

Panacea or Pandora's Box?
The introduction of a generalised ID obligation in the Netherlands

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Introduction

A year ago in the Netherlands, the Extended Identification Law (Wet op de uitgebreide identificatieplicht) entered into force. The new law does not require citizens to carry identification. However, it does require everyone, aged 14 and above, to show a valid ID document if asked by the police or other authorities. It gives a wide range of government and law enforcement officials (the police, immigration and customs officials and all sorts of inspectors, for instance foresters, tax officials, labour and environment inspectors) the power to demand identification in the course of their duties. A substantial fine applies to anyone who does not comply. Refusal constitutes a criminal offence.

The new ID regime has a long previous history. Already in the 1930s there had been proposals to introduce a compulsory ID scheme in the Netherlands. They were rejected because it would break Dutch traditions. In 1940, the German occupation authorities introduced an ID card which every citizen had to carry in public and which the authorities could demand to be produced at all times. Shortly after the war ended, this compulsory ID regime was abolished. The government of the time did not preclude its reintroduction, but thought the time not opportune. The administrative machinery was overburdened and the population would not accept it.

Because of its associations with the war and the German occupation, it lasted forty years before the introduction of an ID obligation was put on the political agenda again. It lasted another ten years – years of sometimes heated debate – before the Limited Identification Law (Wet op de beperkte identificatieplicht) (1994) was enacted. This law introduced ID requirements in 25 existing other laws, for example fiscal and social security laws. It also determined which identification papers were legally accepted. Ten years later again, there was sufficient support for a general ID obligation. The Extended Identification Law was passed without much discussion. Thus, in the course of two decades, the country got ripe for a break with its traditions.

In this presentation, I'll try to answer the following questions:

- How can this break with traditions be explained?
- Who were the main proponents of a broad ID obligation?
- What were their main arguments and how did they substantiate these arguments?

To answer these questions, I studied the debates which preceded the introduction of both laws. I analysed the parliamentary debates as well as discussions in legal and other scientific journals and in the newspapers.¹

A Favorite of Politicians

Perhaps surprisingly, Dutch police officers and their organisations never asked for ID legislation. Again and again, it was politicians who opened the discussion.

In the 1980s, politicians of two parties, the christian-democratic CDA and the conservative-liberal VVD, proposed the introduction of a more or less generalised ID obligation. They did so on several occasions, and each time, the reactions were rather negative. Besides concern over the implications for the privacy and liberty of individuals, there were doubts about the necessity and effectiveness of a generalised ID obligation. From the side of the police, too, reactions were rather sceptical. Leading police officials and police unions and organisations repeatedly stated that they did not expect much from a compulsory ID regime. Also after 9/11, police spokesmen remained rather sceptical.

To sum up, there was not an organised lobby to introduce ID legislation. The issue was put on the agenda by (right-wing) politicians. Also after the introduction of the Limited Identification Law, in 1994, it was christian-democratic and conservative-liberal politicians who put the issue back on the political agenda.

A Solution needing a Problem

In the course of the debate, the proponents of a compulsory ID regime again and again put forward new arguments.

At first their most important argument was that it would assist law enforcement. It would be an important tool in the fight against fraud and other forms of crime. Later on, after the Schengen Agreement had been signed and discussions on the abolition of internal border controls started, it was claimed that a compulsory ID regime, allowing for identity checks behind the border, was needed to control illegal immigration. Another argument was that a generalised ID obligation would remove an existing inequality between Dutch and non-Dutch citizens (foreign residents were already required to carry valid ID papers at all times). In the beginning of the 1990s, when the Limited Identification Law was enacted, football hooliganism and passengers travelling without ticket in public transport happened to be important issues. Therefore the draft Bill was adapted at the last moment so as to require passengers without ticket and visitors of football matches to produce valid ID papers if the police or other authorities ask them to identify themselves. Later on, it was claimed that a generalised ID obligation would help to combat 'pointless violence' and terrorism.

In brief, one gets the impression that compulsory ID was seen as a solution which only needed an appropriate problem. For some proponents, by the way, the most important problem appeared to be that the Netherlands was one of the few remaining countries in Europe without a generalised ID requirement. A persistent misunderstanding in the Dutch debate was that

¹ Böcker, A. (2002). *Identificatieplicht. Oplossing of oorzaak van problemen*. Nijmegen: GNI/Instituut voor Rechtsociologie.

nearly all EU countries have such a requirement, that is, that every citizen has to carry ID in public and that the police has the power to demand ID at all times. In fact, only few countries have this blanket requirement.

Selective Use of Research and Advice

Many scholars and researchers made invited or uninvited comments on the proposals by politicians and the government to introduce a compulsory ID regime. They were mostly sceptical or negative, and cautioned that a generalised ID obligation was likely to create new problems in stead of solving existing ones. Most importantly, it would lead to discriminatory practices, as the police and other authorities would not use it to conduct random checks. ID checks would target certain minorities.

Criminologist Frank Bovenkerk (1989), for example, predicted that if immigration officials would have the power to ask Dutch residents for identification, too, this would lead to discriminatory practices. Bovenkerk's prediction was based on systematic observation of the method of working of military police officers on international trains to Germany. Bovenkerk and his students found that cross-border passengers with 'foreign looks' significantly more often had to produce identification than whites.²

The Research and Documentation Centre of the Ministry of Justice published a study on the costs and benefits of a generalised ID requirement. The study was not commissioned by the minister of Justice. The Centre's researchers had observed themselves that discussions so far were not informed by facts or knowledge about the costs and benefits of obligatory ID. The study concluded that the practical value of a general ID obligation was easily overestimated.³

The results of these and other studies were used in a selective manner. Politicians, including the government, only referred to them if it could strengthen their already taken stance. The need for information among members of government and parliament obviously was not large. This, of course, had to do with the highly politicised nature of the debate. The standpoints of most political parties were rather fixed. What also played a role was that the parties forming the government parties had agreed to introduce ID legislation in their coalition agreement. This was the case both in 1989, when it was decided to introduce specific ID requirements, and in 2002, when a broader, more or less blanket obligation was announced.

Deals in coalition agreements have clear disadvantages. At the time they are concluded, there often is no clarity about the necessity and the possible implications of new legislation. Reaching a compromise is considered more important. To fix things in a coalition agreement also means that only a limited group of persons is involved in the decision-making process and that the controlling function of the parliament is reduced.

Change in Public Opinion Climate

In the course of twenty years, the public opinion climate changed drastically. Topics which aroused intense public debate in the 1980s, gradually became more and more accepted.

² Bovenkerk, F. (1989). *Er zijn grenzen*. Arnhem: Gouda Quint.

³ Veerman, G.J., G. Paulides & E.J. Hofstee (1989). *Ik zal eens even vragen naar zijn naam. Voor- en nadelen van een legitimatieplicht*. Arnhem: Gouda Quint.

Initially, for example, there was much resistance to the introduction of a national identity number and its being printed on identity papers. In the beginning of the 1990s, this resistance evaporated and the proposal to print the newly introduced social security and fiscal number on all identity papers, including driving licenses, was accepted almost without discussion. Likewise, fewer and fewer references were made to the Second WW.

In the 1980s, opinion polls showed that about half of the population were against a requirement to carry ID at all times. In the 1990s, a majority of the population supported the introduction of limited ID requirements if they would help reduce the incidence of crime. Shortly after 9/11, a large majority supported a general ID requirement.

Symbolic Law?

Partly under the influence of the spirit of the time, the focus of the debate shifted from fundamental to practical aspects. Nevertheless, politicians kept paying remarkably little attention to the practical working of ID requirements. In the parliamentary debates on both bills, the study of the Ministry of Justice's Research Centre about the costs and benefits of a generalised ID obligation was more or less neglected. The government has not commissioned studies into the practical working of either of the two laws.

The issue of obligatory ID appears to have mainly symbolic value for (certain) politicians. The long list of problems for which obligatory ID should provide a solution is another indication. It enables politicians to show that they really want to do something about all kinds of problems.

However, symbolic discussions and measures, too, may have important practical effects. They are not inherently harmless. A danger about which many persons who participated in the debate were concerned, was that the police and other authorities would develop discriminatory practices and that ID checks would target minorities. What was meant to be a panacea could then easily turn into Pandora's Box.

Practical Working

As said, no systematic studies have been conducted into the practical working of the ID legislation. As far as can be ascertained from available data, the Law of 1994, which introduced the obligation to identify oneself in a number of situations, has produced only limited effect. A study about illegal immigrants did find, however, that the requirement that employers make photocopies of the ID papers of their employees, has made it practically impossible for undocumented immigrants to find insured employment. The study also revealed a perverse effect: Many undocumented immigrants were using forged ID papers.⁴

The new broadened ID obligation, which entered into force in 2005, has probably enlarged the market for stolen and forged documents even further. There has been a significant rise in the number of thefts and losses of passports and other ID documents. In 2005, nearly 190,000 ID documents were reported stolen or lost. In 2004, the number was 28,000 lower.

⁴ Engbersen, G., J. van der Leun, R. Staring & J. Kehla (1999). *De ongekende stad 2. Inbedding en uitsluiting van illegalen*. Amsterdam: Boom.

This is a side effect which was anticipated.

Another effect, which was not anticipated by the legislator, but did not come as a surprise to those who had cautioned that the new law might invite discrimination, is that the broadened ID requirement is mainly used against beggars, street people and youngsters. Between January 2005 and April 2006, about 80,000 people were fined under the new law for not being able to produce ID. The total fines amounted to nearly 4 million euro.⁵ The reason why people got fined was nearly always a trivial one. In most cases, people were stopped for cycling without light or on the pavement or for urinating in public, and, if they could not produce ID, were fined for that offence as well. Thus, the police, who never expected much help from an ID obligation in the fight against crime and terrorism, appears to have embraced it as a useful tool to achieve organisational targets: A few years ago, performance contracts were introduced in the Dutch police organisation. Every policeman or woman has to achieve a specific number of fines. The ID obligation obviously is a practical tool then. It serves as a fine-doubler. This effect was not anticipated. Opinions as to whether it is a perverse effect differ. The minister of Justice thinks it is not. In reply to parliamentary questions, he stated that the doubled fines probably assist law enforcement, which was an important aim of the new law.⁶

⁵ *De Volkskrant*, April 22 and May 12, 2006.

⁶ Tweede Kamer, 2005-2006, Aangangsels van de Handelingen, Nr. 1537.