

**INTERNATIONAL ENCYCLOPAEDIA
FOR LABOUR LAW
AND INDUSTRIAL RELATIONS**

VOL. 10

**EDITOR IN CHIEF
PROF. DR. R. BLANPAIN**

KLUWER

The Netherlands

By

Antoine T.J.M. Jacobs
University of Tilburg

This monograph is updated to 31 August 2003

2004

KLUWER LAW INTERNATIONAL
THE HAGUE / LONDON / NEW YORK

Published by Kluwer Law International
P.O. Box 85889
2508 CN The Hague, The Netherlands
Tel.: +31 70 308 1560
Fax: +31 70 308 1515
sales@kluwerlaw.com
<http://www.kluwerlaw.com>

Sold and distributed in North, Central and South America by
Aspen Publishers, Inc.
7201 McKinney Circle
Frederick, MD 21704
USA
Customer Care is: 877-529-5427
Direct Dial Number is: 301-698-7100
Fax Number is: 301-698-7159
e-mail: customer.care@aspenpubl.com

Sold and distributed in all other countries by
Turpin Distribution Services Limited
Blackhorse Road
LETCHEWORTH
Herts
SG6 1HN
United Kingdom
Telephone Number: +44 1462 672555
Fax Number: +44 1462 480947
e-mail: KLJ@TurpinLtd.com

DISCLAIMER: The material in this volume is in the nature of general comment only. It is not offered as advice on any particular matter and should not be taken as such. The editor and the contributing authors expressly disclaim all liability to any person with regard to anything done or omitted to be done, and with respect to the consequences of anything done or omitted to be done wholly or partly in reliance upon the whole or any part of the contents of this volume. No reader should act or refrain from acting on the basis of any matter contained in this volume without first obtaining professional advice regarding the particular facts and circumstances at issue. Any and all opinions expressed herein are those of the particular author and are not necessarily those of the editor or publisher of this volume.

Printed on acid-free paper

9888000507

The monograph *The Netherlands* is an integral part of *Labour Law and Industrial Relations* in the *International Encyclopaedia of Laws* series.

© 2004, Kluwer Law International

Labour Law and Industrial Relations was first published in 1977.

This publication is protected by international copyright law.
All rights reserved. No part of this publication may be reproduced, stored in a retrieval system, or transmitted in any form or by any means, electronic, mechanical, photocopying, recording or otherwise, without the prior written permission of the publisher.

The Netherlands

By

Antoine T.J.M. Jacobs
University of Tilburg

This monograph is updated to 31 August 2003

2004

KLUWER LAW INTERNATIONAL
THE HAGUE / LONDON / NEW YORK

Published by Kluwer Law International
P.O. Box 85889
2508 CN The Hague, The Netherlands
Tel.: +31 70 308 1560
Fax: +31 70 308 1515
sales@kluwerlaw.com
<http://www.kluwerlaw.com>

Sold and distributed in North, Central and South America by
Aspen Publishers, Inc.
7201 McKinney Circle
Frederick, MD 21704
USA
Customer Care is: 877-529-5427
Direct Dial Number is: 301-698-7100
Fax Number is: 301-698-7159
e-mail: customer.care@aspenpubl.com

Sold and distributed in all other countries by
Turpin Distribution Services Limited
Blackhorse Road
LETCHEWORTH
Herts
SG6 1HN
United Kingdom
Telephone Number: +44 1462 672555
Fax Number: +44 1462 480947
e-mail: KLJ@Turpinltd.com

DISCLAIMER: The material in this volume is in the nature of general comment only. It is not offered as advice on any particular matter and should not be taken as such. The editor and the contributing authors expressly disclaim all liability to any person with regard to anything done or omitted to be done, and with respect to the consequences of anything done or omitted to be done wholly or partly in reliance upon the whole or any part of the contents of this volume. No reader should act or refrain from acting on the basis of any matter contained in this volume without first obtaining professional advice regarding the particular facts and circumstances at issue. Any and all opinions expressed herein are those of the particular author and are not necessarily those of the editor or publisher of this volume.

Printed on acid-free paper

9888000507

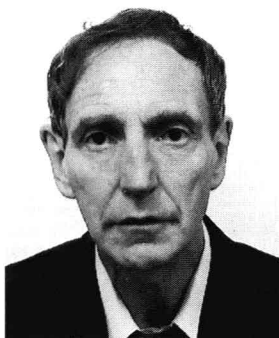
The monograph *The Netherlands* is an integral part of *Labour Law and Industrial Relations* in the *International Encyclopaedia of Laws* series.

© 2004, Kluwer Law International

Labour Law and Industrial Relations was first published in 1977.

This publication is protected by international copyright law.
All rights reserved. No part of this publication may be reproduced, stored in a retrieval system, or transmitted in any form or by any means, electronic, mechanical, photocopying, recording or otherwise, without the prior written permission of the publisher.

The Author



Dr. Antoine T.J.M. Jacobs is Professor in Labour Law, Social Security Law and Social Policy at the University of Tilburg, The Netherlands.

Born on 30 April 1946, in Vaals (The Netherlands), he took his Master's Degree (*cum laude*) in law at Leyden University, 1973. Later he studied in Düsseldorf, Paris, Cambridge, Canterbury and Brussels.

He was deputy-secretary on social affairs at the Dutch Merchant Shipping Council (1968–1974) and lecturer in Labour Law and Social Security Law at Tilburg University (1976–1982). In 1986 he obtained his doctorate (*cum laude*) at the University of Brabant in Tilburg on the right of collective bargaining in European and comparative perspective.

He has written books and articles on Dutch labour and social security law in general, the right to work, the right to strike, discrimination and employment, the direct effect of international norms on Dutch labour and social security law, the influence of ILO norms on Dutch social security law, labour law and social policy of the European Communities, labour law in the German Federal Republic, labour law, employment law and social security law in the USA, Dutch collective labour law, the Dutch law on dismissals and flexible workers, actual developments in Dutch social security law, etc.

He has held the chair of Professor in Labour Law, Social Security Law and Social Policy at Tilburg University since 1987.

He has been visiting professor in Montpellier (1993), Bari (1995), Nantes (1996) and Leuven (1998), has given papers on comparative labour law at international conferences on Labour Law in Cologne, Frankfurt, Komintini (Greece), Fontevreau (France), Tokyo, Barcelona, Montreal, Paris, etc., cooperated with colleagues in other European countries on comparative work and has advised the European Commission and social partners in The Netherlands on matters of labour law and social security law.

He is a member of the Research Network on transnational trade union rights of the European Trade Union Institute.

The Author

Table of Contents

The Author	3
Abbreviations	11
Introduction	13
CHAPTER 1. GENERAL BACKGROUND	13
§1. Geography, Population and Economy	13
§2. Economic Growth and Employment	14
§3. The Composition of the Labour Force	16
§4. Wealth and Poverty	17
CHAPTER 2. THE POLITICAL BACKGROUND	21
§1. General Observations	21
§2. Political Parties, Coalition Cabinets	21
CHAPTER 3. THE SYSTEM OF INDUSTRIAL RELATIONS	24
CHAPTER 4. GENERAL ASPECTS OF LABOUR LAW	26
§1. Origins, Functions and Prospects of Labour Law	26
§2. Definitions and Notions of Labour Law	30
CHAPTER 5. SOURCES OF LABOUR LAW	32
§1. Constitutional Law	32
§2. International Law	33
§3. Legislation	34
§4. Collective Agreements	34
§5. Agreements with the Works Councils, Company Rules and Rules Unilaterally Imposed by the Employer	35
§6. The Contract of Employment and Custom and Practice	36
§7. Judge-made Law	38
§8. The Conflict of Rules and the Hierarchy of Sources	38

Table of Contents

CHAPTER 6. THE COURT SYSTEM	40
§1. Introduction	40
§2. The Ordinary Courts	40
§3. Special Courts	42
§4. Alternatives	42
CHAPTER 7. THE LABOUR INSPECTORATE	43
CHAPTER 8. SELECTED BIBLIOGRAPHY	44
Part I. The Individual Employment Relationship and Labour Market Regulation	45
CHAPTER 1. DEFINITIONS AND CONCEPTS	45
§1. The Contract of Employment	45
§2. Different Categories of Workers	48
I. Seamen	48
II. Commercial Agents and Commercial Representatives	48
III. Atypical Work Contracts	49
IV. Temporary Agency Workers	49
V. Apprentices	50
VI. Home-based Work	50
VII. Company Directors	51
§3. Different Kinds of Individual Contracts of Employment	51
I. Contracts of Employment for an Indefinite Period	51
II. Contracts of Employment for a Definite Period	51
III. Labour on Call	52
§4. Requirements Necessary to Conclude a Valid Contract of Employment	53
I. Formal Requirements	53
II. Legal Capacity	54
§5. Restrictions on the Work of Children, Young Persons and Foreigners	54
I. Child Labour	54
II. Young Persons	55
III. Foreigners	55
CHAPTER 2. DUTIES OF THE PARTIES TO THE CONTRACT OF EMPLOYMENT	57
§1. Duties of the Employee	57
I. Duty to Work	57
II. Duty to Obey Lawful and Reasonable Orders	57

Table of Contents

§2. Duties of the Employer	58
I. Duty to Pay Wages	58
II. A Duty to Provide Work?	58
III. Duty to Equal Treatment and Non-Discrimination	59
A. Handicapped Persons	60
B. Women	60
C. Immigrants	61
§3. The <i>Bona Fides</i> Principle	61
 CHAPTER 3. REMUNERATION	 63
§1. General Observations	63
§2. Manner of Payment	63
I. Calculation of Payment	63
II. Payment in Currency or in Kind	65
III. Periods of Payment	65
§3. Prohibition of Truck System, Deductions, Seizure and Transfer; the Itemized Pay Slip	65
§4. The Amount of the Wage	66
§5. Minimum Wage	67
§6. Equal Pay	68
§7. Remuneration and Work	68
I. Absence Due to Sickness	68
II. The Employer's Risk as Regards the Impossibility of Performing Work	69
§8. Rights to Remuneration in Case of Employer's Insolvency	70
 CHAPTER 4. WORKING TIME	 73
§1. Limitation of Working Time	73
I. Statutory Regulation	73
II. Collective Agreements	76
§2. Part-time Work and the Adaptation of Working Time	78
§3. Holidays	79
§4. Leave Regulations	80
 CHAPTER 5. HEALTH AND SAFETY	 82
§1. Duty to Provide Safe and Healthy Working Conditions on the Premises	82
§2. Health and Safety Regulations under Public Law	84
§3. Number of Persons Benefiting from Sickness and Disability Schemes	85
 CHAPTER 6. MISCELLANEOUS	 87
§1. Changing the Terms and Conditions of the Contract of Employment	87

Table of Contents

§2. The Privacy of the Employee	87
§3. The Principle of <i>Respondeat Superior</i>	88
§4. The Duty to Provide a Testimonial at the End of the Contract of Employment	89
§5. Covenants of Non-Competition	89
§6. The Duty of Secrecy	90
§7. Inventions by Employees and Copyright	90
§8. Transfer of an Enterprise; Job Security	91
§9. Retirement	92
§10. Disciplinary Sanctions	94
§11. Conflicts of Law	94
 CHAPTER 7. THE TERMINATION OF THE CONTRACT OF EMPLOYMENT	 97
§1. The Development of Dutch Law on Dismissals	97
§2. Redundancy Practices in The Netherlands	99
§3. Methods of Terminating Employment	100
§4. Termination by Mutual Consent	100
§5. Dismissal with a Permit of the Public Authorities	101
§6. Termination by Judicial Rescission	103
§7. Compensation	105
§8. Prohibited Dismissals – Special Protection for Certain Categories of Worker	106
§9. Periods of Notice	108
§10. Summary Dismissal	109
§11. Dismissal During a Probationary Period (Trial Clauses)	110
§12. Collective Dismissals	111
§13. Social Plan	112
§14. Dismissals in Case of Insolvency of the Employer	114
§15. Fixed-term Contracts	115
§16. Other Forms of Termination by Operation of Law	116
§17. The Dismissal of Temporary Workers	116
 CHAPTER 8. LABOUR MARKET SERVICES AND POLICIES	 118
§1. Introduction	118
§2. The Public Employment Service	119
§3. Reintegration Activities	119
§4. Private Employment Services	120
§5. Temporary Employment Agencies	121
§6. Labour Pools	123
§7. Vocational Training of Adults	124
§8. Apprenticeship	125
§9. Public Intervention for Corporate Restructuring or Reconversion	125
§10. Subsidizing Jobs	126
§11. Self-Employment Incentives	127
§12. Finances	127

Part II. Collective Labour Relations	129
CHAPTER 1. TRADE UNIONS AND EMPLOYERS' ASSOCIATIONS	129
§1. Trade Unions	129
§2. Employers' Organizations	131
§3. Trade Union Law	131
§4. Representativeness	133
CHAPTER 2. THE NEO-CORPORATIST SYSTEM	135
§1. History	135
§2. Wage Formation Policies	136
§3. Institutions	140
CHAPTER 3. COLLECTIVE BARGAINING	141
§1. The System of Collective Agreements	141
§2. The Bargaining Process	147
§3. Definition, Form and Publicity of Collective Agreements	148
§4. Parties to Collective Agreements	148
§5. A Right to Collective Bargaining?	150
§6. Geographical, Temporal and Personal Scope of Collective Agreements	151
§7. Regulatory Content of Collective Agreements	152
§8. The Mandatory Force of Regulatory Provisions of Collective Agreements	153
§9. Extension of Collective Agreements	154
§10. Contractual Content of Collective Agreements	156
§11. Diagonal Clauses	157
§12. Interpretation and Appeal	157
CHAPTER 4. INDUSTRIAL DISPUTES	159
§1. Introduction	159
§2. Historical Development of the Right to Strike and Strike Action	160
§3. Definition/Concept of the Legal Strike	161
§4. Judicial Methods and Procedures	162
§5. Disputes of Rights and Disputes of Interest	163
§6. Strikes in Essential Services	164
§7. Effects of Strikes	164
§8. Other Types of Industrial Action	165
§9. The Lock-out	165
§10. Dispute-settlement Mechanisms	166
§11. Strikes in the Public Service	167

Table of Contents

CHAPTER 5. EMPLOYEE PARTICIPATION IN THE ENTERPRISE	168
§1. Introduction	168
§2. Union Participation Rights	169
I. Involvement in the Right of Company Inquiries	169
II. Collective Dismissals	170
III. The Merger Code	170
§3. Workers' Influence on the Composition of the Top-level Management of Major Companies	172
§4. Works Councils	175
I. Legal History	175
II. The Duty to Establish a Works Council	176
III. Notions and Definitions	176
IV. Statutory and 'Autonomous' Arrangements	177
V. Composition of the Works Council and Contact with the Employer	178
VI. The Electoral System	178
VII. General Powers	179
VIII. Economic Powers	180
IX. Social Powers	183
X. Other Powers	184
XI. Dispute Resolution	185
§5. European Works Councils	185
Index	187

Abbreviations

ACA	Act on collective agreements
AECA	Act on the extension of the terms of collective agreements
AEIA	Allocation of employees by intermediaries Act
AOW	<i>Algemene Ouderdomswet</i> (old age pensions Act)
AWVN	Algemene Werkgevers Vereniging Nederland
BBZ	Besluit Bijstandsverlening Zelfstandigen
CC	Civil Code
CDA	<i>Christen Democratisch Appèl</i> (Christian democrat party)
CEO	Chief executive officer
CNV	<i>Christelijk Nationaal Vakverbond</i> (Protestant trade union confederation)
CWI	Centre for Work and Income
DWA	Determination of Wages Act
EC	European Community
EEC	European Economic Community
EU	European Union
EWCA	European Works Councils Act
FNV	<i>Federatie Nederlandse Vakbeweging</i> (General Trade Unions Confederation)
FW	<i>Faillissementswet</i> (Bankruptcy Act)
GDP	Gross Domestic Product
HSA	Health and safety at work Act
ICT	Information, communication and technology
ILO	International Labour Organization
LTO	<i>Land- en Tuinbouw Nederland</i> (Farmers' confederation)
MHP	<i>Middelbaar en Hoger Personeel</i> (Confederation of white-collar unions)

Abbreviations

MKB	<i>Midden en Klein Bedrijf</i> (Confederation of Small and Medium Sized Enterprises)
NCDA	Notification of collective dismissals Act
OECD	Organization of Economic Cooperation and Development
OIA	Organization of industry Act
PvdA	<i>Partij van de Arbeid</i> (Social democratic party)
RCO	<i>Raad van Centrale Ondernemers Organisaties</i> (Employers' confederations liaison committee)
SER	<i>Social Economische Raad</i>
SNB	Special negotiating body
SPAK	<i>Speciale afdrachtskorting</i> (tax reduction on minimum wages)
UNICE	European Employers Federation
UN	United Nations
UWV	<i>Uitvoeringsinstituut Werknemersverzekeringen</i> (Social Security Administration)
VNO-NCW	Main Dutch Employers Confederation
VUT	<i>Vervroegd Uittreden</i> (early retirement)
WAADI	<i>Wet Allocatie Arbeidskrachten door Intermediairs</i> (Allocation of employees by intermediaries Act)
WAO	<i>Wet op de Arbeidsongeschiktheidsverzekering</i> (Employees disability benefits Act)
WCA	Works councils Act
WTA	Working time Act
WW	<i>Werkloosheidswet</i> (Employees unemployment benefits Act)

Introduction

Chapter 1. General Background

§1. GEOGRAPHY, POPULATION AND ECONOMY

1. The Netherlands is a small country of 16 million people occupying 35,000 sqkm in the heart of north-western Europe, on the continental shores of the North Sea between Germany, France and England, a stone's throw from the capital of Europe, Brussels. Easy access from the North Sea has made the delta of the rivers Rhine, Maas and Schelde the gateway to Europe and, as a result, a major centre of economic activity.

Apart from a small hilly area in the south-east, the country is flat. As about one-third of the country lies below sea level, the dykes are of vital importance. The struggle against the water of the sea and the rivers is a permanent task. For over a thousand years, land has been saved and reclaimed by building and maintaining dykes.

The western part of the country has traditionally been the most densely populated and this is where the three main cities are situated: Amsterdam, capital of the Netherlands; Rotterdam, one of the largest ports in the world; and The Hague, seat of the government.

The country's main mineral richness is natural gas. Despite its small area and population, the Netherlands has an impressive economy. It ranks sixteenth in the world in terms of total GDP. The national income, generated by intensive agriculture, industry and services is, to a large extent, dependent on exports (c. 50 per cent of the national income). It is the world's eighth largest exporting country. Thus the Dutch economy is quite vulnerable, with its international competitiveness being the prime indicator of its health. At the same time it is evident that the Dutch performance is very fragile. The preservation of this fragile structure is the fundamental concern of Dutch political and social forces.

The establishment of the European Economic Community has given a new dimension to The Netherlands' function as an economic link. A striking feature of this development is that the area's transit functions and related service activities have not been the only ones to grow in importance: the delta has also become a favourite location for internationally oriented industries. The oil, chemical, metal, heavy machinery, foodstuffs and electronics industries have become very important, and such companies as Royal Dutch Shell (petroleum and chemicals), Unilever (foodstuffs, detergents), Philips (radio, television, electronics) and Akzo Nobel (man-made fibres, plastics, fertilizers, pharmaceuticals, pesticides) are among the largest

corporations in Europe. Other internationally renowned Dutch enterprises are DSM (chemicals), Heineken (beer), Ahold (food retail), KLM (airlines), ING and ABN-AMRO (banking and insurance).

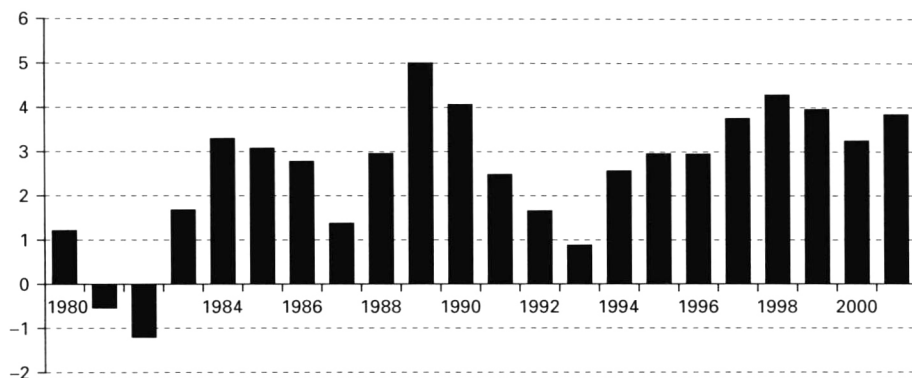
Due, above all, to the presence of major industrial multinational companies within the country, the Netherlands is the world's fifth largest source of direct investment. And it ranks sixth as a destination for foreign direct investment.

As a result of these developments the Dutch economy has experienced almost uninterrupted expansion since World War II, with real national income more than doubling in the period from 1961 to 1982.

§2. ECONOMIC GROWTH AND EMPLOYMENT

2. However, following the first oil crisis of 1973–74, the pace of the economy slowed down noticeably. Since 1980 the poor economic situation has led to a substantial fall in employment in most European countries and also in The Netherlands. This stagnation lasted until a recovery of the Dutch economy in the second half of the 1990s.

FIGURE 1. *Growth rates of Gross Domestic Product*
(annual percentage change in volume)



The low economic growth in The Netherlands at the beginning of the 1980s resulted in a drop in employment and consequently an increase in the unemployment rate. In the first half of the 1980s employment fell by 1.5 per cent annually, which was a sharper drop than in most other EU countries. Labour supply, on the other hand, accelerated: increasing numbers of young people were reaching working age and female participation rates were rising. The standardized unemployment rate peaked in 1983 (11.4 per cent).

In the second half of the 1980s rates of GDP growth were higher. The improved general economic condition in the mid-1980s increased employment. The new jobs