Shadowboxing: legal mobilization and the marginalization of race in the Dutch metropole, 1979-1999

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5. Nonperformative antiracism? The mandate to use 'legal measures'

5.1. Introduction

The cabinet that created the Landelijk Bureau Racismebestrijding (LBR) had no intention of it becoming an agent for changing the racialized status quo of the social and economic hierarchies in the Dutch metropole, as the previous chapter demonstrated. Despite these intentions, however, the eventual charter of the LBR did permit activities that had the potential to do so. That charter identified the main purpose of the LBR as 'preventing and combatting racial discrimination in the Netherlands'; it charged the organization with 'identifying and combatting structural forms and patterns of discrimination' and included among the authorized means to pursue this goal 'filing legal or administrative procedures under its own name.'[515] Filing cases was listed last among the listed priorities for the LBR, and required approval from the organizational board of directors, and the Ministry of Justice had to approve the LBR's annual budget and could theoretically fail to do so if too much were spent on such cases. But the action was listed in the charter as allowed, and thus invested the LBR with a certain amount of potential power, which would be up to the board of directors and staff of the LBR to transfer into action.

Unfortunately, over the 15 years in which the LBR operated under this charter,[516] the LBR did not mobilize its legal power in a way that either identified existing racialized hierarchies in the Netherlands, and the resulting patterns and structures of racial discrimination through which those hierarchies were maintained, nor did it employ adversarial legal strategies to combat those structures. To the contrary, over the course of its organizational life, it consistently downplayed adversarial legal action, and as such the enforcement of anti-

[515] Maurik, "LBR Akte van Oprichting," Article 2.

[516] The activities evaluated in this chapter include those from the official opening of the LBR, in October 1985, through its merger with the ADO (Anti-Discriminatie Overleg) and ARIC (Anti-Racism Informatiecentrum) in 1999. While the LBR continued to exist as a legal entity until 2007, after the merger the focus on legal measures and racial discrimination ceased to be as central to its organizational mission.

discrimination norms. By systematically decentering adversarial legal strategies, the LBR moved away from the enforcement potential that makes *legal* mobilization different from any other political or social organizing and which made it, as the only national, government-funded organization chartered to use law to combat racial discrimination, unique as an organization; instead it became a nonperformative antiracist organization. As defined by Sara Ahmed, such organizations claim to stand for antiracist norms and practices, but in fact take little to no action to materially end those practices.[517]

While legal mobilization theory makes clear that litigation is not the only way groups seeking social change can mobilize the law, the willingness to engage in it does play an essential role. Litigation is but one tool in a basket of 'legal measures' that occur 'in the shadow of law'; others include framing of grievances as rights, raising consciousness about those rights and motivating people to 'name, blame and claim' them.[518] Sometimes the mere threat of legal action can move parties to negotiate changes in policy or practices that meet a movement's demands. However, for such 'legal leveraging' to work in practice, advocates or activists must be able to follow through on such threats.[519] The LBR rarely, if ever, made good on these threats and so failed to perform on the one front it was created to address. This reluctance to engage in adversarial legal activity was present from the moment the LBR began, through the period when it officially abandoned its organizational focus on legal measures in 2000.

The LBR's chosen tactics not only failed to materially perform against racial discrimination in the short term, they perpetuated the occlusion of the role of racialization in Dutch society in the longer term. Failing to file legal cases or complaints about racial discrimination created gaps or absences in legal archives where those cases would have been, an example of what historian Michel Rolph Trouillot describes as 'silencing the past' at the moments of both 'fact creation (the

[517] Ahmed, "The Nonperformativity of Antiracism," 114–17; Sara Ahmed, "'You End up Doing the Document Rather than Doing the Doing': Diversity, Race Equality and the Politics of Documentation," *Ethnic and Racial Studies* 30, no. 4 (July 1, 2007): 590–609, https://doi.org/10.1080/01419870701356015.

[518] McCann, "Litigation and Legal Mobilization," 524–25.

[519] McCann, "Law and Social Movements," 30.

making of *sources*)' and 'fact assembly (the making of *archives*)'.[520] Dutch scholar of racialized violence, criminologist Rob Witte, observed the results of this silencing in both his 1995 doctoral thesis and 2010 book on the subject; he had to use newspaper databases and archives to track such acts because no national archive chronicled them, a process he observed allowed people to deny that such violence was a national, structural problem in the Netherlands.[521] In the case of acts of racial discrimination, which unlike riots, fights or attacks addressed in Witte's research, occurred more often outside of public view and were less likely to be covered by journalists, the problem of erasure and silencing would be, and was in fact, even more complete.

As discussed throughout this manuscript, I am not arguing this exclusion of facts from the historical record was an intentional, or even conscious, act on the part of the LBR directors and staff. They perceived the incidents of racial discrimination to which they were responding as just that, aberrant incidents. They did not interpret those acts as signs of larger structural practices of racialization that had deep roots in Dutch history and still impacted Dutch society. They did not perceive structural racism as an afterlife of the racializing practices of slavery and colonialism. In this way, the views of the directors and staff of the LBR, and the politicians who authored their mandate, were also products of colonial aphasia and occlusion; they were based on perceptions of the Netherlands as a tolerant nation with no deep history or tradition of racism, as discussed in Section 3.4.2 above. This ignorance was hardly innocent, however; as addressed in multiple sections above, there were plenty of organizations and activists who did make those connections. The decision to ignore or dismiss that information was a sign of a type of arrogance that can also be considered a colonial afterlife and byproduct of ideological white supremacy. It is also an example of how colonial occlusion/aphasia reproduces itself, informing strategies which lead to non-performativity which leads to more aphasia and occlusion of the role of race in both Dutch history and its present.

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[520] Michel-Rolph Trouillot, *Silencing the Past: Power and the Production of History* (Kindle, Beacon Press 2015) Ch 1 (emphasis in the original).

[521] See e.g. Witte, *Al Eeuwenlang Een Gastvrij Volk*, 193; Rob Witte, "Racist Violence and the State: A Comparative European Analysis" (1995).

5.2. LBR start-up period (1983-1985): Limiting expectations

The set-up period of the LBR is notable for how quickly the priorities of the young organization shifted away from the idea of using courts and legal strategies to combat racial discrimination. Despite warnings contained in the government's own reports about the importance of enforcing anti-discrimination norms,[522] and the potential for courts as vehicles for enforcement, despite the experiences of grassroots and 'ethnic minority' groups, and independent lawyers engaged in court-based strategies, despite the potential precedent of the 1982 *Binderen-Kaya* case that statistics might be admissible as proof of discrimination, despite the explicit mention of using 'legal means' in the foundational charter of its organization, the people responsible for setting up the LBR seemed more concerned with managing what they saw as 'too high expectations' for the young organization and avoiding being 'drowned' in a 'flood' of requests for help with individual complaints than on building an organization capable of living up to its name.[523]

The people responsible for setting up the LBR were a professionally impressive group. Nominated in October 1984 by Justice Minister Korthals Altes

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[522] Van Duijne Strobosch, *Bestrijding van Discriminatie Naar Ras*.

[523] Kruyt, "Een instituut tegen rassendiscriminatie," January 12, 1983, 2 (In this first proposal Kruyt used imagery of floods and drowning to describe the threat of a large number of complaints that would likely face an antidiscrimination institute. He wrote there, 'De staf van een dergelijk instituut gaat snel door de overvloed van klachten prioriteiten stellen en selecteren in welke zaak wel en in welke zaak geen actie word ingesteld. Een overvloed van individuele gevallen belemmert de mogelijkheid om gelijktijdig aandacht te besteden aan de structurele aanpak van een probleem.'); These metaphors of storms and floods have been repeatedly invoked by anti-immigration advocates both in the period studied and now. While I found no evidence whatsoever of any anti-immigrant sentiment behind Kruyt's metaphors, and in fact he has continued to advocate on behalf of recent immigrants to the Netherlands throughout his career, his word choice presented then, as now, an unfortunate harmony with the general hostility toward people racialized as 'foreign' and living in the Dutch metropole. See e.g. David Shariatmadari, "Swarms, Floods and Marauders: The Toxic Metaphors of the Migration Debate," *The Guardian*, August 10, 2015, sec. Opinion, https://www.theguardian.com/commentisfree/2015/aug/10/migration-debate-metaphors-swarms-floods-marauders-migrants; Tyler Jimenez, Jamie Arndt, and Mark J. Landau, "Walls Block Waves: Using an Inundation Metaphor of Immigration Predicts Support for a Border Wall," *Journal of Social and Political Psychology* 9, no. 1 (April 20, 2021): 159–71, https://doi.org/10.5964/jspp.6383.

and Minister of Interior Rietkerk, they included five men: Athanasios Apostolou, then director of the Dutch Association for Foreign Workers (Stichting Buitenlandse Werknemers), Hugo Fernandes Mendes, an attorney and qualified judge and named in his capacity as a University of Leiden researcher, E. D. Nijman, 'adult educator and teacher', and Usman Santi, former legal counsel for the Moluccan Advisory Organization, named in his capacity as 'lawyer of Utrecht'; the chair of the board was former judge, Hugo Pos.[524] Both Pos and Fernandes Mendes were born in Suriname and had connections in the various organizations representing the Surinamese community; Pos's daughter Tamara had represented the National Federation of Surinamese Welfare Organizations at the 1983 Congress on Law and Race Relations, discussed in the previous chapter.[525] The set-up board was responsible for developing a statute consistent with ministry financing rules and sets of rules governing personnel, financing and budgeting, finding office space, creating job descriptions for future personnel, developing a confidentiality policy, making a workplan for the first year, and selecting and recruiting a general board of directors.[526] They were given six months to do so, a deadline they succeeded in meeting.

In December 1984, the set-up board received a 162-page 'workbook' created by Leo Balai, then serving as 'bureau assistant' for the set-up board. The document began with Balai's suggestions of priorities for the set-up board and continued with suggested staffing and organizational structure, including a draft profile of a director, and an initial workplan for 1985. Thereafter followed a collection of eleven documents meant to inform an assist the board with their planning and decision-making.[527] Among Balai's first observations and suggestions, was that as soon as it

[524] Kamerstukken II 1984/1985, 16102, nr. 91 (naming members of the LBR start-up board of directors), https://zoek.officielebekendmakingen.nl/0000124484.

[525] Pos had a long and eventful history as lawyer, WWII resistance fighter, and judge, as well as essayist and poet. His 1995 autobiography described the death of Tamara, from cancer, in 1988. Hugo Pos, *In Triplo*, 1st ed. (Amsterdam: In de Knipscheer, 1995], https://www.dbnl.org/tekst/pos_002intr01_01/colofon.php.

[526] Kamerstukken II 1984/1985, 16102, nr. 91, 2–3.

[527] Leo Balai, "Beleidsondersteunende notitie ten behoeve van het bestuur van de stichting Landelijk Bureau ter Bestrijding van Discriminatie Naar Ras I.O. (LBR)" (Amsterdam: Landelijk Bureau Racismebestrijding, December 3, 1984), IDEM Rotterdam Kennisbank. These documents included:

began the LBR would likely be bombarded with different requests for legal support or advice. To avoid feeding into 'the wrong expectations' about how the LBR could or would respond, he advised the board to quickly prioritize specific problem areas on which it would work. The topics featured in the literature in Balai's workbook focused mainly on problems between police and 'foreigners', housing of 'ethnic minorities' and discrimination in the labor market. These were, incidentally, also the problems identified in much of the government's other 'Minorities Policies'. Balai conceded that other problems existed under the rubric of racism and raised the question whether the chosen forms were the most drastic (*meest ingrijpende)* facing Dutch communities racialized as 'ethnic minorities', but he made no other suggestions of priority areas for the future LBR.[528]

Balai's concerns about impossible expectations opened his advisory memo, and his workbook closed with a memo from law professor C.A. Groenendijk, which raised similar concerns. Basing his opinion on visits to the Commission for Racial Equality (CRE) in the United Kingdom, and literature about anti-discrimination commissions in the United States and Paris, Groenendijk listed 'far too high expectations' as one of three main problems facing a new LBR. The other two

- report by the Advies Commissie Onderzoek Minderheden (ACOM), which included advice to the Minister of the Interior on 'Discrimination, Prejudice and Racism in the Netherlands' (1984);
- report, 'Police and Foreigners' copied by the COMT (1983);
- A.J. van Duijne Strobosch's *Bestrijding van Discriminatie Naar Ras*, (1983);
- The summary of an NCB study day on housing and 'ethnic minorities' held 26 and 27 October 1984;
- report by the Instituut Bestuurswetenschappen on 'mogelijke discriminatoire werking van Rijksregelingen op de woningvoorziening van etnische minderheden' (1981);
- Excerpts from a report by the Ministry of Housing and Spatial Planning on foreign workers and rental housing (1983);
- Excerpts from report by the University of Amsterdam's Institute for Social Geography, 'Turkish and Moroccan Youth in the Labor Market' (1984);
- Excerpts from an NCB report *Juridische Knelpunten bij de verbetering van de arbeidsmarktpositie van migrerende werknemers* (1984);
- Summary of C.A. Groenendijk's lecture on labor market discrimination from the first meeting of the Working Group on Law and Racial Discrimination (1983).

[528] Balai, i.

challenges were attempting to change behaviors of society without a clear basis of power, and gaining trust from groups representing 'minorities' who were victims of racial discrimination, as well as government institutions whose behavior might be discriminatory.[529] Groenendijk echoed Balai's advice that one way to avoid these high expectations was choosing clear and explicit priorities; to this he added avoiding publicity until the bureau was fully staffed and making choices clear to all interested parties. He recommended not choosing more than two social sectors on which to focus (for example labor and housing) and basing this decision not only on the level of need, but also the possibility to achieve victories 'with small investment'.

Groenendijk's memo also illustrates how the LBR began to deemphasize adversarial legal strategies before it even opened its doors. In two parts of the memo, Groenendijk outlined the bases from which the LBR could draw the power to accomplish its goals. These bases included 1) information, 2) good relationships with lawyers, 3) good relationships with 'minority organizations,' 4) political good will, 5) access to judges and 6) publicity (which he cautioned could be a boomerang and also work against the organization).[530] The ordering of these bases is telling, with access to judges as the only significant 'legal' power the organization would have, coming near the end.

Placing legal strategies near the bottom of the list contrasted the advice Groenendijk had given to lawyers and advocates a year earlier, at the opening meeting of the Workgroup on Law and Racial Discrimination (Werkgroep Recht en Rassendiscriminatie, Werkgroep R&R) in September 1983; there he had extoled the potential help an organization dedicated to legal intervention in cases of racial discrimination could offer. Unlike an individual acting alone, Groenendijk observed then, an organization could file complaints with the police or public prosecutor on behalf of an individual victim, in some cases even keeping the name of the victim a secret. Such an organization could seek injunctions against discriminatory advertisements, promotional or firing schemes by employers, complain to the national ombudsman, at the time a recently established position, or even pursue international remedies via the United Nations' Commission Against Racial

[529] Balai, 152 (memo by Kees Groenendijk, "Beleidskeuzen en beslissingen op korte en lange termijn").

[530] Balai, 154.

Discrimination. Legal action was 'no miracle cure', he cautioned, but that was not an excuse to forego legal tools, rather a charge to pursue them 'strategically, selectively and stubbornly'.[531] Nine months before this lecture, in his opening address to the Congress on Race Relations, he had been even more enthusiastic. There, Groenendijk observed that a problem with the laws and regulations associated with Dutch 'minorities policies' was that 'protective' measures against discrimination were phrased in passive language and hardly enforced.[532] He challenged his audience then to think creatively about how to combine different legal strategies and to learn from the successes, and failures, of legal strategies in other countries. However, by October of 1984 he was advising that the LBR prioritize information gathering, 'good relationships' with legal aid groups and minority organizations, and 'good will' and 'political credit' with the Tweede Kamer and government ministries, over the 'legal measures' the LBR was created to undertake.[533]

Groenendijk told me recently that the different messages above did not represent an abandonment of his commitment to the importance of creative or aggressive legal strategies, but the idea that there should be a division of labor in which groups would pursue these strategies. He hoped that independent lawyers and the Werkgroep R&R would actively pursue litigation, while the LBR would support these efforts. His memo supports this recollection, recommending under the second basis of LBR's power, having 'good relationships with legal service providers' and continuing to 'build up' its relationship with the Werkgroep R&R.[534] But even with this clarification the advice seems counter intuitive. The Werkgroep R&R was a group of lawyers and advocates who met on their own time in evenings

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[531] Joyce Overdijk-Francis (ed.), "Discriminatie op de Arbeidsmarkt," Verslag Werkgroep Recht & Rassendiscriminatie Bijeenkomst (Utrecht: Plataforma di Organisashonnan Antiano, September 6, 1983), 16, Nationaal Bibliotheek ('Ook op dit gebied blijkt het recht selectief te werken. Dat is geen reden om het gebruik van rechtsmiddelen achterwege te laten. Het is eerder aanleiding om de beperkte mogelijkheden tot correctie van de bestaande achterstelling van leden van etnische minderheidsgroepen weloverwogen, selectief en hardnekkig te gebruiken.).

[532] Ausems-Habes, *Congres Recht En Raciale Verhoudingen*, 13.

[533] Balai, "Beleidsondersteunende notitie ten behoeve van het bestuur van de stichting Landelijk Bureau ter Bestrijding van Discriminatie Naar Ras I.O. (LBR)," 152–54 (Groenendijk memo).

[534] Balai, 154.

after their regular office hours. They paid dues to cover the costs of sandwiches during their meetings, and photocopies of the summaries of those meetings. The only government subsidy the group received was indirect, through the salary of its chairperson, Joyce Overdjik-Francis; she was also the legal counsel for the subsidized Antillean welfare organization, Plataforma di Organisashonnan Antiano (POA), which allowed her to use working hours to administer the Werkgroep R&R.[535] The LBR, by contrast, was fully funded by the Ministry of Justice with a mandate to use legal measures, including filing cases. It had a full time staff, including two jurists, a director, and several full-time researchers, dedicated office space and the opportunity to secure additional funding for special projects. Moreover, the government claimed to have created the LBR to use 'legal measures' including filing cases to address the problem of access to courts and the legal processes on which it based its enforcement of laws and norms against racial discrimination. The decisions of LBR leadership to downplay these powers and responsibilities from the beginning seems indicative, of a recognition (or perhaps resignation) by those involved that the actual practice of the organization would be something other than that.

5.2.1. Organizational charter

Just in time to meet the six-month deadline set by Justice Minister Korthals Altes, the set-up board of the LBR filed its *akte van oprichting*, or organizational charter, with the Dutch Chamber of Commerce (Kamer van Koophandel) in April 1985. Despite two years of discussions with interested parties across the racial and political spectrum, despite hundreds of pages of research reports and at least as many pages of Tweede Kamer questions and debates, the charter was strikingly similar to proposal for a national institute submitted that Arriën Kruyt had submitted to the government in 1983 on behalf of the four national welfare and advisory organizations representing 'ethnic minority' groups, and to the statements made by the ministers of Justice and Interior to parliament later that year. All three versions mentioned the importance of building a national network of legal service

[535] Joyce Overdijk-Francis, interview by Alison Fischer, audio & transcript, September 9, 2021, in author's possession.

providers and the idea that a national organization would disseminate information and assist with the education of those providers. While the cabinet proposal left out the explicit possibility of filing legal cases in its own name, this was an early component of the coalition's proposal and was brought back in the final charter, albeit framed as something of a last resort. Indeed, perhaps the most telling difference among the proposals and the final charter was the organization of priorities: while both the coalition and cabinet proposals had placed service to victims of racial discrimination as first among their priorities, the final charter placed 'standing by and advising victims' as fourth of its six priorities.

Arriën Kruyt proposal	Cabinet Proposal	LBR Akte van Oprichting
1. be readily accessible to the victim of discrimination; be available by telephone on a permanent basis 2. seek to combat patterns of racial discrimination and conduct research to that end; be able to conduct investigations and subsequently initiate legal proceedings 3. provide education to prevent discrimination 4. establish such a nationwide network of individuals, foundations, Legal Aid Offices and action groups that can help those discriminated against.	1. advising victims of discrimination and being available to them as much as possible; 2. providing training and expertise for legal advisers and building up a national network of legal advisers; 3. serving as a source of information for local groups active the field of anti-discrimination; 4. providing information to (potential) victims of discrimination on how to defend themselves against discriminatory behavior; [and]	1. to build and maintain a national network of legal service providers; 2. to educate and train those service providers; 3. to support communication between local groups, municipalities and other institutions working to combat racial discrimination 4. 'to stand by and advise' and be available to victims of racial discrimination 5. to bring attention to and combat structural forms and patterns of racial discrimination via legal action; and 6. in cases where it was deemed necessary, to file legal or

5. provide schooling for legal aid workers[536]	5. identifying structural forms and patterns of discrimination.[537]	administrative procedures under its own name.[538]

The final LBR organizational charter also included other important guidelines for the nascent organization. For example, it encompassed a rather broad definition of racial discrimination that tracked closely to international and domestic laws. That definition identified two different types of discrimination, one focused on practice and the other ideology. The practice-focused definition included:

> any form, directly or indirectly, of distinction, exclusion, restriction or preference, on the grounds of race, color, descent, ethnic origin or - unless justified on objective and reasonable grounds - of nationality, the purpose of which is to nullify or impair the enjoyment or exercise, on an equal footing, of human rights or any other right, or having the effect of nullifying or impairing them....[539]

The ideology-based definition included:

> ...the expression or distribution, in any form whatsoever, of texts, ideas, representations or information, or the possession of objects containing them, when this is based on the alleged inferiority or superiority of persons by reason of their race, color, descent, ethnic origin or nationality.[540]

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536 Kruyt, "Een instituut tegen rassendiscriminatie," January 12, 1983 (Kruyt's proposal uses a narrative form, which I have transposed into a list).

537 Kamerstukken II 1982/1983, 16102, nr. 21,100–101. (translation mine. Original: '(a) het met raad terzijde staan van slachtoffers van discriminatie en optimaal voor hen bereikbaar zijn; b. het ter hand nemen van de scholing en deskundigheidsbevordering van rechtshulpverleners en het opbouwen van een landelijk netwerk van rechtshulpverleners; c. het dienen als vraagbaak voor lokale groepen die zich bewegen op het terrein van discriminatiebestrijding; d. het geven van voorlichting aan (potentiële) slachtoffers van discriminatie hoe zich tegen discriminerende gedragingen te verweren; e. het signaleren van structurele vormen en patronen van discriminatie.')

538 Maurik, "LBR Akte van Oprichting."

539 Maurik, Article 2. Section 2.

540 Maurik, 2.

The charter did not include a definition of race, though later LBR publications would publicize the definition of race established by Dutch jurisprudence and international law.[541]

5.2.2. Start-up board of directors and staff

After heavy debate in the Tweede Kamer about who should or should not be included,[542] the LBR charter established a board of directors that seemed to reflect a broad cross section of people who represented groups directly impacted by racial discrimination or invested in combatting it. The charter required that its board of directors include one representative appointed from:

- the Moluccan Advisory Organization (Inspraakorgaan Welzijn Molukkers*)*;
- the National Federation of Surinamese Welfare Organizations (Stichting Landelijke Federatie van Welzijnsorganisaties voor Surinamers*)*;
- the Dutch Center for Foreigners (Nederlandse Centrum Buitenlanders);
- the Association of National Organizations for Foreign Workers (Vereniging Landelijke Samenwerking van Organisaties van Buitenlandse Arbeiders);
- the Platform for Antillean Organizations (Vereniging Plataforma di Organisashonnan Antiano (POA));
- the Association of Dutch Refugee Networks (Vereniging Vluchtelingenwerk Nederland);
- the Association of Dutch Lawyers Committee for Human Right (Nederlandse Juristen Comité voor de Mensenrechten*)*;
- the Society of Antiracist Organizations of the Netherlands (Samenwerkende Antiracisme Organisaties Nederland, SARON);
- a former member of the judiciary responsible for administering justice;
- the Jewish community, 'who has the confidence of broad Jewish circles';

[541] Possel, *Rechtspraak Rassendiscriminatie*, ix.

[542] Handelingen II 1984/1985, 16102, nr. UCV 11, https://zoek.officielebekendmakingen.nl/0000122995.

- the Association for Legal Aid (Vereniging voor Rechtshulp*)*;
- the Netherlands Bar Association (Nederlandse Orde van Advocaten*)*.[543]

Additionally, the charter required that two board members be appointed from the Anti-Discriminatie Overleg (Anti-Discrimination Consultancy, ADO). Board members would serve a term of three years, and had the right to decide among themselves to appoint up to three additional members based on 'specific expertise or ability'.[544] As of the filing of the organizational charter, the LBR board contained fifteen members, including all four members of the set-up board initially appointed by the Ministries of Interior and Justice, with Hugo Pos continuing to serve as chair. Other notable members of the first board of directors included human rights lawyer and law professor Ulrich Jessurun d'Oliveira, representing the Association for Legal Aid, Utrecht University Professor of Criminology Paul Moedikdo, nominated by SARON, and law professor C.A. Groenendijk as an independent expert.[545] Of the sixteen board members, seven were born outside the Dutch metropole (three in Suriname, one in Curaçao, one in the Indonesian archipelago[546], one in Greece and one in Uruguay); Usman Santi was born in 1954 in Camp Westerbork, at that time housing people forced to migrate from the Moluccan Islands. All of the members of the first LBR board of directors were men.

The LBR board did not hold seats representing either groups of employers or business leaders, or major employment unions, as had been requested by liberal party members of the Tweede Kamer. Nor did it contain representatives of organizations dedicated to representing the interests of women, young people, or caravan dwellers, as requested by members of parliament from more leftist parties.[547] This absence reflects what legal scholar Kimberlé Crenshaw calls an 'intersectional failure', or missed opportunity to address the fact that race intersects with other areas of identity such as gender and class, and thus that racial

[543] Maurik, "LBR Akte van Oprichting," Article 4, paragraph 1, lines a-m.

[544] Maurik, 2.

[545] Maurik, 6–7.

[546] Paul Moedikdo was born in 1927 in Bandung, which at that time was part of the Dutch East Indies; at present, it is the capital of West Java, Indonesia.

[547] Handelingen II 1984/1985, 16102, nr. UCV 11, 26.

discrimination may be experienced differently among people who also experience discrimination based on other marginalized aspects of their identities. [548] Because the lack of women and caravan dwellers represented on the set-up board was raised as a concern raised to Minister of Justice Korthals Altes during his questioning by the Tweede Kamer, this intersectional failure of representation is not one of which he or the start-up board members were unaware.[549] Again, the point here is not the motivations of Korthals Altes or others, but the effect of their oversights, which meant that certain perspectives and experiences relevant to combatting racial discrimination were left out of the LBR's initial board of directors.

As with any organization, the board of directors would have oversight but the real direction would come from the staff of the LBR, particularly its director, the hiring of which was also delegated to the set-up board of directors. A list of qualities needed for the position went through a few revisions during the six-month set up period. When Justice Minister Korthals Altes spoke to the Tweede Kamer in March 1984, his emphasis had been on staffing the LBR and its board with people with 'legal expertise'.[550] In Balai's policy workbook, in December of 1984, the job description was drafted by LBR board member and director of the Netherlands Center for Foreign Workers, Athanasios Apostolou. He interpreted 'legal expertise' recommended by the Justice minister into being 'up to date' with the laws and rules governing 'foreigners", experience working with groups of foreign workers, and knowledge of groups serving victims of racial discrimination. Given that the 'accent' of the LBR's goals was on 'legal measures' against racism, 'legal schooling would be recommended.' Apostolou did not go so far as to recommend that the future LBR director be a jurist or practicing lawyer.[551] Groenendijk's memo to the LBR start-up board recommended an overall LBR staff that was both recognizable to 'immigrant

[548] Crenshaw, "Mapping the Margins," see e.g.

[549] Handelingen II 1984/1985, 16102, nr. UCV 11, 26 (MP Jabaaij asked about the lack of women on the board, MP Krajenbrink about the lack of representation of caravan dwellers [woonwagenbewoners], and MP Wiebenga about the lack of businesspeople and employers.).

[550] Handelingen II 1983/1984, 16102, UCV 61, 3.

[551] Balai, "Beleidsondersteunende notitie ten behoeve van het bestuur van de stichting Landelijk Bureau ter Bestrijding van Discriminatie Naar Ras I.O. (LBR)," V ("Enkele gedachten omtrent het profiel van de direkteur van het Landelijk Buro ter Bestrijding van Discriminatie naar ras [LBR]" A. Apostolu, November 1984).

groups' and 'acceptable to potential opponents' though it did not define who those opponents might be or to what they might be opposed.[552]

By the time the job description for LBR director was released to the outside world, it had changed from Apostolou's original draft. In December 1984, *Plataforma*, the quarterly publication of POA, published a call for applications (included in image below); the job description called for someone who was 'by preference a jurist'. The person should have, not only experience with foreign workers, but also 'Surinamers, Antilleans, Jews (sic), Moluccans, Refugees etc.' and experience working with these groups.[553] The 1985 LBR year-end summary reported that 36 people applied for the function.[554] Interviews with former members of the LBR board and others familiar with the process

34 PLATAFORMA 1/3, december 1984

(advertentie)

STICHTING LANDELIJK BUREAU TER BESTRIJDING VAN DISCRIMINATIE NAAR RAS i.o. (LBR)

roept sollicitanten op voor de functie van

DIREKTEUR (M/V)

Het LBR is een door het ministerie van Justitie gesubsidieerde, onafhankelijke particuliere organisatie, die zich ten doel stelt het voorkomen en bestrijden van rassendiscriminatie in Nederland.

Tot de taken van het LBR behoren o.a.:
het met raad terzijde staan van slachtoffers van discriminatie;
het ter hand nemen van de scholing en deskundigheidsbevordering van rechtshulpverleners;
het opbouwen van een landelijk netwerk van rechtshulpverleners;
het dienen als vraagbaak voor locale groepen die zich bewegen op het terrein van discriminatiebestrijding.

Het Bureau zal bij de bestrijding van discriminatie primair uitgaan van juridische middelen. Naast juridische discriminatiebestrijding zal het Bureau zich ook richten op het onderzoek naar structurele vormen en patronen van discriminatie.
Het LBR zal enerzijds de slachtoffers van discriminatie terzijde moeten staan, anderzijds de publieke opinie, de overheid, particuliere en politieke organisaties moeten betrekken bij de strijd tegen discriminatie.

Van de Direkteur wordt verwacht dat hij in staat is om, in samenwerking met het Bestuur, het Bureau (verder) vorm te geven.
Hij zal ook worden betrokken bij de selectie van de aan te trekken medewerkers.

Teneinde de doelstellingen van het LBR te kunnen realiseren zal de Direkteur o.a. aan de volgende eisen moeten voldoen:
– bij voorkeur jurist(e)
– goede kennis en inzicht in de problematiek van buitenlandse werknemers, Surinamers, Antilliänen, Joden, Molukkers, Vluchtelingen etc.
– ervaring in het samenwerken met organisaties van bovengenoemde groepen
– kennis van het netwerk van instellingen en instanties die zich bezighouden met de hulpverlening aan slachtoffers van discriminatie naar ras
– bekendheid met de landelijke politiek
– bekendheid met het Nederlandse beleid t.a.v. zaken die discriminatoir gedrag in stand houden of bevorderen
– visie op de positie van groepen die aan discriminatie onderhevig zijn en de wijze waarop discriminatie bestreden moet worden
– kennis van en ervaring met de pers en de massa-media
– organisatorische kwaliteiten (opzet van overlegstructuren, besluitvorming, taken van medewerk(st)ers etc.)
– ervaring in het begeleiden van medewerk(st)ers (ondersteuning in hun werkzaamheden, stimulering, etc.)

Salaris- en rechtspositieregeling volgens de CAO Welzijn.

Uw schriftelijke sollicitatie kunt u, vergezeld van uw curriculum vitae, **binnen 14 dagen** richten aan:
Het Bestuur van het Landelijk Bureau ter bestrijding van discriminatie naar Ras i.o.
Postbus 517 3500 AM Utrecht

Voor nadere inlichtingen kunt u contact opnemen met:
dhr. drs. A. Apostolou, tel. 030–31 38 33

552 Balai, 154.

553 "Stichting Landelijk Bureau Ter Bestrijding van Discriminatie Naar Ras i.o (LBR) Roept Sollicitanten Op Voor de Functie van DIREKTEUR (M/V)," *Plataforma*, December 1984, 34.
"LBR Jaarverslag 1985" (Utrecht: Landelijk Bureau Racismebestrijding, 1985), IDEM Rotterdam Kennisbank.

indicated that hiring a director was a contested process, involving heated debate and strong feelings.

By May 1, 1985, Arriën Kruyt had been hired as the first director of the LBR. Kruyt did not identify, nor was he racialized by others, as a member of an 'ethnic minority group.'[555] He had become active on issues of discrimination against 'foreigners' when he was a law student in Utrecht and witnessed discrimination against people from Greece who had come to the Netherlands either to work as laborers or seeking asylum.[556] The experience brought him into contact with other law students and lawyers for immigrant and refugee rights, including Groenendijk. Together they started the Workgroup on Legal Assistance on Immigration Cases (Werkgroep Rechtsbijstand Vreemdelingenzaken*)*. In 1976, Kruyt became the staff jurist for the NCB, a position he held at the time of the LBR's founding, and in which capacity he had authored the proposal for a national anti-discrimination institute submitted to the ICM on behalf of that organization and the three welfare/advisory organizations representing people from Suriname, the Antilles and the Moluccan Islands. He had also helped coordinate the 1983 Congress on Law and Race Relations.

While Kruyt was intimately involved in the start-up process of the LBR, he told me he did not seek the position of director, which he thought would be better suited to someone 'from a minority background, which I am not.' He said Hugo Pos had pressured him to apply, and that he only did so after consulting with his friend, Athanasios Apostolou.[557] Apostolou, as mentioned above, was also a member of the LBR start-up board and responsible for drafting the job description for the future director. Kruyt's near decade of work on immigration and discrimination fulfilled the job description in terms of experience with 'ethnic minority' organizations and Dutch political processes. He had not, however, been involved with an organization engaged in combatting racial discrimination in particular; both the NCB and the Workgroup on Legal Assistance for Foreigners focused mostly on immigration and labor laws. While there was overlap between discrimination based on nationality or national origin and that based on perceived race, the legal work of these groups was

[555] Kruyt, interview.

[556] Kruyt.

[557] Kruyt.

usually not connected explicitly to racialization. Perhaps more remarkable for an organization dedicated to combatting racial discrimination through legal measures, Kruyt was not a qualified lawyer, though he did have a bachelor degree in law from the University of Utrecht.

In the short term, Kruyt's racialized identity attracted more attention than his legal qualifications. At a meeting of the Frantz Fanon Center in Utrecht in June 1985, an unnamed Utrecht City Council member from the Dutch Communist Party named, as a general problem, the lack of people racialized as non-white on government, academic and social institutions ostensibly meant to help their communities. Adding 'insult to injury' (*klap op de vuurpijl*) she observed that the LBR had appointed a 'white man' as director, a decision she characterized as 'a huge barrier to go to such a bureau if you have been discriminated against.'[558] In the long term, it may have been his lack of legal experience that made an equal if not greater impact on the future work and legacy of the LBR.

In contrast to six pages describing the form and function of the board of directors, the LBR charter dedicated only seven lines to how the organization should meet its goals. It should, first, hire staff and build up an office; it should meet with relevant organizations and institutions, it should make use of subsidies and other financial tools and it should 'make use of all legally permissible means' useful to achieving its goals.'[559] Arriën Kruyt, as the first director of the LBR, along with the daily board of directors and staff of the LBR, would have a tremendous amount of discretion in interpreting which 'legally permissible means' to use. Kruyt saw himself primarily as a political organizer who knew whom to call in which situations to get certain measures through the cabinet or parliament.[560] This skill set would later manifest in the LBR's consistent preferences for addressing incidents of racial discrimination through dialogue and one-on-one negotiation, as opposed to public confrontation or adversarial legal proceedings.

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[558] Penni Peterson, "Cadeau voor de wereld: Grootser menselijk aanzien zonder ras-, klas-, of sex-onmenswaardighied," *Plataforma*, August 1985, 31.

[559] Maurik, "LBR Akte van Oprichting," 1.

[560] Kruyt, interview.

5.3. Executing the LBR mandate through 'legal measures', 1985-2000

The LBR's organizational charter, defined its purpose as 'preventing and combatting racial discrimination.'[561] The charter then went on to define six goals or priorities through which the organization would fulfill that purpose. The first three of these goals, building a national network of legal service providers, educating and training those providers, and facilitating communication with other groups engaged in racial discrimination will be addressed in more detail in Chapter Six. This remainder of this chapter analyzes the LBR's performance on the second three goals, which are more directly related to legal mobilization as defined by McCann and other socio-legal scholars. These goals were 1) to 'stand by and advise' victims of racial discrimination, 2) to signal and use legal means to combat structural forms and patterns of racial discrimination, and 3) when necessary to bring legal or administrative procedures in the name of the organization.[562] As stated in the introduction to this chapter, I argue below that the LBR failed to use these 'legal means' in a way that was likely to materially impact racializing practices in the Dutch metropole, and as such that its practices constituted forms of nonperformative antiracism, as defined by Sara Ahmed.

Lawyers who work in the public interest often distinguish between 'direct service' work and 'impact or strategic litigation.' In the first instance, the law is considered adequate to address a problem, and the lawyer provides service to those who may not otherwise be able to access that law; for example, lawyers who work for legal aid agencies that provide free representation in criminal cases, or related to child custody or housing. In the second instance, the law itself is considered flawed, and a representative test case, or group of cases, is brought to challenge the legitimacy of that law.[563] Legal mobilization analysis originated mainly from studies of strategic litigation, but it theorizes a broad range of activities that can be considered *legal* and mobilized for social change. For example, 'legal consciousness

[561] Maurik, "LBR Akte van Oprichting," Article 2.1.

[562] Maurik, Article 2, Paragraph 1, lines d-f.

[563] See e.g. Georgetown University Law School, "Public Interest & Non-Profit OVERVIEW," educational, Georgetown Law School: Public Interest & Non-Profit OVERVIEW, accessed June 7, 2024, https://www.law.georgetown.edu/your-life-career/career-exploration-professional-development/for-jd-students/explore-legal-careers/practice-settings/public-interest/.

raising' involves framing the discourse around social complaints or problems to invoke rights and demands for solutions.[564] Strategic litigation and direct services are also not strictly separate approaches to legal mobilization; clients who come to pubic interest lawyers seeking direct services may bring to those lawyers' attention issues that need to be addressed at a more structural or strategic level, or lawyers seeking representative cases to make a legal challenge may seek out clients who fit the profile and ask if they would be willing to represent the cause. In this way, the LBR's charge both to 'stand by and advise' victims, as well as 'bring attention to and combat structural forms and patterns' of racial discrimination were not necessarily in conflict. The manner in which the LBR approached these two objectives, however, resulted in its failure to achieve its objectives on either front.

5.3.1. A 'second line organization'

From its inception, the LBR staff and board defined it as a 'second line organization', standing behind and supporting the efforts of those 'first line institutions' and individuals that would directly interact with victims of racial discrimination. This reluctance to engage directly with victims of racial discrimination was paired with observations that there were an enormous number of people who needed such services. LBR start-up documents, for example, caution that the organization would be 'flooded' or 'drowned' in requests for help should it attempt to engage directly with individual victims of discrimination.[565] Staff advised tempering expectations of potential victims, waiting until the last minute to release the LBR phone number, and avoiding press as long as possible to avoid these

[564] McCann, "Litigation and Legal Mobilization," 523–26; McCann, "Law and Social Movements," 25–26.

[565] Leo Balai, "LBR Concept Beleids- Werkplan 1985" (Landelijke Bureau Racismebestrijding, January 1985), 26, IDEM Rotterdam Kennisbank ('Enerzijds is het gevaar aanwezig dat de hoge verwachtingen worden gewekt en het LBR overspoeld wordt door klachten waardoor er geen tijd overblijft voor andere werkzamheden.'); Kruyt, "Een instituut tegen rassendiscriminatie," January 12, 1983, 2 ('Het instituut moet in principe niet zelf de klachten gaan behandelen al is het alleen naar om niet te verdrinken in de hoeveelheid en om de tijd vrij te houden voor een structurele aanpak.') See footnotes above regarding the connotations of flood imagery.

floods.[566] Fears of being unable to adequately address victims of racial discrimination were not completely unfounded; many of those involved with the LBR had also worked with the Vereniging Tegen Discriminatie op Grond van Ras en Etnische Afkomst, (Association Against Discrimination on the Basis of Race or Ethnicity, VTDR), the national organization against racial discrimination discussed in Section 3.5 above. That organization disbanded in the early 1980s, in part, over conflicts in how to handle individual complaints. Instead, the LBR decided that the best place to handle individual complaints was at the local level, through hotlines (*meldpunten)* organized by municipal governments or 'welfare organizations of ethnic minority groups'.[567]

Once it opened its doors, the LBR did receive phone calls from individuals complaining of racial discrimination, though in numbers that could hardly be described as overwhelming. A year-end summary reported 200 calls in 1987, and that the LBR staff mostly offered advice by phone, sometimes referring those who called to 'experts in the region'.[568] To facilitate its role as a 'second-line organization' which could refer victims to legal service providers, the LBR charter committed the organization to 'building and maintaining a network of legal service providers dealing with issues of racial discrimination'.[569] Such a network could have been as simple as a list of active lawyers compiled and updated regularly, or a group that met regularly for education and collaboration. But while the LBR made many attempts at systemic cooperation with various organizations of legal service providers and anti-discrimination advocates through the years, by the time it ceased focusing on legal measures in 1999, it still had not successfully accomplished this goal.[570]

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[566] Balai, "Beleidsondersteunende notitie ten behoeve van het bestuur van de stichting Landelijk Bureau ter Bestrijding van Discriminatie Naar Ras I.O. (LBR)," 153.

[567] "LBR Werkplan 1985-1986" (Landelijk Bureau Racismebestrijding (LBR), 1986 1985), 6–7, IDEM Rotterdam Kennisbank.

[568] "LBR Jaarverslag 1987" (Landelijk Bureau Racismebestrijding, 1987), 13, IDEM Rotterdam Kennisbank.

[569] Maurik, "LBR Akte van Oprichting."

[570] "LBR Werkplan 1999" (Landelijk Bureau Racismebestrijding, 1999) (indicated by the fact that forming such a network is still listed in the workplan); see also e.g. "LBR Werkplan 1996" (Landelijk

In addition to building a network of legal practitioners, the LBR was expected to build the capacity and knowledge of legal practitioners through 'education and schooling'.[571] However, as time went on, the LBR staff shifted the focus of this education away from legal service providers. First it targeted staff and volunteers of regional discrimination hotlines and anti-discrimination bureaus, and eventually to more general audiences which had even less to do with law or legal measures.[572] By 1991, only one of the five groups highlighted as having received education from the LBR included legal practitioners; the other four were described as victims of discrimination, 'colleague organizations', policy makers, and actors in 'areas in which the LBR [was] active' including representatives of housing corporations, municipalities, and businesses.[573] This shift in focus mirrored the general organizational abandonment of a focus on law and legal measures as part of the means it used to address racial discrimination, and accordingly the abandonment of its ability to use state power to enforce anti-discrimination rules and laws.

5.3.2. Financial support for individual victims

The initial 'household regulations' of the LBR, which added more concrete detail to the organizational charter, suggested two ways in which the LBR could become directly involved in legal procedures: filing cases under its own name (addressed below) or, in situations where 'the outcome [wa]s important to reaching the statutory goals of the LBR', contributing funds to help pay the costs of such a

Bureau Racismebestrijding, 1996) (stating goal of 'realizing' a network in that year). Why the LBR failed to establish such a network will be further addressed in Chapter Six.

[571] Maurik, "LBR Akte van Oprichting," Article 2, para 1.b.

[572] "LBR Jaarverslag 1986" (Landelijk Bureau Racismebestrijding, 1986), 8, IDEM Rotterdam Kennisbank (Early LBR year-end summaries consistently report that its staff organized or participated in trainings with the Foundation for Training Legal Aid Workers [Stichting Opleiding Sociale Rechtshulp, SOSR], continuing legal education courses or lectures for law students.); "LBR Jaarverslag 1987," 10; "LBR Jaarverslag 1989" (Landelijk Bureau Racismebestrijding, 1989), 4, IDEM Rotterdam Kennisbank.

[573] "LBR Jaarverslag 1991" (Utrecht: Landelijk Bureau Racismebestrijding, 1991), 24, IDEM Rotterdam Kennisbank.

lawsuit through a budget line called *proceskostenfonds* (process cost funds).[574] These funds were mentioned in LBR work-plans from 1987-1996, though frequently in the context of them being underutilized. In 1987, the *LBR Bulletin*, the organization's bi-monthly publication, advertised the availability of the funds, which could be granted based on a written application demonstrating 'that the outcome of the procedure [wa]s important to combating racial discrimination with legal means', and that parties in question did not have the financial resources to pay for the case themselves.[575] By the end of that year, the LBR granted eight such requests and rejected one.[576] By 1990, the LBR had used *proceskostenfonds* to support thirty-one cases, though these cases were not evenly distributed across the years; in 1989, for example, the LBR granted thirteen requests, and in 1990 only four.[577] The type of case and extent of LBR involvement also varied. The 1989 report lists eleven matters (one of which included three separate cases), some of which are described as 'procedures' but others as 'advice' and one as 'advice, settled out of court'. Likewise one case is described as 'discrimination by fight between neighbors, (procedure)', another is merely 'discrimination on work floor (advice)'.[578] Several cases included in these numbers, and in which the LBR was more involved, are discussed below. By 1992, the section of the year-end report dedicated to *proceskostenfonds* described only one case, an appeal of a case started in 1989. In the 1994 report, the number of cases funded by the funds 'could not be quantified'[579] and by 1996, requests for *proceskostenfonds* were so infrequent that the item was cut from the organizational budget.[580]

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574 "Huishoudelijk Reglement" (Landelijk Bureau Racismebestrijding (LBR), 1985 1984), 2, para. 24, IDEM Rotterdam Kennisbank.

575 "Proceskostenfonds Rassendicriminatiebestrijding," *LBR Bulletin*, 1987.

576 "LBR Jaarverslag 1987," 10–11. The funded cases included Vredestein, Werknet, Open Deur, KLM steward, police in Zeist, Goeree case, Enschede housing, Turkish charter flights.

577 "LBR Jaarverslag 1990" (Landelijk Bureau Racismebestrijding, 1990), bijlage 5, IDEM Rotterdam Kennisbank.

578 "LBR Jaarverslag 1989," Bijlage 4.

579 "LBR Werkplan 1994" (Landelijk Bureau Racismebestrijding, 1994), 6, IDEM Rotterdam Kennisbank.

580 "LBR Werkplan 1996," 3.

5.4. Identifying and addressing structural forms of racial discrimination

From the beginning, those who started the LBR suggested that representing individuals in their cases of racial discrimination would interfere with the arguably more impactful goals of 'signaling, and with legal measures combatting, structural forms and patterns of racial discrimination.'[581] One reason the LBR gave for not engaging more with the former was to be able to pursue the latter.[582] 'Combatting structural forms and patterns of racial discrimination' would seem to be a goal most suited to addressing with legal mobilization strategies of strategic litigation, sometimes called 'test cases', defined in Section 5.3 above. However, this was a tactic the LBR avoided at every opportunity. Instead of filing test cases in criminal or civil court, the LBR preferred to privately engage with actors accused of discrimination to reach a mutually agreed upon solution, engage in educational measures or promote voluntary compliance with behavioral guidelines. This choice for out-of-court strategies, sometimes called 'alternative dispute resolution' in the world of legal advocacy, had the consequences of being nonperformative against discrete acts of racial discrimination in the short term, while contributing to the occlusion and denial that racial discrimination existed as a national problem in the Netherlands in the long term. In the short term, private settlement or voluntary compliance may have temporarily addressed the problem of one victim of discrimination, but there was no enforcement mechanism to make sure that same discrimination was not practiced again after the LBR departed the interaction, or against subsequent victims. In the long term, these cases were never made a part of legal or other public archives and so created gaps in the 'legal archive' of how racialization was practiced in the postcolonial Dutch metropole.[583]

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[581] Maurik, "LBR Akte van Oprichting."

[582] See also "LBR Jaarverslag 1990," 3 ('Het LBR richt zich op het opsporen en bestrijden van structurele patronen van rassendiscriminatie. Individuele klachtbehandeling heeft geen prioriteit. Het LBR mist daarvoor de menskracht en de vaak noodzakelijke kennis van lokale omstandigheden en situaties.').

[583] For observations of the present day challenges of researching "race" in Dutch legal archives, see e.g. De Hart, "'Ras' en 'gemengdheid' in Nederlandse jurisprudentie."

5.4.1. Court cases and administrative complaints

5.4.1.1. Filing court cases in the name of the LBR

In terms of a means to combat racial discrimination, filing cases in its own name was considered from the beginning to be the LBR's tactic of last resort. Justice Minister Korthals Altes said as much in his appearances before the Tweede Kamer discussed in the previous chapter. Before filing a case in its own name, the LBR had to receive permission from its board of directors, but this was not an insurmountable barrier. Many of its early board of directors were long time legal advocates against racial discrimination, and some were even actively involved in activist organizations. However, filing cases under its own named remained a low priority, as reflected in the relatively few cases on record in which the LBR was a named party.

Between 1985 and 1999, the online database of jurisprudence related to equal protection and anti-discrimination lists only ten such cases.[584] In two of these, the LBR was a defendant, as opposed to a complaining party, which means it was not the LBR's choice to be involved in the case.[585] Of the remaining cases, most were

[584] "Results LBR as Party in 'Rechtspraak Rassendiscriminatie,'" database, Art.1 jurisprudentiedatabase, December 11, 2023, https://art1.inforlibraries.com/art1web/List.csp?SearchT1=LBR&Index1=Index2&Database=2&BoolOp2=AND&SearchT2=&Index2=Index1&BoolOp3=AND&SearchT3=&Index3=Index1&Year1=&Year2=&OpacLanguage=dut&NumberToRetrieve=50&SearchMethod=Find_3&SearchTerm1=LBR&SearchTerm2=&SearchTerm3=&Profile=Profile3&PreviousList=Start&PageType=Start&EncodedRequest=t*28*C8*82vYGC*24*CC*AB*A1*CA*5B*AA*BB&WebPageNr=1&WebAction=NewSearch&StartValue=1&RowRepeat=2&MyChannelCount=. The term 'LBR' actually gets twelve hits, but two of these are appeals from earlier cases, so I have counted them only once each.

[585] In the first of these cases, a right-wing political party, the Center Democrats (Centrum Democraten), accused the LBR and three other organizations of inappropriately pressuring people who had signed the party's petition to participate in an election to withdraw their signatures; the court found these accusations without foundation, both in the initial case and on appeal. Centrum Democraten v HIFD, LBR, TZ en HTFD, online Art.1 Jurisprudentiedatabase; In the second, a housing corporation in Lelystad accused the LBR of defamation for alleging the corporation engaged in racist practices; the board of journalists sustained the complaint and ordered the LBR to print retractions in two national newspapers. Woningbouwvereniging Lelystad v Landelijk Bureau ter bestrijding van Rassendiscriminatie (LBR), online Art.1 Jurisprudentiedatabase.

filed before the national ombudsman or administrative bodies, which did not carry the same weight either in terms of potential penalties, or national attention, that would have come from filing criminal or civil cases in Dutch courts. The cases in which the LBR was a complaining party were:

Before the national ombudsman:

1. A complaint on behalf of an applicant for a guard position with the Marine Guard Corp. The ombudsman found that the applicant should not have been dismissed on the grounds that the applicant had not completed military service (he had), but that it was appropriate to deny the application based on language as Dutch language was a legitimate requirement for the job. The decision was that there was 'no discrimination in the form of racist ideas or feelings.'[586]
2. A complaint that the Dutch border patrol guard (Koninklijke Marechaussee*)* had inappropriately determined that a 'Black South African' man travelling through the Netherlands on his way to West Germany did not have sufficient money to pay for his transit and therefore denied him entry; the man alleged he was the only one questioned in such a way and that this was because of his race. The ombudsman decided that the detention was inappropriate, on the grounds that the man had enough money to travel through by train, but the guards only considered plane fare; the ombudsman found no evidence of racism or racial discrimination.[587]
3. A complaint about police in Zeist, who arrested 63 young people, 'including a large number of Moroccan youth' in and in the neighborhood of a department store, after the store complained about rowdy behavior. The LBR accused the police of acting 'carelessly and in a discriminatory manner when deciding on the action,' and complained about how the officers treated the youth after their arrest.

[586] LBR en DR v Ministerie van Defensie | [1987] De Nationale Ombudsman 0221 (dossier no), online Rechtsprak Rassendiscriminatie.

[587] LBR v Min. v Justitie/Marechaussee, 9 Migrantenrecht 1987-9, 64 via Art.1 Jurisprudientiedatabase 64 (De Nationale Ombudsman 1987).

The ombudsman found that while the police had acted inappropriately in a number of aspects, it was 'not sufficiently plausible that the arrests were made solely on the basis of appearance.' Despite this loss at the ombudsman level, the notation observes that one of the youth involved was able to obtain damages in a separate civil case, not brought by the LBR.[588]

Before internal industry review boards or governing bodies:

4. Before the General Union of Temporary Employment Agencies (Algemene Bond Uitzendondernemingen, ABU), the LBR complained about a job advertisement that required 'command of the Dutch language in word and writing' and 'Dutch nationality' for work in a warehouse. This case was brought under the behavioral codes designed in cooperation with the LBR and discussed below. In this case the ABU found the defendant, Werknet, guilty of racial discrimination, but it is not clear what if any punishment was imposed.[589]
5. Before the same board, complaint that an employment agency kept separate lists of 'immigrant job seekers' and annotated some of these lists with comments like 'neat Negro' and 'Sambo'; the board found the complaint well founded, and recommended further legal action be taken in criminal or civil court.[590] It is not clear whether the LBR was involved in any follow up, or if any court case did take place.
6. Before the Supervisory Committee of the Association for Dutch Finance Organizations (Vereniging van Financieringsondernemingen in Nederland), allegation that a loan application was rejected because the applicant did not have Dutch identification documents. The body

[588] LBR e.a. v Burgemeester van (gem. pol.) Zeist, online Art.1 Jurisprudentiedatabase (De Nationale Ombudsman 1988).

[589] LBR v Werknet Uitzendorganisatie BV |, online version Art.1 Jurisprudentiedatabase (Scheidsgerecht ABU (Vz.) 1988).

[590] LBR, RADAR, A.M.K. v Hygro Uitzendbureau BV |, online Art.1 Jurisprudentiedatabase (Scheidsgerecht ABU (Vz.) 1989).

found that the lender had violated the industry 'honor code' which prohibited discrimination on the basis of national origin. No penalty or recourse is mentioned.[591]

7. Before the Board of Journalists (Raad van Journalistiek), the LBR complained about a newspaper columnist who characterized the construction of mosques as discrimination against 'native Dutch people' (*autochtonen)* that had no place in a 'civilized country'. The board found that the journalist's writing fell short of 'racism or xenophobia' and thus was permissible.[592]

Before local and national courts:

8. Along with the Centrum Informatie en Documentatie Israel (CIDI) and the Anne Frank Organization, the LBR filed a civil complaint about a Belgian organization distributing pamphlets in the Netherlands that denied the existence of the Holocaust. The judges found the defendant guilty and ordered him to stop distribution or face a penalty of 10,000 guiders.[593] The man appealed the case (earning another reference in the online jurisprudence database) but the judgment was upheld.[594]

This small sample of cases makes it difficult to discern a strategic line or motivation to address structural or patterns of racial discrimination in bringing these particular cases before these particular bodies. The greater commonality appears to be the reluctance to bring cases in actual courts, instead preferring to deal with internal regulatory bodies or the national ombudsman, fora often

[591] LBR en RADAR v Ohra Financiering NV, Art.1 Jurisprudentiedatabase (Cie van toezicht Financierders 1994).

[592] LBR v R. Hoogland en de hoofdredactie van De Telegraaf, 1601 (dossiernummer) Raad voor de Journalistiek (Raad van Journalistiek 1996).

[593] CIDI, LBR, Anne Frank Stichting v VHO / Verbeke / Vd Bossche, Kort Geding 1992 Art.1 Jurisprudentiedatabase 399 (Rechtbank 's-Gravenhage 1992).

[594] Siegfried Verbeke v. Centrum voor Informatie en Documentatie Israël (CIDI), Anne Frank Stichting, Landelijk Bureau Racismebestrijding, No. 92/2009 (Gerechtshof Den Haag June 16, 1994).

designated under the rubric 'alternative dispute resolution'. As observed above, while these alternative venues may bring (temporary) resolution to individual conflicts, they do not create precedent which courts would be inclined to follow in other, similar cases, nor do they become part of generally available legal archives.

In the case of the national ombudsman, the decisions were not even enforceable in the first instance; the ombudsman, like the Commission for Equal Treatment and the Human Rights College that would later come in the Netherlands, offered only advisory opinions. If a victim of discrimination wanted to receive compensation they would have to pursue their claim in a national court.[595] Viewed in light of their impact on structural patterns or practices of racial discrimination, or on combatting racializing practices generally, the LBR's preference for alternative dispute contributes to an overall sense that its actions failed to perform either in identifying structures or patterns of racial discrimination.

In the early 1990s, some evidence shows that staff and directors of the LBR were unhappy with the small number of cases the organization pursued. The first page of the 1991 workplan stated:

> The LBR is essentially a legal agency. Its main task is to combat racial discrimination by legal means. This also distinguishes the Bureau from other institutions active in the field of combating racial discrimination. In the coming year an attempt will be made to give this main task even more emphasis than in the past. Thus in 1991 the legal activities will be expanded with a number of specific projects. Furthermore, at the expense of the research budget, the Legal Section will be expanded by half a full-time position.... It is foreseeable that after 1991 the Legal Section will have to be enlarged by another half-staff position.[596]

[595] See e.g. Peter Rodrigues and Janny R. Dierx, "The Dutch Equal Treatment Act in Theory and Practice," Text, European Roma Rights Centre (European Roma Rights Centre, October 5, 2003), 3–4, Hungary, http://www.errc.org/roma-rights-journal/the-dutch-equal-treatment-act-in-theory-and-practice.

[596] "LBR Werkplan 1991" (Landelijk Bureau Racismebestrijding, 1991), 1, IDEM Rotterdam Kennisbank.

The next year's workplan echoed these goals, stating that 'in the year 1992, test cases will be an important point of attention,' including not only supporting cases 'but also if necessary, conducting proceedings in [the LBR's] own name.'[597] However, despite refreshed legal ambitions, the organization acknowledged that such cases required extensive resources and that, without additional subsidies, the strategy wouldn't be possible.[598] Later year-end summaries reported that the resources were never acquired and cases never pursued.

Marcel Zwamborn took over the position of LBR director from Arriën Kruyt in 1992. On the subject of the LBR and filing cases in its own name, he was self-critical. He confessed that, though a qualified jurist, his own background and interest lay more in lobbying for improved human rights policies at the European Union and that, pursuant to this interest, he spent a good deal of his time as LBR director lobbying in Brussels. He wanted to start a more aggressive lobbying campaign on issues of racial equality in the Netherlands as well, and believed he had support for such a strategy from the then-LBR board chair Lillian Gonçalves-Ho Kang You. However, he failed to mobilize that support among the LBR staff. He believed one reason for this lack of enthusiasm was that some LBR staff interpreted 'legal measures' as publishing jurisprudence and were committed to these projects above others.[599]

Reflecting on his period as LBR director, Arriën Kruyt stated in 1999 that the Ministry of Justice had never tried to influence the LBR's activities.[600] On the other hand, during Kruyt's tenure as director the LBR did not engage in adversarial legal campaigns. Zwamborn, by contrast, recalled receiving what he characterized as friendly advice from a member of the Ministry of Justice regarding the LBR filing cases under its own name. That person said something to the effect of 'if you're going to sue the government, you had better win'. Zwamborn interpreted this to mean if the LBR was going to use its government subsidized funds to sue that same

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[597] "LBR Werkplan 1992" (Landelijk Bureau Racismebestrijding, 1992), 4, IDEM Rotterdam Kennisbank.

[598] "LBR Werkplan 1994," 6.

[599] Marcel Zwamborn, interview by Alison Fischer, audio & transcript, April 4, 2023, in author's possession.

[600] Arriën Kruyt, "Het Ontstaan En de Beginjaren van Het LBR," *LBR Bulletin*, 1999, 20.

government – or use government funds to sue anyone in a high profile manner – the result should not reflect badly on the government that was providing the money.[601] This exchange underscores the problem with legal mobilization via government subsidy in general; however independent the LBR was chartered to be, it could only go so far in its critique of the ministry or government that enabled it to exist. AJ van Duijne Strobosh had pointed out this risk nearly a decade earlier in *Bestrijding van Discriminatie Naar Ras*; in that report to the government, he observed that US civil rights organizations could function as a check on government because they operated independently of that government.[602] His observation was true in 1983, and remained true throughout the life of the LBR. Whatever the reasons, by 1997, the LBR budget no longer included funds dedicated to 'filing cases in its own name.' The workplan for that year justified this change by explaining that any such case had to be authorized by the LBR board of directors anyway; in the event that the board wanted to file such a case, it could also authorize funding via its 50,000 guilder 'buffer budget'.[603]

5.4.1.2. Consultation on other cases – precedent not put to good use?

Instead of filing cases in its own name, the LBR reports frequently mention 'consultation' with lawyers engaged in cases of racial discrimination, though the reports are often vague as to the specifics of what this consultation or 'close involvement' entailed. Between initial filings and appeals, these cases could stretch over years, or even decades, which is not unusual for test cases. Some of these cases began before the LBR existed, and the LBR consulted on the appeal. One such example is *Nedlloyd v Bras Monteiro e.a.,* which began in 1983, when the defendant shipping company fired 222 non-Dutch citizens as part of its financial reorganization, as opposed to firing in decreasing orders of seniority as would have been customary in the industry.[604] In 1992, the Dutch Hoge Raad decided the firings

[601] Zwamborn, interview.

[602] Van Duijne Strobosch, *Bestrijding van Discriminatie Naar Ras*.

[603] "LBR Werkplan 1997" (Landelijk Bureau Racismebestrijding, 1997), 5, IDEM Rotterdam Kennisbank.

[604] "LBR Jaarverslag 1990," 4.

had been the result of discrimination on the basis of nationality and were therefore unreasonable and ordered the fired employees to receive provisional damages.[605]

A case which the LBR reports as 'having carried out', but which does not bear its name is that of the *Nederlands Bureau voor Buitenlandse Studentenbetrekkingen v Ilhan Akel en Inspraak Orgaan Turken*.[606] Filed initially in 1988, the case accused the travel agency NBBS of refusing to sell the same cheap charter flight tickets to Turkey to Turkish nationals living in the Netherlands that they marketed to Dutch passport-holding students as part of package vacations. The trial court and court of first appeal both agreed with the parties that this represented indirect racial discrimination, but the Hoge Raad disagreed, finding for the charter companies.[607] In describing this case for the *LBR Bulletin*, LBR legal adviser (and later Leiden law professor) Peter Rodrigues attempted to tie the loss to the need for a stronger equal treatment law (Algemene Wet Gelijke Behandeling), then under debate in the Dutch parliament.[608] Such a law, he observed, should include the possibility for immigrants to the Netherlands (and their children) to maintain dual nationality, which would prevent companies like NBBS from hiding behind nationality rules in order to carry out racial discrimination. Rodrigues's article is a good example of McCann's observation that a loss in court is not necessarily a defeat for the larger social movement behind it; a loss in court can galvanize support for electoral or political change around the same issue.[609] However, Rodrigues's article in the *LBR Bulletin* seems to be a stand-alone call in this regard, and not a strategy behind which the LBR placed any additional resources or programming.

The LBR also provided 'advice during the legal procedure' of a Turkish employee against the Dutch broadcasting system NOS in 1990. The employee, along with all other '*allochthone* employees' (those racialized as non-white/non-Dutch) had been working free-lance for over a decade while '*autochthone* employees' (those

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[605] Nedlloyd v Bras Monteiro e.a., Rechtspraak Rassendiscriminatie via Art.1 Jurisprudentiedatabase.

[606] NBBS v Ilhan Akel en Inspraak Orgaan Turken (I.O.T.), 283; 0667 Rechtspraak Rassendiscriminatie via Art.1 Jurisprudentiedatabase (Hoge Raad 1991).

[607] Peter Rodrigues, "Rechtspraak: Hoge Raad Acht Onderscheid Naar Nationaliteit Toelaatbaar in NBBS-Zaak," *LBR Bulletin* 8, no. 1 (1992): 12–21.

[608] Rodrigues, 21.

[609] McCann, "Law and Social Movements," 31.

racialized as white and Dutch) all had permanent contracts. In summary proceedings, it was argued that this different treatment represented a case of indirect racial discrimination, but this court required additional evidence before making a decision; as of 1990, the case was proceeding to a fact-finding trial.[610]

One case on which the LBR consulted eventually reached the United Nations Committee on the Elimination of Racial Discrimination, which decided in favor of the complainant.[611] Rather than taking this case as a precedent, however, and pursuing court-based strategies more actively, the LBR's response was tellingly ambivalent. The case stemmed from an August 1989 incident involving a resident of Utrecht racialized as Moroccan. The man attempted to rent a home, but was informed by his potential neighbors that if he did so, they would set fire to the house. The man went to the police station to file a complaint under Penal Law 137, but the police did not accept the complaint until a local anti-discrimination group intervened.[612] After that, the office of the prosecution delayed the case for over two years before the Court of Appeals dismissed it in June 1991.[613] The UN committee found in the complainant's favor, holding that the Dutch state 'did not afford the applicant effective protection and remedies within the meaning of Article 6 of the Convention [on the Elimination of Racial Discrimination]'.[614] The LBR commented on the case, stating:

> The LBR naturally hopes that tensions [like the ones in this case] are resolved initially through mediation. However, where criminal offenses are clearly involved, the provisions of criminal law should actually be used to protect victims of racial discrimination and enforce standards. LBR has repeatedly pointed out to the Ministry of Justice that prosecutors do not properly weigh in on whether or not to prosecute. In addition to proper guidelines, the Ministry should also ensure that the police and the Public Prosecution

[610] "LBR Jaarverslag 1990," 5.

[611] L.K. v The Netherlands, online University of Minnesota Human Rights Library (The Committee on the Elimination of Racial Discrimination 1993).

[612] L.K. v The Netherlands, online University of Minnesota Human Rights Library paragraph 2.2.

[613] L.K. v The Netherlands, online University of Minnesota Human Rights Library at paragraphs 2.6-2.7.

[614] L.K. v The Netherlands, online University of Minnesota Human Rights Library at paragraph 6.7.

> Service have sufficient people and resources to recognize and handle cases of discrimination.[615]

This commentary is essentially a 'we told you so' to the Ministry of Justice, followed by a recommendation that amounts to more of the same. The Ministry of Justice, police and prosecutors had been informed for decades, at that point, that their officers and prosecutors were not properly enforcing anti-discrimination measures. Beginning in the late 1970s, police inaction and indifference had been the subject of community activism by JOSH and SARON, reports and publications from both government and academic institutions,[616] articles in publications directed at groups of people racialized as non-white,[617] and from the LBR itself.[618] Numerous 'memoranda', guidelines and behavioral codes had also been issued to the public prosecutor about how to handle such cases.[619] Rather than initiating a new strategy of criminal complaints, inspired by the UN decision, however, the LBR continued to recommend more of the same: discussion and education.

Other, more general forms of consultation included serving as a 'question bank', and 'source of expertise' for any 'first line' advocates working on racial discrimination. While in the early years of the LBR, these 'first line' advocates were mostly seen as lawyers, as time went on the LBR began to focus more on people

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[615] "LBR Jaarverslag 1992," 1992, 13, IDEM Rotterdam Kennisbank.

[616] See e.g. Bovenkerk, *Omdat Zij Anders Zijn*; Claudia Biegel and Kenneth Tjoen-Tak-Sen, *Klachten over Rassendiscriminatie* (ʾs-Gravenhage: VUGA, 1986); Claudia Biegel, Anita Böcker, and Kenneth Tjoen-Tak-Sen, *Rassendiscriminatie-- Tenslotte Is Het Verboden Bij de Wet* (Zwolle: Tjeenk Willink, 1987); Monique M. J. Aalberts and Evelien M. Kamminga, *Politie En Allochtonen: Verslag van Een Onderzoek Naar de Relatie Tussen Gemeentepolitie En Allochtonen in Nederland*, C.O.M.T. Rapport, no. 10 ('s-Gravenhage: Staatsuitgeverij, 1983).

[617] Joyce Overdijk-Francis, "Recht En Rassendiscriminatie: 'Nog Veel Werk Te Doen': Vijf Jaar Werkgroep Recht & Rassendiscriminatie," *Plataforma*, July 1988, (describing instructions from the Minister of Justice to the police in 1985, instructing them how to handle cases of alleged racial discrimination, and guidelines from the Minister of Social Work and Employment on discrimination indicating problems with police enforcement.).

[618] "LBR Werkplan 1992," 10–11; "LBR Jaarverslag 1994" (Landelijk Bureau Racismebestrijding, 1994), 4, IDEM Rotterdam Kennisbank.

[619] Biegel, Böcker, and Tjoen-Tak-Sen, *Rassendiscriminatie-- Tenslotte Is Het Verboden Bij de Wet*, 135.

working at local anti-discrimination bureaus.[620] 'In concrete terms,' an early workplan described, such consultation could include 'a particular case [or] some other form of support in or out of court.'[621] The type and intensity of LBR's 'consultation' in many of these cases is difficult to gauge from the reports. The 1990 report provides the most detail in terms of the cases themselves but describes the LBR's input only as 'being intensely involved'. On the one hand, this lack of detail makes sense; the LBR staff were 'jurists' not 'advocates', a distinction in Dutch law between those who have graduated with a legal education and can therefore give legal advice, and those who have completed additional professional training and can appear in court and represent clients. Likewise, legal advice is usually considered privileged between attorneys and clients and so one would not expect the content to be included in a report. On the other hand, when justifying their activities to those funding them, as is often the purpose of annual reports like the ones used in this case study, additional detail would seem to be warranted if they demonstrated that the LBR was adding value to these cases. Unfortunately many descriptions focus more on the LBR actions than the results those actions achieved. For example, a 1997 report, describes the case of a Somali family assigned social housing in Den Bosch; when the woman and her child went to visit the house, they were greeted with a banner reading 'full is full' and shouts against 'foreigners' in the neighborhood. The LBR 'contacted the municipality of Den Bosch and listed various options for (legal) action. Ultimately, this case did not lead to criminal prosecution of the local residents involved.' The report did not mention what happened to the Somali family, only that the case, and others like it, remained 'a point of attention' for the LBR.[622]

Evidence against the effectiveness of LBR consultations in making material impacts on practices of racial discrimination in the metropole can be found in the absence of the LBR from discussions among lawyers actively engaged in cases on these matters. Many of these attorneys participated in the Workgroup on Law and Racial Discrimination (Werkgroep Recht en Rassendiscriminatie, Werkgroep

[620] "LBR Jaarverslag 1997" (Landelijk Bureau Racismebestrijding, 1997), 4, IDEM Rotterdam Kennisbank.

[621] "LBR Werkplan 1985-1986," 10.

[622] "LBR Jaarverslag 1997," 6.

R&R), legal practitioners and activists who began meeting regularly in September 1983 and published detailed summaries of their meetings. These minutes did not often mention the LBR in the context of active cases they discussed. If the LBR was, as its year-end reports described it to be, a valuable resource to such first-line legal service providers, one would expect it to be referenced more and in greater detail in the minutes of these meetings. However, as will be discussed more extensively in Section 6.3.3, the groups barely interacted.

5.4.2. Consultation with government organizations

The LBR frequently reported being consulted by public prosecutors, staff of local anti-discrimination bureaus and social workers.[623] The 1987 year-end report, for example, includes an entire section titled 'LBR and the government' where it describes the LBR writing reports for parliament regarding the set-up of criminal law, police registers and the then-under-debate Algemene Wet Gelijke Behandeling (General Equal Treatment Law), consulting with municipalities on positive action and housing, advising about candidate lists in provincial elections, and giving advice to individual members of parliament.[624] The 1988 report describes being consulted by the police regarding proper procedures for detaining individuals to check their identification,[625] a process many antiracist groups and organizations representing people racialized as non-white had opposed for years because of its potential for racial profiling.[626] While there is nothing wrong with giving advice per se, the LBR only had so many staff and was frequently shorthanded, as is often indicated in its later reports. While this advice may have fallen in the larger goal of 'combatting racial discrimination' and while law and policy could represent 'legal

[623] "LBR Jaarverslag 1988" (Landelijk Bureau Racismebestrijding, 1988), 3, IDEM Rotterdam Kennisbank.

[624] "LBR Jaarverslag 1987," 13–14; See also "LBR Jaarverslag 1989," 5 (listing the Pubilc Prosecutors office and individual prosecutors as among those asking for advice, but not specifying the topic); "LBR Jaarverslag 1990," 4 (referencing prosecutors and 'diverse police departments').

[625] "LBR Jaarverslag 1988," 3.

[626] Joyce Overdijk-Francis, "Nederland Fabeltjesland? Discriminatoire Aspecten van Het Vreemdelingtoezicht," *Plataforma*, December 1986, 20, (describing two hundred such organizations which joined together in 1982 to form the 'National Action Committee "No pass-law, but equal rights"' and communicate this opposition to the Dutch government, without success).

means' these activities seem further away from its core business of increasing the capacity of enforcement of existing anti-discrimination norms of individuals and organizations. Like out-of-court settlements and other alternative dispute resolution methods, advice to government organizations left no public records and did not become part of public legal archives.

5.4.3. Legal consciousness raising

The LBR's mandate to 'bring attention to and combat structures and patterns of racial discrimination' in the Netherlands was in a way a charge to raise 'rights-consciousness', a concept defined by McCann as a stage of legal mobilization that 'draws on legal discourse to name problems' in terms of rights and injustices and to connect those problems to potential legal solutions.[627] What makes consciousness raising a mobilization tactic, however, is the ability to connect awareness to action; it is in this regard the LBR failed to make clear its intentions or plans or to produce results.

5.4.3.1. Publishing and Disseminating Jurisprudence

By many measures, the most impactful 'legal measure' taken by the LBR during the course of its existence was its collection and dissemination of jurisprudence – cases and decisions related to legal claims of racial discrimination in a variety of contexts. Beginning in 1985, the LBR began publishing jurisprudence relevant to racial discrimination.[628] It began publishing cases in the *LBR Bulletin*, the organization's bi-monthly publication, and then bundled those case reports into books entitled *Rechtspraak Rassendiscriminatie*, which were updated and re-published three times between 1987 and 1991, before being merged into the electronic database in 1992.[629] To date, the online Jurisprudentiedatabase, now maintained by the antidiscrimination organization Art.1, is the only place to find summaries of many Dutch cases related to racial discrimination.

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[627] McCann, "Law and Social Movements," 25.

[628] The LBR took over this practice from the Working Group on Law and Racial Discrimination, which began doing so in 1983. The Working group will be discussed in more detail below.

[629] "LBR Jaarverslag 1992," 12.

The LBR legal staff was aware of the importance of this publication and dissemination work to wider strategies of combating racial discrimination. Staff legal adviser Anne Possel, who edited *Rechtspraak Rassendiscriminatie,* wrote in the first edition:

> [T]he more widely known [court decisions] become, the more likely they are to be effective. If one knows, for example, that a civil action against the policy of a discriminatory housing association can be successful partly because the court does not impose impossible requirements for proof, then familiarity with this case law will have practical consequences. The aggrieved know what to do and the housing association knows what to expect in the case of discriminatory policies.[630]

There was nothing wrong with the LBR's assessment of the importance of jurisprudence to legal consciousness raising; the problem came with leaving the organization's use of 'legal measures' at publication. Not following up and stimulating the *use* of that jurisprudential knowledge represented a failure of action that led the LBR to function as a nonperformative entity in the field of racial discrimination.

This ambivalent approach to the use of 'legal knowledge' was evident in the contents of the *LBR Bulletin*, which began publishing in 1985. The intended audience of the *LBR Bulletin* is difficult to ascertain; different articles seem directed at legal practitioners, government agencies or law makers, or the general public. I have been unable to find information related to circulation or subscriptions in the annual reports, save for an offer to give free subscriptions to lawyers willing to be in the LBR network of service-providers.[631] The content of the articles contributes to this confusion regarding the target audience. On the one hand, articles frequently include jurisprudence or commentary on it, which give the impression that the publication is directed at legal practitioners. On the other hand, there are just as often interviews with local anti-discrimination office volunteers or employees, book

[630] "Nieuwe Uitgaven: Rechtspraak Rassendiscriminatie," *LBR Bulletin* 3, no. 2 (April 1987): 33.

[631] "LBR Werkplan 1993" (Utrecht: Landelijk Bureau Racismebestrijding, 1993), 5, IDEM Rotterdam Kennisbank.

reviews or announcement of sociological studies or other academic publications, reports of LBR activities or trainings, or pro-con debates about anti-discrimination policy. The articles rarely make explicit recommendations about how lawyers or advocates could use existing jurisprudence or research to pursue strategies in individual cases or against larger patterns of racial discrimination. When I asked former LBR staff members who they identified as the audience for the *Bulletin*, they answered almost universally that it was the staff and volunteers of local anti-discrimination bureaus, but the articles themselves do not seem to support this assertion. Instead, the *Bulletin* seems to jump between commentary on jurisprudence fit for a law journal to general educational or 'open to debate' takes on issues that would be more appropriate for those completely unfamiliar with the subject.

An issue from 1986 provides a representative illustration. That issue had a general focus on housing discrimination, discussed in the editor's introduction and followed by several articles highlighting government policy on the issue and examples of housing discrimination in Utrecht and Gorinchem.[632] An article highlighting 'jurisprudence on the housing market' follows, including discussion on *spreidingsbeleid* in Rotterdam, a policy in which municipalities used housing policy to attempt to 'spread out' families of people racialized as non-white to prevent forming 'ghettos' of such groups, and a case from the local court in Eindhoven. All these cases were covered very briefly, in less than half a page, giving the impression that readers were already familiar with the cases or would pursue them independently, as opposed to using the article to provide guidance as a stand-alone piece.[633] The next article, 'Administrative possibilities to combat discrimination', was authored by an administrative law researcher from the University of Amsterdam; it issued policy advice to local governments, encouraging them to use powers to issue subsidies, licenses and permits to address discrimination in housing and services, as opposed to lawyers or legal service providers, albeit with the acknowledgment that whatever the policy, 'procedures against the government are,

[632] Choenni and Van der Zwan, "Notitie Plaatsingbeleid Utrecht: Achterstelling Voor Allochtonen?," 11.

[633] Anne Possel, "Rechtspraak Woningmarkt," *LBR Bulletin* 2, no. 2 (1986): 20–22.

unfortunately, still necessary' to enforce those policies.[634] Thereafter followed a one page essay by LBR board member and jurist Hugo Fernandes Mendez; this article observed that given the freedom to contract, building owners could be encouraged to deny rentals to overtly racist organizations, like the then active Centrum Partij. Toward the end of the article, Fernandes Mendes included that the Minister of Justice had suggested that if building owners rented to groups they knew would make racist statements while using the space, the building owners could be charged criminally.[635] This suggestion was (and would still be) a fairly novel use of criminal law and turning it into a viable legal strategy would have been something the LBR would have had to put an active effort into to make it a reality. The local antiracist group, Workgroup Artikel 429 Quater, based in Hilversum, was using a similar strategy with its local municipal council, and could have served as a resource for such action.[636] But the article in the LBR bulletin is a scant page long; it includes no list of references or organizations who could offer guidance. The LBR year-end reports or workplans also contain no indication that the organization further attempted to support such organizing. As such, the question is left as to the purpose of this article's inclusion in the LBR Bulletin. The rest of the issue announced publications of a study of positive discrimination measures in the US, UK and Sweden that was commissioned by the government research body ACOM and conducted by Frank Bovenkerk, a page about an ongoing court case against a right-wing member of parliament, and short paragraphs describing other publications related to discrimination and race.

When legal consciousness raising is effective as a form of legal mobilization, it is because it empowers people to take action on their cause. The majority of *LBR Bulletin* articles raised topics or provided information, but stopped short of educating or encouraging readers about how to act once armed with such information. In short, they made statements against racial discrimination, and gave discursive support to actions that might address these problems, but failed to perform via material engagement with most of those actions.

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[634] Tom Hoogenboom, "Bestuursmogelijkheden Tot Discriminatiebestrijding," *LBR Bulletin*, 1986, 2, no. 2 (n.d.): 23–26.

[635] Hugo Fernándes Mendes, "Verhuur van Zaalruimte," *LBR Bulletin* 2, no. 2 (1986): 27.

[636] Bogaers, "Recht & Rassendiscriminatie"; Bogaers, interview.

The content and scope of many of the articles in the *LBR Bulletin* seem particularly denuded of their power to raise *legal* consciousness when compared to articles on similar topics published in the newsletters of organizations dedicated to combatting racism or representing the interests of people racialized as non-white. For example, the published series of summaries of meetings of the Workgroup on Law and Racial Discrimination presented similar issues to those raised in the LBR, but paired information with discussions and suggestions for how to translate that knowledge into action.[637] Articles published by the legal advisers of organizations representing people racialized as non-white made similar links. For example, an article by POA legal counsel, Joyce Overdjik-Francis, in *Plataforma* in May 1985, raised the question of whether to push the government to register citizens' racial and ethnic information along with other census data.[638] After describing the possibilities of collecting such data, and reviewing the concerns associated with such registration, the author made a clear statement of why such collection was still an important step in combatting racial discrimination and made recommendations of how to support such policies and strategies.[639] In the same issue, an article about the potential for 'preferential treatment' of 'ethnic minorities' in employment began by grounding the causes of inequality in Dutch colonial history, and ending by explicitly calling on Dutch institutions to adopt such policies.[640] Even more concrete in terms of legal mobilization was a 1984 *Plataforma* article, 'Legal

[637] Joyce Overdijk-Francis (ed.), "Jaarverslag 1983/1984 & Cumulative Index," Verslag Werkgroep Recht & Rassendiscriminatie Bijeenkomst (Utrecht: Plataforma di Organisashonnan Antiano, May 1, 1985), Nationaal Bibliotheek (explaining purpose of Workgroup meeting summaries is to support lawyers in developing law in this area through practice).

[638] Joyce Overdijk-Francis, "Registreren of Blijven Creperen," *Plataforma*, May 1985, ; European legal scholars would echo Overdijk-Francis's conclusions in the 21st century, arguing that the benefits of keeping statistics on racialized identity and discrimination outweigh the risks, see e.g. Möschel, Hermanin, and Grigolo, *Fighting Discrimination in Europe*.

[639] Overdijk-Francis, "Registreren of Blijven Creperen."

[640] Penni Peterson, Cliff Rigot, and Anco Ringeling, "Naar Een Voorkeursbehandeling Voot Etnische Minderheden: Van Formele Naar Substantieve Gelijkheid," *Plataforma*, December 1983, (making clear that the unequal position of Antillean and Surinamese people in the Netherlands comes 'from the fact that they were denied substantive equality of opportunity in the past…. As victims of past and present systemic injustices, they possess relatively lower incomes and higher levels of unemployment and may not adequately utilize available education or training.')(translation mine).

Measures Against Racism: Proof is the biggest stumbling block', in which Overdijk-Francis described all laws relevant to racial discrimination in the Netherlands, from the constitution through criminal law, and described the experience of reporting such crimes to the police, and the possibility that the police may refuse to accept such complaints. She then informed her readership of their rights to appeal these police decisions and ended by identifying concrete action POA, and other organizations representing people from the Caribbean, should take to address these problems of proof. She wrote:

> Here is a task for Antillean organizations. They can play an important role in collecting data for the burden of proof. It concerns a systematic registration over a longer period of time of discrimination cases and of bodies that discriminate. Registration of declarations of discrimination, which may or may not have been prosecuted by the police, or (as the case may be) by the public prosecutor, is also recommended. Such registration can help the difficult task of proof.[641]

While articles in *Plataforma* did not result in material actions against racial discrimination, they did suggest openly that such action was both desirable and necessary. Such messages contrasted to those in the *LBR Bulletin* which often seemed to position research on racial discrimination as an end unto itself.

5.4.4. Conducting research

In the early 1980s, legal advocates against discrimination were excited by the potential to use statistical research and evidence to pursue court cases against large scale incidents or patterns of racial discrimination. These cases were often more difficult to prove than the more explicit incidents of individuals being denied access to a disco or being subject to hate speech. The main reason for this optimism was the *Binderen v Kaya* case, decided in December 1982 and discussed in detail

[641] Overdijk-Francis, "Juridische Bestrijding Rassendiscriminatie: Bewijslast Grootste Struikelblok," 22.

above.[642] In that case, the Dutch Hoge Raad accepted statistical proof of indirect discrimination as sufficient grounds on which to hold the defendant liable for racial discrimination. The *Binderen* case was seen as having enormous potential for filing similar cases, not only related to housing, but also employment. Not only academics[643] but also government-sponsored researchers,[644] groups representing 'ethnic minorities' and independent lawyers[645] and advocates and the Dutch government itself[646] recognized that gathering the statistical information needed for such cases would be beyond the capacity of individual victims of discrimination.[647] It would require the work of a larger organization, ideally able to compel cooperation with its investigations, but at least to be able to compile statistics across industries, regions and years. In the minds of many, the LBR would become just that sort of national organization. Indeed, over the course of its life the LBR produced thousands of pages of research. As time went on, however, it became clear that the research the LBR produced was not destined for the courtroom; in fact, none of the cases listed in Section 5.4.1 above in which the LBR was a named party, or even those in which the LBR was 'closely involved', were based on statistical evidence from the organization's many research projects. Instead of being utilized as the basis for cases, LBR research was frequently presented as an end in and of itself.[648]

The LBR published the results of its research in the *LBR Bulletin* or its supplement, the *LBR Reeks*. Much of this research focused on generalized practices or beliefs about discrimination, the likes of which already existed in the Netherlands in abundance, produced by government research institutions like the ACOM, and supplemented by a variety of other groups and individual researchers, some

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642 Hondius, "Private Remedies Against Racial Discrimination - Some Comparative Observations with Regard to R.K. Woningbouwvereniging Binderen v Kaya."

643 Hondius; Ausems-Habes, *Congres Recht En Raciale Verhoudingen* (mentioned in opening speech to the Congress by Professor Kees Groenendijk).

644 Van Duijne Strobosch, *Bestrijding van Discriminatie Naar Ras*, 87.

645 Overdijk-Francis (ed.), "Civiel Recht En Rassendiscriminatie," 11.

646 Kamerstukken II 1982/1983, 16102, nr. 21, 98–99.

647 Boer, "Artikel 1 Grondwet," 134.

648 Kruyt, "Het Ontstaan En de Beginjaren van Het LBR" ('De eerste duidelijke resultaten waren onderzoeksrapporten.... Een rapport over uitzendbureaus heeft een geweldig effect gehad.').

independently commissions, others based in universities, all funded through various government ministries. In fact, the Dutch government paid for so much research that it had to also create a separate institution just to track it all; between 1989 and 1993, a time period in which the LBR was also active, that organization catalogued over 300 separate research projects related to 'ethnic minorities' in the Netherlands.[649]

Five years earlier, in his report on to the Ministry of Justice on how to address racial discrimination in the Netherlands, A.J. van Duijne Strobosch had already commented on the quantity of research on the topic. He advised the cabinet that a future national institute should indeed conduct investigations to gather statistical evidence on discriminatory patterns or practices in order to support legal complaints, but should avoid 'research about the existence' of racial discrimination in the Netherlands generally, which already existed in abundance.[650] Researchers and others who identified as members of groups racialized as non-white agreed with his complaints. Sociological researcher Chan Choenni, who would end up working as a staff researcher for the LBR, complained in *Spann'noe* in 1985 that:

> The number of research reports, memos and books on so-called ethnic minorities are already so numerous that it is an almost impossible task to keep an overview.... Many times there are overlaps, irrelevant details and sometimes trivialities....Yet it appears more and more that quotations from these works are being made indiscriminately. A strange kind of incompetence then comes around the corner: to your great surprise, firm statements are made that are clearly based on misconceptions and misinterpretations.[651]

The LBR identified its role as different from those other research organizations in that it spent a lot of time following up on the results of its research so that it would lead to change of circumstances for 'the foreigners who were disadvantaged' by

[649] E. Dijk, "Onderzoek Etnische Minderheden 1989-1992," Documentatie lopend onderzoek sociale wetenschap, Selektie (Amsterdam: Sociaal-Wetenshappelijk Informatie- en Documentatiecentrum, 1993).

[650] Van Duijne Strobosch, *Bestrijding van Discriminatie Naar Ras*, 86.

[651] C.E.S. Choenni, "Evenredigheid En Toegankelijkheid," *Span'noe*, 1985, 12.

discrimination.[652] Unfortunately much of that follow up was often in the form of more research, or non-binding measures that did little to change patterns and practices of discrimination.

5.4.4.1. Case Study One: Employment Agency Discrimination

One illustration of how the LBR used research in 'combatting racial discrimination with legal means' and how fundamentally nonperformative this practice was, can be seen by looking at the LBR's response to allegations of discrimination by employment agencies (*uitzendbureaus* and *gewestelijke arbeidsbureaus*). In 1986, the LBR commissioned researcher Choenni, who was by then working full time for the LBR, and university researchers R. den Uyl and Frank Bovenkerk to research these allegations. The result was *Mag het ook een buitenlander wezen?*, a publication which revealed that local and regional employment offices 'structurally discriminated against ethnic groups'.[653] Using research assistants acting in pairs, one 'descended from an ethnic group' and one 'a native Netherlander', the researchers applied to various agencies, where the 'ethnic group' members were denied twice as often as the 'native' Dutch applicants. They also posed as potential employers, calling the employment agencies and requesting that the agencies *not* send them any candidates of Surinamese or 'foreign' background, openly discriminatory requests to which agency staff members almost universally agreed. The researchers also spoke with staff of the employment agencies, who admitted to accommodating employers' discriminatory requests without informing their supervisors, and with 'members of ethnic groups' who reported experiencing such discrimination.[654] In response to their findings, the researchers recommended eight courses of action, none of which included filing court cases in criminal or civil court.[655]

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[652] "LBR Werkplan 1992," 14.

[653] Den Uyl, Choenni, and Bovenkerk, *Mag Het Ook Een Buitenlander Wezen*; (described in) Frank Bovenkerk, C. Choenni, and R. den Uyl, "Het LBR pakt discriminatie bij uitzendbureaus aan.," *LBR Bulletin*, 1986.

[654] Den Uyl, Choenni, and Bovenkerk, *Mag Het Ook Een Buitenlander Wezen*, 10.

[655] Bovenkerk, Choenni, and Uyl, "Het LBR pakt discriminatie bij uitzendbureaus aan.," 15–17; Den Uyl, Choenni, and Bovenkerk, *Mag Het Ook Een Buitenlander Wezen*, 27–29 (The

Instead, the LBR focused its efforts on working with the General Union of Employment Agencies (Algemene Bond Uitzendbureaus, ABU), to develop a behavioral code (*gedragscode)* which would forbid employment agency staff from engaging in practices like those found in the report. The Dutch parliament, as well as the Ministry for Social Work and Employment, signaled their support for such codes. The ABU accepted the suggestions and developed such a code with the cooperation of LBR staff; the Ministry for Social Work and Employment followed suit.[656] All parties acknowledged the codes would only be effective if enforced,[657] but enforcement remained difficult. In 1988 and 1989, the LBR filed two cases with the ABU regulatory body related to discriminatory Dutch language and citizenship requirements for warehouse workers, where these qualities were not essential to the work.[658] But those complaints was rare. By 1991, not only the LBR but national newspapers were reporting that most employment agencies ignored the non-discriminatory behavioral codes, and continued to discriminate against applicants from 'ethnic minority' groups.[659] That same year, the LBR presented a follow-up report, conducted by researchers at Leiden University and titled *Makkelijker Gezegd* (*Easier Said*); that research consisted mainly of interviews with employment agency workers, who reported finding the non-discrimination code

recommendations did include: 1) that the employment agencies adopt a code of conduct (gedragscode) which included a commitment not to discriminate in accepting candidates, or accommodating the discriminatory wishes of client-employers; 2) that the employment agencies themselves hire more 'members of ethnic groups'; 3) that the agencies train their employees with special attention to (non) discrimination; 4) that the Ministry of Social Work and Employment include non-discrimination requirements in issuing permits to such agencies; 5) that the same Ministry, though its salary control services, check the agencies more frequently for discrimination; 6) that the Dutch cabinet, municipalities and other large institutions only do business with agencies that had non-discrimination policies; 7) that the organizations representing 'ethnic groups' conduct similar investigations at the local level and 8) that agencies register how many 'members of ethnic groups' were registered with their agencies and how many of those candidates had actually been referred to potential employers.).

[656] "LBR Jaarverslag 1987," 2.

[657] Tjeerd van der Zwan, "Anti-Discriminatiecode Voor Uitzendbureaus," *LBR Bulletin*, 1987.

[658] 'LBR Jaarverslag' (n 374) 6 (representing two of the seven cases filed in the LBR's name above).

[659] Henk Muller, "Uitzendbureaus Negeren Gedragscode Discriminatie," *Volkskrant*, October 3, 1991, IDEM Rotterdam Kennisbank; "LBR Jaarverslag 1991," 24–25.

helpful, but lacking 'sufficient skills to resist discriminatory requests of employers.'[660] Instead of filing complaints against individual employment agencies under Art.429quater of the criminal code, which outlawed such discrimination by businesses, the LBR's response to this new evidence of ongoing discrimination was to design a training module for employment agency staff which would focus on how to respond to discriminatory requests from employer-clients, and later 'intensifying schooling' pursuant to a permanent cooperation agreement between the LRB and the ABU.[661]

Rather than accept that, as predicted by A.J. van Duijne Strobosch in 1983, that behavioral codes without enforcement were 'dead letters', a prediction reinforced by their own research, the LBR expanded this nonperformative strategy to other agencies and industries. In the late 1980s and early 1990s LBR staff were active on various committees and in conversation with various industries to develop more behavioral codes and performance guidelines (*richtlijnen)*. These codes and guidelines included, among others, the auto insurance industry[662], airline industry[663], Ministry for the Interior[664], the prison authority[665], the restaurant and hotel industry, city of Amsterdam, labor unions, the Central Labor Administration

[660] "LBR Jaarverslag 1991," 13–14.

[661] "LBR Werkplan 1992," 14; "LBR Werkplan 1993," 13.

[662] "LBR Jaarverslag 1992," 10.

[663] "LBR Werkplan 1993," 14 (In 1992, the LBR announced the results of a survey of KLM's Material Management Department. This survey confirmed earlier complaints by 'immigrants' about the obstacles they faced in their careers within the company. Based on the investigation, the LBR reported that KLM decided to tighten its anti-discrimination policy and set up a working group was set up to implement this policy on which an LBR staff member served. The working group was to focus on 'the installation of confidants and a complaints committee on discrimination and improving opportunities for immigrants to progress within the company.').

[664] "LBR Jaarverslag 1993," 1993, 9, IDEM Rotterdam Kennisbank ('consultation about set up and content for a behavioral code for the ministry; Liley this code would be used as a model for other ministries.').

[665] 'LBR Jaarverslag' (n 573) ('A code for imprisoned people…the LBR exchanges thoughts with the [Ministry of] Justice regarding improving the position of detained foreigners.').

and Dutch Olympic Committee[666], as well as the police and Ministry of Justice.[667] The LBR observed that these codes were more effective than general norms and laws against discrimination because they were more specific and concrete, and often included sanctions for discriminatory behavior.[668] This statement seems to be wishful thinking, however, since other than the two cases brought by the LBR to the ABU in 1988 and 1989, the LBR offered no research or other evidence to prove that guidelines were being enforced. By contrast, evidence up to and including the present day indicates that the sort of discrimination described in the early research continues to this day.[669]

5.4.4.2. Case Study Two: Research on housing discrimination

In addition to the LBR's work on employment bureaus, many people associated with the group often pointed me to research on housing discrimination as an example of the organization's successful work. Closer examination demonstrates, however, that the 'success' of this research was as difficult to assess as that of behavioral codes for employment agencies. Housing discrimination was a problem identified early and often as a priority for the LBR[670], but had proved harder to address than employment or disco discrimination. Government policy documents had long forbidden explicitly racialized *spreidingsbeleid*, or 'dispersal policies' which attempted to 'spread out' groups of people racialized as non-white in different neighborhoods across Dutch cities or regions.[671] In practice, however,

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[666] "LBR Jaarverslag 1993," 9 (cooperation with LBR ranging from discussion to drafting definitive versions of such codes).

[667] "LBR Jaarverslag 1992," 9 (the LBR sat in a committee developing guidelines (*richtlijnen*) for the police and OM; in 1992, 'the current guidelines appear not to be affective and need to be sharpened.').

[668] "LBR Jaarverslag 1993," 8.

[669] See e.g. Anne Dohmen, "Linda verkoopt meer hypotheken dan Ouafa," *NRC*, April 13, 2018, https://www.nrc.nl/nieuws/2018/04/13/linda-verkoopt-meer-hypotheken-dan-ouafa-a1599331.

[670] See e.g. "Verslag Kongres Minderheden," 29–30; "De LOSON Roept Op Tot Massale Deelname Aan de Anti-Racisme-Campagne," 7; Ausems-Habes, *Congres Recht En Raciale Verhoudingen*, 39, 206.

[671] Choenni and Van der Zwan, "Notitie Plaatsingbeleid Utrecht: Achterstelling Voor Allochtonen?," 13; e.g. Bart Jungmann, "Verplichte Rapportage Corporaties over Buitenlanders Bij

such policies persisted using categories like income, family size, employment history or 'lifestyle' to perpetuate the same practice. The Dutch housing ministry requested that housing corporations voluntarily report how many 'foreigners' were included among their renters, but compliance was rare; in its first workplan, the young LBR listed 'compelling' this compliance through 'political and legal measures' a priority.[672]

In September 1989, the LBR published research indicating that housing corporations in Haarlem used the category 'family with many children' to discriminate against Turkish and Moroccan families seeking subsidized apartments.[673] Officials from regional housing corporations that administered these applications denied that they took actions that were impermissible, but also justified that these actions were necessary concessions to protect the interests of 'Dutch' residents.[674] In response to the LBR report, the Dutch ministry responsible for housing (*Ministerie van Volkshuisvesting, Ruimtelijke Ordening en Milieubeheer, VROM*) ordered Haarlem to conduct its own research, a request to which Haarlem agreed, along with starting a working group to look into the LBR's recommendations for improvement, which included mandatory reporting for housing corporations.[675] However, the Haarlem city council also complained that the LBR was singling it out when other municipalities engaged in similar practices; [676] LBR researcher Kees Tazelaar agreed with the council on this point, but argued

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Woningtoewijzing Stuit Op Weerstand: 'Rassendiscriminatie Gebeurt Achter Het Loket,'" *De Volkskrant*, October 17, 1989, sec. Binnenland, Delpher.

[672] "LBR Werkplan 1985-1986," 5.

[673] "Haarlem discriminatie buitenlanders verweten," *De Volkskrant*, September 23, 1989, print edition, sec. Binnenland, Delpher; "LBR Jaarverslag 1990," 14–15.

[674] "Haarlem discriminatie buitenlanders verweten" ('Directeur W. Langeler, van woningbouwvereniging St Bavo, verdedigt het beleid…door erop te wijzen dat Nederlanders vaker zouden verhuizen als er veel buitenlanders in hun wijk wonen… "Ze kunnen zich dan niet meer in hun eigen wijk herkennen."'). Jungmann, "Verplichte Rapportage Corporaties over Buitenlanders Bij Woningtoewijzing Stuit Op Weerstand: 'Rassendiscriminatie Gebeurt Achter Het Loket'" ('Yvonne Grooten van de NCIV [zei] soms moet de toestroom van "mensen met een kleurtje", zoals zij dat noemt, wel eens worden afgeremd.').

[675] "Onderzoek Naar Discriminatie in Haarlem Gelast," *NRC Handelsblad*, December 29, 1989, sec. Binnenland, Delpher.

[676] "Onderzoek Naar Discriminatie in Haarlem Gelast."

this singling out was strategic and should warn other municipalities to change their practices or be similarly called out.[677]

A scant four months later, however, the success of the Haarlem research was difficult to determine. The city council had 'emphatically denied' any allegations that 'foreign families' were discriminated against with its approval.[678] The 1990 LBR year-end report indicated that the LBR had participated in the Haarlem working group, and that its recommendations had been 'endorsed' by the city council, but the report does not indicate whether those reports indicated mandatory reporting, or how that reporting would be enforced, except to say that the organization was in 'contact with interested local organizations' and had a conversation with the 'LBR and the Bureau of Legal Aid,'[679] but neither LBR reports, nor online databases of legal cases of discrimination or Dutch media archives indicate that such a case was ever filed in Haarlem.

Zooming out, Tazelaar's wish that the Haarlem research serve as a model for national action on housing discrimination also yielded dubious results. An LBR report on housing discrimination in the city of Lelystad, published in 1990 met with immediate resistance from officials there who denied allegations of discrimination and also rejected the idea of engaging in a 'Haarlem model' working group to adopt recommendations of the LBR.[680] One of the housing corporations featured in that report ended up suing the LBR for defamation and winning, forcing the LBR to print retractions of its findings in two national newspapers in 1993.[681]

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[677] Jungmann, "Verplichte Rapportage Corporaties over Buitenlanders Bij Woningtoewijzing Stuit Op Weerstand: 'Rassendiscriminatie Gebeurt Achter Het Loket'" (Tazelaar: 'We hebben bewust een middelgrote gemeente genomen en niet Amsterdam….').

[678] "Haarlem ontkent discriminatie," *Algemeen Dagblad*, January 15, 1990, sec. front page, Delpher.

[679] "LBR Jaarverslag 1990," 14.

[680] Berry Brinkhorst, "Discriminatie Bij Toewijzen van Huizen," *Het Parool*, June 30, 1990, sec. Omstreken & Amsterdam, Delpher; "Gesprek over discriminatie vastgelopen: Lelystad en LBR uit elkaar," *Het Parool*, August 14, 1990, sec. Omstreken & Amsterdam, Delpher; "Heerma Eist Openheid in Racismezaak: Rond Woningtoewijsizing Lelystad," *Het Parool*, September 8, 1990, sec. Omstreken & Amsterdam, Delpher.

[681] Woningbouwvereniging Lelystad v Landelijk Bureau ter bestrijding van Rassendiscriminatie (LBR), online Art.1 Jurisprudentiedatabase; Landelijk Bureau ter Bestrijding van Rassendiscriminatie, "Rectificatie," *NRC Handelsblad*, January 22, 1993, sec. Economie; Landelijk Bureau ter Bestrijding van Rassendiscriminatie, "Rectificatie," *De Volkskrant*, January 22, 1993.

Using these reports as leverage for political change failed to yield clear victories. While in 1991, the LBR reported successfully lobbying Parliament to include a reporting requirement as an amendment to its Housing Law,[682] the ultimate law adopted in 1992 was less clear; it prevented landlords from refusing a report, if the municipality asked for one.[683] By 1993, the political tone of national discussions around housing discrimination seemed to have shifted entirely. That year, an 'Antillean family' tried to rent a house in Tilburg, the home was vandalized with 'racist slogans' and cleaners working for the housing company were threatened, after which point the family was placed in another neighborhood.[684] Rather than tightening anti-discrimination requirements, however, support in the 'public housing world' increased for 'placement policies' that openly considered 'lifestyle and living culture' when placing renters with an eye to avoiding 'neighborhood conflicts.[685] Despite describing these categories as 'alibis for discrimination on the basis of ethnicity', the LBR did not engage in, or recommend, further legal action on the matter, but instead advocated to the readers of its yearly report that municipalities respond more quickly to people causing neighborhood problems.[686] In 1994, it reported having 'close discussions' with a lawyer in Maastricht who achieved a positive result in a discrimination case against a commercial property that refused rental to a person from Ghana, but reported no new efforts on the issue of housing discrimination that year.[687]

5.5. Conclusion

The LBR's fundamentally non-adversarial approach to legal mobilization defined its beginnings, as well as its ends. It's ambivalent, somewhat contradictory relationship to legal mobilization is revealed in how its first director, Arriën Kruyt, looked back at the life of the organization on the last issue of the *LBR-Bulletin*. To

[682] "LBR Jaarverslag 1991," 4.

[683] "LBR Jaarverslag 1992," 16.

[684] Remco de Jong, "Tilburg Schikt Zich in Afkeer Andere Leefstijl," *Het Parool*, October 7, 1993, sec. Binnenland, Delpher.

[685] "LBR Jaarverslag 1993," 19.

[686] "LBR Jaarverslag 1993," 19–20.

[687] "LBR Jaarverslag 1994," 14.

begin, Kruyt acknowledged that 'publicity, consciousness trainings and that sort of thing are undoubtedly necessary, but they don't do much for someone who has just been fired due to discrimination. That person needs an educated advisor who knows their way around the law.' He then went on, to explain that the LBR met this need by 'in the first place bringing the experts in-house, and then on the basis of this expertise lobbying for good laws and educating lawyers to give good help.'[688] In other words, victims of discrimination needed people to take legal action, but that action would come at arms-length from the LBR itself.

In her articles on nonperformative antiracism, Sara Ahmed describes what it means to 'perform equality' – that is, to give a performance, a show, which acts like taking action against inequality or discrimination, but in fact changes nothing. Writing about university diversity policies against discrimination, she poses the question, 'whether what is being measured are levels of institutional competence in producing documents rather than what the university is doing in terms of race equality,' and cites the concern of those working for racial equality on campus that 'writing documents or having good policies becomes a substitute for action.'[689] The activities pursued by the LBR, from informational campaigns, to out-of-court mediation of individual complaints, from prioritizing research and publishing to crafting of elaborate behavioral codes and guidelines, comport with Ahmed's observation; these practices consumed the time and energy of both LBR staff and workers from the industries or agencies in question, while yielding at best unprovable results. At worst, these efforts created the illusion of compliance with non-discrimination norms while allowing ongoing discriminatory practices to continue. They also denied victims of such racial discrimination the chance to shift the perception of their grievances from a 'psychological reality to a material reality' as Nicole Immler observed happened in the case of the Rawagede widows who were able to obtain compensation from the Dutch state decades after their family members were killed by the Dutch military in Indonesia.[690]

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[688] Kruyt, "Het Ontstaan En de Beginjaren van Het LBR," 20.

[689] Ahmed, "The Nonperformativity of Antiracism," 116–17.

[690] Immler, "Human Rights as a Secular Social Imaginary in the Field of Transitional Justice: The Dutch-Indonesian 'Rawagede Case.'"

On the rare instance when the LBR did engage in adversarial legal procedures under its own name, it did so under the ahistorical definition of racism defined in Section 2.3.1 above, that is an explicit, conscious expression of hatred or superiority based on group identity, as opposed to more every day, practical racialized social practices. For example, the cases the LBR filed in Dutch courts were in large part in response to racist speech acts, like pamphlets including Holocaust denials or speeches by self-declared anti-immigrant parties, like the Centrum Partij or Centrum Democraten.[691] Even the cases it filed before regulatory bodies employment agencies were about explicitly racialized categorization of job applicants or requirements.[692] Other cases were more focused on discrimination based on nationality (in the case of Turkish charter flights); while these cases may have overlapped with issues of racial discrimination and racialization, in that some nationalities were racialized as non-white, the LBR never made this connection clear as part of its arguments, or explained the history of why racialization and nationality were so intimately connected, as explained in sections 1.2.2. and 2.2.1 above. By contrast, cases which were deeply racialized, but which involved practices more passively integrated into Dutch society, for example the consistent and persistent reluctance of police or prosecutors to follow up on allegations of racial discrimination[693] the LBR chose repeatedly and over a long period of time for

[691] See e.g. Siegfried Verbeke v Centrum voor Informatie en Documentatie Israël (CIDI), Anne Frank Stichting, Landelijk Bureau Racismebestrijding; Vereniging Centrum Democraten v HIFD, LBR, Van der Zwan HTFD, online Art.1 Jurisprudentiedatabase (Gerechtsof 's-Gravenhage 1993); CIDI, LBR, Anne Frank Stichting v VHO / Verbeke / Vd Bossche, Kort Geding 1992 Art.1 Jurisprudentiedatabase.

[692] Lieneke de Klerk, "Rechtspraak: Discriminerende Aantekeningen Op Kaarten Uitzendbureau: ABU-Scheidsgerecht Doet Wederom Uitspraak in Discrimininatiezaak," *LBR Bulletin*, no. 6 (1990): 21–25; LBR v Werknet Uitzendorganisatie BV |, online version Art.1 Jurisprudentiedatabase.

[693] Biegel and Tjoen-Tak-Sen, *Klachten over Rassendiscriminatie*; Biegel, Böcker, and Tjoen-Tak-Sen, *Rassendiscriminatie-- Tenslotte Is Het Verboden Bij de Wet*; Aalberts and Kamminga, *Politie En Allochtonen*; Anne Possel, "Klachten over Politie-Optreden," *LBR Bulletin* 2, no. 6 (1986): 10–11; For evidence that this reluctance to take on cases remains a present day problem, see e.g. Rolinde Hoorntje, "Racisme in Nederland leidt zelden tot rechtszaak," *OneWorld*, October 8, 2020, https://www.oneworld.nl/lezen/discriminatie/racisme/racisme-in-nederland-leidt-zelden-tot-rechtszaak/.

strategies of dialogue or education, as opposed to more adversarial legal enforcement.

One of the reasons the cabinet created the LBR was to answer critiques from grassroots groups and those representing people racialized as non-white that existing anti-discrimination norms and laws were not being enforced and therefore had no material impact. The government refused to budge from its strategy of relying on individual complaints, but conceded that an organization was needed to make that strategy effective. In refusing to engage with enforcement of those measures in a way that materially impacted large numbers of people experiencing racial inequality in the Dutch metropole, the LBR became, at best, complicit in maintaining the status quo, a society still operating with social and economic hierarchies influenced by a white supremacist past. At worst, its actions also obscured the existence of those problems, occluding the fact that 'incidents' of racial discrimination were in fact wide-spread and national problems, baked into the structure of postcolonial Dutch society, by keeping cases and controversies out of public, legal archives. This occlusion of race as an aspect of Dutch society resulted not only from their legal activities, or lack thereof, but also from the content of their educational and networking efforts, which the following chapter will address.