

Annual Report 2008

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Foreword

This is the annual report of the Electoral Council for 2008. With it the Electoral Council would like on the one hand to render account for its work over the past year and, on the other, provide information about its work to a broader public.

In 2008 no elections were held for generally representative bodies. In November 2008, however, national elections were held for the water board executive committees. It was the first time that the list system was used for voting. Another new feature was that 26 water boards held elections simultaneously. The Electoral Council monitored the developments, also because with the increasing similarity between the electoral process for water boards and that for generally representative bodies the systems will tend to influence one another more, and because in the run-up to those elections the Electoral Council for the first time in its history had been asked by the Ministry of Transport, Public Works and Water Management to give advice about the electoral procedure for water boards. The question whether in the future adjustments to the electoral procedure for the water boards will be necessary, will recur based on the various evaluations promised.

In 2008 the Electoral Council issued five advice notes and two reactions. The subjects of advice were highly varied, dealing with issues ranging from a consultative referendum on the European Reform Treaty to assistance for mentally impaired voters, illiterate voters and people whose command of the Dutch language is lacking or insufficient, and from a legislative proposal to alter the Elections Act (*Kieswet*) because of the new constitutional status of the islands Bonaire, St. Eustatius and Saba (the 'BES Islands') in the Netherlands to the legislative proposal for an Electoral Procedure Act (*Wet inrichting verkiezingsproces*). This particular advice note, in which the Electoral Council expressed fundamental objections to the draft legislative proposal, sketches the international framework for the electoral process and the resulting possibilities and impossibilities of organising and designing elections in the Netherlands. Given the necessity for checks and balances, it included special recommendations about the distribution of powers and responsibilities among the relevant national administrative bodies and the municipalities, and among the national administrative bodies themselves.

In June 2008 GRECO approved and adopted the 'Transparency of Party Funding' Evaluation Report on the Netherlands. GRECO (Group of States Against Corruption), of which the Netherlands has been a member since 2001, is part of the Council of Europe and its object is to fight corruption by monitoring the member states' anti-corruption measures. GRECO examined the situation regarding the supervision of political party finances and, in particular, studied the draft legislative proposal for the funding of political parties. GRECO underlines the need for an act regulating the funding of political parties and the public disclosure of donations. This act must provide a number of safeguards that are as yet lacking. It is seen as a major step in the right direction towards meeting international standards in that regard.¹

In 2008, by word of the Chairman of the Venice Commission, the Council of Europe requested the Electoral Council and the State Secretary of the Interior and Kingdom Relations to organise the 6th EMB congress. This international congress of sister organisations of the Electoral Council, the so-called Electoral Management Bodies, will be held in The Hague in November

¹ Report of the Group of States against Corruption (GRECO) about the evaluation of the transparency of party financing in the Netherlands (appendix to Parliamentary Documents II, 2007-2008, 31 200 VII, no. 77).

2009. Issues dealt with at it will be informing the voter, increasing electoral participation and withdrawing the right to vote. The congress will be organised by the Ministry of the Interior and Kingdom Relations and the Electoral Council jointly.

This annual report describes the activities undertaken by the Electoral Council in the broad field of elections over the past year. It is a field undergoing constant change, and one that is rightly subject to the intense scrutiny of the media and voters themselves. All sorts of comparative studies show that Dutch voter confidence in the electoral process is relatively high. That is gratifying. But only by constantly maintaining and improving it can this confidence be sustained. In years to come we shall continue to work at it.

H.R.B.M. Kummeling,
Chairman

1 Introduction

The Electoral Council Annual Report for 2008 provides information about the work and the organisational aspects of the Electoral Council over the past year, dealing with the major issues chapter by chapter. It makes no consistent division between the work the Electoral Council does as an advisory body and the work it does as a central electoral college, because both activities overlap.

Specific activities carried out in 2008 that were only completed at the beginning of 2009 are dealt with briefly and will be discussed in more detail in the annual report for 2009.

In accordance with Section 28 of the Advisory Bodies Framework Act, this Electoral Council Annual Report for 2008 has been presented to Ms Dr G. ter Horst, Minister of the Interior and Kingdom Relations. In connection with her responsibility for electoral law and elections, Ms A.Th.B. Bijleveld-Schouten, MSc, State Secretary of the Interior and Kingdom Relations, has been presented this annual report as well.

2 Duties and composition

Section A1 of the Elections Act regulates the composition of the Electoral Council. Section A2 of the Elections Act lays down the duties and composition of the Council:

- 1 It is the duty of the Electoral Council to advise the government and both houses of the States General about matters of implementation relating to electoral law or elections.
- 2 The Electoral Council also acts as a central electoral college in the instances prescribed by law.
- 3 The Electoral Council is formed of seven members.

Aside from its statutory duties as an advisory body and central electoral college, the Electoral Council plays a role in providing information to citizens and municipalities as well as political and other interested parties. That is discussed elsewhere in this report.

Some time ago, in a draft legislative proposal for funding political parties, the intention was expressed of transferring to the Electoral Council the responsibility for subsidising political parties and supervising the finances of political parties. The Electoral Council issued advice notes on 13 March 2006 and 13 April 2006 about this legislative proposal. On 9 December 2008, at the request of the Minister of the Interior and Kingdom Relations, it issued a further response to it.² The legislative proposal has not yet been presented to the House of Representatives.

The composition of the Electoral Council remained intact in 2008, and was as follows:

Prof H.R.B.M. Kummeling, LL.M., chairman;
G.J. Schutte, vice-chairman;
Ms G.M.M. Blokdijk-Hauwert, LL.M., member;
R.T.B. Heemskerk, member;
Prof M.H. Leyenaar, LL.M., member;
W.M.B. Stoker, member;
A.J. te Veldhuis, LL.M., member.

By Royal Decree of 5 July 2008 Mr Kummeling, Ms Leyenaar and Mr te Veldhuis were reappointed for four years with effect from 1 January 2009, respectively as the chairman and members of the Electoral Council.

Ms J. Schipper-Spanninga, LL.M., occupied the position of secretary-director of the Electoral Council. Ms R. Hoorweg, LL.M., was its deputy secretary-director.

² The advice of the Electoral Council was presented to the House of Representatives at the request of the House of Representatives by letter of 24 January 2008 from the Minister of the Interior and Kingdom Relations (Parliamentary Documents II, 2007-2008, 31 200 VII, no. 46). Both the letter from the Electoral Council, which contains a response to the later version of the legislative proposal, and the response of 9 December 2008, can be found on www.kiesraad.nl.

3 Developments

Two thousand and eight was a year that saw significant electoral reforms. It was also a year in which certain far-reaching changes were abandoned.

The Senate voted to end the disenfranchisement of persons placed under guardianship because of a mental disorder. This constitutional amendment, which was followed by an amendment to the Elections Act³, has a long history. Voter numbers were also enlarged by extending to all inhabitants of the Netherlands Antilles and Aruba who meet the requirements also applicable to residents of the Netherlands the right to vote for the European Parliament. Both extensions of franchise were implemented after persons who had been disenfranchised had brought lawsuits that ended up before the European Court of Justice.⁴

Not only franchise itself but also the organisation of elections and the relevant resources used continued to attract interest in 2008, including from the media. An expert group on new voting technology⁵ studied the possibilities offered by the vote printer and vote counter as alternatives to the previously used but no longer approved voting machines. The group concluded that 'while the (organisational and financial) efforts required to develop and test a vote printer are considerable, there is no 100% guarantee that every individual machine will meet the requisite standard during an election.'⁶ Not long afterwards the State Secretary of the Interior and Kingdom Relations decided to abandon the introduction of such machines and, for the time being, to revert to the use of pencil and paper for elections. With this decision the Netherlands charted a course which is not always easy to explain in this Information Age but which, in view of the risks of manipulation or machines failing to safeguard voting secrecy, is unavoidable.

In 2008 another fundamental change was implemented: compulsory ID in polling booths.⁷ For the time being this will only apply in municipalities that took part in the experiment known as Voting in an Arbitrary Polling Station, but it will be extended to all municipalities starting in 2010. The Electoral Council had issued advice previously about the introduction of compulsory voter identification.⁸

Following the Senate elections in 2007, a debate arose in 2008 about the various aspects of elections to that body. On 26 February 2008 the Senate itself held an interpellation debate with the State Secretary of the Interior and Kingdom Relations.⁹ The central issue of the debate was whether a summons by political parties to members of Provincial Councils to adhere to the order of candidates laid down by the party was constitutional. The Senate examined three other

3 Parliamentary Documents I, 2006-2007, 30 471, D (Bulletin of Acts and Decrees 2006, 564) and 2007-2008, 31 012, no. 34 (Bulletin of Acts and Decrees 2008, 272). Decision by the Administrative Jurisdiction Division of the Council of State, 29 October 2003, 200300512/1, JB 2004, 1.

4 Decision by the Administrative Jurisdiction Division of the Council of State, 21 November 2006, 200404446/1 and 200404450/1, www.raadvanstate.nl. Judgment by the European Court of Justice, 12 September 2006, C-300/04. Parliamentary Documents I, 2008-2009, 31 392, G, Bulletin of Acts and Decrees 2008, 475.

5 Expert Group Resolution, Government Gazette of 5 February 2008, no. 25 / p.8.

6 Parliamentary Documents II, 2007-2008, 31 200 VII, no. 64.

7 Parliamentary Documents I, 2008-2009, 28 664, E.

8 Advice of 22 June 2007, see www.kiesraad.nl under Advice.

9 Interpellation-Kox, Appendix to the Proceedings, 2007-2008, no.21, pp. 913-927.

issues as well: the height of the preferential vote threshold, the possibility of combinations of lists following voting for Provincial Councils and the time of voting.¹⁰

In 2008 previous intentions to institute reforms were withdrawn. Both proposals to introduce the system of an elected mayor and the one to scrap the appointment of mayors from the constitution were withdrawn. An amendment to the Municipality Act (*Gemeentewet*) also revoked the possibility of holding a mayor's referendum, which had been introduced in 2001.¹¹

The cabinet also responded to proposals that, at the request of the previous cabinet, had been developed by the Electoral System Citizens Forum. The Citizens Forum had suggested giving voters the choice between voting for the party of their choice and voting for their preferred candidate.¹²

In addition to these developments, further thought was given to revising electoral procedure following the debate about voting machines. The cabinet submitted a proposal for an Electoral Procedure Act for the advice of the Electoral Council, the Association of Netherlands Municipalities ('VNG') and the Dutch Association for Civil Affairs ('NVVB'). The Electoral Council and the VNG had major objections to it, partly for similar and partly for differing reasons. The NVVB also had its reservations about it. See the advice given by the Electoral Council and that of the VNG in this regard.¹³

Finally, reference is made to a technical amendment to the Elections Act.¹⁴ Part of it concerns the separate counting of blank votes. Until this amendment was introduced, blank votes were counted as invalid ones.

10 Letter from the State Secretary of the Interior and Kingdom Relations to the Senate: Parliamentary Documents I, 2007-2008, 31 200 IIA, A. The Electoral Council also issued advice about several of these and other matters relating to Senate elections. Reference is made here to the Electoral Council's advice on the amendment to the Electoral Act with regard to the Senate elections of 15 July 2009. See www.kiesraad.nl.

11 Parliamentary Documents I, 2008-2009, 31 393 (Bulletin of Acts and Decrees 538).

12 Parliamentary Documents II, 2007-2008, 30184, nos. 11 and 20.

13 Electoral Council's advice of 10 November 2008, see www.kiesraad.nl. Response from the Association of Netherlands Municipalities (Vereniging van Nederlandse Gemeenten) of 2 October 2008, see www.vng.nl.

14 Bulletin of Acts and Decrees 2008, no. 405.

4 Organisation and working method

Secretariat of the Electoral Council

The secretariat of the Electoral Council employs twelve full-time permanent staff. They can be supplemented during elections, when, for example, an Elections Information Centre is always set up. That was not the case in 2008 because there were no normal elections that year. The secretariat is controlled by the Ministry of the Interior and Kingdom Relations. While its staff are employed by the ministry, they are placed at the disposal of the Electoral Council. This means they are accountable to the Electoral Council only.

Outplacement project

The Electoral Council and the Ministry of the Interior and Kingdom Relations feel that the secretariat of the Electoral Council should be placed outside the core department, in order to heighten transparency of the Electoral Council's autonomous position in executing its executive responsibility as well. Two thousand and eight saw the publication of the report 'Voting for Clarity', which describes ways in which this outplacement can be achieved. It was agreed with the core department to study in more detail the option of having this outplacement being accompanied by giving the Electoral Council and the secretariat its own legal personality. This will be put into effect in 2009.

Research Advisory Council

In 2008 a Research Advisory Council was established to issue recommendations about the Electoral Council's research programme. The council is made up of Prof W.J.M. Voermans, Professor of Constitutional and Administrative Law at Leiden University, Dr H. van der Kolk, a political scientist in the Political Science and Research Methods department of the University of Twente, and Dr J. Loots, a historian in the Political History department of Radboud University. The council's secretary is Dr R. de Jong, a researcher for the secretariat of the Electoral Council. The Advisory Council met twice in 2008.

Meetings

In 2008 the Electoral Council held fourteen plenary sessions. Individual members also met on various other occasions.

External contacts

It goes without saying that the Electoral Council and its secretariat maintain various external contacts. It holds periodic discussions with the State Secretary of the Interior and Kingdom Relations, the Ministry of the Interior and Kingdom Relations, the Association of Netherlands Municipalities and the Dutch Association for Civil Affairs. In 2008 the House of Representative's Permanent Committee for the Ministry of the Interior and Kingdom Relations and the Electoral Committee also consulted with one another, in addition to regular communications that took place between the registry and the secretariat. Moreover, in 2008 frequent consultations were again held with municipal officials responsible for supporting the principal electoral colleges.

5 The Electoral Council as an advisory body

Under Section A2(1) of the Elections Act, the Electoral Council is required to advise the government and both houses of the States General about matters of implementation relating to electoral law or elections. There are two types of advice: requested advice and unsolicited advice. Requested advice is given to the Minister or State Secretary of the Interior and Kingdom Relations and to the Senate and House of Representatives. In principle, unsolicited advice is issued to the Minister of the Interior and Kingdom Relations. In all the Electoral Council issued five advice notes and two reactions. All the advice notes issued had been requested and the two reactions were to positions taken by the cabinet. Most of the advice was addressed to the State Secretary of the Interior and Kingdom Relations. One advice note was addressed to the Minister of the Interior and Kingdom Relations and one to the House of Representatives. The following is a summary of the advice notes and reactions in question.

Advice of 22 January 2008 regarding the provision of assistance in polling stations

The Electoral Council advised the State Secretary of the Interior and Kingdom Relations about providing voters assistance required other than for physical reasons. Examples include assistance to illiterate or semiliterate voters, people whose command of Dutch is lacking or insufficient, and persons who because of a mental impairment have difficulty voting. This advice note can also be considered a reaction to the cabinet position of 23 November 2007 about electoral procedure (reference BPR2007/U59586). Other remarks by the Electoral Council on the cabinet's position are contained in its letter of 18 January 2008.¹⁵

The Electoral Council advised maintaining Section J 28 of the Electoral Act as it currently stands. For the group of voters with a mental impairment, the Electoral Council pointed out the desirability of adhering to the requirement of an individual being able to decide for himself and effecting that decision himself by casting a vote independently. The Electoral Council considers that, in providing assistance, the risk is too great that voters who are illiterate or whose command of Dutch is insufficient or who have a mental impairment might be influenced inappropriately.

In a letter to the Speaker of the House of Representatives of 24 January 2008, the State Secretary of the Interior and Kingdom Relations said that the Electoral Council's views about providing assistance to voters abroad is broadly in line with the position taken by the cabinet on the report by the Election Process Advisory Commission and that the advice of the Electoral Council would be taken into consideration in reviewing statutory and other rules on electoral procedure.

Advice of 24 January 2008 about a consultative referendum for the European Reform Treaty

The Electoral Council issued an advice note to the House of Representatives about the legislative proposal submitted by the members van Bommel, van der Ham, Ouwehand, Peters and de Roon on holding a consultative referendum about the European Union Reform Treaty. Refraining from giving an opinion about the necessity and desirability of holding such a referendum, the Electoral Council in that note limited itself instead to matters of actual implementation.

¹⁵ Letter of 18 January 2008, reference 2008-0000026497, see www.kiesraad.nl.

As stated in the Explanatory Memorandum, the legislative proposal is broadly in line with the European Constitution (Consultative Referendum) Act (*Wet raadplegend referendum Europese Grondwet*). In some aspects it differs from this act, specifically where evaluations of such a referendum suggest improvements to it. In its advice the Electoral Council commented on the options decided on in the legislative proposal, suggesting for inclusion in the legislative proposal that when voters register to vote for the European Parliament they also be given the option of registering for such a referendum should it be held. This would mean that as many voters abroad as possible would be able to take part in the referendum. The Electoral Council also advised reconsidering the provisions regarding the deadline for the act's entry into force. It also advised having the period for holding a referendum commence later with regard to the date that referendum committee members are appointed and to extend the period in which a referendum may not take place. It is also the opinion of the Electoral Council that it should be decided that the mayor determines the number of voters. The principal electoral college would then be able to determine the total number of voters for the electoral district, after which the central electoral college based on these data would be able to establish official voter turnout figures. The legislative proposal did not say how voters abroad would be included in the turnout figures. The Electoral Council therefore advised including a provision that the mayor of The Hague determine how many voters have registered to vote. Finally, the Electoral Council advised changing the title of chapter six to 'Determining Voter Turnout and the Result of the Referendum', in order to do justice to the duties regulated in that chapter.

Most of the Electoral Council's suggestions were adopted by the persons who had submitted the legislative proposal.¹⁶ These included the suggestion to have the period for holding a referendum commence later with regard to the date that referendum committee members are appointed, as well as the one to have the period in which such a referendum may not take place extended. Also adopted was the Electoral Council's recommendation to include a provision that the mayor determine the number of voters. Another suggestion adopted was that the title of chapter six be changed. However, the suggestion for a provision that the mayor of The Hague determine the number of voters who have registered, was not adopted.

Advice of 18 September 2008 about an amendment to the Temporary Electronic Remote Voting Experiments Order

The Electoral Council advised the State Secretary of the Interior and Kingdom Relations that the proposed amendment to the Experiments Order created an inadequate basis for the introduction of compulsory voter identification. In its advice the Electoral Council pointed out the risk of a lack of clarity about the inspection of a card or document that a voter is required to produce if they have mislaid their identity document and advocated a uniform rule for all voters. It underlined the importance of good (and timely) communication. Finally, the Electoral Council advised using working days instead of days for the period laid down for applying for a replacement voting pass.

As demonstrated by the Explanatory Memorandum to the Royal Decree of 20 March 2009 amending the Temporary Electronic Remote Voting Experiments Order (*Tijdelijke experimentenbesluit Kiezen op Afstand*), the government takes the view that the current wording of Section 3 of the 'Electronic Remote Voting Experiments Act' does not rule out compulsory ID for voters using a voting pass to vote in an arbitrary polling station. Unlike the Electoral Council, the cabinet considers it useful to experiment with compulsory voter

¹⁶ Parliamentary Documents II, 2007-2008, 31 259, nos. 5 and 6.

identification. The experience gained can then of course be included in the official introduction of compulsory ID in the framework of the legislative proposal being prepared for electoral procedure. Nor does the government share the fear of the Electoral Council that the introduction of compulsory voter identification only in those municipalities participating in the Voting in an Arbitrary Polling Station Experiment would create confusion.

Advice of 23 October 2008 about an amendment to the Elections Act because of the new constitutional status of the BES Islands as public entities in the Netherlands

The Electoral Council advised the State Secretary of the Interior and Kingdom Relations about the legislative proposal for an amendment to the Elections Act because of the new constitutional status of Bonaire, St. Eustatius and Saba as public entities in the Netherlands. The Electoral Council broadly endorsed the legislative proposal, considering it advantageous that by putting the franchise rules for the BES Islands as far as possible in a separate part of the Act, the Elections Act would remain as intact as possible and that the provisions relating to the public entities would where possible be collected in a single chapter. Given the importance of having uniform voting procedure in the Netherlands, the Electoral Council also supported the point of departure that the Elections Act be applied in its entirety to the BES Islands. Although this would entail a number of consequences for the implementation of elections (e.g., candidate nomination procedure and post-voting procedure), the Electoral Council consented to the idea of allowing the three public entities to be their own electoral districts in elections for the Senate and House of Representatives. The Electoral Council said it was aware that this option might be at odds with Article 55 of the Constitution, but that it agreed with the opinion of the Council of State of the Kingdom to designate that in elections to the Senate members of the Island Councils be equated to members of the Provincial Councils. The Electoral Council did, however, consider that in a subsequent review of the Constitution a provision should be made for this. In the Electoral Council's opinion it would be preferable that duties concerning the assessment of the authenticity of documents relating to acts that within the European part of the Netherlands are included in the duties of the central electoral college be delegated to the state representative as representative of the Electoral Council. As regards the submission of candidate lists, the Electoral Council advised including a provision in the form of a prolonged point of contact both in the BES Islands and in the European part of the Netherlands. The Electoral Council said it was willing to contribute to ideas on designing such a provision. The Electoral Council also agreed with the legislative proposal's notion of enabling the electronic transmission of documents either from the authorities of Saba and St. Eustatius to the principal electoral college in Bonaire, or from the principal electoral college to the central electoral college. The Electoral Council also supported the proposal to amend Section I2(1)(e) of the Elections Act. And it supported the proposed study of the level of support for including in the Elections Act the possibility of displaying logos of political parties on ballot papers and the consequences of implementing a request for registering them. In addition, the Electoral Council had a number of questions about options included in the legislative proposal.

According to the Explanatory Memorandum¹⁷ to the legislative proposal, the government broadly endorsed the Electoral Council's advice. It did not, however, adhere to the Electoral Council's advice to delegate to the state representative as representative of the Electoral Council duties relating to the authenticity of documents, because it did not consider there was any the necessity for departing from the normal rule of the Elections Act in the sense of an additional assessment by a third party of documents sent from the principal electoral college to the central

¹⁷ Parliamentary Documents II, 2007-2008, 31 956, no. 3.

electoral college. Nor did the government abide by the Electoral Council's advice to include a provision for the nomination of candidates in electoral districts other than their own in the form of a prolonged point of contact both in the public entities and in the European part of the Netherlands. The reason for this was that such a provision would entail a far-reaching departure from the system of the Elections Act for which there seemed to be no necessity. The space allowed by the Elections Act for the decentralised (and centralised) nomination of candidates, if required through nomination by a voter in the relevant electoral district, seemed adequate according to the Explanatory Memorandum. As regards the Electoral Council's suggestion to have a provision included in the Constitution for equating the Island Councils with the members of the Provincial Councils, the government took the position that once it is clear what the final status of Bonaire, St. Eustatius and Saba will be, the Constitution will be reviewed in this aspect.

Reaction of 4 November to the legislative proposal for an Electoral Procedure Act

The Electoral Council sent a reaction to the State Secretary of the Interior and Kingdom Relations about the legislative proposal for the Electoral Procedure Act, in which various aspects of electoral procedure are revised. The Electoral Council had a number of fundamental questions about the proposed amendments and advised the State Secretary to reconsider the legislative proposal. The Electoral Council considered it highly inappropriate to distribute electoral law over two acts and felt there was no need to do so. In this regard it considered it relevant that such distribution between the Elections Act and the Electoral Procedure Act seemed rather arbitrary, in terms of both structure and detail. If all provisions relating to elections were put into a single Elections Act, the electoral process would be clearer not only for citizens but also for those charged with implementing elections. The Electoral Council therefore advocated one general Elections Act.

It also advised against delegating legislation on essential elements of the electoral process to the executive (government or minister) because of the special character of the Elections Act. Essential aspects of the electoral process should not be designed without an active legislative participation of the States General, leading to legislation in the formal sense. The Electoral Council therefore took the view that only details of legislation should be delegated.

The Electoral Council agreed with the legislative proposal's notion that Dutch electoral procedure should be brought in line with international electoral norms. However, it considered the details of this rather imbalanced. In its advice it underlined the importance of including as a safeguard the principle of independence and to make it a more explicit part of electoral procedure. It also emphasised the desirability of giving the minister greater influence over electoral procedure, but considered that the legislative proposal gave too much weight to the governmental model, which threatened the requisite independence. The Electoral Council did not, for instance, see any clear need for largely relieving municipalities of responsibility for their own actions. The Electoral Council took the view that many municipal affairs could be supervised horizontally and doubted the need for the obligation to provide information and the authority to give instructions. In a more general sense, the Electoral Council moreover considered it unrealistic to suppose that almost the entire electoral process could be controlled from The Hague.

The Electoral Council also advised maintaining the role of principal electoral colleges in determining the results of elections. The Electoral Council considered it appropriate that central electoral colleges should be transparent about what they do and made various suggestions in that regard. However, the Electoral Council had serious misgivings about introducing for central electoral colleges a general obligation to provide information that can be activated at every

stage of the electoral process, particularly in cases where such obligation to provide information is part of the directive role of the minister. This could threaten confidence in the necessarily independent functioning of the central electoral colleges. The Electoral Council had no objection to central electoral colleges being obliged where required to issue the minister reports and advice (comparable with the obligation of municipal executives laid down in Section 118 of the Municipalities Act).

Finally, the Electoral Council took the view that a study as suggested by the legislative proposal would entail risks regarding the legitimacy and perception of legitimacy of election results themselves. Studies are generally initiated when situations of abuse are felt to arise and might arouse the expectation that their results could influence the results of elections even once they have been determined. The Electoral Council therefore preferred to use the term evaluation in implementing improvements to electoral procedure. The Electoral Council also advised delegating supervision to an independent body instead of contracting out studies to parties hired externally.

Further examination of the legislative proposal was prompted partly by the advice of the Electoral Council. The legislative proposal is expected to be submitted for the advice of the Council of State at the end of 2009.¹⁸

Reaction of 9 December 2008 to the legislative proposal for a Political Parties (Funding) Act

The Electoral Council advised the Minister of the Interior and Kingdom Relations about the amended draft legislative proposal for a Political Parties (Funding) Act (*Wet Financiering Politieke Partijen*). The Electoral Council endorsed the amended legislative proposal and, referring to advice it had given previously on the matter, largely restricted itself to amendments of substance formulated by the minister. The Electoral Council did this primarily in view of its future role as a supervisory body pursuant to the act in question. In previous reactions to this legislative proposal, the Electoral Council underlined the need for making punctual preparations for implementing the act.

This legislative proposal has not yet been submitted for debate to the House of Representatives.

Advice of 16 December 2008 about amendments of the models for the Elections Act and Elections Decree

The Elections Council advised the State Secretary for the Interior and Kingdom Relations about a proposal for amending the models for the Elections Act and Elections Decree (*Kiesbesluit*). These models needed to be amended because of the removal of the possibility of voting with a voting machine or over the Internet, the drafting of the law of 25 September 2008 amending the Elections Act and various other laws entailing technical amendments (Bulletin of Acts and Decrees 2008, 405), and the legislative proposal amending the Elections Act because of the granting of franchise to all Dutch citizens resident in the Netherlands Antilles and Aruba for European Parliamentary elections.

It turned out that a considerable number of models were not included in the proposal and that they would therefore not be amended. The Electoral Council displayed understanding of the option decided upon that only models that would be directly affected by the three aforementioned statutory amendments would be amended, but emphasised that it would like the other models

¹⁸ Proceedings of the House of Representatives, 2008-2009, no. 91, pp. 7125-7140.

to be subject to thorough examination at a later stage. It was willing to provide assistance in more far-reaching amendments. It listed another four models that, though not included in the proposal, required amendment. In terms of references and classification, the Electoral Council felt that the models were not always equally consistent. Unnecessary differences between the models were, in its opinion, inappropriate. An important example in this regard was the ways in which the models referred to the various representative bodies. The Electoral Council accordingly advised amending the models where necessary.

As regards the technical amendment about the separate registration of blank and invalid votes cast, it struck the Electoral Council that it was only in the official records of the sessions of electoral colleges and principal electoral colleges that the numbers of blank and invalid votes were mentioned. The Electoral Council considered it inappropriate that in view of the idea underlying the rule – informing voters about the number of blank votes – the models did not require central electoral colleges as well to determine and announce these numbers formally. The Electoral Council advised amending the Elections Act in due course such that the total number of blank votes and invalid votes cast would also be included in these official records, and to have the models amended accordingly.

Finally, the Electoral Council advised mentioning the voting pass as well as the polling card in the models to be amended, in order to prevent confusion particularly among electoral college members.

The adopted Models Regulation (*Modellenregeling*)¹⁹ shows that not all of the Electoral Committee's advice was adhered to. The official record of a central electoral college session, for instance, does not include the possibility of registering blank and invalid votes separately. Nor was the advice adopted to determine the voter turnout percentage officially and to include it as official information in the official record of the central electoral college. The Electoral Council reiterates here the importance of simplifying the models where possible, e.g., the various official records, for determining the results of elections and in order to make them more user-friendly.

Study

To back up its work, particularly in relation to the advice it issues, the Electoral Council has set up a study programme. Over the past year, in response to the request for advice about the legislative proposal for an Electoral Procedure Act, the Electoral Council studied international electoral norms and their possible significance for Dutch election procedure. The work of two trainees – which resulted in two Master's Degree papers – was followed by a brief study assignment. This led in turn to the production of a document containing all international electoral norms relevant to the Netherlands.

¹⁹ Bulletin of Acts and Decrees 2009, no. 46.

6 The Electoral Council as an independent administrative body

6.1 General

The Electoral Council's electoral law responsibilities include work it carries out as the central electoral college for elections to the House of Representatives, the Senate and the European Parliament. In municipal elections and Provincial Council elections, it mainly plays the role of an information centre. The Electoral Council's secretariat provides information and assistance to citizens, municipalities, provinces and political parties, doing so in various ways which include sending out circulars and letters and setting up an Elections Information Centre (in association with the ministry of the Interior and Kingdom Relations).

In 2008 no elections were held in which the Electoral Council was directly involved as a central electoral college. In November 2008, however, elections for municipal re-divisions and for the water boards did take place.

6.2 Elections for municipal re-divisions

If the decision is taken to merge municipalities, interim elections must be held for the council of the new municipality. The re-division act, which applies to a specific re-division, provides that such re-division always commences on 1 January. Elections are therefore held in the autumn preceding the date of the re-division. The re-division act also designates one municipality charged with organising the elections.

In autumn 2008 two re-division elections were held, as a result of which the municipalities of Alkemade and Jacobswoude were merged with effect from 1 January 2009 to form the new municipality of Kaag and Braassem²⁰, and the municipalities of Bloemendaal and Bennebroek were merged with effect from 1 January 2009 to form the new municipality of Bloemendaal.²¹ The elections were held on Wednesday 19 November 2008. Monday 25 August was the last day on which political parties were allowed to register an appellation and Tuesday 7 October was candidate nomination day (the day on which candidate lists were submitted).

In re-division elections, the Electoral Council is obliged pursuant to Section G 1(8) of the Elections Act to publicly announce forty days before candidates are nominated the registered appellations and names of authorised representatives known to it for elections to the House of Representatives. It does so with a view to the so-called carry-over of these appellations to the relevant municipal elections. In 2008 the Electoral Council issued this publication for the re-division elections in the Government Gazette of 28 August 2008.

6.3 Filling of interim vacancies

When a seat becomes vacant in the House of Representatives, the Senate or the European Parliament, it is the duty of the chairman of the Electoral Council to nominate a candidate as a member of the representative body in question. In 2008 successors were nominated for the following numbers of vacancies:

²⁰ Bulletin of Acts and Decrees 2008, no. 282.

²¹ Bulletin of Acts and Decrees 2008, no. 281.

Representative body	Number of interim vacancies	Distribution among the parties
House of Representatives	8	CDA 3 PvdA 1 GROENLINKS 1 SP 2 VVD 1
Senate	0	
European Parliament	1	PvdA 1
Representative body	Number of temporary vacancies due to illness or pregnancy	Distribution among the parties
House of Representatives	4	CDA 2 GROENLINKS 2

In appointing successors when vacancies arise, the chairman of the Electoral Council in his capacity as chairman of the central electoral college determines who is the highest ranking candidate on the relevant list that was finalised following the election. That person qualifies for appointment. It regularly occurs, however, that a candidate does not wish to qualify for an interim vacancy. In that case the person in question can issue a statement that they do not wish to qualify for appointment and they will be disregarded in the appointment procedure.²²

In order to carry out this task properly, the chairman has regular contact with the registries of the Senate and House of Representatives. Interim appointments to the European Parliament are also regulated through the registry of the House of Representatives.

Two thousand and eight was the first year in which use was made of the ruling enabling members of representative bodies to step down temporarily because of pregnancy, birth or illness.²³ That year use was made of the ruling four times in the House of Representatives. It turns out that frequent use is made of it at municipal level as well.

Compared with 2007, there were significantly fewer vacancies, particularly in the House of Representatives, numbers having fallen from 17 in 2007 to 8 in 2008. This difference may be explained by the (dissolution) elections held in November 2006. At the beginning of 2007, i.e., almost immediately after the elections, a number of persons appointed as members of the House of Representatives resigned after having been appointed as cabinet members.

²² See Sections W 1 and W 2 of the Electoral Act.

²³ Bulletin of Acts and Decrees 2006, no. 418.

6.4 Election Back-up Software

One of the recommendations of the Voting Machines Decisions Committee in 2007²⁴ was to lay down requirements for software used for calculating election results, including the distribution of seats. The State Secretary of the Interior and Kingdom Relations then formulated requirements for the central electoral colleges and sent them to the Speaker of the House of Representatives²⁵ and the Electoral Council. The Electoral Council then held discussions with the Association of Netherlands Municipalities ('VNG') and agreed that the Electoral Council would have this software developed for all central electoral colleges. Arrangements between the VNG and the Electoral Council have been recorded in an agreement published in the Government Gazette. This agreement includes the provision that the 'parties consider it important that all elections held pursuant to the Elections Act use the same software'.

They also considered it important to have an external Consultative Group charged with 'advising the Electoral Council about choices that have to be made in the process of tendering out and developing the election process'. The decree establishing this group was also published in the Government Gazette.²⁶

Following a (public) European tendering procedure in the summer of 2008, the contract to develop, manage and maintain this software was awarded to the German company IVU Traffic technologies AG. To ensure that this contract was tendered out properly, the demands of the State Secretary of the Interior and Kingdom Relations were embodied in a Descriptive Document containing over 100 requirements. The software will provide back-up for both candidate nominations and the calculation and determination of election results.

Development of the software began right away in October, priority soon being given to the election software needed by the municipalities, political parties and the Electoral Council in light of the European Parliamentary elections in June 2009. The name given to the software is Election Back-up Software ('OSV').

6.5 Water board elections

In November 2008 all water board elections were held simultaneously for the first time.

Water board elections do not come under the scope of the Elections Act, but rather have their own statutory regime laid down in the Water Board Act (Waterschapswet) and the Water Board Decree (Waterschapsbesluit). These statutes include the introduction of the list system (water boards previously used the individual candidate system) and the possibility of voting over the Internet in addition to voting by post. Given its own statutory regime, the Electoral Council has no formal duty in water board elections. In 2007 it did, however, issue an advice about the Draft Water Board Decree²⁷ and, in 2008, it had official contact, with the civil servants working for the Water boards particularly with regard to procedure on registering interest groups.

²⁴ The Report of April 2007 by the Voting Machines Decisions Committee can be found on the Electoral Council's website.

²⁵ Parliamentary Documents II, 2007-2008, 31 200 VII, no. 55.

²⁶ The Consultative Group comprises the following members: Mr J. Smit (project manager of the Municipality of Groningen Elections and member on behalf of the Dutch Association for Civil Affairs (Nederlandse Vereniging voor Burgerzaken)), Mr W.M.B. Stoker (member of the Electoral Council and head of the Municipality of Utrecht Elections), Dr. A.S. Tanenbaum (Professor of Computer Systems at Amsterdam's VU University), Ms M. Veerbeek (legal advisor to – and member on behalf of – the Association of Netherlands Municipalities) and Mr M. Wessling (policy advisor to the Consumers' Association in The Hague).

²⁷ The advice of 3 July 2007 about the Draft Water Board Decree can be found on the Electoral Council's website.

At the beginning of 2008 an amendment was made to the Water Boards Act because of the inclusion of the requirement that interest groups participating in the elections have full legal capacity.²⁸ This amendment was partly occasioned by the Senate debate on the Water Board (System Modernisation) Act, and was in accordance with the Electoral Council's advice referred to above.

In September 2008 the State Secretary of Transport, Public Works and Water Management wrote to the House of Representatives informing it of the definitive decision that the Internet would not be used for voting in water board elections.²⁹ This letter showed that following the findings of Fox-IT, a firm which advised the state secretary about the Internet voting facility, the water boards had decided to revoke their intention of allowing voters to vote over the Internet.

In November the preliminary relief judge in The Hague dismissed an application filed by the 'We don't trust voting computers' Foundation for an injunction halting the water board elections because of a breach of voting secrecy. The Foundation considered the voting secrecy guarantees given by the water boards inadequate. The judge considered it insufficiently proven that the process was not secure.³⁰

Average voter turnout was 24%. Both the Ministry of Transport, Public Works and Water Management and the Union of Water Boards are evaluating the elections. The Electoral Council has offered the state secretary its assistance in this evaluation.

28 Parliamentary Documents II, 2007-2008, 31 319, no. 1 et seq.

29 Parliamentary Documents II, 2007-2008, 31 142, no. 12.

30 Judgment by the District Court of The Hague, 11 November 2008, 320128 / KG ZA 08-1209, LJN: BG3907.

7 Registering an appellation

7.1 Applications for registration

Having approved the highest ever number of applications for registration in 2006, i.e., seventy-four, the Electoral Council (as the central electoral college) registered a significantly lower number of applications in 2007, i.e., three. There was a slight rise in the number of applications in 2008: in that reporting year the Electoral Council registered five appellations in the elections register for the House of Representatives and one in the register of appellations for European Parliamentary elections. It also granted one application for an alteration to a registered appellation for the House of Representatives. In 2008 the Electoral Council did not deny any applications for registration.

The following five appellations were entered for the first time in 2008 in the register for elections to the House of Representatives:

Trots op Nederland
de Ondernemerspartij
Partij voor het kind
Partij voor Mens en Spirit
Heel NL

In that register the appellation 'Burgers voor Burgers Nederland' ('Citizens for Citizens the Netherlands') was altered to 'Burgers voor Burgerbelangen' ('Citizens for Citizen Interests').

In the register for European Parliamentary elections, the appellation 'NEWEUROPEANS' was registered last year for the first time.

No political parties registered for participation in the Senate elections.

7.2 Deletion of a registered appellation

Pursuant to Section G1(7)(a) in conjunction with Section Y2 of the Elections Act, the central electoral college deletes an appellation in the registers for elections to the Senate and House of Representatives and the register for European Parliamentary elections if a political group that has registered that appellation ceases to exist. A registered appellation can be deleted at the request of the competent authority of the political group. The Electoral Council may also delete a registered appellation on its own initiative. Given the processing of new registration applications, it is important that the registers be kept as up-to-date as possible. The time at which an existing appellation is deleted can affect the assessment of a new application for registration. The Electoral Council bears its own responsibility for this.

In 2008 the Electoral Council on its own initiative deleted the appellations of a number of political associations. Lijst Pim Fortuyn ('Pim Fortuyn List') and Europa Transparant were deleted as neither group existed any longer. In both instances an appeal was filed with the Administrative Law Division of the Council of State, which found in favour of the Electoral Council. On its own initiative the Electoral Council also deleted the appellation Nieuw Rechts ('New Right') from the registers for elections to the House of Representatives and the European Parliament when it transpired that the Commercial Register contained the entry that the dissolved legal person Nieuw Rechts had ceased to exist.

7.3 Advice about the registration of political groups

In 2008 the Electoral Council was asked by municipalities on several occasions how they should deal with requests for the registration of local 'Trots op...' ('Proud of...') parties (e.g., 'Trots op Heerlen'). The municipalities wondered whether they could accept such applications, as the appellation 'Trots op Nederland' had been registered by the Electoral Council at the national level. Because of the possibility of a precedent being set, the Electoral Council published on its website the advice given by it to the municipalities.

The Electoral Council considered that, pursuant to the ground for rejection provided by Section G3(4)(b) of the Elections Act, such an application for registration must be rejected unless it can be demonstrated that the local party is part of the national 'Trots op Nederland' party. This was also in line with recent case law. Given the wording used, it is of course confusing if the appellation of a local 'Trots op (name of town/city)' party corresponds largely with the registered appellation of another political group, in this particular case Trots op Nederland. Moreover, it could create the impression that the local party is part of or accountable to the national 'Trots op Nederland' party.

The case was different where the appellation of a local 'Trots op ...' party had been registered before the appellation 'Trots op Nederland' was entered in the register for elections to the House of Representatives (which happened on 16 April 2008). In that case the previous registration would be legitimate and irrevocable. Because in that case, as the appellation 'Trots op Nederland' was not registered nationally at the time that such registration was made, it was not possible to review the appellation 'Trots op Nederland'. This implied that the appellation 'Trots op Nederland' could not be used in the municipalities for future municipal elections because a previous local 'Trots op ...' party had been registered.

On 6 July 2009 the Electoral Council granted Trots op Nederland's request to change its appellation to TROTS OP NEDERLAND LIJST RITA VERDONK

7.4 Policy Rule on 'Spelling of an Appellation'

As demonstrated by the numerous questions received by the Electoral Council from political parties and municipalities, the rules contained in the Elections Act about the spelling of appellations of political parties wishing to register themselves are not always sufficiently clear. Thus the Electoral Council issued clarification on the interpretation of these rules in a Policy Rule issued on 20 March 2008. This Policy Rule, entitled 'Spelling of an Appellation', answers various questions including ones on the use of capitals and italics, as well as bold-face type, underlining and signs.

8 Lawsuits

In 2008 various judicial bodies delivered decisions involving electoral law. The Electoral Council monitors them closely where it is not itself a party to proceedings or if it is heard as an expert.

The subjects of dispute were various in 2008. Decisions in two lawsuits to which the Electoral Council was a party are dealt with below. In another case the Electoral Council was involved as an expert. Finally, reference is made to a number of cases in which important decisions were delivered on elections.

Lawsuits to which the Electoral Council was a party

On 12 June 2007 a candidate of the so-called blank list number 14 filed an application with the District Court of Rotterdam contesting the Electoral Council's refusal to return a deposit that had been paid for participation in elections to the House of Representatives in November 2006. The District Court of Rotterdam declared his application unfounded. The candidate filed an appeal with the Administrative Law Division of the Council of State. This appeal was also declared unfounded.³¹

In its decision of 11 February 2009, the Division issued a ruling of its own motion that neither the Elections Act nor the Elections Decree gives the Electoral Council express powers regarding the repayment of deposits. According to the Division, in refusing to repay the deposits the Electoral Council did envisage creating some legal effect. In that regard the Division referred to Section H3(1) and (2) of the Electoral Decree, from which it follows that the Minister of the Interior and Kingdom Relations retains the deposits paid and only repays them if the Electoral Council has notified him within the meaning of Section H3(2) of the Electoral Decree. In response to the candidate's argument that the Electoral Council had provided him incorrect information at the time his political group registered as a blank list, the Division ruled that the candidate could not derive from the provisions of Section H12 of the Elections Act any claim for repayment of the deposit paid by him.

The candidate claimed that the Electoral Council was wrong not to inform him that if his group participated in the election as a blank list it would not qualify for political parties' broadcasting time. Referring to the provisions of Section 39c of the Media Act, the Division ruled in response that the District Court was correct in finding that only the Dutch Media Authority was authorised to decide on broadcasting time for political parties and that the Electoral Council, if it had issued inaccurate or incomplete statements, was not authorised to do so. As stated above, the Division ruled that the appeal filed by the candidate was unfounded.

In a decision of 28 March 2008 the Electoral Council, acting as the central electoral college for elections to the House of Representatives, deleted the 'Fortuyn' appellation from the register for elections to the House of Representatives. In a decision of the same date the Electoral Council, acting as the central electoral college for elections to the European Parliament, deleted the 'Lijst Pim Fortuyn' appellation from the register for elections to the European Parliament. The party chairman of the Eindhoven municipal council group 'Lijst Pim Fortuyn' appealed these decisions

31 Decision by the Administrative Jurisdiction Division of the Council of State, 11 February 2009, case no. 200804861 (www.raadvanstate.nl)

before the Council of State. The Administrative Law Division of the Council of State ruled that the appeal was unfounded.³²

Applying Section G1(7) of the Elections Act, the Electoral Council deleted the appellations 'Fortuyn' and 'List Pim Fortuyn' from the relevant registers, because the political group 'Lijst Pim Fortuyn' had ceased to exist. The parliamentary party chairman argued that the political group 'Lijst Pim Fortuyn' had not ceased to exist, claiming that the association 'Lijst Pim Fortuyn' had been dissolved unlawfully, contrary to the terms of its articles. He said the same applied to its deletion from the Commercial Register. He also submitted that the Electoral Council had wrongly deleted the appellations 'Fortuyn' and 'Lijst Pim Fortuyn'. Finally, he claimed that the Electoral Council should at least have awaited the results of the appeals filed against the dissolution and the deletion from the Commercial Register before deleting the appellations.

The Division ruled that the Electoral Council was correct to take the position that data from the Commercial Register showed that the association 'Lijst Pim Fortuyn' had been dissolved and that the political group had thus ceased to exist. The Division said it was not up to the Electoral Council to assess whether the association had been dissolved lawfully or whether the data in the Commercial Register had been altered lawfully, and that these matters therefore exceeded the scope of the proceedings. The Division also ruled that as the Commercial Register showed that the association 'Lijst Pim Fortuyn' had in fact been dissolved, the Electoral Council was authorised to delete the relevant appellations from the registers. Finally, the Division ruled that the Electoral Council was not obliged to await the results of the civil lawsuits brought, inter alia, by the party chairman against the dissolution decision and the alteration of the Commercial Register.

Lawsuits in which the Electoral Council was involved as an expert at the request of the courts

The executive committee of the Rotterdam submunicipality Prins Alexander warned a municipal councillor that he no longer fulfilled the requirements for membership of the Prins Alexander submunicipal council. The Administrative Law Division of the Council of State ruled that the appeal of the municipal councillor was unfounded.³³

The executive committee of the submunicipality Prins Alexander had given the municipal councillor in question a warning within the meaning of Section X5(2) of the Elections Act because his actual place of residence was not in the submunicipality and therefore failed to meet one of the requirements for membership of the submunicipal council. The executive committee based its warning on the fact that the home situated in the submunicipality in which the councillor had lived until mid December 2007 and where he was registered according to the municipal personal records database, was empty and was for rent. The Division ruled that as it was not in dispute that the home previously occupied by the submunicipal councillor was empty and was for rent and, given the submunicipal councillor's statements in that regard, the executive committee had grounds to take the position that at the time of the warning the councillor did not meet the requirement for membership of the submunicipal council that he should be a resident of the submunicipality, although he was registered in the municipal personal records database. Furthermore, as the councillor in question did not provide the

32 Decision by the Administrative Jurisdiction Division of the Council of State, 25 June 2008, case nos. 200802415/1 and 200802416/1.

33 Decision by the Administrative Jurisdiction Division of the Council of State, 29 April 2008, case no. 200801320/1 (www.raadvanstate.nl).

submunicipal council any formal notification within the meaning of Section X5(1) of the Elections Act, it was correct to issue him a warning with the application of the provisions of Section X5(2) of the Elections Act. The fact that the submunicipal councillor's actual place of residence was once again within the submunicipality and that his failure to fulfil the requirement had been temporary did not mean that a different decision should have been delivered, because it was a circumstance that occurred following the decision which did not affect its lawfulness.

Other cases

The public prosecutor appealed the decision of the District Court of 's-Hertogenbosch³⁴ acquitting an electoral college member (and candidate for municipal elections in Landerd) from manipulating the voting computer (Section 127 of the Criminal Code). The accused was alleged to have cast several votes for himself. The Court of Appeal of 's-Hertogenbosch³⁵ set aside the District Court's decision and imposed 240 hours' community service and a six-month suspended prison sentence on the accused for manipulating the voting machine

The NV NEDERLANDSE APPARATENFABRIEK NEDAP (NEDAP) objected to an order by the State Secretary of the Interior and Kingdom Relations revoking the 'Conditions and Approval of Voting Machines Regulation 1997' (*Regeling voorwaarden en goedkeuring stemmachines 1997*). The state secretary also ordered that the approvals issued based on that regulation would be cancelled. NEDAP objected to this order and, pending an appeal, applied to the preliminary relief judge in Zutphen to impose a preliminary injunction. In an order of 7 April 2008 the state secretary made a decision on the objection. The application for a preliminary injunction was withdrawn.

The 'We don't trust voting computers' Foundation applied for a preliminary injunction suspending the order of 2 March 2007 by the Minister of Administrative Reform and Kingdom Relations approving three types of voting machines. The preliminary relief judge of the District Court of Amsterdam upheld the application, finding that the approval of the voting machines in question was contrary to Sections J33 of the Elections Act and J14 and J14a of the Elections Decree as well as with the 'Conditions and Approval of Voting Machines Regulation 1997'. In the end NV NEDERLANDSE APPARATENFABRIEK NEDAP withdrew its appeal against this decision.

The mayors of Venlo and Maastricht reported the chairman of the Partij voor de Jongeren ('Party for Young People') to the Maastricht Public Prosecution Service for forging documents. The District Court of Maastricht imposed a 200-hour community punishment order on him for the forgery of 59 of 70 of the declarations of support required by him for participating in the Limburg Provincial Council elections.

The national ombudsman delivered a decision³⁶ on a complaint about an electoral college member who had been absent on a day when voting took place. This prompted the mayor of Muiden to notify the person concerned that her services would no longer be called upon as a member of the electoral college. The ombudsman ruled that the decision not to call up the electoral college member to serve as a member of an electoral college in the next election should be considered reasonable. In order to guarantee the orderly course of elections, Section J12 of the Elections Act includes a provision that three persons sit in an electoral college: one chairman and two members. The participation of many persons is required for an important

34 Judgment by the District Court of 's-Hertogenbosch, 19 April 2007, case no. 21-005245-06, LJN: BA9085.

35 Judgment by the Court of Appeal of 's-Hertogenbosch, 18 January 2008, LJN: BC2171.

36 Decision by the National Ombudsman, 29 November 2007, no. 2007/276

event such as an election. According to the ombudsman, an administrative body should be able to rely on persons invited by it to assist with elections to be aware of the rules and to succeed in acting in accordance with them.

9 Communication

9.1 The Government Information (Public Access) Act

The Government Information (Public Access) Act (*Wet openbaarheid van bestuur*) regulates both the active and passive disclosure of documents. The Electoral Council performs the active disclosure obligation laid down by Section 8 of the act by placing as many relevant documents as possible on its website, as well as by publishing press releases and information material.

Private individuals and journalists regularly rely on the Government Information (Public Access) Act to request information. Where possible the Electoral Council tries to respond to these requests within the statutory time limit. However, given the complexity of some requests, it did not succeed in every instance. In 2008 the Electoral Council received and processed four requests under the Government Information (Public Access) Act, including an extensive request from the 'We don't trust voting computers' Foundation.

On many occasions, advice issued by the Electoral Council prompted persons to contact the media, in some instances based on press releases issued by the Electoral Council about its advice. Finally, the secretariat provides the media with much background information about the operation of the electoral system and the various relevant statutory regulations.

In the course of 2008 the Electoral Council launched its new website. The information on it has largely been renewed.

9.2 Election results database

In 2008 an IT firm was contracted to build a database for the publication of past and present election results. To start with, election results for the House of Representatives from 1848 and recent results for other representative bodies will be entered into the database. In the future the database will also contain extended series of results of elections to municipal councils, the Provincial Councils and the Senate. The election results can be viewed either in table or map form. Data can also be downloaded.

9.3 Publications

In 2008 the Electoral Council issued the compilation 'Fraud and inappropriate influencing of elections'. It includes the readings given at the symposium of 13 December 2007 on the occasion of the Electoral Council's 90th anniversary. Also issued in 2008 were the publications 'Election Results for the House of Representatives of 22 November 2006', 'Statistical Data on the Provincial Council Elections of 7 March 2007' and 'Statistical Data and Election Results for the Senate of 29 May 2007'.

10 International developments

The Electoral Council is linked to European and international networks of election authorities and experts. It participates actively in gatherings of international organisations and, in addition, regularly receives visitors from abroad, particularly during elections.

These activities have two purposes: contributing to the Electoral Council's other activities (e.g., by building on knowledge of relevant international developments) and contributing to electoral developments in other countries. The Electoral Council achieves the latter purpose by receiving international delegations to the Netherlands and providing information about the Dutch electoral system.

In July 2008 the secretary-director of the Electoral Council attended the Organisation for Security and Cooperation in Europe (OSCE) seminar in Austria (Vienna) on the evaluation of electoral observation.

Also held in Austria, but in Bregenz, was the third international conference on electronic voting, from 6 to 9 August 2008. It was organised by the Competence Center for Electronic Voting and Participation, with the support of the Council of Europe. The approximately 100 persons attending the conference were mainly from the EU member states, but also from states such as the United States, Canada, Argentina, Brazil and Kenya. Most were government representatives, academics and technical experts. The Electoral Council was also represented. One of its members gave a presentation, having been invited to do so in a personal capacity.

In November the 5th Electoral Management Bodies (EMB) conference took place based on the theme 'Distance Voting'. The chairman and secretary-general represented the Electoral Council on that occasion.

In the same month the International Foundation for Electoral Systems (IFES) invited the chairman of the Electoral Council to take part in a programme related to the elections in the United States.

Finally, in December 2008, at the request of the Netherlands Institute for Multiparty Democracy ('NIMD'), the Electoral Council received a delegation of representatives from nine African countries (directors of centres for multiparty democracy in various African countries and a number of African politicians). The Electoral Council provided them information on how to design an electoral council and what conditions/safeguards are necessary in order to establish an independent electoral council.

Looking ahead to 2009, it is worth mentioning at this juncture that the Electoral Council, in association with the Ministry of the Interior and Kingdom Relations, has agreed to organise the 6th EMB conference, which will be held on 30 November and 1 December.

11 Finances

In 2008 the budget of the Electoral Council was € 2,442,000.

The table below shows the operational budget of the Electoral Council and the expenses incurred in 2008.

Budget and expenses of the Electoral Council 2008	<i>Operational budget</i>	<i>Expenses</i>
Staff (salaries of permanent and temporary personnel)	€ 1,145,000	€ 804,586
Material	€ 1,297,000	€ 1,292,476
Total	€ 2,442,000	€ 2,097,062

The Electoral Council did not use its entire budget in 2008. The reason was the delay in developing election back-up software, and also the fact that part of the costs and hiring for this project will be incurred in the new budget year.

The above figures do not include the income received from the Electoral Council in the form of deposits. These deposits for the registration of an appeal and for the nomination of political party candidates are placed in a separate account, as they accrue to the State if they are not returned to those who paid them.

The chairman of the Electoral Council receives payment equivalent to the remuneration of 0.3 FTE in scale 18 of the BBRA. Members of the Electoral Council receive an attendance fee of € 235 per meeting

No employee of the Electoral Council secretariat falls under the Executives' Pay Financed from Public Funds (Disclosure) Act (*Wet Openbaarmaking uit Publieke middelen gefinancierde Topinkomens*).

The Electoral Council reports unusual financial data through the normal budget accounting cycle of the Ministry of the Interior and Kingdom Relations (Chapter VII of the National Budget). Amounts for the Electoral Council are listed in Article 1.3 of this budget.

Annex

Policy Rule on Spelling of an Appellation

Policy Rule of the Electoral Council of 10 March 2008 about the spelling of appellations that, pursuant to Section G1 of the Elections Act, are registered with the Electoral Council in its capacity as the central electoral college for elections to the House of Representatives, Senate and European Parliament.

The central electoral college for elections to the House of Representatives, Senate and European Parliament (hereinafter: the Electoral Council)

Having regard to Section G1 in conjunction with Section Y2 and Section Q6 of the Elections Act and Section 1:3(4) in conjunction with Section 4:81(1) of the General Administrative Law Act;

Orders

that with regard to the spelling of appellations that are registered for elections to the House of Representatives, Senate and European Parliament, the following policy shall be applied and that Section G1 in conjunction with Section Y2 and Section Q6 of the Elections Act shall be interpreted as follows:

- a. an appellation consists of letters, possibly supplemented by figures or other signs;
- b. appellations are depicted in a similar manner and using the same font;
- c. an appellation comprises upper case or lower case letters or a combination of both;
- d. an appellation is registered in regular script;
- e. signs combined with letter(s) and/or figures will be registered, provided that the signs are functional in relation to the remainder of the appellation;
- f. logos, figurative marks, pictures or emoticons in appellations will not be registered.

This order shall enter into force with effect from the second day after the date of the Government Gazette in which it is posted. This policy rule shall be cited as 'Policy Rule of the Electoral Council regarding the Spelling of an Appellation'.

The Hague, 10 March 2008.

H.R.B.M. Kummeling
Chairman

J. Schipper-Spanninga
Secretary-Director

Explanation

Statutory framework

This is a policy rule within the meaning of Section 1:3(4) of the General Administrative Law Act (*Algemene wet bestuursrecht*; hereinafter: the Awb). The authority of the Electoral Council to adopt this policy rule is based on Section 4:81(1) of the Awb. Pursuant to Section G1(1) and Section Y2 of the Elections Act, political groups (parties) that are an association with full legal capacity may apply to the Electoral Council in writing to enter in a register kept by the Electoral Council the appellation which they wish to use on the list of candidates for elections to the House of Representatives or European Parliament. Pursuant to Section Q6(1) of the Elections Act, an appellation registered for the House of Representatives is also applicable to Senate elections and, pursuant to Section Q6(2), a separate application can be made to register an appellation for Senate elections.

Pursuant to Section G1(4)(d), the Electoral Council rejects an application for registration if, inter alia, an appellation contains more than 35 letters or other signs. The intention of this is to prevent there being insufficient space for overly long appellations above the lists of candidates. In applying this rule, figures are also counted. Punctuation marks, hyphens, brackets and spaces are not included. This interpretation of the statutory provisions flows from the parliamentary debate on the Elections Act 1989.

Policy rule framework

The Elections Act stipulates a maximum of 35 'letters' or 'signs'. The Electoral Council does not answer the question whether the use of upper case letters and italics, bold-face type, underlining and signs is permitted. Nor did the parliamentary debate provide any clarity about the spelling of an appellation. Given the questions that have arisen in practice, the Electoral Council considers it important to provide clarity in this regard and has therefore formulated relevant policy. Political parties that intend applying to register an appellation may read this policy rule and take it into consideration when submitting an application for registration.

Specific explanations

- Re b. Appellations are all registered and depicted in a similar manner, i.e., using the same font. Appellations are placed above the list of candidates in the same way that they are entered in the register.

- Re d. An appellation is registered in regular script. This means that appellations in italics, bold-face type or one that is underlined are not registered as such. Nor are appellations registered in a specific font.

- Re e. Examples are 'Registration!' and 'Registration 18+'. 'Functional in relation to the remainder of the appellation' means that the signs add a specific meaning to the expression of the letter(s) and/or figures.

It should be noted that when campaigning, political parties are of course at liberty to use other spellings, fonts, figurative marks, colours, etc., irrespective of the rules on spelling registered appellations.

H.R.B.M. Kummeling
Chairman

J. Schipper-Spanninga
Secretary-Director

