

The Netherlands¹

IHF FOCUS: Peaceful assembly; misconduct by law enforcement officials; detainees' rights; conditions in prisons and detention facilities; protection of asylum seekers and immigrants; rights of the child.

The UN report on the operation of the Dutch battalion during the fall of Srebrenica in 1995, as well as the comments made by the UN Committee on the Rights of the Child and the European Committee for the Prevention of Torture and Inhumane or Degrading Treatment or Punishment (CPT), were the focus of some human rights concerns in the Netherlands. Further, the bill on a new aliens act and police activity attracted media attention.

In addition, 14 cases against the Netherlands were pending before the European Court of Human Rights between 1998 and mid-1999, including three cases regarding the allowance or dismissal of an appeal²; two cases regarding the reasonable length of a trial³; two cases regarding detention under a hospital order⁴; one case regarding the presumption of innocence until proven guilty⁵; one case regarding of an evident writing error⁶; two cases regarding the right to a fair trial⁷; and one case regarding asylum seekers.⁸

Peaceful Assembly

A case concerning police misconduct during the Euro-summit in 1996 was concluded by a court in January 2000.

¹ Based on the report by the Netherlands Helsinki Committee to the IHF. The Netherlands Helsinki Committee does not systematically follow up human rights developments in the Netherlands, but mainly organizes projects aimed at strengthening democracy in Central and Eastern European countries. Furthermore, the Netherlands Helsinki Committee monitors and promotes the OSCE process through various publications, such as the Helsinki Monitor. This report is primarily based on reports by prominent international and national human rights organizations, such as the UNHCR and the Netherlands Refugee Council.

² Firstly, *Hammerstein v. the Netherlands*. His application was rejected for being manifestly ill-founded within the meaning of article 27 para.2 of the Convention (1 July 1998), *NJCM-Bulletin*, No.1, 1999. Secondly, *C.C.F. v. the Netherlands*. The application was declared inadmissible (19 January 1999), *NJCM-Bulletin*, No. 5, 1999. Thirdly, *De Groot v. the Netherlands*. His application was declared inadmissible (23 February 1999), *NJCM-Bulletin*, No.5, 1999.

³ Firstly, *B.D. v. the Netherlands*. The court declared the application inadmissible (8 December 1998), *NJCM-Bulletin*, No. 5, 1999. Secondly, *Hozee v. the Netherlands*. There was no breach with article 6 para.1 (22 May 1998), *NJCM-Bulletin*, No.5, 1998.

⁴ *Erkalo v. the Netherlands*. The court decided in favor of the applicant (2 September 1998), *NJCM-Bulletin*, No.1, 1999.

⁵ *Zegwaard and Zegwaard BV v. the Netherlands*. The complaint was declared admissible and the court concluded that there had been a violation of article 6 para.2, (9 September 1998), *NJCM-Bulletin*, No.5, 1999.

⁶ *Douiyeb v. the Netherlands*. The court ruled that there was no breach of article 5 para.1 and 4 (4 August 1999), *NJCM-Bulletin*, No.8, 1999.

⁷ Firstly, *I.J. v. the Netherlands*. The court decided that article 6 para.1 had been violated (27 March 1999), *NJCM-Bulletin*, No. 6, 1998. Secondly, *K.D.B. v. the Netherlands*. Article 6 para.1 had been violated in this case, according to the court (27 March 1998), *NJCM-Bulletin*, No. 6, 1998.

⁸ See *Protections of Asylum Seekers and Immigrants*.

The Netherlands

■ The *IHF Annual Report 1998 and 1999* reported on the Euro-summit of the European Union in Amsterdam in June 1996, during which persons were arrested for participating in demonstrations and riots. They had been arrested under article 140 of the criminal code and detained for several hours or, in some cases, a couple of days. None of them had appeared before court, possibly amounting to a violation of article 5 of the ECHR. Furthermore, the detained did not receive sufficient water or medical care, and did not have suitable access to sanitary facilities. During the first week of January 2000, the District Court of Amsterdam held that it was unlawful both to detain the demonstrators on these grounds, and to hold them under such inadequate conditions. The court held the state liable to pay compensation to the persons detained.⁹

Torture, Ill-Treatment and Misconduct by Law Enforcement Officials

Illegitimate Body Searches¹⁰

Questionable police activity prompted a discussion about the legitimacy of police conduct.

■ In November, the police closed off the Millinxbuurt neighborhood in Rotterdam for a couple of hours and body-searched, with or without permission, anyone who tried to enter the neighborhood. According to the Public Prosecutor's Department, such action was justified because there had been a huge number of criminal of-

fences committed in that neighborhood during the past few years.¹¹ As soon as the event took place, a discussion began in the media as to whether the action was justified. The District Court of Rotterdam held that the action was not legitimate.¹²

Detainees' Rights¹³

The CPT carried out an inspection of the prisons and detention facilities in the Netherlands in 1998, concluding that it had not been confronted with torture or other physical ill-treatment. The CPT did, however, come across several practices in need of improvement, including the implementation of the right to notify family and/or friends that one has been taken into custody. Following the CPT visit in 1992, this right has been officially recognized in the Netherlands but, according to the CPT, it was not always enforced, allegedly in order to safeguard the case under investigation.

Furthermore, the CPT reiterated a recommendation from its previous report stating that the right to have a lawyer present should be respected from the first interrogation onwards. The Netherlands government was of the opinion that the presence of a lawyer was not necessary at the first meeting, and could harm the investigation.

Conditions in Prisons and Detention Facilities¹⁴

The CPT described the detention conditions in extremely dangerous and maximum-security prisoners as inhumane. It

⁹ *NRC Handelsblad*, "Schadevergoeding voor demonstranten Eurotop" (Compensation for Demonstrators at Euro-Summit), 11 January 2000.

¹⁰ *NRC Handelsblad*, "Rechter wijst optreden politie Millinxbuurt af" (Judge Rejects Police Action in Millinxbuurt), 4 January 2000.

¹¹ <http://www.rechtspraak.nl>

¹² *NRC Handelsblad*, 4 January 2000, *op.cit.*

¹³ Based on Netherlands Committee of Jurists for Human Rights (NJCM), *NJCM-Bulletin*, Leiden, No.5, 1999.

¹⁴ *Ibid.*

The Netherlands

criticized a lack of human contact, frequent physical searches and the use of handcuffs. The Netherlands government replied by stating that safety was a priority in maximum-security prisons, and that this principle required such measures. The government stated that it was aware of the tension between the present regime on the one hand, and human rights and humanitarian treatment on the other, but was of the opinion that the measures taken were within the boundaries of the law. It did, however, say that it would evaluate the conditions in maximum-security prisons in the near future.

In the eyes of the CPT, a decision must be made concerning the function of the Forensic Observation and Counseling Department (*Forensische Observatie – en Begeleidings Afdeling*). This department has become more of a psychiatric hospital than an observation and crisis center. Once a decision has been made, then adequate regulation, personnel and facilities should come into place. The response of the Dutch government was that the department was only meant for short-term admissions, and that there were psychiatrists present in the facility. The government further said that the procedures were under revision so as to secure the confidentiality of personal files as far as possible. The CPT also found that medical confidentiality was violated in maximum security prisons, because a prison officer was always present during the medical investigation.

The CPT was satisfied with the facilities at the Van Mesdag clinic; a clinic for detainees under a hospital order. It did express concern, however, about the clinic's long waiting list.

In general, the CPT was satisfied with the medical care in police stations and prisons, but expressed its wish that the number of psychological and psychiatric consultations be increased and that nurses distribute medicine to the prisoners, instead of prison staff.

The CPT requested that it be informed of the announced changes to the aliens act. It was concerned by the fact that an asylum request could be turned down if the asylum seeker could not produce any official identification documents.¹⁵

International Humanitarian Law¹⁶

In autumn 1999, the secretary general of the UN published the "Srebrenica Report," which also focused on the role of Dutchbat – the Dutch forces stationed in Srebrenica – who had been instructed to protect the area. The Dutchbat, however, failed to protect the area and, in July 1995, the "safe area" of Srebrenica was overrun by Serbs, killing thousands of men and boys, the majority of whom are still reported missing. The secretary general of the UN considered that "[...] it is not possible to say with any certainty that stronger actions by the Dutch would have saved lives, and it is even possible that such efforts could have done more harm than good."

An air strike, as requested by Dutchbat, might have prevented the massacre, but the secretary general and his senior advisers were, at the time, not convinced that such a course of action would be the right. Had the Dutch battalion reported more fully about the sinister indications they had witnessed, a more robust and quicker reply might have been possible. The report

¹⁵ See also *Protection of Asylum Seekers and Immigrants*.

¹⁶ Based on *Report of the Secretary General Pursuant to General Assembly Resolution 53/55 (1998) "Srebrenica Report", November 1999*.

The Netherlands

concluded that “[...] human and institutional failing at many levels, rather than willful conspiracy, account for why the Serbs were not prevented from overrunning Srebrenica.”

As of this writing, the Netherlands Institute for War Documentation (*Nederlands Instituut voor Oorlogsdocumentatie*) is, at the request of the Netherlands government, investigating the fall of the Muslim enclave and the role of Dutchbat. Its report is expected in 2001. Only then will the government be willing to discuss both reports in parliament.

Protection of Asylum Seekers and Immigrants

In September, the government submitted the new aliens bill to the Lower House of Parliament and hoped that the new law will come into force on 1 January 2001. The main goals of the draft legislation are to shorten the asylum procedure; the simplification of the system of residence permits; and the reduction of possibilities to appeal the authorities' decisions.¹⁷

According to the bill, every alien whose request is granted would receive a residence permit for a definitive period. For aliens who receive a residence permit on normal grounds, this period could not exceed five years. For asylum seekers, this period would be three years. After the five and 3-year periods, a residence permit for an indefinite period could be granted. Every asylum seeker would, according to the bill, receive the same temporary permit with the same rights – a fact that differs from the present practice that provides for several different forms of permits. The minister of justice believes that a uniform policy would decrease the number of

court proceedings and therefore shorten the asylum procedure.

There is one exception to the above-mentioned rule: refugees from war areas would be given a different status. The minister of justice could decide to put their asylum requests on hold for one year, after which period the refugees would enter the normal asylum procedure providing that the situation in their country of origin had not improved in the meantime.

The rejection of an asylum request would automatically mean that the refugee would no longer receive any housing facilities, and that he or she must leave the Netherlands. The government said it hoped that the asylum procedure could be reduced from 22 to 6 months. Moreover, it wished to limit the procedures. The procedures concerning complaints and appeals would also be changed. Currently, there is a complaint procedure, but no procedure for appeal. The new bill provides for an appeal procedure and abandons the complaint procedure. The latter would be compensated by the obligation on an asylum seeker to read the pre-ruling of a court before the final ruling. The comments of the asylum seeker on the pre-ruling would then be taken into account and included in the court's decision. Furthermore, the government wanted to speed up the integration of asylum seekers whose requests have been granted.

The Netherlands Refugee Council (*Vluchtelingenwerk Nederland*) expressed its agreement with the goals set by the government but, together with the Netherlands Jurists Committee for Human Rights (NJCM), also voiced a few concerns.¹⁸ Firstly, according to the proposal, everyone would remain in a state of uncertainty

¹⁷ *Vluchtelingenwerk Nederland, Nieuwsbrief Asiel – en Vluchtelingenrecht, Amsterdam, No.2, 1999; NJCM-Bulletin, Leiden, No.8, 1999.*

¹⁸ *Ibid.*

The Netherlands

for three years, while under the old procedure this had not been the case for all permit types. The NJCM added that this might even be contrary to the rationale of the 1951 Geneva Convention on refugees. Besides, the three-year permit described in the bill would give fewer rights and less protection to the applicant than formal refugee status. If the government were to decide within these three years that the situation in the home country has improved sufficiently, it could send the applicant back. Had the applicant been granted refugee status, as defined in the Geneva Convention, the situation in the home country would need to meet higher security standards. The applicant could be of the opinion that he/she is a refugee within the definition of the Convention, in which case he/she should have been granted asylum. This would certainly be very difficult to prove after three years had elapsed.

Secondly, the grounds on which a request can be granted would not be made known to the asylum seeker. According to the government, this would not be necessary as there would only be one type of permit. The NJCM disagreed because the justification could be important with respect to family reunification and the principle of equality.¹⁹

Thirdly, according to the bill, during the one-year postponement of the processing of an asylum claim for applicants from war areas, the asylum seekers would be unemployed, unentitled to education or housing, and unable to exercise their rights.

Fourthly, the Refugee Council said it was concerned about the automatic termination of housing facilities once a permit had been rejected. Frequently, an asylum seeker cannot be expelled because the home country refuses to accept the asylum seeker, a fact for which the asylum seeker cannot be blamed.

Fifthly, the Netherlands is the only country in which asylum seekers with a Dublin-claim can be set out on the street²⁰ while unable to leave the Netherlands, which is in violation of international law.²¹

In the first 24 hours (which would be lengthened to 48 hours in the new law) of the asylum procedure, a first selection would be made in one of the centers throughout the country.²² Amnesty International stated that post-traumatic stress syndrome can have an important impact on the interrogation of the asylum seeker. According to the Handbook of the UNHCR (paragraph 206), an asylum seeker with a mental or psychological disorder must be seen by a doctor. At the center at Schiphol Airport, there is no doctor present who could determine the welfare of the asylum seeker. Further, most doctors and nurses are not trained to identify traumas and even if they were, there would not be enough time to do so.

In light of this, the NJCM concluded that the elaboration of the goals set out in the draft aliens bill would result into the weakening of the legal position of refugees and persons who received a permit on hu-

¹⁹ *NJCM-Bulletin, Leiden, No.8, 1999.*

²⁰ *The Member States of the European Union agreed in Dublin that a refugee can only apply for asylum in one of the EU member states, and only in the first country of the EU that he or she enters. If one of these preconditions are not met the asylum seeker has a Dublin-claim, and the asylum request is rejected.*

²¹ *Article 11 of the ICSECR, articles 2 and 25 of the Universal Declaration of Human Rights, and articles 22, 24, 25, 26 of the Treaty on the Rights of the Child, which obliges the Netherlands to provide shelter. Source: Vluchtelingenwerk Nederlands, <http://www.vluchtelingenwerk.nl>; press release of 10 December 1999.*

²² *Vluchtelingenwerk Nederland, op.cit.*

The Netherlands

manitarian grounds under the present law. Moreover, the bill would create long-term uncertainty and a decrease in the right to shelter. Finally, the bill would violate certain rights provided by international treaties.²³

Undocumented Asylum Seekers

The UNHCR commented on the bill on undocumented asylum seekers.²⁴ The bill states that a lack of identification documents would be a ground for considering an asylum claim to be manifestly unfounded. The UNCHR was of the opinion that, unless it was obvious that an applicant had destroyed or concealed the documents, applicants should be given the benefit of the doubt. In any other situation, in order to gain access to the regular procedure, it should be sufficient for the asylum seeker to provide a credible and plausible account of why he/she did not have any documents. Accelerated procedures, and sending asylum seekers back as soon as they fail to produce any documents, should only be applied when there is a clear indication of fraud. While the UNHCR recognized the need for body searches, it hoped that they would be carried out with due respect for the dignity of the person and in such a manner as to minimize the intimidating nature of the act. The UNHCR would like to see the amendments to the bill brought in line with its remarks, which are part of the UNHCR policy that has been accepted by the Netherlands government.²⁵

²³ *NJCM-Bulletin*, "NJCM-Commentaar op het voorstel tot wijziging van de *Vreemdelingen-wet*," Leiden, No. 8, 1999.

²⁴ *UNHCR's Comments on the Dutch Bill on Undocumented Asylum Seekers of 5 October 1998*. *Nieuwsbrief Asiel-en Vluchtelingenrecht, Vluchtelingenwerk Nederland, Amsterdam*, No.2. On 19 January 1999 both Chambers of Parliament adopted the bill (26088).

²⁵ *Nieuwsbrief Asiel-en Vluchtelingenrecht, Vluchtelingenwerk Nederland, Amsterdam*, No.2, 1999, and *NJCM-Bulletin*, Leiden, No.8, 1999.

²⁶ *Humanistisch Overleg Mensenrechten, Nieuwsbrief, Utrecht*, <http://www.human.nl>, March 1999.

²⁷ *Bahaddar v. the Netherlands (19 February 1998)*, *NJCM-Bulletin*, No. 8, 1999.

Female Refugees

The Netherlands government recognized that female circumcision, and other traditional practices that infringe the physical integrity of women, violated women's human rights. These and other conditions particular to women were, however, not taken into account in the asylum procedure. The Immigration and Naturalization Council's decision as to whether a person could be sent back, or had legitimate reasons to stay, was based on the reports of the Foreign Ministry. Women's situation and the abuses they fled were usually held to be a private matter. Furthermore, sexually discriminatory laws were considered to be an expression of the national culture and should therefore be respected. As a result, neither female genital mutilation nor sexually discriminatory laws were included in the ministry's reports. According to the Humanistic Council of Human Rights, more attention should be paid to women-specific circumstances, which should be considered grounds for asylum. Finally, in a number of countries, women are treated as minors and thus do not possess the identification documents that are a prerequisite for the granting of asylum.²⁶

Ruling by the European Court of Human Rights²⁷

Article 3 of the ECHR (which states that no one should be subjected to torture or inhumane or humiliating treatment or punishment) was addressed in the case of Ba-

The Netherlands

haddar v. the Netherlands. On 19 February 1998, the European Court of Human Rights ruled that expelling a refugee to a country where there might be a real risk that he or she will be exposed to ill-treatment as described in article 3 of the treaty, for the sole reason that the person concerned had failed to comply with the formal requirement to submit the grounds for appeal in time, even though these grounds were submitted before the national authorities took their decision, undermined the absolute character of the article. An applicant should be given a realistic opportunity to prove his or her claim. For this purpose, time-limits should not be applied too rigidly. However, the formal requirements and time-limits laid down in domestic law should normally be complied with.

This does not relieve refugees from the duty to exhaust any available and effective domestic remedies.²⁸

Rights of the Child

In 1997, the Netherlands submitted its initial report on the Rights of the Child under article 44 of the Convention on the Rights of the Child. The UN Committee on the Rights of the Child discussed the report in October 1999, after hearing the Child Rights Collective (*Het Kinder-rechtencollectief*), a forum of Dutch NGOs for the rights of the child in June 1999.²⁹ Four children joined the Dutch delegation. They had prepared essays on various issues, and the committee directed most of its questions to the children. The information, which the committee obtained during the June meeting, was used in the October 1999 meeting.

The committee was pleased with the established infrastructure, comprehensive policies, legislation, administrative mea-

asures and the government's commitment to the rights of the child in development assistance programs, which were set up to implement the convention. It put forward a number of recommendations, including a comprehensive national plan of action to implement the convention; the wider dissemination of information in society; and the creation of better possibilities for the active participation of children in the implementation of the convention. The committee was of the opinion that education in human rights, and particularly in the rights of the child, should be part of primary and secondary school curricula. A dialogue should be initiated between the authorities and children, and policies concerning youths should be more substantially coordinated on the national level.

Female Circumcision

The UN committee directed special attention to the circumcision of young immigrant girls, which attracted considerable attention in the media and led the committee to wonder whether the government could do anything to stop this practice. The government stated that its focus was on prevention, and that it could not do anything against circumcisions that took place in the girls' countries of origin during holidays, as was often the case.

Minor Asylum Seekers

With regard to the asylum procedures for minors, the UN committee emphasized the need for immigrant children to be educated, perhaps in their own language.

In response to the committee's reference to the disappearance of young girls from centers for asylum seekers, the government replied that it takes the problem very seriously.

²⁸ "Over een slordige advocaat, een slordig hof en het absolute karakter van artikel 3", *EVRM, NJCM-Bulletin*, jrg. 24 (1999), nr 8.

²⁹ *Defence of Children International*, Amsterdam, No.2-3, September 1999.

The Netherlands

With reference to the practice of alternative punishment for children, the committee was worried about the possibility of arbitrariness, and an insufficient right to fair trial, because the children did not have the right to a lawyer.³⁰

Child Labor

In June, the ILO Convention on the ban of the worst forms of child labor was adopted. It did not, however, include an additional clause on child soldiers because the governments of the United States, the United Kingdom and the Netherlands rejected such a clause. The clause would have increased the minimum age of child soldiers from 15 to 18 years.³¹

The Netherlands government rejected such a plan because it said it would create recruitment problems in the Netherlands, which no longer had compulsory military service. Several NGOs, including the Red Cross, War Child and Amnesty International, established a coalition against the use of child soldiers. The coalition was able to convince the Netherlands parliament to adopt a resolution to increase the recruiting age of soldiers from 17 to 18. The government, however, retained the age of 17 for recruitment.³² No one under the age of 18, however, may be posted abroad for any military operation, whether peacekeeping or other international operations, in areas of hostility.³³

In sum, more areas of the human rights treaties and conventions have been addressed this year by the Netherlands government, although most attention was still devoted to the situation of refugees. Because the NHC bases its annual report on the reports of prominent human rights organizations, the subjects to be covered in this report are largely determined by these organizations. ■■■

³⁰ *Defence of Children International*, Amsterdam, No.2-3, September 1999.

³¹ "17-jarige mag in dienst", ("17-year-old can enlist"), Saskia Jansens, Trouw, 15 June 1999; "Netherlands Committee Against the Use of Child Soldiers", press release, 21 December 1999, <http://www.kindsoldaten.nl>

³² "Coalitie tegen gebruik van Kindsoldaten," <http://www.kindsoldaten.nl>, press release, 21 December 1999.

³³ *Initial Reports of States Parties due in 1997, the Netherlands*, the Netherlands Ministry of Foreign Affairs, 15 May 1997.