



NEDERLANDSE ORDE VAN ADVOCATEN

DE RECHTSSTAAT,  
EEN QUICK SCAN

# DE PARTIJPROGRAMMA'S VOOR DE VERKIEZINGEN 2021 RECHTSSTATELIJK?

RAPPORT VAN DE COMMISSIE  
RECHTSSTATELIJKHEID IN VERKIEZINGSPROGRAMMA'S

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Report of the Committee on the Rule of Law in Election Programmes 2021,  
established by the Netherlands Bar

The Hague, March 2021



## SUMMARY

### **Finding ways to improve the political organisation is the trend.**

In seven of the fourteen party programmes examined, the Committee found proposals that failed to meet the minimum standards of the rule of law. Mostly being proposals on immigration and asylum, they were assigned the red disqualification mostly because they openly discriminate against certain groups of citizens or deny or impede their access to justice.

Still, the Committee ultimately has a positive view of the plans of most of the parties examined. It is clear that all parties are struggling with the answers to the questions of how to politically organise or reorganise our democracy to meet the demands of these turbulent times, how to improve citizens' involvement in far-reaching decisions to be made by politicians and how to strengthen institutions such as the judiciary, precisely with a view to protecting citizens' fundamental rights. This is the constitutional task that unites the parties for the next four years.

## THE RULE OF LAW AT ELECTION TIME

On 17 March 2021, we will be asked to vote.

A record 37 parties are participating in the elections for the House of Representatives.

The House of Representatives is the most important part of our people's representation in the States General. The representatives we elect to the House will determine who will govern us in the next few years and under what laws they will do so.

This means that the upcoming elections give us the opportunity to influence our administration and laws – that is the very essence of democracy.

### WHY THIS REPORT?

The Netherlands is a democracy. The country is also a state under the rule of law.

The purpose of the rule of law is to protect citizens from abuse of power by the government. Under the rule of law, the government – like citizens – must abide by the law. Even if democratically elected, the authorities may not curtail or take away the rights and freedoms of the country's citizens for no reason. The police cannot simply enter someone's home, apprehend someone on the street or lock someone up in a cell. In a democracy based on the rule of law, everyone has the right to express their opinions within the limits of the law. Exactly what those limits are in a specific case is for the independent and impartial courts alone to decide. In a democracy, the rights of minorities are protected against the majority's arbitrariness.

Many of the 37 parties running in the 2021 elections to the House of Representatives have written down their plans in an election programme. It is important that voters are able to take note of the consequences those plans will have for the constitutional foundations of our democracy. The rule of law should never be taken for granted; it must always be maintained and protected from deterioration. This is not exclusively an issue abroad, like in Hungary or Poland, where the government undermines the independence of the judiciary. In the Netherlands, too, the rule of law is not set in stone and the authority of and trust in democratic institutions is not self-evident. We should seek to protect and strengthen the rule of law. Strengthening begins with awareness: awareness of the great importance of the government treating citizens equally

and awareness of citizens being able to invoke their fundamental rights, such as freedom of speech or the right to privacy, in a fair trial before the court.

As it has done for previous elections to the House of Representatives, the Netherlands Bar has established a committee to analyse election programmes for their respect for the rule of law. This is an important issue for the Netherlands Bar, as the Bar is composed of lawyers who have an essential role to play in the legal protection of citizens' rights and freedoms in a democratic society.

Awareness of each other's rights and freedoms – that is the purpose of this report. It aims to give interested citizens an overview of some important rule-of-law issues and of what the election programmes have to say about these issues. For each political party, we state the consequences that its plans may have for our rights and freedoms.

## **STRUCTURE AND METHOD**

The Committee has studied the election programmes of the thirteen parties who were in the House of Representatives with two or more seats in December 2020. Since JA21 is a breakaway from an existing party in the House of Representatives, its programme has been included in this report. Links to the published party programmes are provided.

The Committee has examined the programmes of the following parties:

- [50PLUS](#)
- [Christen Democratisch Appèl \(CDA\)](#)
- [ChristenUnie \(CU\)](#)
- [DENK](#)
- [D66](#)
- [Forum voor Democratie \(FvD\)](#)
- [GroenLinks \(GL\)](#)
- [JA21](#)
- [Partij van de Arbeid \(PvdA\)](#)
- [Partij voor de Dieren \(PvdD\)](#)
- [Partij voor de Vrijheid \(PVV\)](#)
- [Staatkundig Gereformeerde Partij \(SGP\)](#)
- [Socialistische Partij \(SP\)](#)
- [Volkspartij voor Vrijheid en Democratie \(VVD\)](#)



**Throughout the review, the Committee has asked itself three main questions:**

- Do the plans consider the requirement for the government to be predictable and self-compliant?
- Do the plans respect the fundamental rights and freedoms of citizens?
- Do citizens have effective access to independent courts?

We start off by discussing a number of trends in Chapter 2. These are issues that many parties are mentioning this election year and that are associated with the rule of law. These trends partly set the political agenda for the elections.

In Chapter 3, we elaborate on the main questions and explain the basis underlying our review of the political parties' plans. We call this the "review framework".

The Committee does not advise anyone how to vote. It merely states whether a particular plan could have positive or negative effects on the rule of law. To clarify this, we have used three colours:

**GREEN:** plans that may improve the rule of law

**YELLOW:** plans that may pose a risk to the rule of law

**RED:** plans in direct violation of the rule of law

When referring to 'the rule of law', the Committee specifically means the current Dutch rule of law. A plan that might improve the rule of law in another country is nevertheless considered a risk to, or a violation of, the rule of law if that plan may or will detract from the current Dutch rule of law.

Chapter 4 lists proposals for each party that the Committee classifies as green, yellow or red. Plans that do not substantially alter the current situation or that are not sufficiently specific have been classified as neutral and are not discussed in this report.

The Committee has conducted a quick scan. This means that the text of the election programmes has been taken as a basis and that no further information on the study has been exchanged with any of the parties involved.

An election programme is not a legal text, and this is not how the Committee has analysed the contents. Election programmes provide broad outlines of proposals.



As a result, the Committee has not split hairs, even if there was sometimes cause for hesitation as to whether the details or consequences of a position would pass a legal test.

Of course, the Committee could not escape interpreting a position in its context. For example, if a party writes that hate preachers are liable to punishment, it apparently refers to Islamic preachers. From the perspective of the rule of law, this immediately raises the question of why criminalisation of hate speech is limited to this category of persons. In such cases, the Committee has applied the principle that a proposal should be considered in more detail if it clearly suggests an actual or potential infringement of the rights and freedoms of individuals or an impediment to access to independent courts.

The Committee acknowledges that some parties hold positions inspired by religious views and personal beliefs that are at odds with established laws and social majority views. A party that opposes abortion, for example, and wants to abolish the current Abortion Act advocates a situation that could become problematic in terms of the rule of law, as it is unknown how this will affect women's right to self-determination. However, the Committee does not give a judgement on political views but merely reviews them against the minimum legal standards stated.

**This time, the Committee consisted of the following members:**

- W.A.M. van Schendel, former Vice President of the Supreme Court (Chair)
- I.H. van den Berg, lawyer at SIX advocaten and Chair of the Board of the Lawyers for Lawyers foundation
- D. Hoefsmit, MBA, Programme Director at the Ministry of Health, Welfare and Sport
- Prof. E. Mak, Professor of Jurisprudence (Utrecht University)
- C. Samkalden, lawyer at Prakken d'Oliveira Human Rights Lawyers and member of the Netherlands Bar's Advisory Committee on the Rule of Law
- C.B. Schutte, lawyer at SSHJ Advocaten and Chair of the Netherlands Bar's Advisory Committee on the Rule of Law
- F.L.J. van Vloten, Office Director / Deputy Secretary of the Limburg Bar (Secretary)

Brief CVs of the members have been annexed to this report.



## TRENDS

Several party programmes mention the COVID-19 crisis and its impact on our society, our healthcare and our economy. Without a doubt, the consequences of this crisis and the lessons we learn from it will continue to dominate politics in the period ahead. The pandemic makes it clear once again that we cannot take our freedoms for granted. Constitutional safeguards securing the fundamental rights of citizens are essential, especially in times of crisis.

Several trends can be distilled from the election programmes that require additional attention from the perspective of the rule of law. We will briefly discuss the issue in this chapter.

### TREND 1: EUROPE AND INTERNATIONAL TREATIES

The election programmes adopt a variety of positions on the EU. We see proposals ranging from the Netherlands leaving the European Union ("Nexit") to further refinement of cooperation within the European Union, more tailored to a national scale, and to strengthening the Union as a democratic state under the rule of law, including more extensive powers for the European Parliament. In addition to greater transparency about what is going on in the European corridors, several parties are calling attention to compliance with the essential norms of a European rule of law, norms that each Member State will have to observe, whether it wants to or not. Some parties are Euro-weary, while another party imagines a multi-speed Europe.

In any case, what connects all election programmes is that the parties are reconsidering the project called 'Europe', with democratic involvement in Brussels decision-making and attention to the rule of law dominating in general terms. Other European themes the parties consider important are the fight against crime (and organised crime in particular), the reception of refugees and the standardisation of digital developments.

Whether or not to denounce trade or other treaties and a reorientation of the Netherlands in the international legal system are other recurring themes in the election programmes. No specific details are provided. In a number of programmes, the parties readily distance themselves from the obligations ensuing from treaties. The unilateral denunciation of the UN Refugee Convention, withdrawal from the UN Climate Agreement and withdrawal from the International Criminal Court and the European Court of Human Rights,

for example, undeniably pose risks not only to the solidarity to be practised internationally but also to the extent of the rule of law in our society. After all, the fundamental principles, freedoms and human rights expressed in these treaties do not disappear with their denunciation, but the denunciation does create a legally uncertain situation.

The parties do not explain how these risks can be overcome. At the same time, various parties are calling attention to measures that companies and the government should take – also in an international context – to combat human rights violations, such as child labour and forced labour, in production chains.

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## **TREND 2: CONSTITUTIONAL REFORMS AND THE CONSTITUTION**

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The Committee notes that many parties support constitutional reforms in their programmes and have also considered ways in which the Constitution may be adapted to the demands of this day and age. Finding ways to improve the political organisation has become a trend.

For example, a large number of election programmes advocate the introduction of a binding corrective referendum, with the conditions under which such a referendum should be held varying from party to party. The importance of strengthening democratic support for far-reaching decisions is a shared underlying concern here.

A number of parties also speak in favour of judicial review of laws against the Constitution or advocate the creation of a constitutional court to review laws against the Constitution at the request of a court or Parliament. Although the parties differ on the details of this constitutional review, they share the concern for adequate compliance with the rule of law in laws and regulations.

The same Constitution has also inspired the parties to make various further proposals. These include the codification of Dutch values, such as those of the democratic rule of law, as well as the enshrinement of the protection of human life, fundamental digital rights, a ban on disability discrimination, LGBTI rights, animal rights and languages spoken within the Kingdom, including sign language, in the Constitution. Several parties clearly realise that, given social developments, fundamental rights need to be redefined.

Several parties also propose amendments to Articles 93 and 94 of the Constitution to abolish direct reliance on treaty provisions in the courts or to limit such reliance to a catalogue of treaty provisions authorised by the legislature. It is also proposed to redefine Article 23 of the Constitution in order to guarantee free access of all persons to all schools.

The King as the head of state is no longer self-evident in a number of programmes. Where one party proposes an elected head of state, another advocates a king who would no longer chair the Council of State nor have a role in government formations.

Some parties believe that the Senate can or should also be abolished.

In short, many election programmes exude an atmosphere of our 21st-century society being in need of a more modern Constitution.

The same goes for the electoral system. Some programmes not only suggest lowering the voting age to 16, but also the possibility of a regional electoral system with or without the introduction of an electoral threshold.

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### **TREND 3: IMMIGRATION AND REFUGEES**

Immigration and asylum are once again hot topics in the various election programmes. While some advocate a full asylum freeze and denunciation of the Refugee Convention, to others a greater focus on integration and faster processing of asylum requests are important issues. It is precisely this topic that reveals the tremendous challenge of striking the right balance between solutions to real issues of immigration and asylum and protection of the fundamental human rights of migrants and asylum seekers in a state under the rule of law. A number of parties have placed remigration on the political agenda. More parties are pleading for a joint European and humane approach, bearing in mind the situation on Lesbos, for example. Various parties consider the European Union to be the perfect platform for agreeing on an asylum and migration policy. Improving the enshrinement of the rights of the child in the Aliens Act is also suggested. Fighting racism and tackling discrimination and intolerance are on the political agendas of various parties.

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### **TREND 4: SECURITY AND COUNTERTERRORISM**

The parties pay ample attention to radicalisation and counterterrorism in their programmes. There is a broad consensus in favour of robust action to combat terrorism, with the parties again placing the focus on different aspects. Some proposals made in this area require a careful review against constitutional safeguards, such as protection of the right to privacy or access to justice. From the perspective of the rule of law, there are concerns about the calls for very severe punishments, revocation of Dutch citizenship, limiting legal aid, long-term surveillance, etc. in respect of terrorist acts. One party shows itself to be in favour of putting jihadists and their sympathisers in administrative detention, while another party focusses on deradicalisation and taking the necessary measures to

improve civic integration. We see a great willingness among all parties to free up more resources to combat terrorism. Some parties believe that trials should preferably be held before an international tribunal. A number of parties also mention the need for international collaboration to counteract terrorist financing.

Most parties extensively discuss the fight against crime (and organised crime in particular) and security in cities, neighbourhoods and villages. Many parties believe that the police and judicial authorities should be allocated additional resources to allow them to act not only against organised crime but also against subversion. In a few places, we even read about a Delta Plan to be created for that purpose. Many parties also call for more neighbourhood police officers and for strengthening the position of special investigating officers.

It is noted that, in their programmes, quite a few parties prefer to return the duties of managing the national police and maintaining public order to the Ministry of the Interior.

Many parties pay attention to criminal law as an instrument that brings about behavioural change, combats social problems and promotes security policy. Proposals for legal prohibitions in all sorts of areas abound, although it is not always clear whether they have more than symbolic significance, who should enforce them and how, and whether recourse to the courts is an option. Several parties are pushing for faster and especially harsher punishment for certain offences, and some of them mention minimum sentences or mandatory prosecution by the Public Prosecution Service. A test against the rule of law can only take place if we know how high those penalties will be, whether exceptions are possible and under what conditions prosecution is mandatory. As no details are provided, our concerns on this point have not been removed. Several parties put their faith in the criminalisation of illegal residence, without explaining why, whereas one party expressly opposes this. It is notable that the election programmes contain various forms of "naming and shaming", which creates a real risk for such rights as the right to privacy.



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## **TREND 5: THE LAW AND DIGITISATION**

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A large number of programmes address the opportunities but, more importantly, also the risks of digitisation in our information society.

They focus in particular on protecting citizens from the use of often highly personal data by the authorities and technology or other companies. Although several parties emphasise that each and every person owns their personal data and is entitled to protection of these data, some parties also call attention to the necessary transparency as more and more algorithms make their way into decision-making processes. Attention is given to the importance of citizens' control over their data and decisions that affect them, and to safeguarding their right to information in a world that is increasingly moving from analogue to digital. How do we handle camera surveillance in public spaces? How do we ensure that the Netherlands remains safe for everyone even in this digital age? How do we achieve that no one is left behind and excluded in this digital march of nations? The various parties have again worked out this issue differently, but the focus and emphasis on this theme is widely shared among the parties.

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## **TREND 6: AN INDEPENDENT AND FREE PRESS**

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An independent and free press is a precondition for a properly functioning democracy, if only to control the government's actions. In times when the use of the term "fake news" is becoming increasingly common in media outlets, it should come as no surprise that the theme of an independent and free press emerges in many programmes. All parties are each in their own way concerned with the adequate provision of information, but they differ in how this should be achieved. Where one party would prefer to abolish public broadcasting, others advocate reinforcement of the public broadcasting system. A theme widely shared by the parties is that journalists should be able to do their work in safety in their search for free and objective news gathering. Protecting the freedom of the press is a core task of government, as one programme says.

Free news gathering also requires a government that operates transparently. A number of parties believe this calls for a government that endorses the principle that citizens rather than the government own the information concerning them. The increased focus on protecting whistleblowers also fits in this context.

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## **TREND 7: ADMINISTRATION OF JUSTICE**

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A number of parties call attention to the funding needs of the various actors in the judicial process. Some parties are of the opinion that output funding of the judiciary and the Public Prosecution Service is passé. In addition to concerns about the independence of judges, the various programmes also focus on strengthening subsidised legal aid and guaranteed access of all persons to justice. Several programmes support court fee reduction as an additional measure in this regard.

A number of parties mention community justice and community mediation initiatives in their election programmes not only to make justice cheaper, but also to bring it closer to citizens in geographic terms. Alternative forms of dispute resolution and broadening the subdistrict court's remit are advocated, as is a form of administration of justice by laypersons (outside of criminal law). The concern that everyone should have adequate access to justice is widely shared by the parties.

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## **TREND 8: CLIMATE ACTION**

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Environment, climate, sustainability – these terms are found in nearly all party programmes. Views differ on the urgency, goals and content of climate policy, the concrete measures required, and the rate at which steps – and which ones – can or should be taken to develop a clean living environment or a more circular economy. From ceasing our efforts to reduce carbon emissions, repealing the Climate Act and withdrawing from the UN Paris Climate Agreement to the Dutch Climate Agreement as minimum standards, a carbon tax on top of the current European levy, embracing – or not embracing – the goals of the European Green Deal, advocating more windmills in the North Sea or, on the contrary, emphasising their detrimental effects, proposing investments in new nuclear power plants or, on the contrary, advocating a ban on nuclear energy, there is no shortage of proposals. However, the consequences of any measures to be taken will undeniably affect citizens' rights and freedoms.

## **IN CONCLUSION**

Democracy and the rule of law receive plenty of attention from all political parties, and that's a good thing.

### **Good news?**

Constitutional reform is an important topic in many programmes. All parties

are considering how to reinforce the central position the Constitution occupies in our parliamentary democracy. Proposals pertain to the incorporation of new fundamental rights in the Constitution. We also see parties advocate judicial reviews to ensure compliance with the Constitution, which often involves the creation of a constitutional court. If – as holds true for some parties – this is inspired by more nationalist reasons and the courts can no longer review international treaties that include such human rights, this detracts from the good news.

We also see plenty of views on intensifying citizens' involvement in decision-making processes through a binding corrective referendum or in administration, for example by introducing elected mayors, although the precise implications for our representative parliamentary democracy have yet to be fleshed out.

Many parties explicitly prioritise the fight against racism and discrimination of all kinds. In the context of digitisation and the application of algorithms, this also applies to protecting citizens from the use of their personal data by the government or companies. Although many of these aspects are positive in themselves, we need to put them into perspective. It's all in the details, of course, because these changes may strengthen the rule of law or they may weaken it, for example if measures infringe the right to privacy.

A free and independent press as a watchdog of a properly functioning rule of law receives wide support. Whistleblowers are equally assigned that role and protection.

Many party programmes contain appealing words on the need to provide citizens with easily accessible, speedy and effective justice as an indispensable pillar underpinning the rule of law, with sufficient resources to facilitate this and to provide adequate legal aid for litigants. But some proposals suggest that courts should no longer review legislation or government policy, and some proposals interfere with the independence of the judiciary. Such proposals, which sometimes seem motivated by unwelcome judicial judgments, erode the judicial protection of citizens against the government.

### **Worrying news**

When it comes to safeguarding the fundamental rights and freedoms of all citizens or when it comes to the predictability of rules that the government will abide by, safeguarding and accepting the independence of the judiciary or the certainty of a fair trial and effective access to the courts for all, the picture is less rosy.



These matters are in fact mostly covered by proposals on the major political and social issues of Islam, immigration, refugees, terrorism and jihadism. It is these issues where the rule of law, including on an international scale, proves to come under pressure first. These real challenges facing politicians will require them to choose those solutions that do not undermine the rule of law itself. For example, people who exclude certain groups of citizens from fundamental rights and freedoms that are at the heart of our democratic rule of law are themselves acting contrary to the rule of law. Such fundamental rights and freedoms generally accepted in a democratic legal system cannot be defined away by denouncing treaties in which they are laid down and thus creating the legal appearance that these core values do not apply to everyone or do not apply at all.

In seven of the fourteen party programmes examined, the Committee found proposals that failed to meet the minimum standards of the rule of law. They were assigned the red disqualification mostly because they openly discriminate against certain groups of citizens or deny or impede their access to independent courts.

### **Better news?**

Four years ago, five of the thirteen party programmes we examined contained proposals that were diametrically opposed to the rule of law. In this regard, see the [2017](#) report of the Committee at the time. Comparing those proposals with the current ones, we notice that they mostly involve positions that have been classified as red once again.

Still, the Committee ultimately has a positive view of the plans of most of the parties examined, even considering the diverse and in some instances rudimentary nature of those proposals.

This is because it is clear that all parties are struggling with the answers to the questions of how to politically organise or reorganise our democracy to meet the demands of these turbulent times, how to improve citizens' involvement in far-reaching decisions to be made by politicians and how to strengthen institutions such as the judiciary, precisely with a view to protecting citizens' fundamental rights.

What unites the parties is the knowledge that this is the constitutional task at hand in the next four years. That discussion affects us all.



## THE RULE OF LAW AS A REVIEW FRAMEWORK

The Committee has reviewed the texts of the election programmes of the political parties listed in Chapter 1 to determine whether they meet three minimum constitutional requirements.

The review was not exhaustive; a programme that stands up to scrutiny in this rapid review does not automatically acquire the label of "in compliance with the rule of law". At best it can be said that, in the Committee's opinion, the text of the programme in question remains above the minimum standard set for the points examined.

**The review framework defines threshold standards on the following three themes:**

- 1) a predictable and rule-led government
- 2) respect for fundamental rights and freedoms
- 3) effective access to independent courts

The threshold standards used for these three themes will be phrased as minimum requirements and briefly explained below.

Of course, these minimum requirements are not unrelated; they are essentially different floors of the same building. This means that there is some overlap between those criteria from general to increasingly specific: the second minimum requirement is an indispensable safeguard for the first, and the third minimum requirement, in turn, is an indispensable safeguard for the second. The main focus of the Committee's report is on the safeguards securing the rule of law. The Committee assesses how the plans the parties unfold in their election programmes affect the effective rule of law.

**First minimum requirement:** the government abides by the rules applicable to it and does not exercise its powers arbitrarily

The exercise of government power may result in arbitrariness, for instance when the government fails to abide by the applicable rules consistently or at all. A narrow definition of a 'state under the rule of law' therefore reads: a state is a state under the rule of law if the government abides by the rules applicable to it and does justice proportionately to all who may be affected by its rules. If the government does not apply the rules unambiguously or does not phrase a policy known to citizens, its actions may become capricious and, as a result, unpredictable in nature for citizens.

For the same reason, from the perspective of the rule of law, it is in principle unacceptable for people to be punished on the basis of rules introduced after the fact that they could not foresee. Article 16 of the Constitution sets out this "principle of legality": "No offence shall be punishable unless it was an offence under the law at the time it was committed."

In other words, a reliable government is one that provides legal certainty. This entails that its actions are predictable as it abides by its own national rules and the international rules to which it is subject.

**First minimum requirement:**

1. The government abides by the rules applicable to it and holds citizens to rules that they have been able to take note of in good time and that they have been able to adjust their behaviour to.

1.1. A predictable government abides by its own rules and the rules to which it is bound internationally and in a European context.

1.2. The government ensures that it bases its actions on lawful policy and that it exercises its powers in a manner that is known in advance and can be verified in retrospect.

1.3. In terms of criminal law, no one may be punished for something that was not yet punishable at the time the offence was committed (principle of legality).

**Second minimum requirement:** respect for fundamental rights and freedoms

A democratic state under the rule of law can only exist if the government respects fundamental human rights and freedoms.

In a democracy, the rule of law guarantees that no majority – as democratically elected from time to time – abuses its power to exclude minorities from political or social and economic participation. This is the purpose of the fundamental rights and freedoms, which even democratic majorities cannot take away.

The scope, ranking and interrelationship of fundamental rights and freedoms are the subject of much political and legal debate, for instance concerning the relationship between freedoms on the internet and the limits of the right to privacy and freedom of speech.

These discussions are strikingly extensive and as such are a good example of what a democracy is all about: that fundamental issues can be freely discussed in lively and sometimes fierce debates.



Moreover, these issues show that there is something to be said for many positions within these debates, including from the perspective of the rule of law. In other words, even when it comes to fundamental rights and freedoms, the rule of law creates a form of living together that still allows many different interpretations.

The Committee does not wish to take sides in discussions about the exact scope of fundamental rights and freedoms, as those discussions are held in political debate. Consequently, the Committee will not conduct a full review of the extent to which the long list of existing fundamental rights, and the human rights applicable to the Netherlands, are honoured or worked out in the various election programmes. What the Committee does do is define a constitutional lower limit. Political proposals that amount to excluding people from the protection or exercise of fundamental rights and freedoms on the sole ground of belonging to a particular group or category do not meet the minimum standard as they go directly against the core function of the democratic rule of law: respect for fundamental rights and freedoms intended to maintain the democratic rule of law itself.

The Committee interprets ‘fundamental rights and freedoms’ to mean only the so-called classic fundamental rights, i.e. the political rights (including the right to vote and to stand for election) and the rights of freedom (such as freedom of speech and freedom of religion) in conjunction with the non-discrimination principle as phrased in the first article of the Constitution.

**Second minimum requirement:**

2. The fundamental rights and freedoms of all residents are respected.

2.1. Political proposals that amount to excluding people from the exercise or protection of their fundamental rights and freedoms simply because they belong to a particular group or category do not meet the minimum standard.

2.2. In this connection, fundamental rights and freedoms are understood to be the nationally and internationally generally recognised political rights and freedoms, whether in conjunction with the non-discrimination principle or not

**Third minimum requirement:** effective access to independent and impartial courts

Access to justice, i.e. effective access by all to the courts, is part of the hard core of the rule of law.



It is essential for a suspect of an offence to appear before a court in a timely manner. Their arrest cannot be arbitrary: an assessment of the detention by an independent and impartial judge is the minimum safeguard we know of to determine whether the legal basis for detaining someone is sufficient.

The desperate situation of prisoners held without trial and without clear charges in many parts of the world demonstrates why effective access to justice is a minimum requirement under the rule of law.

However, effective access to justice is not merely about the situation of people who have come under the government's control involuntarily, through detention. It is also generally about the right of citizens and other residents to bring their disputes with the government or with each other before independent and impartial courts.

Article 17 of the Constitution provides that no one may be prevented against his will from being heard by the courts to which he is entitled to apply under the law. Citizens may take their disputes to bodies other than the courts of their own accord, but the government may not render recourse to the courts impossible. A state that does not allow citizens to effectively obtain justice is not a state under the rule of law.

As a result, the third minimum requirement that the Committee uses to review party programmes is whether effective access to justice is provided.

This means, firstly, that a robust judicial organisation exists: an organisation in which judges can decide disputes submitted to them in a timely and efficient manner, but in which they also have the time and resources to find the applicable law for the case at hand. Administering justice requires an examination and contemplation of the facts and the law. If that examination and contemplation is actually impossible, matters may as well be decided by lot. This is a possibility and it is probably cheaper for the State, but it will not be a state under the rule of law.

Secondly, judges must be able to exercise their office independently and impartially. Here, "independent" means: sufficiently autonomous from the legislative and executive branches. "Impartial" means: insensitive to pressure from litigants or society ('public opinion') to take a biased position in respect of one of the litigants.



Litigants must also have a real opportunity to pursue legal action. Access to justice that exists only on paper because citizens or classes of citizens are systematically prevented from litigating due to factual obstacles (such as high costs) is insufficient.

As part of this third review, the Committee also expressly considers the right to a fair trial as set out, for example, in Article 6 of the European Convention on Human Rights (ECHR). In criminal cases this means, for instance, that a suspect of an offence must be presumed innocent until the offence of which they are accused has been established by a court, that the suspect has the right to remain silent, that the suspect will not be tortured, that the suspect has the right to take note of the charges, and that the suspect has the right to a lawyer's advice and assistance and to a timely hearing of their case.

**Third minimum requirement:**

3. There is effective access to independent courts.

3.1. There is an efficient and robust judicial organisation in which judges decide in a timely manner.

3.2. Judges must be able to exercise their office independently and impartially, with sufficient time and resources at their disposal.

3.3. Citizens are entitled to a fair trial and may take their disputes among themselves and with the government to an independent and impartial court.

3.4. In criminal cases, suspects of an offence are entitled to a fair trial and are presumed innocent until proven guilty in court.



## THE ELECTION PROGRAMMES

The Committee has assessed the fourteen election programmes listed using the review framework described in Chapter 3. In doing so, the Committee limited itself to the plans expressed in the programmes. We mention only those plans that we believe could be positive or negative for the rule of law. As stated, we use three colours to identify the effects of the plans:

**GREEN:** plans that may improve the rule of law

**YELLOW:** plans that may pose a risk to the rule of law

**RED:** plans in direct violation of the rule of law

Plans that do not substantially alter the current situation or that are phrased in very general terms only have been classified as neutral and are not discussed in this report.

The studied election programmes of the parties currently holding two or more seats in the House of Representatives are listed in alphabetical order. The election programme of new party JA21 has also been studied. The numbers in parentheses refer to the page numbers in the programmes as published on the relevant party's website.

### 50PLUS

**GREEN:**



50PLUS calls for expansion of the Ombudsman's capacity to make citizens more resilient against the government (page 12), which can be classified as positive in terms of the rule of law.

**YELLOW:**

50PLUS supports patient/client records being accessible to all care providers involved (page 9). The election programme does not clarify how the right to privacy is guaranteed, which is a point of concern from the perspective of the rule of law.

## Christen Democratisch Appèl (CDA)

### GREEN:



On page 28 of its election programme, CDA advocates clear guidelines for the protection of medical data, with patients remaining in charge of their own medical records. This is also a logical corollary of the course CDA adopts on page 56 of its election programme regarding expanding the Constitution with fundamental digital rights,

as a state under the rule of law needs to keep its finger on the pulse in the face of lightning-fast digital developments. CDA also believes that Europe and international treaties should be brought up to date digitally. In this context, we should also mention the reinforcement of the legal protection of citizens in automated decision-making by the government by means of a right to access the data and algorithms, as advocated on page 82.

CDA says it will take strict action against schools passing on intolerance, anti-democratic ideas or an aversion to Dutch society through education. According to CDA, citizenship, democracy and rule of law should become a separate part of the final examination for all secondary school students (pages 33 and 34). These measures may have a positive impact on the rule of law.

An independent tax ombudsman having their own powers can launch investigations and assist citizens who are stuck in a conflict with the Dutch Tax and Customs Administration (page 48).

CDA advocates broadening Article 1 of the Constitution to include a ban on discrimination based on sexual orientation and disability (page 89). Page 53 calls for more attention to equal treatment based on ethnicity. This concern for inclusiveness may be considered a plus for the rule of law in the election programme.

CDA considers protection of the freedom of the press a core task of government (page 57). Together with a strengthening of the whistleblowers' regulations (page 81), this contributes to a more transparent government.

Stricter legal requirements for the democracy and funding of political parties are advocated on page 80 of the election programme.

## YELLOW:

Reducing the pressure on the criminal justice system observed by CDA by having police handle simple cases at the neighbourhood level together with social partners (page 87) disregards the guarantee of recourse to the courts, which may lead to risks for the rule of law.

Extending the integration policy to second and third generations (page 101) may result in ethnic profiling and in undesirable degrees of citizenship and, as such, is a point of concern from the perspective of the rule of law.

The general ban on Salafist organisations advocated by CDA (page 105) can hardly be reconciled with freedom of religion. It is up to the courts to prohibit or permit certain organisations in specific cases.

## RED:

An asylum status or residence permit already granted cannot simply be revoked, as CDA proposes on page 88 of its election programme, not even in cases of radicalisation. This is because governments abiding by their own rules must comply with treaty provisions and laws and regulations, and it should be possible to subject the measures proposed to judicial review.

## ChristenUnie

### GREEN:



ChristenUnie proposes that Article 1 of the Constitution be expanded to include a ban on discrimination based on disability or orientation (page 12).

Enshrining Sign Language, Papiamentu and English in the Constitution alongside Dutch and Frisian may also be regarded as progress for the rule of law (page 14).

Helping newcomers become part of the democratic state under the rule of law and internalise its core values is stated on page 26.

The party advocates the Netherlands' endorsement of the Third Optional Protocol, which gives children the right to bring complaints to the Committee on the Rights of the Child (page 28).

Page 28 argues for additional money for legal aid to improve legal aid for people of limited means.

The introduction of a justice of the peace may create more customised dispute resolution (page 28).

Aligning capacity and resources within the legal system (page 28), police (page 30) and Public Prosecution Service (page 33) will have a beneficial effect on the operation of the rule of law.

A number of measures are advocated in the context of digital ethics, such as the appointment of a digital security regulator, the introduction of an algorithm quality mark, digital protection of children and international digital standards (page 36).

On page 82 of the programme, ChristenUnie outlines proposed actions intended to achieve gender equality in labour relations. Companies may also be excluded from government aid and procurement if they fail to take action to prevent human rights violations, such as child labour and forced labour, in their production chains (page 90).

Within the Council of Europe, the Netherlands monitors the strengthening of the European Court of Human Rights and compliance with the Court's decisions (page 130).

In a European context, it also advocates strengthening the European and national democratic legitimacy of decision-making. The party also advocates protection of the rule of law by enshrining it in European law and providing for an expedited procedure for proceedings involving infringement of the rule of law (page 133).

#### **YELLOW:**

Page 35 of the election programme states that hate preachers who oppose the rule of law and call for violence should not be given a platform.



What remains unclear is who determines whether certain statements constitute hate speech. The pitfall of censoring in advance is a point of concern here.

Why this wording was chosen – which suggests that the measure applies only to Islamic preachers – and why it does not apply to all hate preachers in general remains unclear.

## DENK

### GREEN:



An obligation for companies to identify, prevent and combat human rights violations, child labour, environmental pollution, animal welfare degradation and biodiversity loss in their chains, as advocated by DENK (page 16), may support the protection of fundamental rights also in the international legal system, provided that the relevant procedure is surrounded by proper safeguards.

DENK favours enhanced citizenship education that will be part of the examinations (page 35).

Page 65 advocates investments in legal aid and subsidised legal aid, which will have a positive impact on the rule of law.

### YELLOW:

An obligation for companies to prove on the front end that they do not discriminate (page 16) is inconsistent with the presumption of innocence enshrined in our rule of law. It may also lead to evidentiary complications, as DENK does not clarify how this could be proven in concrete terms and what rules should apply in this regard.

The institutionalisation of people tracking down racists by encouraging them to engage in racist conduct, as advocated on page 16, is at odds with the Dutch legal system, as it is not permitted to provoke others to engage in prohibited behaviour that the persons themselves did not want.

Similarly, the introduction of a racism register listing discriminating individuals who lose the possibility of government employment (page 16) poses risks to the protection of citizens under the rule of law.



## D66

### GREEN:



On page 70 of its election programme, D66 advocates a number of measures to solidify the rule of law. Not only is more funding made available to actors in the administration of justice, accessibility to the legal system is also increased by lowering court fees, by a more robust system of subsidised legal aid and by providing solutions through legal expenses insurance.

Furthermore, proposals are made to ensure the independence of the legal system and the Public Prosecution Service. D66 also advocates a redesign of administrative boards (page 70), which could have a positive effect on the rule of law.

Administrative instruments may only be applied to crime control when necessary for public order and safety. Due to the lack of prior judicial review, this should not be regarded as an alternative to criminal law (page 115).

In its election programme, D66 comes up with a number of proposals intended to provide the necessary safeguards to further embed digital developments in the rule of law. Personal data protection, respect for fundamental rights in data processing and transparency in financial data processing are a few of the headlines disclosed on pages 119 et seq.

A National Anti-Discrimination Coordinator with a mandate and sufficient resources may help combat discrimination and racism (page 136). The prospective enforcement measures related to discrimination on pages 138 and 144 of the election programme also contribute to the fight against discrimination.

Democracy, the rule of law and protection of human rights are issues that must be addressed in a European context as well (page 180).

The proposals concerning the democratisation of European institutions, including an extension of the powers of the European Parliament and the principle of openness and transparency of governance, may make a positive contribution to the rule of law of the European system (page 181).



## Forum voor Democratie

### GREEN:



Strengthening police and investigative capacity, as shown on page 28 of the election programme, may have a positive impact on the rule of law.

### YELLOW:

Forum voor Democratie advocates a clean-up of public broadcasters (pages 8 and 14). Active interference on the part of the government in the content of public broadcasting poses a risk of eroding the freedom of the press, which may adversely impact the rule of law.

The introduction of a law on the exercise of judicial discretion (*wet op de rechtsvinding*) as advocated by Forum voor Democratie (page 12) may be at odds with the separation of powers (the "trias politica", the legislature, the executive and the judiciary) and may affect the independence and impartiality of the judiciary. This risk may also arise when introducing a parliamentary committee of inquiry on the appointment of prospective members of the Supreme Court and the Administrative Jurisdiction Division of the Council of State.

The proposal to amend Article 3:305a of the Dutch Civil Code to make it impossible to challenge government policy solely on the basis of the public interest (page 8) entails risks to the rule of law, since it may limit access to justice for certain citizens or certain groups of citizens. This is undesirable for a state under the rule of law, while possibly unlawful government actions cannot be challenged, even if they cannot be traced to specific interests of citizens themselves.

### RED:

On pages 6 and 7 of its election programme, Forum voor Democratie advocates withdrawal from the International Criminal Court and the European Court of Human Rights, the very bodies created to secure respect for generally accepted fundamental rights and freedoms.



It remains unclear how this respect *is* guaranteed, so it would seem that not all of these rights and freedoms are considered essential. The outright denunciation of the UN Refugee Convention also means that safeguards for the application and respect for universal human rights are lacking for refugees.

By automatically precluding the award of grants to organisations conducting test cases against the State or, in the eyes of the same State, taking subversive actions against it (pages 8, 26 and 44), the State abuses its grant-giving power to nip citizens' critical voices in the bud. The same holds true for the prohibition on giving grants to organisations representing a particular ethnic or sexual "identity" (pages 26 and 27). Grants are improperly used as a sieve here for restricting the freedom of association and speech of certain groups of citizens in advance.

Simply eliminating the possibility to apply for asylum on Dutch territory and dismantling the 'asylum industry', including the cessation of subsidised legal aid provided to asylum seekers and the prohibition for asylum seekers to change facts and circumstances on appeal (pages 20 and 21) – the single instance of appeal permitted – violates universal human rights, including the right to a fair trial. The proposal to criminalise illegal residence (page 20), which – as no further details are provided – precludes the humane and proportionate treatment of a certain group of people who have not committed an ordinary crime, also violates constitutional guarantees. All these proposals open the gateway to arbitrariness and make certain groups of citizens legally homeless.

## GroenLinks

### GREEN:



On pages 66 to 70 of the election programme, a number of proposals to combat discrimination and racism are phrased that do justice to a social problem from a constitutional point of view.

Increasing the accountability of the government by implementing the Open Government Act, which is based on the standard that data belong to citizens rather than the government (page 77), may strengthen the legal position of citizens in respect of the government.



The same goes for the measures that GroenLinks advocates in the context of the transparency to be observed in algorithms used for behavioural prediction and decision-making in both the private and public sectors (page 78 of the election programme), as the rule of law is served by authorities that are reliable and predictable even when using data and algorithms.

Strengthening funds for independent journalism, freeing up more resources for regional broadcasters and free access to public broadcasters' productions on the internet (page 78) may enhance the operation of the rule of law. This also holds true for enshrining whistleblower protection in the law, as advocated on page 81.

GroenLinks's planned investments in the detection of serious crime (page 80) are positive for the rule of law, which benefits from a safe society. These investments are only worthwhile if adequate resources are also earmarked for the Public Prosecution Service and the judiciary. The latter is advocated on page 83 of the election programme.

The Public Prosecution Service and the judiciary can only function adequately in a state under the rule of law if everyone is also able to obtain proper legal assistance. On page 83, GroenLinks qualifies legal assistance as a public service to which sufficient funds should be allocated. Privatisation of legal aid will be reversed.

If it were up to GroenLinks, the European Court of Justice would be given more powers to intervene in violations of fundamental European values, including human rights, democracy, freedom of the press and an independent legal system. Assigning additional powers to the European Parliament and making decision-making in the Council of Ministers transparent may also advance the rule of law in Europe and, as a result, in the Netherlands (page 94).



# JA21

## GREEN:



JA21 supports the introduction of a referendum on page 7 of its election programme, which could positively affect the democracy of certain decisions and, as such, the rule of law.

Strengthening the capacity of investigation services to effectively detect and combat organised crime and digital crime may have a positive impact on the rule of law (page 15).

The focus on page 44 of the election programme on the personal ownership of citizens' data and the creation of the necessary safeguards in this regard may help strengthen the rule of law.

## YELLOW:

Cracking down on radicalisation, extremism and jihadism at an early stage, unhampered by bureaucracy, with terrorists being deprived of Dutch nationality – as JA21 advocates on page 15 and elsewhere – gives rise to concerns regarding the rule of law. After all, who determines if a person has radicalised? What are the criteria for extremism? What actions are proportionate here? Investigation and prosecution deserve to be embedded in laws and regulations containing safeguards and providing the possibility of judicial review.

## RED:

On page 10, JA21 emphasises the importance of the separation of powers. However – contrary to JA21's argument – this also means that restricting the exercise of judicial discretion by the courts is out of place here. The exercise of judicial discretion simply requires an interpretation of laws and regulations. Limiting the power of the courts to determine the severity of sentences as stated on page 14 is also incompatible with the rule of law. The suggestion that JA21 makes on page 10 that political background plays a role in the appointment of judges and members of the Public Prosecution Service is factually incorrect.

JA21 is in favour of having punishments carried out publicly, which it believes should act as a deterrent.

Since judgments are generally already pronounced in public and JA21 does not specify what else it has in mind, the current phrasing leads us to fear mediaeval pillory and scaffold scenes, which can hardly be reconciled with our current rule of law.

JA21 proposes a number of measures in the areas of immigration and asylum (pages 16 to 18). For example, it advocates setting quotas on the numbers of refugees to be admitted, is in favour of making asylum procedures more austere and lowering the fee for asylum lawyers, and speaks out in favour of criminalising illegal residence. The final decision on whether or not persons meet the asylum and residence criteria is reserved to the courts, which follow sound procedures that cannot be captured in quotas.

On page 21, JA21 rightly argues that citizens should be able to invoke their fundamental rights and freedoms freely and without fear. However, on the same page the party dismisses Islamic doctrine without question as possibly clashing with our free Western values and norms, which means that it stigmatises a part of the Dutch population solely because they adhere to a particular religion and treats them differently than is required based on the equality of all before the law. This is also incompatible with the constitutional right to freedom of religion, which – as is the case for all other beliefs – is limited by each person’s responsibility under the law. A similar form of segregation and stigmatisation is seen in the ban on foreign funding of mosques and Islamic schools.

## Partij van de Arbeid (PvdA)

### GREEN:



PvdA not only calls for more financial resources for the judiciary (page 57) and legal aid (including on page 62) but also makes proposals for a legal system in which judges and the Public Prosecution Service, as well as lawyers and the police, can do their work in safety.

According to PvdA, a reduction in court fees should give more citizens access to this legal system.

PvdA also develops a number of proposals in its election programme that strengthen the rule of law through education.

These proposals include not only the proposed amendment to Article 23 of the Constitution that guarantees the right of all citizens to receive education in a school of their choice (page 33), but also announced measures aimed at combating segregation in schools (page 33), with citizenship and social skills being instilled at an early age (also page 65).

After all, even when it comes to the rule of law, you are never too young to learn.

Activities intended to combat racism and discrimination are proposed in several places in the election programme (page 68). Stated positively, this also amounts to taking measures to promote equal opportunities, such as gender equality in employment (page 65) or enshrining LGBTI rights in the Constitution (page 64).

In its election programme, PvdA shows the necessary reflection on the rule of law, including on pages 62 and 72, where it proposes constitutional review and the introduction of a binding corrective referendum for national legislation. These measures may promote the rule of law.

Finally, in addition to the additional funds envisioned by PvdA to strengthen a public broadcaster (page 78), the right of citizens to digital self-determination and increasing the oversight of a transparent digital government (page 75) may also be regarded as strengthening the rule of law.

## Partij voor de Dieren (PvdD)

### GREEN:



Partij voor de Dieren wants to allow the International Criminal Court to prosecute companies or countries guilty of ecocide (page 11 of its election programme). Together with intensified monitoring of companies – as advocated on page 89 – for human rights violations, destruction of nature and the environment, money laundering and other forms of fraud, these are factors that may contribute to strengthening an international ‘rule of law’.

In its election programme, Partij voor de Dieren makes a number of proposals that could increase the democracy of the legislative process and decision-making. These include the proposal to make water authority boards more democratic (page 17), the initiation of citizens’ initiatives, and the introduction of an advisory referendum and a corrective binding referendum (pages 90, 91). Other noteworthy proposals are measures for an open and transparent government (page 92) without "black box algorithms" and the creation of a solid basis for free news gathering (page 92) and whistleblower protection (page 90).



Allocating more financial resources to the legal aid system and the legal system may also have a positive effect on the rule of law (page 89).

Partij voor de Dieren further proposes an amendment to Article 23 of the Constitution to prohibit schools from discriminating when accepting students and to guarantee free access to education for all (page 80).

#### **YELLOW:**

A point of concern from the perspective of the rule of law is the party's overly resolute proposals where it speaks of breaking up large trade chains, which all seem to be lumped together on the assumption that they destroy ecosystems and facilitate oppression (page 37). Customised measures and judicial review are called for.

## **Partij voor de Vrijheid (PVV)**

#### **GREEN:**



If soundly developed under the rule of law, PVV's advocated strengthening of the police, its cybercrime offensive and the fight against drug crime (page 21) may have a positive effect on our rule of law.

#### **YELLOW:**

Questions must be raised about the proportionality and legitimacy of the introduction of digital pillories for convicted sex or violent offenders (page 20), the introduction of criminal law for adults from the age of 14 (page 21), PVV's proposed obligation for the Public Prosecution Service to always prosecute crimes of violence and sex offences, and the introduction of hefty minimum sentences (page 21).

#### **RED:**

By revoking the residence rights of Syrians, barring migrants from Islamic countries, advocating a complete asylum freeze, closing asylum seekers' centres, an indiscriminate ban on spreading 'Islamic ideology' (schools, mosques and Koran), a ban on wearing headscarves (pages 8 and 9) and other proposed measures, PVV is tearing at the foundations of our rule of law.

The fact that PVV, for example, defends the constitutional right to privately-run education on page 45 in this context but promotes a ban on Islamic education on the same page is contradictory from the perspective of the rule of law. Moreover, a portion of our population are being stigmatised and discriminated against based on religion, which is not compatible with our Constitution. Not having the right to vote and not being allowed to hold political office in cases of dual citizenship and criminalising illegal residence (page 9) are also at odds with our Constitution.

PVV shows itself in favour of abolishing public broadcasting and not providing grants to what it calls "multiculti clubs" (pages 11 and 13), but in doing so overlooks the fact that free news gathering and freedom of speech, like a ban on making unjustified distinctions, are important features of a rule of law.

Preventively locking up jihadists and their sympathisers through administrative detention (page 21) opens up the possibility of arbitrary detention of citizens without judicial intervention and, consequently, without a fair trial. Moreover, when can a person be considered a jihadist? What are the criteria for being considered a sympathiser? Who determines that, and how is it monitored whether the far-reaching power to deprive someone of their liberty (and for how long) was correctly applied? No judicial review is provided.

## Staatkundig Gereformeerde Partij (SGP)

### GREEN:



Citizenship education should focus on respectful treatment of all people and recognition of the democratic rule of law (page 19).

The primacy of handling criminal cases must remain with the legal system. Continued expansion of the number of cases disposed of by penalty orders issued by a public prosecutor (with or without hearings by the public prosecutor) is undesirable (page 63).

SGP advocates cyclically insensitive funding of the criminal justice system to ensure that the police, the Public Prosecution Service and the legal system do not suffer from constantly changing policies and funding that jeopardise the performance of their legal duties (page 65).

Concrete arrangements will be made with the judiciary on asylum cases that have dragged on for years. Cases running for more than three years will be taken up and handled with priority (page 70).

Honour killings, marital exploitation, female circumcision and similar unacceptable practices will be effectively countered (page 76).

The protection of everyone's privacy is a valuable asset. Violations are justified only when this is in the interest of the safety of persons or the State in emergency situations (page 90).

SGP wants to move toward as much "individual ownership" of data as possible (page 140), and government services should, in principle, be readily accessible even to groups lagging behind in digital society (page 141).

#### **YELLOW:**

Salafist organisations whose activities are at odds with the rule of law are prohibited (page 76). It is not clear who determines when such – vaguely defined – activities exist, which reinforces the danger of unjustified distinctions between groups of citizens. It is up to the courts to prohibit or permit certain organisations.

#### **RED:**

The death penalty may be a just punishment for homicide, including terrorist crimes. It should therefore also be possible for suspects of serious crimes such as terrorism or murder to be extradited to countries that apply the death penalty, provided that they have a properly functioning rule of law (page 64). The death penalty violates the right to life and is irreversible. Moreover, it may be considered a cruel and inhumane punishment if only because of the method of execution, which is in violation of the UN Convention Against Torture, to which the Netherlands is a party.

It should be possible to strip terrorists of Dutch citizenship. Should that not be possible for some, it should be impossible for them to exercise certain privileges associated with Dutch citizenship, such as the right to vote or the right to work in the public service (page 66). If someone is a terrorist, who decides who is to be deprived of Dutch citizenship and under what circumstances? If deprivation is not possible, who decides what the consequences will be? Without precise elaboration and without providing for judicial intervention, distinguishing between Dutch citizens is in any case fundamentally wrong from the perspective of the rule of law.



Filing repeated asylum applications that mostly have no chance of succeeding is often used as a way to stall for time or block a forced return. This should really be discouraged. Reducing the fee for legal aid may contribute to this. Appeals will be abolished for migrants from safe countries and for asylum seekers to be deported to other EU Member States in accordance with the Dublin Regulation (page 70). Due to their oversimplified nature and the focus on certain groups of citizens, the purpose of these proposals runs counter to the right to submit radical government decisions affecting people's lives and safety to an independent court.

Loudly playing Islamic calls to prayer in asylum seekers' centres will be banned because it can be extremely painful for other, often traumatised occupants (page 73). Prayer calls in which the Islamic creed is poured out over the surroundings with sound amplification should no longer be allowed by law (page 76). Measures that apply exclusively to Islamic religious practice and not to similar expressions of other religions make unwarranted distinctions between people based on religion.

Foreign funding of mosques will be banned (page 76). Here, without qualification, restrictions are imposed only on the Islamic religious community and unequal treatment is advocated between this community and other religious groups. This reinforces stigmatisation of Muslim believers.

## Socialistische Partij (SP)

### GREEN:



SP's focus on page 9 of its election programme on the position of whistleblowers and how to strengthen this position may have a positive effect on the rule of law.

The establishment of a "Digitisation Committee" to advise politicians on the social consequences of technological developments and make proposals for additional civil rights in the digital age may contribute to the further development of the digital rule of law (page 12).

On page 18 of its election programme, SP makes a plea for media independence and in this context also makes some proposals to enhance both transparency and free news gathering.



The planned strengthening in capacity of the police, the Public Prosecution Service and the Fiscal Intelligence and Investigation Service (FIOD) in the fight against subversion (page 21) may be considered progress under the rule of law. This also holds true for bringing justice closer to citizens – not only by physically lowering the threshold by introducing "Houses of Justice", but also by financially enabling people to obtain justice through a proposed strengthening of the legal aid system and a reduction in court fees (page 22).

If properly implemented, the anti-discrimination measures announced on page 25 of the election programme and the proposed amendment to Article 23 of the Constitution to prohibit schools from discriminating when accepting students, combined with embedding knowledge of fundamental rights in the educational process, may help strengthen the rule of law.

### **RED:**

The ban on funding political and religious organisations from abroad advocated on page 25 of the election programme is inconsistent with, among other things, the fundamental right of freedom of religion laid down in the Constitution. Although it is clear from the context that this is about fighting terrorism, the explicit mention of mosques in this connection is evidence of stigmatisation and unequal treatment of certain groups based on religion. Segregation – whatever side it comes from – does not create a sound culture for further shaping our rule of law in the 21st century.

## **Volkspartij voor Vrijheid en Democratie (VVD)**

### **GREEN:**



In its election programme (page 16), VVD shows itself in favour of introducing regulations that make data personal property. The proposals intended to improve the protection of children's data in advance and counteract child marketing also have a positive impact on the protection of citizens.

This also holds true for the privacy of patient data to be guaranteed on page 39 and the introduction of a regulator for algorithms to prevent arbitrariness and discrimination (page 97).

The amendment to the Constitution advocated by VVD to provide that freedom of education may not undermine the principle of equality may further strengthen the rule of law.

The elimination of the co-payment for lesbian or single women for IVF treatments and/or artificial insemination with donor sperm – as is currently the case for heterosexual couples – proposed on page 43 of the election programme may be considered a medical and ethical implementation of the principle of equality.

On page 65 of its election programme and elsewhere, VVD also makes a number of proposals to advance the fight against serious crime. For example, increased capacity at the Financial Intelligence Unit (FIU) to better combat money laundering could help prevent subversion of the rule of law. The actors in this fight, including mayors, local administrators, individuals in the criminal justice system and journalists deserve extra protection (page 64).

#### **YELLOW:**

The intervention that VVD advocates on page 28 of its election programme in educational institutions that undermine integration, democracy or the rule of law, in which respect it mentions in the same breath Turkish weekend schools and informal schools that are largely paid for from abroad, may be problematic from the perspective of the rule of law. After all, who decides which educational institutions undermine integration, democracy or the rule of law?

VVD's proposed scaled-down funding of legal aid for asylum cases (page 58) carries the risk that people in a vulnerable position will not have those opportunities for legal protection that may be expected in a state under the rule of law.

Barring persons who preach hate, ordering area bans and closing religious institutions (page 60) are sweeping measures that may be at odds with fundamental rights. What previously known legal criteria or other criteria will be used to determine when such measures are needed? VVD's advocacy of terminating licences granted to organisations that, in its view, work against integration or undermine free democratic values and prohibiting certain churches (page 63) also require a judicial review. Providing opportunities for municipal councils to restrict prayer calls by relying on integration (page 60) poses a risk of discrimination against certain population groups, including based on their religion.



This risk of unequal treatment also applies to the ban on bringing a spouse to the Netherlands more than once, as proposed on page 60.

It is positive that, on page 64 of its election programme, VVD identifies the fight against drug crime as an important issue, but giving priority to fighting this crime to the detriment of privacy rules is – without further elaboration – problematic in terms of the rule of law.

Although the criminalisation of the publication of data and images in which police officers and emergency workers can be recognised on page 65 may sound sympathetic at first sight, this intention also has a dark side. Where this proposal prevents possible abuses from being uncovered, such criminalisation may also have an adverse effect on the rule of law.

### **RED:**

On pages 55 to 58 and elsewhere, VVD proposes a number of measures that should drastically limit immigration. These include introducing refugee quotas depending on public support, selecting refugees based on social fit, suspending the right to asylum, closing the Dutch borders, abolishing appeals in asylum cases and denouncing or amending the UN Refugee Convention. Merely denouncing or amending a treaty does not absolve the government of its duty to respect universally recognised human rights and to protect people under oppression.

Long-term supervision and, if necessary, life-long monitoring of jihadists (page 63) may not involve life-long persecution of someone who has already undergone punishment under a court judgment. This also violates the right to privacy. Revocation of the Dutch citizenship of Dutch citizens (page 63) may not result in statelessness.

Publishing blacklists of fraudsters, as VVD proposes on page 67 of its election programme, which are shared not only within the government but also outside, could stigmatise individuals for life, which would violate the right to privacy. Moreover, questions arise here such as: who determines whether a person is a fraudster? What are the criteria for being known as a fraud on the internet for life?



Adequate legal assistance is important in a state under the rule of law, not only where private-law interests are at stake, but also where legal protection against the government is involved. The ability for a lawyer and client to communicate in confidence is essential here. The possibility that VVD advocates on page 69 of making it easier to lift this legal professional privilege of lawyers may violate the rule of law, especially since any abuse of this privilege is already adequately sanctioned under current laws and regulations.



## ANNEX

### Brief Curriculum Vitae of the Committee members

**Willem van Schendel** (born 1950) – after receiving his doctorate in Leiden on the subject of Representation in Private and Administrative Law – has worked in the judiciary since 1983. He has successively been a judge at the Rotterdam District Court, a justice at the Amsterdam Court of Appeal, and from 2001 to 2021 a justice at and later Vice President of the Supreme Court of the Netherlands, each time alternating between the criminal and civil sectors. In the past few years, he was President of the Criminal Division of the Supreme Court. Among other positions, he was a Crown-appointed member of the Disciplinary Appeals Tribunal (disciplinary law for lawyers) for many years.

**Irma van den Berg** (born 1966) has been a lawyer in Amsterdam since 1992, except for a period between 1999 and 2002. Until 1999, she had a general practice with great emphasis on migration law. Between 1999 and 2002, she was a staff lawyer at the then Aliens Law Uniform Application Chamber of the Hague District Court and the Aliens Chamber of the Amsterdam District Court. She has been a public-law lawyer since 2002, the first years at NautaDutilh and from 2008 at SIX advocaten. She has also been a Board member since 2009 and, since 2019, Chair of the Board of the Lawyers for Lawyers foundation, which is committed to an independent legal profession worldwide.

The main focus of **Daan Hoefsmit**'s career has been to lead radical change, particularly at public service providers. In doing so, he operated as the ultimately responsible manager and director. He is currently closely involved in the permanent resolution of problem debt in the Netherlands and contributes ideas on how to eliminate the consequences of problem debt for citizens' health and livelihood security.

Prof. **Elaine Mak** (born 1979) is a Professor of Jurisprudence at Utrecht University. She studies the legitimacy and functioning of constitutional institutions, in particular the judiciary, in a changing European context. Among other positions, she is a President of the Netherlands Association for Philosophy of Law and a deputy justice in criminal cases at the Hague Court of Appeal.

**Channa Samkalden** (born 1975) received her doctorate from the European University Institute in Florence on religious freedom and separation of state and religion in Europe. Afterwards, she worked for some time as a lecturer in Constitutional Law at the University of Amsterdam and as a legal specialist in the Constitutional Affairs Department of the Ministry of the Interior and Kingdom Relations. She has been a lawyer since 2008 and at human rights firm Prakken d'Oliveira she focusses primarily on liability of companies for human rights violations.

She is also a member of the Netherlands Bar's Advisory Committee on the Rule of Law.

After studying Law in Madrid and Amsterdam, **Camilo Schutte** (born 1970) worked at the University of Amsterdam, Department of Constitutional Law, where, in 1999, he received his doctorate for his doctoral thesis 'Constitutional Case Law in Spain'. He has been a lawyer since 1999, since 2006 at SSHJ Advocaten in Amsterdam, a firm he co-founded. He currently chairs the Netherlands Bar's Advisory Committee on the Rule of Law.

**François van Vloten** (born 1966) practised law at various firms after his law studies. He has also held various legal and management positions in the civil service. Until 2020, he served as a member of the National Selection Committee for the Judiciary. He currently serves as a Director at the Limburg Bar, is a member of a number of municipal committees deciding on notices of objection, and is a Chairman of the Supervisory Council of Stichting Onderwijs Midden-Limburg.



