Ibid., note SG to Minister of Justice, 2 November 1964, 1.

52 For more details about repatriates, option for Indonesian citizenship and naturalization see: C. Laarman, *Oude onbekenden. Het politieke en publieke debat over postkoloniale migranten, 1945-2005* (Leiden 2013); L. Rosen Jacobson, *The Eurasian question: The colonial position and postcolonial options of colonial mixed ancestry groups from British India, Dutch East Indies and French Indochina compared* (Hilversum 2018).

53 Hekman and Duyvendak, *The Netherlands*, 105.

54 *De Volkskrant* 15 May (1965); See also: *Het Parool* 17 May (1965).

An indication of changing times was also the arrest and severe punishment of gangs of boys, who made a living by blackmailing and robbing homosexual men in the Netherlands, including French and Italian men.⁵⁵ Their victims had dared to report them. In December 1963, the famous Dutch novelist Gerard van 't Reve spoke openly on Dutch television about his homosexuality.⁵⁶ A year later, the VARA (the large social-democratic broadcasting corporation) aired a television program about homosexuality in which the chairman of COC, Benno Premssela, spoke publicly, while two homosexual couples talked about their relationships anonymously.⁵⁷ In 1965, member of parliament Cor van Dis (orthodox Christian Party SGP) still called homosexuality the 'sin of Sodom', but he was becoming an exception. In 1968, it was claimed in a Dutch television documentary on homosexual foreigners, that the situation in the Netherlands was much better than in other countries.⁵⁸ In 1970, the social-democratic (PvdA) Senator Jan Broeksz (who was also an authority in the Dutch media world) argued in favour of the recognition of homosexual relationships and the institution of gay marriages.⁵⁹ Nothing happened in response, but as the section below will show societal debates intersected with debates within the Ministry of Justice.

In July 1964, changes in the policy towards homosexuals were discussed in a note from the Head Department of Alien Affairs and Border Patrol (HV&G) A.J. Fonteijn to the Secretary-General J.C. Tenkink of the Ministry of Justice. Fonteijn said: 'homosexuality is a deviation and [...] the milieu of homosexuals [should] stay as small as possible'. 'Homosexual urges seem on the rise' because of the 'continuing disintegration of responsibility in the welfare state', 'growing organization of homosexuals', and 'a diminishing sense of norms among non-homophiles'. Young people could be 'turned' into homosexuals, and needed to be protected. Fonteijn referred to the lawyer Jan Loeff, who represented a more 'modern' view. According to Loeff homosexuality was an inclination that people were born with, which they could not change and which the 'sufferer must be able to give free reign'. Fonteijn disagreed and said that 'unsocial urges' had to be suppressed. Homosexual for-

55 *Trouw* 15 December (1965); *Het Vrije Volk* 17 June (1965); *De Volkskrant* 14 October (1965); *De Volkskrant* 7 July (1965).

56 AVRO tv broadcast, 'Literaire ontmoetingen: Gerard Kornelis van 't Reve', 11 December 1963.

57 VARA tv broadcast, 'Achter het Nieuws: Homosexualiteit', 30 December 1964.

58 *De Tijd* 19 June (1968).

59 Minutes Senate 1970-1971, 17 November 1970, 52.

eigners, who had lived in the Netherlands for a long time, would not be expelled, but they should never be naturalized.⁶⁰ In 1967, J.M. Scholten, a psychiatric advisor to the Ministry of Justice, said homosexuality could be innate or acquired and should be 'regarded as a neurosis'.⁶¹ He did not think homosexuality was on the rise, but due to growing tolerance, more people were open about it. It is clear that the Ministry of Justice, in these years, tried to collect input from experts, while experts sought to influence policy makers.

A problem was, according to some, that 'homosexual relationships were seldom monogamous'.⁶² Fonteijn said 'there rarely is a basis for love between two men which is similar to the normal basis for marriage between a man and a woman'.⁶³ Scholten agreed that homosexual contacts were often short, but in his view that was because there was no legal framework like marriage. Scholten said homosexuality should be separated from its possible harmful consequences, like blackmailing. Homosexual foreigners should only be deported if they showed 'unwanted social behaviour'.⁶⁴ This last observation, made in passing in 1967, proved to provide a breakthrough in policy, because it was seen as opening up the possibility for homosexual men to migrate to the Netherlands as partners, as long as a scandal was avoided. It was taken to mean that the 'inclination' of the migrant had to be ignored.⁶⁵ It was a revolutionary change because homosexuality stopped being an explicit ground for the rejection of migrants.

Between 1945 and 1967, post-war reconstruction, severe housing shortages, the arrival of 300,000 immigrants from the Dutch East Indies, and the departure of 400,000 Dutch to overseas destinations were structural changes in or affecting migration. Overall, immigration policies were restrictive.⁶⁶ Entry and naturalization of foreign homosexuals were restricted as well, but numbers were low. In this period, homosexuals in the Netherlands, who met with few restrictions (compared to other countries), emancipated and organized. They

60 NA-IND 931, note HV&G to SG, dd. 28 July 1964.

61 J. Euwema, (*Jeugd*)*psychiatrische diagnostiek in de forensische praktijk* (Haren 2000) 26; NA-IND 931, note SG to Minister of Justice, dd. 10 November 1967; NA-IND 931, Letter J. M. Scholten to Mr. Fonteijn, 6 November 1967.

62 NA-IND 931, note HV&G to SG, 3 August 1964.

63 NA-IND 931, note SG to Minister of Justice, 2 November 1967.

64 NA-IND 931, Letter J. M. Scholten to Mr. Fonteijn, 6 November 1967.

65 NA-IND 931, note SG to Minister of Justice, 2 November 1967.

66 M. Schrover and T. Walaardt, 'Displaced persons, returnees and 'unsuitables'. The Dutch selection of DPs (1945–1951)', *Continuity and Change* (2018) 1–28.

however did not campaign for rights for homosexual immigrants. Debates were mainly conducted within the Ministry of Justice and with expert advisors. The high-level civil servant Fonteijn said the problem was the absence of stable relationship: he implied the immigrant might become a public charge if the relationship ended. The solution offered by psychiatric advisor Scholten – although not completely fitting the problem as it was defined – was to ignore the 'inclination': no scandal, no problem.

Charter flights full of homosexuals: moral panic in the mid-1960s

In the 1960s, another debate developed more or less parallel to the one described above. Dutch authorities were afraid that lenient Dutch policies would attract homosexual foreigners: 'Germans, whose real inclinations would be punishable in Germany, will come this way on a scale greater than now'.⁶⁷ The Minister of Justice, Carel Polak (Liberal party VVD) said: 'In general, in the countries that surround us, the penalties against homosexuality are more severe than here. The Netherlands should not become too attractive for foreigners with this inclination'.⁶⁸ In 1965, an investigation started into 'charter flights full of homosexuals' that were believed to be landing at Schiphol Airport. In January 1965, several newspapers wrote about the increasing number of bars for homosexuals in Amsterdam.⁶⁹ *Het Parool* (a large national newspaper based in Amsterdam) wrote that there were 25 gay bars in Amsterdam. This information was listed in the World Report Travel Guide and Amsterdam was the city with the most 'meeting places'. Homosexual men from all around the world, but especially from Germany and the UK knew about these opportunities in Amsterdam, and this was ruining Amsterdam's reputation according to *Het Parool*. The chief of police said homosexuals were not the problem, but homosexuality was: men were robbed and blackmailed. The gay bars attracted young runaways who made a living from robbery, blackmail, and prostitution.⁷⁰ The Amsterdam city council decided to reduce the number of gay bars. A city

67 NA-IND 931, note HV&G to SG, 28 July 1964.

68 PC Justice 1967-1968, 19 October 1967, 23.

69 *Nieuwsblad van het Noorden* 13 January (1965); *Leeuwarder Courant* 13 January (1965); *Het Vrije Volk* 13 January (1965).

70 *Het Parool* 16 January (1965).

council member for the PSP (a left-wing party) said this would ruin Amsterdam's traditional reputation as a city of refuge for minorities.⁷¹

In 1965, the sensational murder of the English film director Claude Berkeley in Amsterdam led to a moral panic. Berkeley, who according to newspapers had a 'homophile character', had lived in the Netherlands for five years.⁷² He had been in touch with the police because of 'short contacts with men and boys'.⁷³ Newspapers articles discussed his death and the increase in the number of homosexual foreigners in the same context, thus adding to the problematization of homosexuality, and enforcing the idea that there was a crisis. In 1965 the world-famous American professor in pathology and 'family man' Richard Follis – who might according to some newspapers have been working for the CIA – disappeared in Amsterdam. Because he was last seen very drunk in the company of three 'known' homosexual men, the police started a 'homo hunt', with no result. A few days later the professor's body was found in an Amsterdam canal.⁷⁴ Newspapers connected the cases of Berkeley and Follis to each other and to the increase in the number of homosexual foreigners. *De Telegraaf* (a right-wing populist national newspaper) ran the headline: 'Is the capital becoming a Mecca for homophiles?'⁷⁵ According to the newspaper, especially on Friday and Saturday night the number of homosexual foreigners in Amsterdam was large. The Amsterdam Vice Squad said: 'We do not know with certainty how many foreigners come here. Acts of homosexuality are not criminalized in the Netherlands, contrary to in Germany and England. Exactly from those countries – but also from more southern countries – homophiles come to Amsterdam to spend their holidays or a weekend'. Interestingly, the police tried to prevent homosexual foreigners from obtaining a work permit, although we 'don't know [...] if they are homophile or not'.⁷⁶ This newspaper article prompted the Ministry of Justice to investigate the number of homosexuals arriving in the Netherlands. In December 1965, the Ministry asked the Amsterdam Police Department to monitor the arrival of homosexuals at Schiphol Airport.⁷⁷ The police screened

71 *Het Parool* 18 January (1965).

72 *De Waarheid* 25 September (1965); *Telegraaf* 27 September (1965).

73 *Het Vrije Volk* 29 September (1965); *Leeuwarder Courant* 29 September (1965); *Limburgsch Dagblad* 30 September (1965); *De Waarheid* 4 October (1965).

74 *The Washington Post* 5 January (1966); *Nieuwsblad van het Noorden* 9 December (1965); *Algemeen Handelsblad* 8 December (1965); *De Waarheid* 9 December (1965); *De Tijd* 31 December (1965).

75 *Telegraaf* 9 October (1965).

76 *Ibid.*

77 NA-IND 931, Letter Municipal Police Amsterdam to HV&G, 9 March 1966.

passengers and ordered luggage to be searched for 'homosexual attributes'.⁷⁸ On Friday, 28 January 1966, four flights from London landed at Schiphol. The officer on duty reported there was one foreigner on these flights, who might be a homosexual, judging by his 'appearance and statement', combined with the fact that he was planning to stay in a hotel that was known to put up homosexuals. The police found a powder puff in another man's hand luggage, which the police considered to be a gay attribute. It was no reason to stop the man from entering the Netherlands. Other men who looked like they might be homosexuals also had their luggage searched, but nothing suspicious was found. The report concluded that there seemed to be no massive influx of homosexuals, although the report said that numbers might increase during the holiday season.⁷⁹

Hotels in Amsterdam were also monitored and their registers were checked, especially for British men, but the result did not support rumours about a massive influx.⁸⁰ The personnel at Schiphol Airport continued to talk about the airplanes as '*flikker-machines*' (faggot machines).⁸¹ The Minister of Justice, however concluded that the observation that 'charter flights full of homos were flying on and off in the weekends is based on exaggeration'.⁸² The Amsterdam police suggested that men might now be arriving by boat at Oostende.⁸³ There may not have been 'charter planes full of homosexuals', papers wrote, but British gay men did come to Amsterdam.⁸⁴

During the moral panic of the 1960s newspapers were important claim makers. The problem was defined as the increase in the number of foreign homosexuals. The cause was Dutch lenient policy. The connection to the sensational murders of Berkeley and Follis made the problem bigger. The response by the Ministry of Justice and the police was half-hearted: luggage was searched but nothing suspicious was found. The policy consequences of post-modern problematization were nil.

78 NA-IND 931, Report Amsterdam Alien Police, 28 February 1966.

79 NA-IND 931, Report Amsterdam Alien Police, 28 February 1966.

80 NA-IND 931, Report Amsterdam Police, section Hotel Controls, 23 December 1965.

81 NA-IND 931, handwritten note, 16 March 1966. The joke that is made refers to the meaning of 'flicker', which is both a derogatory name for a homosexual, but also a verb for 'flashing light' or 'flickering light'.

82 NA-IND 931, Note Loco-SG to Minister of Justice, 2 November 1967.

83 NA-IND 931, Concept letter HV&G to Loco-SG, 31 October 1967.

84 *De Telegraaf* 10 May (1966).

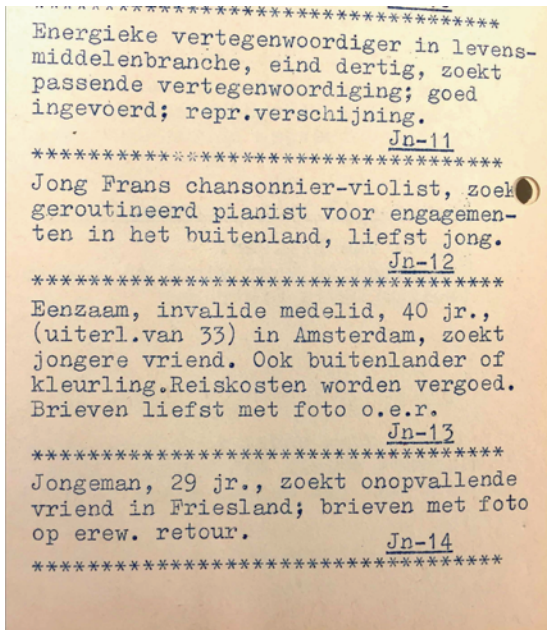


Illustration 2 Contact advertisement called Schakeltje from June 1960: foreigners and 'coloured' men can respond (source: De Schakel, June 1960).

Avoiding scandal: the solution in practice in the 1960s

In 1968, the Hungarian man mentioned earlier, was naturalized.⁸⁵ He had been living in the Netherlands continuously for 28 years.⁸⁶ The German man, who was also mentioned before, was however still considered to be a 'notorious homosexual', and was again denied naturalization.⁸⁷ He was not deported, and three years later, he was naturalized after all.⁸⁸ Something had changed. The case of the Malaysian man (mentioned above) caused a breakthrough. The member of parliament Frits Daams (PvdA) took an interest in his case.⁸⁹ His discussions with the Minister of Justice Ynso Scholten (Protestant party CHU) led to inquiries which resulted in a positive appraisal of the relationship between the Dutch man and his Malaysian partner. 'The relationship between both men seems

⁸⁵ Minutes Parliament 1968-1969, Annex 9841.2, 2.

⁸⁶ Minutes Parliament 1968-1969, Annex 9841.3, 4; Minutes Parliament 1968-1969, 16 October 1968, 448; Minutes Parliament 1968-1969, Annex 9841.4.

⁸⁷ NA-IND 931, SG to Minister of Justice, 2 November 1964, 2.

⁸⁸ Minutes Parliament 1967, Extraordinary meeting 2 May 1967, 137; Minutes Senate 1967, Extraordinary meeting 23 May 1967, 173; Minutes Parliament 1967, Annex 9062.4.

⁸⁹ During his term as a parliamentarian, Mr. Daams was very active on topic of 'spijtoptanten': people returning from Indonesia. Source: <http://www.parlement.com/id/vg09lkzkg4zq/fhjmfritsdaams>.

[...] of a solid nature. As said, such relationships are very rare.⁹⁰ The note concluded that the relationship would not lead to a 'scandal'. In December 1965, Daams approached the new Minister of Justice, Ivo Samkalden (PvdA) who agreed to reconsider the case provided the Malaysian man would secure work and housing independently from his partner and in a different city in order 'to avoid scandal'.⁹¹ This was a break with past policies because the Minister suggested to ignore the homosexual relationship. In practice it did not benefit the Malaysian man, because he was unable to secure a job and his request for a staying permit was denied again in September 1966. A year later the request was resubmitted, but this time his contract with an Indian restaurant was not deemed reliable. Also, he wanted to live at an address that was known to the Amsterdam vice police as a house of homosexuals. That was not enough to 'avoid scandal', and the advice was again negative.⁹² The advice was provided by J. Boudewijn, working at the HV&G, and it was sent to many stakeholders. A.F. Bulthuis, senior civil servant at the Ministry of Justice and the superior of Boudewijn, wrote: 'I hold it as very unadvisable to promote a homophile relationship by granting a staying permit'. Fonteijn was milder and said that 'although [Malay man] will probably be able to secure work, it seems to me that given the current circumstances there is no reason to admit a cook or kitchen boys'.⁹³ He made the economic situation the most relevant factor and treated the Malaysian man as any other labour immigrant. Minister Samkalden commented that he would like to get advice about the issue of 'family reunification' for homosexual couples.⁹⁴ The case of the Malaysian man showed that individual cases were crucial to policy changes, as was advocacy on behalf of the applicants.

In 1962, an Italian man came to the Netherlands to work for a company in Haarlem. The Italian man used the right of the free movement of workers within the European Economic Community (EEC). He had met a Dutch man in Italy in 1956 and since he was a nurse, he also took care of the ill father of his Dutch friend. When the Dutch police found out he had been arrested in Italy for shoplifting and fare-dodging on the train, he was ordered to leave the Benelux-area. In 1963, the Dutch man's lawyer told the police the two men were in a relationship, though

90 NA-IND 931, note HV&G to SG, 3 August 1964.

91 NA-IND 931, note HV&G to SG, 31 October 1967, 2; NA-IND 931, note HV&G to AV, 9 January 1967, 1

92 NA-IND 931, note HV&G to AV, 9 January 1967, 2.

93 Ibid.

94 Ibid. It seems that the Malaysian man did come to the Netherlands in the end, since he was buried near Rotterdam in 1985.

the couple had previously denied this. Rumours circulated that the Italian man earned a lot of money by massaging men. The Dutch man said his Italian partner only massaged him and his late father. The Italian's request was refused in 1964. In 1966, he reapplied this time from Germany where he had found work. He had arranged housing with a family in Haarlem.⁹⁵ In this way he hoped to avoid the impression that he and the Dutch man were in a relationship, similar to what the Malaysian man had done before him. According to Dutch authorities the Italian man could not be rejected because he was a citizen of an EEC country. He only could be denied to stay if he was a danger to the public order. Boudewijn suggested that the ('perhaps expired') criminal records, or the perceived 'milieu' (homosexual massages), could lead to the conclusion that the Italian man was a danger to the public order. Bulthuis added that under Benelux legislation, 'danger for the public order' also included moral offenses.⁹⁶ Reference was made to the 1964 decision which said homosexuality was an aberration, and that the group of homosexuals should be kept as small as possible.⁹⁷

Homosexuality was still seen as something foreign to the Netherlands, which had to be kept out.⁹⁸ Homosexual men could come and stay as labour migrants. Rather large-scale guest worker migration in this period made this a likely scenario. In practice, civil servants tried to restrict numbers by seeking to prove that scandal had insufficiently been avoided. Policies had changed, but in practice much remained the same. Claim makers were civil servants, politicians, and lawyers.

Relaxation in the 1970s

In 1967, a Spanish couturier became the subject of discussion.⁹⁹ He lived with his partner in Rotterdam. A staying permit was refused by the Rotterdam police, because of their homosexual relationship.¹⁰⁰ The Spaniard asked for a revision. The Advisory Committee for Alien Issues (*Adviescommissie voor Vreemdelingenzaken* ACVZ) – created in 1957 as an independent advisory board for appeals in immigration cases¹⁰¹

95 NA-IND 931, note HV&G to AV, 9 January 1967, 2.

96 Ibid., 3. Bulthuis referred to page C16, where the article on moral offenses is actually on C15.

97 See also NA-IND 931, note HV&G to SG, dd. 28 July 1964, 1.

98 NA-IND 931, note SG to Minister of Justice, dd. 2 November 1964, 1.

99 Bonjour, *Grens en gezin*, 120-121.

100 NA-IND 931, note HV&G to SG, 31 October 1967, 1.

101 T. Walaardt, *Geruisloos inwilligen. Argumenten in de Nederlandse asielprocedure in de periode 1945-*

– saw reasons to grant the Spaniard a staying permit. This brought the case again to the attention of the Ministry of Justice, where civil servant Boudewijn was preparing a report on homosexual immigration.

Within the Ministry people now realized that Minister Samkalden two years earlier, in 1965, had created an opportunity, when he said that homosexuality in itself was not a reason to refuse a staying or working permit. Requirements were a job and housing, both of which should not cause a scandal. The ACVZ asked what a 'scandal' meant? Boudewijn agreed that ideas regarding homosexuality were changing. He forwarded the case to the Ministry of Economic Affairs asking for an opinion on the usefulness of the Spanish couturier to the Dutch labour market. Boudewijn realized that the outcome of this case would set a clearer precedent than Minister Samkalden (accidentally) had done in 1965.¹⁰² It is interesting that Boudewijn ends his report by mentioning two counter-indications: the Spaniard held back information on an earlier conviction, and on the homosexual relationship itself. Boudewijn's report was sent to the Secretary General of the Ministry of Justice, with comments from Bulthuis, who said that Minister Samkalden's decision in the case of the Malaysian man was sufficient to decide also this case. In Bulthuis' view, Samkalden's decision effectively made homosexuality irrelevant provided it did not cause a scandal, and since the latter condition was subjective, it was not really a condition. The only requirement for a staying permit (for all migrants) was having a job and housing.¹⁰³

The Ministry of Economic Affairs said 'in 9 out of 10 cases' a more thorough investigation was needed and that would take one year. Applicants were granted a one-year staying permit while waiting for the outcomes of this investigation. The investigation into the case of the Spaniard showed he was of economic use, since he set up a flourishing company within a short time.¹⁰⁴ The Spanish man received his residence permit in 1967 and was naturalized in March 1974.¹⁰⁵

Discussions in Parliament, within the Ministry of Justice and in newspapers continued.¹⁰⁶ In 1969, a Dutch man wrote at length to the

1994 (Hilversum 2012) 36-37; A.H.J. Swart, *De toelating en uitzetting van vreemdelingen* (Deventer 1978) 351-367.

102 NA-IND 931, internal note HV&G, 19 October 1967, 2.

103 NA-IND 931, note HV&G to SG, 31 October 1967, 2.

104 Ibid., 3.

105 Minutes Senate 1973-1974, 19 March 1974, 410.

106 *De Telegraaf* 10 May (1966); *Het Vrije Volk* 13 October (1967); *Leeuwarder Courant* 9 October (1968); NA-IND 931, '1. De vreemdelingendienst te Amsterdam', no date; Minutes Parliament 1968-1969, 22 April 1969, 2642; Ibid. 2644.

Minister of Justice about discrimination at border crossings between the Netherlands and Germany.¹⁰⁷ He tried to bring several boyfriends via various crossings into the Netherlands, and he reported on his encounters with the border police.¹⁰⁸ His tactics were similar to those of activists in the USA in the 1980s. The Ministry did not take his complaints lightly and the report was forwarded to the Commander of the Royal Military Constabulary (*Marechaussee*).¹⁰⁹ Research showed responses were arbitrary: at one crossing the man could enter with his friend, while at others he could not.¹¹⁰ 'Lack of means' was given as a reason for denying entry. According to the 1966 Alien Circular, tourists coming to the Netherlands needed to have a certain amount of money to sustain themselves. The minimum was 25 guilders per day.¹¹¹ People who said they were planning to stay for the weekend could be denied if they did not have 50 guilders on them. The Ministry of Justice, in response to the report, warned the border police to deal carefully with homosexuals and to contact the Ministry to avoid the accusations of discrimination.

In this period other changes occurred as well. In 1971 article 248bis was removed from the Penal Code; the COC had very actively been campaigning for this. In 1973, Dutch homosexual men were allowed to serve in the army. Before 1973, men who were believed to be homosexuals were given the label S5; 'mentally instable'. About 2.4 per cent of the enlisted men got this label. Rumour had it, that S5 meant you would not find employment as a civil servant or as a school teacher. The abolition of S5 and the removal of article 248bis were COC successes.

Homosexuality was in the 1970s no longer an automatic contra-indication for foreigners who tried to obtain a staying and labour permit. Foreigners could stay in the Netherlands *despite* their homosexuality because it was officially deemed to be irrelevant. Claim makers continued to be civil servants, politicians and lawyers. Though the change in policy was radical in theory, in practice not much changed because the possibility to come as a labour migrant was short-lived. A structural factor, like the economic crisis, which started with the oil crisis, led to the end of labour recruitment and made labour migration after 1975 difficult.¹¹² Alternatives were family migration and refugee migration.

107 NA-IND 931, letter [Dutchman] to Minister of Justice, dd. 25 September 1969, 1.

108 NA-IND 931, letter [Dutchman] to Minister of Justice, dd. 25 September 1969, 2.

109 NA-IND 931, note from HV&G to Commander Military Constabulary, 6 October 1969.

110 NA-IND 931, letter Military Constabulary to Minister of Justice, 21 November 1969, 1.

111 Alien Circular 1966, B-3.

112 Schrover and Obdeijn, *Komen en gaan*, 267.

Family Migration: the solution in the 1970s

For homosexual immigrants, the next big change was the recognition of their homosexual relationships as a ground for admission; they appealed to article 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms. When the Convention was drafted nobody thought this applied to same-sex non-marital relationships, but in the 1970s it was claimed it could. Homosexual relationships came to be regarded as equal to heterosexual relationships, while heterosexual non-marital relationships were recognized as equal to marriage. According to the sociologist Saskia Bonjour, this change was the result of the Sexual Revolution of the 1960s, and the active role of State Secretary of Justice Jan Glastra van Loon (liberal party D66).¹¹³ According to the jurist Sarah van Walsum, it was however the migration from the (former) Dutch colony Surinam which led to changes. In Surinam, it was – according to policy makers – normal for two women to form a household. It was seen as a remnant of slavery. In the treaty that regulated migration after Surinam's independence (1975), non-marital relationships (homosexual or heterosexual) were explicitly mentioned as a basis for family migration to the Netherlands.¹¹⁴ According to Van Walsum, this led civil servants to conclude that if a household of two women with their children was regarded as a family, this should also mean that Dutch men could bring their foreign male partners to the Netherlands within the context of family formation.

Debates about homosexual family migration started properly when a homosexual couple living in Amsterdam refused to accept a rent increase. Their landlady called the Alien Police and the foreign partner was ordered to leave the country. Because he had to return to a country where homosexuality was illegal, he did not protest. He feared that publicity in the Netherlands would bring him in trouble in his country of origin.¹¹⁵ Minister of Justice Polak said a foreigner should not be expelled because he was living together without being married or because he was in a homosexual relationship.¹¹⁶ He added that living together was not deemed 'dangerous for public order or national security' anymore.¹¹⁷

113 Bonjour, *Grens en gezin*, 118, 128.

114 S. van Walsum, *The family and the nation. Dutch family migration policies in the context of changing family norms* (Newcastle 2008); Swart, *De toelating en uitzetting van vreemdelingen*, 165-166, 411.

115 Minutes Parliament 1968-1969, 22 April 1969, 2642.

116 Ibid., 2669.

117 Minutes Parliament 1969-1970, Annex 582, 1193.

Rather surprisingly Glastra van Loon's instructions concerning equal treatment were only communicated to the local police by his successor Zeevalking (D66) in July 1975, with the observation that 'these policy guidelines are already applied several years at the department. It is of course important that you are aware of these.'¹¹⁸ Local police officers were authorized to issue permits and visa, but refusals could only come from the Ministry, Zeevalking emphasized.¹¹⁹

Overall and on a more structural level, Dutch policy makers very much wanted to avoid that the separation between the Netherlands and Surinam would be problematic. Glastra van Loon's role was important, but his decision had few immediate consequences. The decision had been taken more or less in passing. The COC was still not an active claim maker. In the 1970s the COC campaigned mostly for the rights of homosexuals in the Netherlands. It tried to improve its legal basis, get royal recognition, professionalize, and get more subsidies. It wanted to grow from 4,000 to 8,000 members, and it tried to get gay politicians onto the candidate lists of political parties.¹²⁰ Part of the subsidies would be used to help set up organizations in other countries, based on Dutch expertise.¹²¹ The COC did not play a role in defining problems or offering solutions. In 1971, the COC celebrated its 25th birthday without commemorating any of the changes in immigration policies described above, nor presenting any plans on this point for the future. This role of the COC would change after the debate moved towards refugee migration.

Homosexual refugees: the solution in the 1980s-1990s

In 1973, an Amsterdam lawyer presented a long list of cases regarding partner migration to Glastra van Loon. In one case, Glastra van Loon rather casually observed, at a meeting that was attended by the COC, that it might be difficult to apply for partner migration in a country in which homosexuals were persecuted. In that case applicants 'can be placed in the category of refugees' according to Glastra van Loon.¹²² This is the earliest suggestion that persons could apply for refugee status

¹¹⁸ Interim instruction Alien Circular, 7 July 1975.

¹¹⁹ Van Walsum, Jones and Legêne, 'Belonging and membership', 164-165.

¹²⁰ *De Telegraaf* 23 November (1971); *Trouw* 1 May (1972); *Het Vrije Volk* 18 November (1972); *De Tijd* 18 September (1973); *Het Parool* 18 September (1973); *NRC Handelsblad* 20 September (1973); *Trouw* 9 March (1977).

¹²¹ *Het Vrije Volk* 19 September (1973).

¹²² NA-IND 931, Minutes of meeting State Secretary with COC, 24 October 1973.

because of their sexual orientation. In 1979, gay rights organizations tested the idea that the concept 'a social group' in the 1951 Refugee Convention could apply to homosexuals. Five cases of men who claimed refugee status because they had been repressed on account of their sexuality, were presented to the Minister of Justice. The COC now started to campaign and complained that Amnesty International did not acknowledge homosexuality as a reason for refugee status.¹²³ In addition a 'Committee on Homosexual Refugees' became an active claim maker.¹²⁴ The Dutch and international gay community became better organized.¹²⁵ On the 1979 International Gay Solidarity Day one of the main themes was the persecution of homosexuals in Iran.¹²⁶ An organization that called itself the Pink Front sent a letter to the State Secretary of Justice, drawing attention to the fate of thirty Iranian gay refugees.¹²⁷

In 1980, a Gay Rights Committee asked the State Secretary of Justice Bert Haars (Protestant/Christian Democrat Party CHU/CDA) to change her 'policy in such a way that those who are persecuted for homosexuality can in principle obtain refugee status'.¹²⁸ Haars replied that homosexuality in itself would not lead to a refugee status, because applicants needed to have been persecuted. A motion was adopted in Parliament, which asked for clarity regarding the recognition of persecution based on homosexuality as a possible ground for asylum.¹²⁹ The COC organized numerous meetings throughout the Netherlands on this issue, attended by national politicians, representing the political spectrum from left to right.¹³⁰ The adoption of the motion in Parliament again – like with earlier policy changes – did not change much in practice.

At a Council of Europe meeting in 1980 Dutch representatives asked other countries about their policies regarding homosexual asylum seekers.¹³¹ The Austrian representative claimed refugee status had already

¹²³ *Trouw* 21 September (1979).

¹²⁴ International Institute of Social History, Internationaal Homo/Lesbisch Informatiecentrum en Archief (IISH-IHLIA) Homo-vluchtelingen 5, Request Liesker to State Secretary of Justice, dd. 24 December 1981.

¹²⁵ Hekma, *Homoseksualiteit in Nederland*, 125-126.

¹²⁶ *Nieuwsblad van het Noorden* 2 July (1979).

¹²⁷ IISH-IHLIA, Homo-vluchtelingen 4, Letter Het Roze Front to State Secretary of Justice, 29 June 1979.

¹²⁸ IISH-IHLIA, Homo-vluchtelingen 4, Letter of R. P. van Diggelen to State Secretary of Justice, 9 January 1980.

¹²⁹ PC Justice 1979-1980, 28 January 1980, 761. Motion 15649 no. 16; Minutes Parliament 1979-1980, 12 February 1980, 2872.

¹³⁰ Korte van Hemel (CDA), Konings (PvdA), Verkerk (CPN), Combee (VVD), and Beks (PPR) *Limburgsch Dagblad* 6 May (1981).

¹³¹ NA-IND 2658, 'CAHAR 7th meeting', n.d. [April 1980].

been granted to homosexuals on the grounds of belonging a social group, Sweden said it was preparing new policies, and Switzerland stated it had accepted some cases on 'humanitarian grounds'.¹³² The Austrian decision is only mentioned in the unofficial handwritten notes of the Dutch representative at the meeting, and could not be confirmed by other sources.

On 13 August 1981, the Dutch High Court ruled that the 'social group' in the 1951 Refugee Convention could apply to homosexuals. Homosexuals could apply for refugee status based on sexuality.¹³³ In 1981 a homosexual Chilean man got refugee status in the Netherlands.¹³⁴ He came to the Netherlands in 1975, and first had a tourist visa and later a student visa.¹³⁵ In 1978 he applied for refugee status.¹³⁶ His request was denied: he had applied too long after arrival, he had been living in Chile without many problems, and it was not clear if homosexuals were persecuted in Chile.¹³⁷ His lawyer however emphasized the uniqueness of his case, which combined personal and political motives: if the Chilean man was granted refugee status that would not mean all Chilean homosexuals would come to the Netherlands, according to his lawyer.¹³⁸ The Chilean man was granted refugee status, but probably more on political grounds than because of his sexuality.¹³⁹

A large number of individual cases were brought before the court. The COC drew attention to the fate of homosexuals in Kenya, Nigeria, Ireland, Chile, parts of the US, the Soviet Union, New Zealand, and Iran (where it was punishable by death). In the UK, homosexuals were banned from certain jobs. Many countries were jealous of the Netherlands, according to the COC. The COC also protested against the World Health Organization which still labelled homosexuality a disease, and Amnesty International which refused to campaign for homosexuals in prison.¹⁴⁰

¹³² NA-IND 2658, handwritten notes Van Emde Boas, meeting Ministry of Foreign Affairs 3 May [1980].

¹³³ NA-IND 2658, Verdict Raad van State, department jurisdiction, 13 August 1981, 10.

¹³⁴ IISH-IHLIA, Homo-vluchtelingen 5, Interview [Chilean man] by Ministry of Justice, 4 January 1979.

¹³⁵ IISH-IHLIA, Homo-vluchtelingen 5, Report of the ACV, 5 December 1979, 3.

¹³⁶ IISH-IHLIA, Homo-vluchtelingen 5, Decision Ministry of Justice in the case of [Chilean man] 13 May 1980.

¹³⁷ IISH-IHLIA, Homo-vluchtelingen 5, Decision Ministry of Justice in the case of [Chilean man] 13 May 1980.

¹³⁸ IISH-IHLIA, Homo-vluchtelingen 5, Plea notes Mr. R. B. Hartkamp 2 June 1983.

¹³⁹ *De Waarheid* 16 October (1987).

¹⁴⁰ *De Waarheid* 4 January (1984).

The Department Refugee Help of the COC advertised Dutch policies in gay magazines throughout the world. In response they received a large number of letters which the COC presented as a thick file to the press and policy makers.¹⁴¹ In May 1990 *Het Vrije Volk* (a national social democratic newspaper) wrote that 'Homosexuality was in practice hardly acknowledged as a ground for asylum'.¹⁴² The COC had approached 250 lawyers who regularly dealt with refugee cases. They had reported 38 cases in which homosexuality was an issue but in none of these cases a refugee status had been granted based on homosexuality, although this was already possible for ten years. The COC drew attention to the problems homosexuals had if they lived in a country where homosexuality was forbidden. The State Secretary of Justice Aad Kosto (PvdA) responded that being homosexual in itself was no reason for getting refugee status. Applicants had to have been persecuted and proof of that had to be presented.¹⁴³ In protest to Kosto's strict immigration policies an organization called RaRa (*Revolutionaire Anti-Racistiese Aktie*) detonated bombs in the Military Police barracks in Oldenzaal and Arnhem (1990), Kosto's house (1991), and the Ministries of Justice, Internal Affairs and Social Affairs (all in 1993). Nobody got killed but the damage was substantial, and a picture of Kosto saving his cat from the rubble became iconic. Organizations distanced themselves from the RaRa.

According to the COC, only three homosexuals had been admitted to the Netherlands since it became possible for them to claim refugee status. They were however admitted on humanitarian grounds, not as refugees.¹⁴⁴ Kosto instructed civil servants to show awareness that homosexuality might be a reason for fleeing. He emphasized that there was no need to fear that 'a stream of homosexuals' would come to the Netherlands. Feeling uncomfortable, or not being able to fully express yourself, was no reason to be granted refugee status. The COC threatened it would make Dutch policies regarding homosexuals known in countries throughout the world.¹⁴⁵

The COC mentioned the case of a 45-year-old British citizen – Andrew Prichodsky – who was refused refugee status a few months ear-

¹⁴¹ *De Waarheid* 26 June (1989).

¹⁴² *Het Vrije Volk* 8 May (1990); see also: *Het Parool* 8 May (1990).

¹⁴³ *Het Vrije Volk* 8 May (1990).

¹⁴⁴ *Reformatorisch Dagblad* 8 May (1990); See also: M. Bos, R. Pot and E. Willems, 'Grensverlegging of grensversperring? Vreemdelingenrecht en homoseksualiteit', in: M. Moerings and A. Mattijsen (eds.), *Homoseksualiteit en recht* (Utrecht 1992) 163-184, 177.

¹⁴⁵ *Trouw* 8 May (1990).

lier.¹⁴⁶ Prichodsky had arrived in 1989 and was ordered to leave the country after his asylum request had been turned down. The COC exercised pressure and the case was reviewed. The COC saw this as a test case.¹⁴⁷ Prichodsky escaped – in his words – persecution in the UK.¹⁴⁸ In 1992, it was decided he could stay in the Netherlands because he was an EU subject; he did not get refugee status. Dutch papers wrote that Prichodsky had been persecuted in the UK because he had a love affair with a 17-year-old boy. He had been sentenced to jail twice time before because of earlier affaires with boys. If he would return to the UK he would be jailed again. The newspaper wrote that ‘our tolerance towards homosexuals was proverbial. We were a white raven compared to other countries.’ Henk Krol, editor of the *Gay Krant*, said he was happy that Prichodsky had been allowed to stay, but disappointed that it was not as a refugee. He rather surprisingly added that if all homosexuals in Europe would come to the Netherlands, the country would become extremely full.¹⁴⁹

The Ministry emphasized that the decision regarding Prichodsky did not mean a new category of refugees had been created, because Prichodsky had not been granted refugee status.¹⁵⁰ Organizations continued to present cases to courts and they sought to involve the press.¹⁵¹ In April 1991 *Het Parool* wrote that ‘a stream of homosexuals’ was coming from Eastern Europe. Since the Wall had come down, dozens of people from Eastern Europe applied for refugee status in the Netherlands saying they were homosexuals. Refugee Work Netherlands (*VluchtelingenWerk Nederland* VWN: a large refugee support organization) called it the tip of the iceberg. Homosexuality had been regarded by communist regimes as a capitalist perversity. Former communist countries however were not more open towards homosexuals;

146 *SEK* (COC magazine), March (1990).

147 *De Volkskrant* 8 May (1990).

148 *De Volkskrant* 29 March (1991).

149 *De Volkskrant* 8 May (1990); *Trouw* 8 May (1990); *De Volkskrant* 29 March (1991); *Trouw* 24 April (1992); *Nieuwsblad van het Noorden* 23 April (1992); Prichodsky might, in hindsight, not have been the best case for a COC campaign. According to an article in *The Times* dated 11 August (1971) Prichodsky, who was 24 at the time, was convicted for making and selling photographs of young boy (some of them 9 years old) in erotic poses. He met the boys – some were runaways – at amusement arcades. He was convicted to three years imprisonment. Dutch newspapers do not refer to this. In later years his name frequently reappears. In 2000 *The Guardian* mentioned him in long article on a ring of paedophiles operating between London, Berlin and Amsterdam.

150 *De Volkskrant* 23 April (1992); *Nieuwsblad van het Noorden* 23 April (1992); *Trouw* 24 April (1992); *Limburgsch Dagblad* 24 April 1992; *Nieuwsblad van het Noorden* 24 April 1992.

151 *Nieuwsblad van het Noorden* 5 June (1993).

a large number of people had hoped they would be. Men in communist countries were not used to self-identify as homosexuals and they did not mention it as a reason for fleeing. VWN and the COC were trying to take stock. The COC said in *Het Parool* that homosexuals in Eastern Europe were not stoned to death, as they were in Iran, but they were not accepted either.¹⁵² The Ministry of Foreign Affairs investigated the situation for homosexuals in Romania. It had assumed that persecution of homosexuals had stopped after the Revolution in 1989, and for this reason it had turned down many asylum requests by Romanian homosexuals.¹⁵³ The news about the official investigation was published together with an interview with two Romanian homosexuals who applied for asylum in the Netherlands. The *Limburgsch Dagblad* (a local Dutch newspaper) wrote: 'Seeking asylum torture for Romanian homos'. The couple from Romania had a relationship since 1987 and escaped to the Netherlands in 1992. One of them had married a woman in Romania and had a daughter. When he identified as homosexual he lost his job and was followed by the police. He was arrested in 1987 together with 36 other homosexuals and put in jail. He was convicted to five years of confinement, but a general amnesty by Ceausescu led to his release. The couple was continuously harassed by the police. If they broke the anti-gay law, they would go straight to jail. When the revolution broke out in 1989, they had hoped for a change. However, when it became clear that the same law was continued after the revolution, they decided to leave the country. Via a long route through Europe they arrived in the Netherlands and started their asylum procedure. They learned to ride a bike, to speak Dutch and they took computer lessons; all to show that they were able to assimilate. They said: 'We can now live in one house, sleep in one room, walk the streets together, go to the movies together. This freedom makes it worth to have escaped our mother country'.¹⁵⁴ In the same period there were many similar newspaper articles.

As this section showed, the 1973 recognition by the Secretary of State of the Ministry of Justice that homosexual foreigners could apply for refugee status, and the 1981 recognition of the first homosexual applicant, did not change much. The COC, which had reached many of his domestic goals, increasingly focussed on homosexual foreigners. On a structural level, persecutions of homosexuals in Iran after the 1979

¹⁵² *Het Parool* 11 April (1991).

¹⁵³ *Limburgsch Dagblad* 23 October (1993).

¹⁵⁴ *Limburgsch Dagblad* 23 October (1993).

Revolution and Anita Bryant's anti-gay campaign in the US offered a possibility to position the Netherlands as a gay-friendly country. Since immigration policies became more restrictive in this period,¹⁵⁵ this provided a welcome counterimage with very few real consequences. In practice it remained very difficult to get refugee status based on sexuality, as the section above described.

Conclusion

This article analysed when and why Dutch policies regarding homosexual immigrants changed in the period 1945-1992. It adds to the literature by looking at changes over a long period of time and in several policy fields. Post-1945 changes were fundamental, when compared to the pre-war situation. In the immediate post-war years, homosexual foreigners were denied entry, or if they were already living in the Netherlands, they were denied the right to naturalise. In the 1960s, foreigners, who had been living in the Netherlands for years, could naturalise provided they avoided a scandal. This same principle – avoiding scandal – was later applied to homosexual foreigners who asked for a staying permit: they got permits, if they had work, and lived separate from their partners. They could come as labour migrants, and their sexual orientation was deemed irrelevant. The economic recession after 1975 made labour migration more difficult, closing of the newly created possibilities for homosexual foreigners. The debate moved to family migration and refugee migration. Partners wanted to come not *despite* being homosexuals, but *because* they were homosexuals who wanted to live with their partners. The decision to allow family migration was made more or less casually, although the change that resulted from it was revolutionary. Rather surprisingly, it took years before this decision became known. The very same thing happened with the decision regarding the right to refugee status for homosexuals. When it became possible for homosexual foreigners to come within the framework of family migration, it also became clear that some people could not apply for family formation because in their countries of origin homosexuals were persecuted. Again, more or less casually the Secretary of State said in 1973 that 'of course' these applicants should be able to come as refugees.

¹⁵⁵ Walaardt, *Geruisloos inwilligen*.

Structural factors do explain part of the changes: the Sexual Revolution and the demand for labour in the 1960s, as well as the economic crisis of the 1980s, for instance. However, it was not a crisis that led to change. From a postmodern perspective, it can be observed that especially in the first decades after the war experts – lawyers and doctors – sought to influence policy makers, and that policy makers actively sought the advice from these experts. Newspapers were not very actively campaigning for more lenient policies. Rather the opposite was true: when policies in the 1960s moved towards more leniency a moral panic erupted in the press that connected two high profile murders in Amsterdam to alleged increases in the number of homosexual foreigners coming to the Netherlands. The changes in the 1970s were also not the result of active lobbying by organizations such as the COC. The COC mainly campaigned for rights for Dutch homosexuals. Only in the 1980s, did organizations start to make claims regarding immigrant policy.

Structural and postmodern factors do both explain change, but the most striking element of policy changes in this case is the casualness of the decision-making process, and the amount of time that passed before the media, lawyers and organizations followed up on what were in essence crucial changes. Although debates were never about large numbers, the immigration of homosexuals was always highly contested: it was a key part of how a nation defined itself, both now and in the past. Policies were not casual because nobody cared. Policy changes occurred because they were at the periphery of the policy field – they were not the core element of labour, family or refugee migration – while at the same time they were at the points where policy fields intersected, which made grasping or seeing consequences more difficult. It made change possible.

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