

HOW STRICTER DUTCH IMMIGRATION POLICIES ARE CONTRIBUTING TO RISING ISLAMIC FUNDAMENTALISM IN THE NETHERLANDS AND EUROPE

I. INTRODUCTION

Immigration is at the forefront of world issues, especially in the European Union (EU) in light of economic changes and recent world events.¹ Previously long-standing traditions in EU countries such as democracy, tolerance, human rights, and fundamental freedoms supported inclusive and pro-immigration policies.² Now these same countries are enacting stricter immigration policies for the new wave of immigrants, referred to as third country nationals (TCNs).³ These TCNs are ethnically and culturally different from previous immigrants.⁴ While changes in immigration policy are often made to address economic and security problems, they are also often the result of disguised racism and xenophobia.⁵ These policy changes are a reflection of the movement for

1. Barbara Melis, *Negotiating Europe's Immigration Frontiers*, 3 IMMIGRATION AND ASYLUM LAW AND POLICY IN EUROPE 1 (Elspeth Guild & Jan Niessen eds., 2001).

2. *Id.* at 8–9. The goal of inclusion is to integrate immigrants in the host countries. *See id.* at 18.

3. A TCN is a person who is not a national of an EU Member State. European Commission: Justice and Home Affairs, *Glossary*, http://ec.europa.eu/justice_home/glossary/wai/glossary_welcome_en.htm (last visited Apr. 1, 2007).

4. Melis, *supra* note 1, at 18. The new group of TCNs come from developing countries farther away from Europe. As a result, they have less in common with “European” culture, especially regarding language and ethnicity, and are often considered non-European (especially if they are non-white). *See id.* at 2. This is in sharp contrast to previous waves of immigrants from countries that were closer to Europe culturally and geographically. *Id.* at 2.

5. *Id.* at 2. Economics had always been one of the factors driving immigration. *See id.* at 10. Later immigration also sparked security concerns regarding terrorism and international crime. *See id.* at 11. *See also* 3 IAN WARD, A CRITICAL INTRODUCTION TO EUROPEAN LAW 226 (2d ed. 2003) (discussing the immigrant guest worker problem and perceived threat to security brought on by immigration).

Melis discusses the difficulties of assimilating immigrants of non-European descent with the rise of right-wing parties pushing agendas with xenophobia and racism and general hostile attitudes toward foreigners. *See generally* Melis, *supra* note 1, at 15–18.

Several events have demonstrated the social and cultural gulf between Muslims and non-Muslims. Anna Mulrine, *Europe's Identity Crisis*, U.S. NEWS & WORLD REPORT, Jan. 10, 2005, at 36. These events include the debate over EU membership for Turkey, the ban on head scarves in French schools, the commuter-train bombings in Madrid, and the murder of Dutch filmmaker Theo van Gogh. *Id.* More recent events include the July 2005 bombings in London and the controversy over the Danish and European publication of cartoons depicting Muhammad.

See Nasreen Suleaman, *The Mystery of 'Sid,'* BBC NEWS, Oct. 19, 2005, <http://news.bbc.co.uk/2/hi/>

immigration exclusion.⁶ However, many of these new exclusionary immigration policies, such as those in the Netherlands, are effectuating discontent and exacerbating Islamic fundamentalism in Europe.

Part II of this recent development discusses the history of immigration and immigration policies in the EU and the Netherlands. Part III discusses changes in EU attitudes toward immigration, subsequent changes in policy, as well as changes in Dutch immigration policy and the Netherlands' move from a more inclusive to a more exclusive policy. Part IV discusses the effect of the changes in Dutch policy and their relationship to rising Islamic fundamentalism. Part V argues that the change in Dutch policy is a reflection of a general exclusionary immigration policy in the EU and its individual Member States, and that it further contribute to anti-inclusionary policies and rising Islamic fundamentalism in the EU.

II. BACKGROUND/HISTORY

A. EU Immigration Policy

The EU arose from unification of the belligerent nations of World War II.⁷ While the nations made several agreements, they could not agree on a unified immigration policy.⁸

uk_news/magazine/4354858.stm (discussing the London bombings); Arthur Bright, *Firestorm over Danish Muhammad Cartoons Continues*, CHRISTIAN SCI. MONITOR, Feb. 1, 2006, <http://www.csmonitor.com/2006/0201/dailyUpdate.html> (discussing the Danish Cartoons).

6. Melis, *supra* note 1, at 19. Exclusion is defined as the limiting of TCNs from all the benefits of immigration and citizenship. *Id.*

7. See CIA, *European Union*, in THE WORLD FACTBOOK, <http://www.odci.gov/cia/publications/factbook/geos/ee.html> (last updated Jan. 10, 2006). The EU arose out of several treaties and communities. *Id.* After World War II, French Foreign Minister Robert Schuman proposed an eventual union of Europe. *Id.* In 1951, the Treaty of Paris created the European Coal and Steel Community (ECSC). *Id.* Its success led to the Treaties of Rome, which created the European Economic Community (EEC) and the European Atomic Energy Community (EURATOM). *Id.* The six members of the treaty also began eliminating trade barriers among themselves by forming a common market. *Id.* In 1967, the ECSC, EEC, and EURATOM were formally merged into the European Community (EC), creating a single Commission, a single Council of Ministers, and the European Parliament (EP). *Id.* Several countries later joined the EC. *Id.* In 1992, the Treaty of Maastricht led to more cooperation in foreign and defense policy, in judicial and internal affairs, and in the creation of an economic and monetary union (including a common currency). *Id.* This further integration created the European Union. *Id.*

8. Melis, *supra* note 1, at 12–13. The Maastricht Treaty consisted of several agreements for the EU, but since the Member States could not agree on a single framework for immigration, there are scattered provisions throughout the treaty regarding immigration. *Id.*

Social and economic factors influenced European immigration.⁹ After World War II, European governments encouraged immigration to help rebuild Europe.¹⁰ During the international recession in the 1970s, many countries tried to decrease immigration but failed.¹¹ Governments adopted more restrictive measures and methods to reduce immigration.¹² However, many of these measures failed to decrease immigration.¹³ The Single European Act in 1987 increased freedom of movement not only for European citizens but also for TCNs.¹⁴

In 1989, the end of the Cold War increased concerns over rising immigration.¹⁵ Immigration became a bigger security matter, and countries realized the need for increased international cooperation.¹⁶ Traditionally, countries had focused on border policies to keep TCNs out as opposed to immigrant policies, which mainly affected immigrants already within the borders.¹⁷ As countries tightened up policies, they enforced their policies through intergovernmental cooperation rather than centralized action.¹⁸ The principle of mutual recognition was applied to immigration and asylum law, meaning that states recognized each others' decisions in immigration and asylum matters.¹⁹

9. *Id.* at 10.

10. *Id.*

11. *Id.* Countries tried to deal with the recession, caused by the oil crisis, by limiting labor permits in the hope that it would reduce the foreign population. *Id.* However, they failed as immigrants stayed and invited their families to join them. *Id.*

12. *See* Melis, *supra* note 1, at 10–11. The restrictive policies, which included stopping new immigrants at the border and the creation of other intergovernmental complications, increased illegal immigration, which also led to additional and more restrictive laws for migration. *Id.* Repatriation programs intended to give migrants incentive to return to their home countries had little success. *Id.* Forced removal of migrants was impossible due to political and humanitarian reasons. *Id.*

13. *Id.*

14. *See id.* at 11. The Act was intended to remove internal frontiers among member states by 1992. *Id.* However, the increased freedom of movement led to additional security concerns, as everyone, including potential immigrants, could move about more freely. *Id.*

15. Countries were especially concerned over increased immigration from former communist regimes. *Id.* at 12.

16. *Id.* Previously, immigration had been mainly an economic concern. *Id.* Countries realized the need for a more internationally coordinated effort to deal with rising immigration. *Id.*

17. *Id.* at 29.

18. *Id.* at 11–12. *See also* WARD, *supra* note 5, at 225 (discussing how immigration remains an intergovernmental concern among individual Member States despite the formal transfer of immigration matters to the EU).

19. *See* Steve Peers, *EU Immigration and Asylum Law: Internal Market Model or Human Rights Model?*, in 1 EUROPEAN UNION LAW FOR THE TWENTY-FIRST CENTURY, CONSTITUTIONAL AND PUBLIC LAW EXTERNAL RELATIONS 345 (Takis Tridimas & Paolisa Nebbia eds., 2004). Mutual recognition, which requires one country to recognize another's laws, has also been a core EU principle in other areas, including civil, commercial, and criminal law. *Id.*

The EU dealt with immigration on several fronts. The Maastricht Treaty set up a framework for intergovernmental cooperation in security and foreign policy (CFSP) and in justice and home affairs (JHA).²⁰ The institutions created under the Maastricht Treaty had limited authority, if any, in immigration.²¹ Immigration matters, except for visas, were of common interest, but were not subject to European Community (EC) competence.²² Immigration was regulated under JHA, where member states had the most influence.²³ The treaty adopted central immigration policies, but they were ineffective because the instruments enacted to implement the policies lacked legally binding force.²⁴ Additionally there was no unified system to oversee immigration.²⁵ Instead, Member States retained primary control on immigration matters.²⁶ The Maastricht Treaty conferred increased political rights and free movement to European citizens.²⁷ However, TCNs were still considered nothing more than labor or security threats and did not have the same rights as native citizens.²⁸ Criticism of the Maastricht approach to immigration²⁹ led to revisions, and finally, the Amsterdam Treaty.³⁰

Member States in the Amsterdam Treaty (except for the U.K. and Denmark)³¹ called for a common understanding on immigration and a single framework of EC Treaty provisions.³² However, this still did not translate into a unified policy.³³ The goal of unanimity rule failed to resolve the biggest migration issues, such as conditions of entry, residence, and family reunion, which were left up to Member States to decide and enforce.³⁴

20. Melis, *supra* note 1, at 13. The treaty created a system of three pillars: (1) the European Community; (2) the CFSP; and (3) the JHA. The first pillar consisted of the Council (the Member States), the European Commission, and the European Parliament (EP). *Id.*

21. *Id.* The European Parliament had a consultative role while the European Court of Justice did not participate in immigration affairs. *Id.*

22. *Id.*

23. *Id.*

24. *Id.* at 14.

25. *Id.*

26. *Id.*

27. *Id.* at 15. *See also* Treaty on the European Union art. 2, Feb. 7, 1992, 1992 O.J. (C 224).

28. Melis, *supra* note 1, at 15.

29. The European Commission, European Parliament, and many Member States criticized the Maastricht Treaty for various reasons beyond the scope of this article. *Id.* at 13–14.

30. *Id.*

31. *Id.* at 14.

32. *Id.*

33. *Id.* at 14–15. Different countries have varied in their immigration policies depending on the types of immigrants and their countries of origin. *Id.*

34. *Id.* at 52. This was problematic because Member States often made and retained different and conflicting policies despite being aware of the importance of the unanimity of the EU. *Id.*

The Amsterdam Treaty stated a deeper commitment to human rights in respect to the European Convention on Human Rights (ECHR) than the Maastricht Treaty.³⁵ However, the Amsterdam Treaty also created a virtual “fortress of Europe,” increasing the gap between EC migrants and TCN migrants, who were finding it next to impossible to become EU citizens and gain the rights associated with such citizenship.³⁶ Thus, immigration policy moved toward racialization, usually affecting only “ethnic” TCNs in various ways that made immigration and integration more difficult.³⁷

Since the Amsterdam Treaty, the European Parliament (EP) and European Commission have sought increased freedoms for TCNs and a unified immigration policy.³⁸ But such policies are limited by Member States’ reluctance to take action to integrate immigrants and their desire to decrease immigration.³⁹

There have been other movements toward a more unified immigration policy.⁴⁰ The EC originally sought harmonization of national law to allow free movement (including that of persons) but ended up with the minimum standard of mutual recognition.⁴¹ The Treaty of Amsterdam—in regard to visas, asylum, immigration, and other policies related to the free movement of persons—implies that Member States may only introduce laws that are compatible with the Treaty and international law.⁴² The EC

35. *Id.* at 21–23.

36. See generally Steve Peers, *Building Fortress Europe: The Development of EU Migration Law*, 35 COMMON MKT. L. REV. 1235, 1235–72 (1998) (discussing the creation of and problems associated with a “fortress of Europe” in regards to immigration).

37. See Melis, *supra* note 1, at 15–17. “Ethnic” TCNs usually have a distinct culture (regarding ethnicity, language, religion, etc.), which makes it more difficult for them to assimilate and integrate when compared to other immigrants from European or western countries. TCNs are also usually low-skilled, which creates additional economic problems in the foreign country of destination. *Id.* For further discussion on the racialization of immigration policy, see also WARD, *supra* note 5, at 226–31.

38. See Melis, *supra* note 1, at 17. The Commission, and especially the EP, have pushed for increased rights for immigrants, while individual states have advocated for measures to control or decrease immigration. *Id.*

39. *Id.*

40. See Peers, *supra* note 19, at 346–48. Recent efforts include the Tampere European Council of 1999, which called for adopting common standards on asylum procedures and granting more uniform rights to TCNs. *Id.* at 346–47. The Treaty of Nice also added article 67(5) to shorten the transitional period for asylum measures. *Id.* at 347. The EC has adopted legislation “defining the common rules and basic principles governing these issues.” *Id.*

41. *Id.* at 346. The standard of mutual recognition being that of “preventing Member States from limiting free movement where another Member State has already regulated a person, product, or service.” *Id.*

42. Treaty of Amsterdam Amending the Treaty on European Union, the Treaties Establishing the European Communities and Certain Related Acts art. 63, Oct. 2, 1997, 1997 O.J. (C 340) 61 [hereinafter Amsterdam Treaty]. Article 63 states that the EC “shall not prevent any Member State from maintaining or introducing in the areas concerned national provisions which are compatible with this Treaty and international agreements.” *Id.*

can only adopt “minimum standards” to asylum law,⁴³ usually for the protection of the individual.⁴⁴ The changes in the Treaty, which included the abolishment of internal border checks and freedom for TCNs to travel for three-month periods in some countries, may have indicated some relaxation in policies.⁴⁵

But ultimately, these measures did not result in the increased harmonization of asylum and immigration policy in the EU.⁴⁶ Member States were required to set minimum standards for illegal migration, but optional harmonization allowed them to increase regulation on free movement rights within their territories.⁴⁷ Member States may have minimum standards and can be more restrictive than other Member States, making full harmonization impossible.⁴⁸ While some Member States may provide more protection for immigrants, other Member States are not obligated to recognize such protection.⁴⁹ As a result, Member States can maintain more exclusive policies despite the EU’s movement toward more unified, and less restrictive policies.

The Schengen Instruments,⁵⁰ which were eventually adopted into the Amsterdam Treaty, are another extension of the harmonization process.⁵¹ They were originally created to promote free movement across Member States.⁵² The Schengen Instruments attempted to harmonize standards for crossing borders in the EU and create a uniform visa procedure for free movement among Member States.⁵³ Member States are now in agreement in some areas, including the “white list”⁵⁴ of countries exempt from the visa requirement, the uniform visa and visa procedures, required

43. Peers, *supra* note 19, at 346.

44. *Id.* at 351.

45. *Id.* at 356.

46. *Id.*

47. *Id.* at 351–52.

48. *Id.* at 356–57. When countries have different standards, countries with less restrictive standards often end up having to conform to the standards of more restrictive countries. *Id.*

49. *Id.* at 358–59.

50. These instruments are also referred to as the Schengen Agreement and Convention. WARD, *supra* note 5, at 195. The instruments were eventually adopted into the Amsterdam Treaty despite earlier objections from some countries. *Id.* at 196.

51. *Id.*

52. *Id.* at 195. Other Schengen goals included streamlining visa procedures, creating databases of movement, and other methods of monitoring the movement of people (especially immigrants). *Id.*

53. See Peers, *supra* note 19, at 348–49. The Schengen Executive Committee had the power to adopt common rules for visa applications and criteria for movement within the Schengen area (for Member States who signed on). Member States were allowed to adopt a common policy on movement of persons and lists of countries that were exempt and non-exempt from visa requirements. *Id.*

54. The “white list” is a list of countries whose nationals do not have to obtain a visa before entering the EU. *Id.* at 349.

documentation for persons from unrecognized territories, the “freedom to travel” list, and standard refusals of entry.⁵⁵ Agreement in these areas was the result of Member States’ realization of the need for a unified policy to stem the flow of TCNs.⁵⁶

The Dublin Convention (Dublin Regulation)⁵⁷ was created in response to the Schengen-created problem of asylum shopping.⁵⁸ The Dublin Regulation gave one nation the responsibility of reviewing an individual asylum application, solving the problem of “refugees in orbit.”⁵⁹ It established a system for mutual recognition of rejection of asylum applications in accordance with the Geneva Refugee Convention and the European Convention on Human Rights.⁶⁰

In 2001, the European Council hoped to adopt the Action Plan to combat illegal immigration.⁶¹ The EU encouraged adoption of the Action Plan to facilitate the goal of free movement.⁶² The EU recommended the adoption of a common policy on immigration and asylum as well as more effective control of external borders.⁶³

B. Dutch Immigration Policy

In contrast to EU policy, Dutch immigration policy and treatment of foreigners is considered open and tolerant.⁶⁴ The Netherlands’ open and

55. *Id.*

56. Immigrants were once able to skirt strict border controls in some countries by entering the EU through other countries with more lax border policies and eventually entering the more restrictive countries (since borders between countries became more lax with little or no border checks or barriers, especially after the passing of the Amsterdam Treaty).

57. Catherine Phuong, *Persecution by Third Parties and European Harmonization of Asylum Policies*, 16 IMMIGR. L.J. 81, 90 (2001). The Dublin Convention is another EU asylum instrument.

58. *Id.* Asylum shopping is defined as the ability of asylum seekers to move freely among Member States and file asylum applications in multiple states to increase their chances of being granted asylum. *Id.*

59. *Id.* at 90–91. “Refugees in orbit” was a situation where TCNs who wanted to immigrate were left stateless because countries would refuse or take too long to examine asylum applications. *Id.* Countries would try to rely on another country to examine the application. *See id.* Now, a Member State is assigned to review the application. *See id.*

60. Peers, *supra* note 19, at 349–50. This policy was based on complete confidence in the Member States and assumed they would fully apply the Geneva Convention and European Convention on Human Rights to asylum applications. *Id.*

61. European Council, Presidency Conclusions: European Council in Laeken, Dec. 14–15, 2001, at 12, available at http://ue.eu.int/ueDocs/cms_Data/docs/pressdata/en/ec/68827.pdf (last visited Mar. 8, 2006).

62. *Id.*

63. *Id.*

64. *See* Isabelle Wesselingh, *Traditional Dutch Tolerance Confronts Harsh Realities of Integration*, AGENCE FRANCE PRESSE, Nov. 11, 2004.

tolerant policy may be due partly to the fact that the country has always had a large immigrant population.⁶⁵

The Dutch Constitution has long been the basis of immigration policy. However, even though the Constitution offers basic principles to interpret the law, judicial and local government organization and powers are actually derived from Acts of Parliament.⁶⁶ The Constitution is rigid but flexible enough for much leeway in rulemaking.⁶⁷ Constitutional review is only subject to international law norms.⁶⁸

Article 2 of the Constitution covers nationality and the admission and expulsion of aliens.⁶⁹ Nationality is granted through parentage or naturalization through birth.⁷⁰ The Aliens Act (*Vreemdelingenwet*)⁷¹ gave few rights to aliens and allowed immediate expulsion of aliens in certain circumstances.⁷² However, the country cannot refuse admittance to all refugees.⁷³

Since the Treaty of Rome, the Netherlands has followed EC law and has allowed the European Court of Justice to limit its sovereignty.⁷⁴ Primary and secondary EC law prevails over Dutch law, even the Constitution.⁷⁵ International law is usually automatically adopted into Dutch law.⁷⁶

65. See Ken Dilanian, *Dutch Pull Back Welcome Mat*, THE PHILADELPHIA INQUIRER, May 30, 2004, at A2.

66. CONSTANTIJN A.J.M. KORTMANN & PAUL P.T. BOVEND'EERT, DUTCH CONSTITUTIONAL LAW 20–21, 31 (2000).

67. *Id.* at 29. Many concepts in the Dutch Constitution are open to interpretation. *Id.* Dutch governmental bodies have been able to make many major changes to laws without having to revise the Constitution. *Id.* The government, the States General, and the courts have also been able to easily adjust constitutional interpretations for different circumstances left open by the Constitution. *Id.* at 20–21. Governmental bodies have often taken the initiative to make regulations rather than be directed by the Constitution. *Id.* at 31.

68. *Id.* at 21. There is no official body authorized to review laws against the Constitution. The “political” offices, government, and States General involved in making the laws are responsible for conducting constitutional review. *Id.* Article 120 forbids courts from reviewing the constitutionality of Acts of Parliament and treaties. *Id.* at 206. Article 94 in the Constitution forbids courts and officials from applying national laws when doing so would contravene treaties or international organizations. *Id.* at 203. Thus it is usually international law that merits more significant constitutional review.

69. *Id.* at 141.

70. *Id.* Naturalization applies to foreigners born in the Netherlands or its colonies. *Id.*

71. *Vreemdelingenwet, Wet van januari 1965* [The Aliens Act, Act 13 January 1965], *Staatsblad van het Koninkrijk der Nederlanden* [Stb.] 40 (Neth.).

72. KORTMANN & BOVEND'EERT, *supra* note 66, at 143–44. Aliens have some recourse and can seek expulsion review from the Minister of Justice or the district court of the Hague. *Id.*

73. *Id.* at 143. The country must admit refugees who otherwise would have to return and would be threatened with persecution in their home country. *Id.*

74. *Id.* at 151.

75. *Id.*

76. *Id.* The Netherlands follows the European Convention for the Protection of Human Rights

III. MAIN TOPIC

A. *Factors Behind Changing Sentiments on Immigration*

Recently, the Netherlands has been moving towards a “closed” immigration policy.⁷⁷ This more exclusionary policy is reflective of the current attitude of the EU towards immigration and will continue the general EU exclusionary trend unfavorable to immigration, despite human rights and humanitarian considerations.

The EU faces a myriad of problems related to immigration, including security concerns and the need for social cohesion.⁷⁸ Social cohesion is becoming more difficult as immigrants arrive from countries drastically different from Europe.⁷⁹ Some areas are facing economic problems attributed to immigration.⁸⁰ Xenophobia, racism, and related problems are increasing in Europe.⁸¹

The EU has kept these concerns in mind as it has pushed for a stronger integration policy.⁸² This policy includes the promotion of civic citizenship and nationality for immigrants and schooling in new languages.⁸³ The need for active integration is stronger due to shifts in the type of immigration and the different arriving immigrants today.⁸⁴ The

and the International Covenant on Civil and Political Rights. *Id.* These treaties call for fundamental rights of all persons. *Id.* They are automatically adopted into Dutch law and often have the same weight as the Constitution. *Id.* The country also recognizes the European Court of Human Rights and the Human Rights Committee. *Id.*

When international law heavily conflicts with Dutch law or the Constitution, a rule-making authority may need to implement the provision or reconcile the more complicated international law with the conflicting Dutch law or the Constitution. *Id.* at 173.

77. See generally Dilanian, *supra* note 65 (discussing how the Netherlands, an extremely multiethnic nation, is enacting strict immigration laws).

78. See generally Theodora Kostakopoulou, “Integrating” Non-EU Migrants in the European Union: *Ambivalent Legacies and Mutating Paradigms*, 8 COLUM. J. EUR. L. 181, 188 (2002).

79. See Melis, *supra* note 1, at 15–17.

80. See generally *Special Report: Forget Asylum-Seekers: It’s the People Inside Who Count*, THE ECONOMIST, May 10, 2003, at 23 [hereinafter *People Inside*] (discussing immigration and economic problems such as welfare and job loss).

Economic problems attributed to immigrants include worries that immigrants take away jobs from citizens because of their willingness to work for lower wages and fear that immigrants tax many European countries’ general social welfare systems and other scarce resources such as housing. *Id.*

81. *Id.*

82. *Justice and Home Affairs: Commission Sets Guidelines for Integrating Immigrants*, EUROPEAN REPORT, June 4, 2003, § 2781 [hereinafter *Justice and Home Affairs*].

83. *Id.*

84. *People Inside*, *supra* note 80, at 23–24. The other option to integration, natural assimilation, has been considered largely unsuccessful. *Id.* Natural assimilation had been successful in the past, but not today because there are more immigrants entering at faster rates. *Id.* These immigrants are different from previous groups of immigrants. *Id.* They face more obvious prejudice, are more likely to resent

new EU goals for immigration call for increased immigrant rights and harmonized entry procedures into the EU,⁸⁵ yet doubts remain as to whether EU regulation and encouragement has been successful.⁸⁶ In addition, there are still human rights concerns.⁸⁷ Many have argued that EU regulation has actually established systematic exclusion in the community.⁸⁸

The Netherlands is illustrative of internal and EU divisions in immigration policy. The Netherlands was once seen as a tolerant, open society;⁸⁹ however, world events have revealed divisions within the country, especially with respect to the Muslim population.⁹⁰ The Netherlands' reversal on immigration has been the most dramatic in the EU.⁹¹

There were many reasons for the changes in sentiment and policy in the Netherlands. The Dutch feared a loss of national identity,⁹² and blamed

prejudice, and are less able to assimilate into society. *Id.*

85. *Justice and Home Affairs*, *supra* note 82. The Commission-recommended approach to immigration in Member States called for integration as a two-way process based on mutual rights and corresponding obligations, while considering their individual situations. *Id.* Integration was most important for the following: language; housing and urban issues; increased access to health and social services; and encouragement of involvement in the community. *Id.*

86. WARD, *supra* note 5, at 227.

87. *Id.* One human rights concern is the criminalization of asylum, considering the huge number of asylum seekers who are actually escaping persecution. *Id.*

88. *Id.* Such systematic exclusion is due to the continued stress on security and the EU's continued allowance of several suspect immigration policies in Member States. *Id.* The importance of security in the EU may have actually given members justification to enact more exclusionary immigration policies in the name of security and protection. *Id.*

89. It is unclear how tolerant the Netherlands was in actuality, because there was a lot of segregation. Stryker McGuire, *Clash of Civilizations; Europeans Talk of Ethnic Tolerance. But Events in the Netherlands Show How Dangerously They Are Divided*, NEWSWEEK INT'L, Nov. 22, 2004, at 36 (discussing the internal divisions among the Dutch population and the divisions between the immigrants and native-born of immigrants).

Dutch society was based on a "mosaic" (as opposed to a "melting-pot") notion of integration. *Id.* Different religions such as Protestants and Catholics had different churches, schools, and social clubs, but lived in mutual respect as Dutch. *Id.* The government funded religious Islamic schools that isolated immigrants from Dutch life and did not encourage newcomers to learn the language or customs upon arrival. *Id.* This created "ghettoes of discontent" as job prospects soured for new immigrants who were unable to compete with native citizens and were isolated economically and literally from the general population. *Id.*

90. *People Inside*, *supra* note 80, at 22. After September 11, many Dutch were shocked to learn that only sixty-one percent of Dutch Muslims condemned the attacks. *Id.* at 23. As a result there was rising sentiment that many of the immigrants did not share Dutch values. *Id.* Polls also showed rising Dutch sentiment against Muslims and immigration in general. *Id.*

91. Dilanian, *supra* note 65. See also *infra* notes 117–24 and accompanying text.

92. Dilanian, *supra* note 65. There was a movement stressing return to the traditional *normen en waarden* (norms and values) of the Dutch. *People Inside*, *supra* note 80, at 22. This movement stressed the importance of purely Dutch norms and values. *Id.*

rising Islamic extremism for increased violence and crime.⁹³ Citizens also feared that newcomers were taking advantage of the social welfare system.⁹⁴ Pim Fortuyn,⁹⁵ an assassinated former right-wing leader, rose to prominence amid these fears.⁹⁶ His party's slogan, "Holland is full," won his party⁹⁷ twenty percent of the vote during the elections, drastically changing the political climate.⁹⁸ Since then, immigration has become a more divisive problem.⁹⁹

B. Changes in Dutch Immigration Policy

The Dutch response to the immigration problem has created new barriers to immigration.¹⁰⁰ A rule was recently enacted that requires future residents (as opposed to citizens) to pass a Dutch language and culture (*Inburgering*) test before arriving in Holland, making it the first country in the world to demand that permanent residents complete a pre-arrival integration course.¹⁰¹ A local council oversees and tracks the individual

93. Dilanian, *supra* note 65. Immigrants such as Muslims, Turks, and Moroccans are expected to become majorities in a decade in Amsterdam and Rotterdam. *Id.* These major cities have had huge problems with crime. *Id.* Much of the crime is blamed on the immigrants in the city. *Id.* Since September 11, 2001, there has been increased attention and hostility when those perceived as immigrants commit crimes. *Id.*

94. *Id.* The welfare system, which is considered generous, is currently undergoing problems because of declining native birthrates (necessary to support the pensions) and increasing need for welfare support by immigrants. *Id.* Immigrants, especially from Turkey and Morocco, make up a disproportionate amount of the population imprisoned, unemployed, or on disability. *Id.* Once immigrants become residents (not necessarily citizens), they can apply for social welfare benefits. *Id.*

95. Fortuyn was a gay former sociology professor who launched the movement opposing what he viewed as overly generous Dutch immigration policies. *Id.* In 2002, an animal-rights activist assassinated him during his campaign for prime minister. *Id.* His party is still a powerful force in the country. *Id.* While his party was ousted by the Labour Party in recent elections in its stronghold of Rotterdam, the Labour Party and many other political parties have adopted many of Fortuyn's policies on immigration and security. See *Dutch Politics: Left Back*, THE ECONOMIST, May 9, 2006, at 27.

96. Dilanian, *supra* note 65.

97. Fortuyn's right-wing party called itself "Livable Netherlands." Peter Speetjens, *Van Gogh's Murder Brings Out Holland's Contradictions*, THE DAILY STAR, Nov. 20, 2004.

98. *Id.* Before Fortuyn's party came on the scene, a coalition of Christian Democrats, Labor, and Liberal parties had dominated the political climate. *Id.* Fortuyn's party is the largest political party in Rotterdam, Holland's second largest city. *Id.* Rotterdam also has a high concentration of immigrants. Dilanian, *supra* note 65. Currently, the party is promoting several policies purportedly to help immigrants integrate but are in actuality evidence of anti-immigrant policies. *People Inside*, *supra* note 80.

99. McGuire, *supra* note 89.

100. See Dilanian, *supra* note 65. See also *infra* notes 126-34 and accompanying text.

101. Dilanian, *supra* note 65. Most countries with such requirements require aspiring citizens to take courses after arrival in the country and during the citizenship process, not before. *Id.* Those who desire to be residents must take the course even though they have no guarantee of citizenship. *Id.*

integration of residents and fines them for failing to integrate.¹⁰² Another obstacle for immigrants is increasing residence permit fees.¹⁰³ Major cities are considering proposals that would require certain income levels before allowing residents to move there.¹⁰⁴

Earlier immigration laws are now more strictly enforced. The law has also been tightened with regard to immigration for employment and marriage.¹⁰⁵ The government is using more foreign police and has increased crackdowns on the hiring of and renting to illegal immigrants.¹⁰⁶

Asylum procedures are becoming harsher. Accelerated procedures to review asylum cases are increasingly used.¹⁰⁷ This has resulted in unfair treatment of unaccompanied minors from outside the EU. They are given less leeway, although they are already at a disadvantage upon arrival.¹⁰⁸ The Netherlands is also trying to expel 26,000 people who were allowed to stay after their asylum applications were rejected.¹⁰⁹

IV. EFFECTS OF CHANGES IN DUTCH POLICY

Stricter Dutch policy is indicative of a general trend in other countries and the EU in general.¹¹⁰ The Netherlands, despite its small size,¹¹¹ is an influential EU member.¹¹² This constitutional monarchy¹¹³ has a

102. *People Inside*, *supra* note 80, at 23.

103. *Dutch Groups Go to Court Over "Extreme Costs" of Residence Permit*, AGENCE FRANCE PRESSE, Nov. 19, 2004. Residence permits (required to reside in Holland) now cost 430 euros, up from 56 euros three years ago. *Id.* Extensions, which used to be free, now cost 285 euros. *Id.* In addition, permanent residence permits used to cost 256 euros and are now 890 euros. *Id.* These costs are especially harmful to immigrants who are generally on the lower end of the income scale. *Id.*

104. McGuire, *supra* note 89, at 36.

105. It is now easier for skilled workers to gain residency in the Netherlands. *Id.* This does not help most TCNs who are unskilled. In immigration policy regarding marriage, citizens must now earn 120% of minimum wage before they are allowed to bring a foreign partner to the country. *Id.* Those who wish to bring in relatives or a spouse must be older. Roger Cohen, *A European Model for Immigration Falters; Dutch Facade of Tolerance Under Strain; Islam in Europe*, INT'L HERALD TRIB., Oct. 17, 2005, at 1.

106. McGuire, *supra* note 89, at 36.

107. Dilanian, *supra* note 65.

108. *Id.*

109. *Id.*

110. See generally *People Inside*, *supra* note 80, at 24 (discussing the changes in other EU countries with more restrictions on immigration and immigrants in general, such as France).

111. KORTMANN & BOVEND'EERT, *supra* note 66, at 23. The territory is 41,160 square kilometers and largely flat, with few natural resources (making it a large exporter of agricultural goods). *Id.*

112. CIA: The World Factbook, Netherlands, <http://www.cia.gov/cia/publications/factbook/geos/nl.html> (last updated Aug 22, 2006). The Netherlands has been heavily involved in the EU and its predecessor communities. *Id.* It was a founding member of NATO and the EC (now the EU), and participated in the introduction of the Economic and Monetary Union (EMU) in 1999. *Id.*

113. KORTMANN & BOVEND'EERT, *supra* note 66, at 21–23. The Netherlands is a decentralized

population of 16 million, including a large number of foreigners.¹¹⁴ With five percent of the population being Muslim, the Netherlands has the second highest proportion of Muslims in the European Union; only France has a higher percentage.¹¹⁵ The Muslim population is mainly Turkish and Moroccan, with a number of smaller minority groups.¹¹⁶

Recent events and changes in policy have exacerbated the immigration and integration problems.¹¹⁷ A parliamentary report showed that past integration had generally been successful, based on interviews with hundreds of people and a large study.¹¹⁸ But recent events have led to a different conclusion.¹¹⁹ As the policies are tightened, there is more open opposition to “foreigners” and their ways. “[F]oreigners become resentful, find it harder to integrate not only socially but economically, and there are more problems, including increased violence by and against immigrants.”¹²⁰ A recent poll demonstrated increasingly anti-immigrant

unitary state with legislative and administrative functions exercised at the central, regional, and local level. The central government controls national matters such as defense, foreign affairs, and justice. *Id.* The central government is a constitutional monarchy with a parliament, the King, who has immunity, and the ministers, who actually make policy. *Id.*

The Constitution was adopted in 1814 but has been amended many times, most recently in 2002. CIA: The World Factbook, Netherlands, *supra* note 112. The country has a civil law system incorporating French penal theory. *Id.* The Constitution does not permit judicial review of acts of the States General. *Id.*

The Netherlands accepts compulsory ICJ jurisdiction, with reservations. *Id.* These include the rule of law (*rechtsstaat*), which states that there must be review by the courts (except in constitutional matters), adherence to fundamental rights in the Constitution and international treaties on protection of human rights, *trias politicas* (separation of powers), and a system of checks and balances. KORTMANN & BOVEND'EERT, *supra* note 66, at 22. In addition, actions must be based on previous rules. *Id.*

114. The makeup of the population in ethnicity and religion is as follows: Dutch 83%; other 17% (of which 9% are of non-Western origin; mainly Turks; Moroccans; Antilleans; Surinamese and Indonesians) (1999 est.). Religious affiliations include: Roman Catholic 31%; Dutch Reformed 13%; Calvinist 7%; Muslim 5.5%; other 2.5%; unaffiliated 41% (2002). CIA: The World Factbook, Netherlands, *supra* note 112.

115. Paul Schnabel, *The Dutch Experience with Islam*, THE AUSTRALIAN, Nov. 22, 2005, at 12.

116. *Id.* These smaller groups are composed of mainly refugees from Iran, Iraq, Afghanistan, the former Yugoslavia, and Somalia. *Id.*

117. Measures seen as anti-immigrant or anti-Muslim include publishing a code of conduct requiring Dutch to be spoken in public in Rotterdam, and the Parliament legislating a countrywide ban on wearing the burqa in public. Stefan Theil, *The End of Tolerance*, NEWSWEEK INT'L, Mar. 6, 2006, available at <http://www.msnbc.msn.com/id/11569485/site/newsweek/> (last viewed Sept. 4, 2006). The publication of cartoons featuring the prophet Muhammad throughout Europe incited anger in many Muslims. *Id.*

118. Wesselingh, *supra* note 64.

119. See Schnabel, *supra* note 115. Immigration ministers in the Netherlands, France, and Germany have admitted to failures in integration policy. See Theil, *supra* note 117.

120. Speetjens, *supra* note 97. Muslims who feel isolated from Dutch society increasingly turn inward to their communities and are less motivated to advance economically because of real and perceived bias against them. *Id.* The murder of Dutch filmmaker Theo van Gogh, maker of a film widely seen as anti-Muslim, was committed by a Muslim Moroccan native born in the Netherlands and

sentiment and an increased call for integration.¹²¹ Right-wing politicians have called for an end to non-Western immigration.¹²²

The Dutch have acted to exclude foreigners as well as failed to include foreigners, especially Muslims.¹²³ While the EU has also taken measures to restrict immigration, the Netherlands has gone beyond EU policy and that of other Member States. The EU has encouraged policies to assist immigrants financially and socially, but almost nothing in Dutch policy does so.¹²⁴ Immigrants are losing valuable welfare benefits and support.¹²⁵ The EU desires free movement, which the Netherlands impedes directly and indirectly through its policies.

For a variety of reasons, including the immigration problems, Islamic fundamentalism is on the rise in the Netherlands and the rest of Europe;¹²⁶ however, it is distinct from the Islamic fundamentalism associated with terrorism.¹²⁷ While there have been isolated incidents of involvement with well-known international terrorist groups and major incidents of violence, a majority of fundamentalists in Europe are more likely to engage in petty crime, resulting in short jail sentences.¹²⁸ The rioting in France that took place after two Muslim youths were killed while evading police is but one example.¹²⁹ Despite this distinction, there is evidence that these fundamentalists are being absorbed into the ranks of those associated with terrorist networks.¹³⁰ Many of these new fundamentalists, including new converts to Islam, have become “an intense focus of terrorist networks.”¹³¹

Fundamentalist ideas were not popular in the first generation of Muslim immigrants in the Netherlands.¹³² While the Turkish population

illustrates the growing division. *Id.* After the murder, many mosques and Muslim schools were set ablaze or vandalized. *Id.* This incited retaliatory attacks on Protestant Churches. *Id.* Antiterror police also uncovered a plot to kill the woman who had written van Gogh’s film. *Id.*

121. The poll showed that forty percent of Dutch people hoped that the 900,000 Muslims would “no longer feel at home” in the Netherlands, and that eighty percent of the Dutch called for harsher measures to force immigrants to integrate. Wesselingh, *supra* note 64.

122. See Cohen, *supra* note 105, at 1.

123. See Dilanian, *supra* note 65.

124. *Id.*

125. *Id.*

126. See Theil, *supra* note 117. See also Martin Walker, *Europe’s Migrant Elephant*, UNITED PRESS INT’L, Dec. 18, 2005 (discussing Europe’s growing problems with Muslim immigration).

127. Michael Radu, *They Burn, Therefore They Are*, NAT’L REVIEW, Nov. 14, 2005.

128. *Id.*

129. *Id.*

130. See TONY BLANKLEY, *THE WEST’S LAST CHANCE* 50–56 (2005) (discussing recruiting and indoctrinating European Muslims into terrorist networks or jihad by various terrorist groups, including Al-Qaeda).

131. GILLES KEPPEL, *THE WAR FOR MUSLIM MINDS: ISLAM AND THE WEST* 243 (2004).

132. Schnabel, *supra* note 115, at 12.

seems not to be as heavily influenced by fundamentalists, many second and later generations of Moroccans are turning to fundamentalist ideas.¹³³ These people are born and educated in the Netherlands.¹³⁴ However, they turn to Islamic fundamentalism for a variety of reasons, including alienation from their parents, their country of origin, and the society in which they live.¹³⁵ Searching for an identity, these youths have turned to gangs and/or Islamic fundamentalism.¹³⁶ While the level of criminal activity varies, it does indicate that integration is not working. The bombings in London and riots in France also indicate rising levels of violence by fundamentalists.

After Fortuyn's murder, other violent incidents, and the anti-Muslim stances adopted by some politicians, several government buildings are under strict surveillance and many security checks are in place.¹³⁷ Politicians who have spoken out against or have been perceived as against Islam have been under heavy protection as a result of credible threats.¹³⁸ Many Muslims sense a growing hostility toward them both from the government and the people.¹³⁹

V. ANALYSIS

EU Member States have heavily influenced EU policy, and the Netherlands, though small in comparison to other Member States, is an EU powerhouse that has exerted significant influence as an active participant in community institutions. The Court of Justice is located in the Netherlands. The Netherlands is also near other countries, such as Germany and Belgium, that house several other European institutions with authority or influence over the immigration policy of the EU and its Member States. To date, however, these institutions have done little to curtail the more exclusive policies in the Netherlands, even though these policies thwart EU goals.

The Netherlands will be able to adopt more restrictive policies because of recent world events.¹⁴⁰ Security has always been a major concern and

133. *Id.*

134. *Id.*

135. Radu, *supra* note 127. Problems like high unemployment and racism also are factors. *Id.*

136. *Id.*

137. Schnabel, *supra* note 115, at 12.

138. See Theil, *supra* note 117. Dutch Integration Minister Rita Verdonk is one of several top politicians under death threats from Islamists. *Id.*

139. See Alan Cowell, A 'Dangerous Moment' for Europe and Islam, INT'L HERALD TRIBUNE, Feb. 8, 2006, at 1.

140. These events include September 11 and concerns over Islamic fundamentalists. See generally

justification for decreasing immigration.¹⁴¹ Concerns over security will give member states free reign to enact stricter policies on immigration and control of foreigners.¹⁴² The Constitution and courts are powerless or refuse to clamp down on immigration restrictions, whether on the basis of human rights, fundamental rights, or constitutionality.

The Netherlands was previously another alternative for immigrants. Now that the country is trying to restrict its borders, there is little possibility of increased immigrant rights in the Netherlands or in the EU.

The Netherlands experience has shown that badly managed immigration policies can be a destabilizing force even in the most tolerant and settled of European countries.¹⁴³ The situation can only worsen for immigrants as worries about terrorism and discoveries of links between some Muslims and terrorist groups increase.¹⁴⁴ The Netherlands' response has been to toughen immigration policies, encourage integration and assimilation, and shut down some Muslim media outlets.¹⁴⁵ Some of these actions are shrouded under the rubric of fighting terrorism.¹⁴⁶ It is becoming increasingly difficult to distinguish between anti-immigrant and anti-terrorist policies, and immigrants will clearly suffer. Despite attempts to integrate the foreigners and their children into mainstream society, many in the Netherlands still view immigrants as outsiders, causing many of the "native born" to join fundamentalists groups after "rejection" from society.¹⁴⁷ While most Islamic fundamentalists are only engaged in "petty crimes," there are indications that they may increase their level of activity and violence, as demonstrated by the riots in France and similar incidents.¹⁴⁸ This could escalate into even more radicalized Islamic fundamentalism.¹⁴⁹

McGuire, *supra* note 89, at 36.

141. See WARD, *supra* note 5, at 225–28. See generally McGuire, *supra* note 89, at 36.

142. WARD, *supra* note 5, at 225–28.

143. McGuire, *supra* note 89, at 36.

144. *Id.*

145. *Id.*

146. *Id.*

147. See Cowell, *supra* note 139, at 2 (discussing the mistrust between native Europeans and native and non-native Muslims who feel they are viewed as potential insurgents and feel that they are victims of Islamophobia and discrimination in housing, jobs, and social status). See also generally Mulrine, *supra* note 5, at 36. In a recent poll by the Islamic Human Rights Commission, eighty percent of Muslims reported feeling harassed and discriminated against, up from thirty-five percent in 1999. Mulrine, *supra* note 5, at 36.

148. Other incidents include the protests and violence over the publication of Danish cartoons of Muhammad and subsequent reprinting by other European newspapers. See Richard Woods & David Leppard, *How Liberal Britain Let Hate Flourish*, SUNDAY TIMES, Feb. 12, 2006, at 12 (discussing Islamic fundamentalists who have been inciting major violence in Europe).

149. See *Islamic Extremism in Europe: Hearing Before the Subcomm. on Europe and Emerging*

The Netherlands, once a model of tolerance, has now become another model for countries in the region, a glimpse of what their countries might become.¹⁵⁰ While their populations of immigrants and Muslims are smaller,¹⁵¹ other Member States are experiencing increased immigration and integration problems.¹⁵² Many countries are imitating the Netherlands' policies on immigration and integration.¹⁵³ While EU institutions could attempt to change this tide, history and other factors have shown that this will be difficult, if not impossible.

With the Netherlands' effect on immigration in neighboring countries, entry of additional Member States to the EU,¹⁵⁴ and increasing security and economic concerns, the EU may well be moving towards a policy of exclusion of immigrants, while at the same time pushing for inclusion of additional countries into its fold. Ironically, while the EU seeks to include more countries, it is also excluding others from the benefits of EU citizenship, at the huge cost of rising Islamic fundamentalism.

VI. CONCLUSION

The EU desires a more integrative and inclusionary policy on immigration but lacks the institutional power to implement this. Instead the EU must rely on its Member States. The Netherlands, once a safe haven for immigrants and a model of the inclusionary ideals the EU seeks, is changing its policy and excluding immigrants, physically and culturally. The Netherlands is indicative of the anti-immigrant sentiment and

Threats of the H. Comm. on Int'l Relations, 109th Cong. 22 (2005) (discussing the rise of Islamic fundamentalism in Europe and emerging security threat to the world).

150. McGuire, *supra* note 89 at 36.

151. There are an estimated one million Muslims in the Netherlands while the Muslim population in the EU is estimated at five percent. Cowell, *supra* note 139, at 3. If Turkey joins the EU, the Muslim population could be twenty percent by 2050. Mulrine, *supra* note 5, at 36.

152. McGuire, *supra* note 89, at 36. It is argued that it is not the number of Muslims or immigrants that is causing the problem, but the speed of their population growth. *Id.* This means other countries may experience similar problems though their populations of immigrants, compared to the general population, are smaller. *Id.* For example, France is currently experiencing integration problems with its Muslim community. *Id.* The increasing Muslim population is also in sharp contrast to Europe's native population decrease. *See* Mulrine, *supra* note 5, at 36.

153. Notable among these countries are Germany and France, two huge and powerful countries in the EU. German Interior Minister Wolfgang Schubert has called on the country to adopt the more muscular "Dutch Way" in its immigration policy, though the country is also working to improve education for immigrants. In March 2006, France revealed new immigration law that is a virtual copy of many Dutch regulations, including "assimilability" testing and deportation for those who do not respect "western" values. *See* Theil, *supra* note 117.

154. Most notably, Muslim Turkey. Much of the debate on its entry into the EU has been centered on Islam. Mulrine, *supra* note 5, at 36.

exclusionary policy of other EU Member States. Its rising problem with Islamic fundamentalists as a result of its policies does not bode well for the rest of the EU, which is receiving an increasing number of Muslim immigrants and dealing with increasing and more complicated Islamic fundamentalist conflicts.

*Aileen Tom**

* J.D., Washington University School of Law; B.A., University of California, Berkeley. I would like to thank my family and friends for their support and encouragement, and my editors for their hard work and dedication.