

IHF FOCUS: Protection of asylum seekers and immigrants; freedom of movement; international humanitarian law; protection of ethnic minorities; homosexuals rights.

One of the main human rights issues in the Netherlands was the new Asylum Law, some provisions of which were criticized by human rights NGOs. It also left the status of the so-called "Schengen-claimants" unresolved.

As in other EU member states, the Schengen Agreement on the one hand increased freedom of movement for citizens of countries that are party to the Agreement. On the other hand it restricted freedom of movement through visa requirements to citizens coming from outside the Schengen countries.

On 20 November, the Court of Appeal of Amsterdam held that a person who had committed crimes against humanity in another country could be prosecuted in the Netherlands. The case in question was that of Bouterse, who is held responsible for the killing of 15 political opponents in Surinam.

A case that involved paying off Roma to leave a municipality raised much public debate about the status of Roma and the problems they faced.

Homosexuals' rights were improved in 2000: the First Chamber of Parliament passed legislation in December 2000 allowing same - sex couples to marry and adopt Dutch children.

Protection of Asylum Seekers and ImmigrantsNew Aliens Act

The First Chamber of Parliament adopted the new Aliens Act in November; and it will come into force on 1 April 2001. However, members of the Chamber criticized the Act, in particular the fact that refugees from war zones have to wait one year until they can be granted refugee status, a period that causes uncertainty for applicants and can hinder the application procedure. The Chamber also questioned the formulation of a number of reasons that

can be given to refuse a residence permit for a definite period.

On the basis of an amendment to the Act, asylum seekers from "safe" countries – i.e. States that are party to the Convention relating to the Status of Refugees and other human rights treaties - will hardly have a chance to receive a residence permit. The number of "safe" countries has been considerably increased. The Netherlands Refugee Council (*Vluchtelingenwerk Nederland*), Amnesty International and the UNHCR argued strongly against the amendment. Some members of the First Chamber shared the concern about an increase in the number of "safe" countries, arguing that the point is not whether such countries are party to particular treaties, but whether or not the countries comply with them. During the debate on the Act the Government promised that it would not only take into account whether the respective States had ratified the human rights treaties, but emphasized that investigation into the factual situation in each country would be more important. The First Chamber was convinced by this promise.

Another problem that remained unsolved in 2000 was the status of the "Dublin-claimants". In 1990, the EU member States agreed in Dublin that a refugee could only apply for asylum in the first EU Member State that he/she entered. If this precondition is not met, the asylum seeker's application is termed a "Dublin-claim" and is rejected.

The Court of The Hague dismissed a claim for the protection of "Dublin-claimants" and for asylum seekers who had requested asylum repeatedly (in the Netherlands or in other EU countries). Both applications were supported by the Netherlands Refugee Council and the Institutions for Legal Support in Asylum Cases (*Stichtingen voor Rechtsbijstand Asiel*) of Arnhem, Den Bosch and Amster-

dam. The judge recognized that the fundamental right to social security was at stake, but ruled that it was not for him to decide those basic rights to which asylum seekers should be entitled. The problem of the "Dublin-claimants" remained serious because it concerned asylum seekers who were staying in the Netherlands legitimately, but who were unable to receive a legal income and enjoy public services such as health care. "Dublin-claimants" were not allowed to leave the Netherlands either.²

Trafficking in Human Beings

In June, British custom officials found the dead bodies of 58 illegal Chinese immigrants in a Dutch lorry travelling from Rotterdam to Dover. Two of the Chinese immigrants were found alive, the others died of respiratory failure. The lorry was refrigerated and during its transport from Belgium to the UK completely closed. The Dutch driver was arrested and charged by British police on 58 counts of manslaughter, as well as facilitating illegal entry into the United Kingdom. The judge set 19 February 2001 as a provisional starting date for the proceedings.³

The case raised numerous questions in the Netherlands, as there were indications that the police had intentionally allowed the trafficking of Chinese immigrants in order to gain more information on the smuggling route.

In December information was leaked that the police were aware of contacts between the main suspect in the Dover case and the person who smuggled the Chinese people. The Rotterdam police were already monitoring the main suspect because they suspected his involvement in the trafficking of Kurds. Members of Parliament questioned whether the police had made the right choice in deciding not to observe him on a constant basis.⁴

Another problem was the lack of communication between the police and the Ministry of Justice. One month before the fatal incident, the Ministry of Justice had

agreed to extradite the main suspect in the Dover case to France. However, it only initiated a search to extradite him to France one month after the incident. The Minister of Justice explained that the delay was due to the fact that the case was not considered to be "sensitive". The Rotterdam police who monitored the suspect were not aware of the extradition decision of the Court of Haarlem, and the Court was unaware of the monitoring by Rotterdam police. The criminal investigation into the case continued as of this writing.

Freedom of Movement

Visa Requirements

The Schengen Agreement regarding freedom of movement came into force in March 1995, abolishing border checks for people travelling between seven of the ten Schengen countries: Belgium, France, Germany, Luxembourg, the Netherlands, Portugal and Spain. On 1 December 1997, the Schengen Agreement was extended to cover Austria, Greece and Italy, although border checks continued in Greece until its full participation in March 2000. With the Conclusion of the Treaty of Amsterdam in June 1997, Schengen was incorporated into the Treaty on the European Union.⁵ The main aim of the Schengen Agreement is to abolish all internal border checks for both people and goods within the Schengen States. However, there remains an external border between Schengen and other States.

In 2000, citizens from a number of countries required a visa to enter the Netherlands, including people from some OSCE member states (for example: Albania, Armenia, Azerbaijan, Belarus, Bosnia and Herzegovina, Bulgaria, the Federal Republic of Yugoslavia, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Romania, the Russian Federation, Tajikistan, Turkey, Turkmenistan, Ukraine, Uzbekistan and the former Yugoslav Republic of Macedonia).⁶

Because of their planned accession to the EU, Bulgaria and Romania asked the EU member States to abolish visa requirements

for their citizens as soon as possible. The States decided on 1 December 2000 to abolish the visa requirement for Bulgaria. Because the European Parliament still has to express itself on this matter, the abolition is not expected to be final until mid-2001. According to the European Parliament, Bulgaria must show that it has taken measures against illegal migration. However, the EU decided to uphold the visa requirements for Romania because, *inter alia*, its guarding of frontiers falls short of EU standards.⁷

International Humanitarian Law

Prosecution for Crimes against Humanity

On 20 November 2000 the Court of Appeal of Amsterdam decided that a person who committed crimes against humanity in another country could be prosecuted in the Netherlands for such acts. The decision was the result of a request made by two victims' relatives to the Court of Appeal to begin prosecutions in the case against former Surinam military leader Bouterse, who is held responsible for the killing of 15 political opponents of the Surinam Government in 1982.⁸

◆ On 8 and 9 December 1982, the Surinam military authority under the command of Bouterse arrested 15 political opponents, including prominent persons who were accused of posing a threat to the military authority under Bouterse. The available evidence showed that Bouterse had ordered the arrest and torture of the men before they were summarily and arbitrarily executed by the military.

The Court of Appeal, in its decision, followed the conclusions of John Dugard, Professor of Public International Law at the University of Leiden, who contended that Bouterse could be prosecuted in the Netherlands.⁹ About the possible exercise of jurisdiction by the Netherlands Dugard stated: "Because Bouterse is not present in the Netherlands, the Netherlands is not obliged to exercise criminal jurisdiction over him under international law; nor is the Netherlands under a legal obligation to re-

quest his extradition from Surinam or any country that he may visit." If Bouterse were to visit the Netherlands, according to Dugard, the Netherlands would be obliged to try or extradite him under the UN Convention against Torture.

However, the fact that the Convention against Torture only came into force in the Netherlands on 20 January 1989 created a problem: there were doubts about whether it could be applied retroactively to indict Bouterse for crimes committed in 1982. According to Professor Dugard, the Convention against Torture is a declaration of existing international customary law in as far as the prohibition, punishment and definition of torture are concerned. He concluded that although the UN Convention against Torture came into force in the Netherlands in 1989, it could be applied retrospectively to cover conduct that was illegal under Dutch law before 1989 but was not yet criminalized under the name of torture. The Court of Appeal agreed with this reasoning and made possible the prosecution of Bouterse. A preliminary investigation was initiated soon after the ruling.

Bouterse will now be prosecuted both in Surinam and in the Netherlands. The Amsterdam Court of Appeal noted that the prosecution should primarily to take the case in the Republic of Surinam; the Dutch prosecution should only serve as a backup plan. According to the Court, the Dutch prosecution can be stopped once it is certain that the Surinam trial is proceeding satisfactorily.

In February 2001 the Board of Procurators General requested the Supreme Court to give a ruling on the issue of the jurisdiction of the Netherlands in the case against Bouterse. In this way, the Board wants to avoid that, in a later phase, the Supreme Court would rule that the Netherlands have no jurisdiction.¹⁰

Protection of Ethnic Minorities

Roma Minority

In July, the municipality Driebergen (near Utrecht) made a secret deal with five

Roma families that the municipality would pay about U.S.\$ 250,000 to the Roma families if they moved away from Driebergen and its surroundings. The Roma families agreed and left the municipality. The deal was attributed to severe tensions between the Roma families and other residents of a trailer park where the Roma had lived.

The chairwoman of the Roma Commission of the Council of Europe said that the deal was in violation of the ECHR and, according to her, the European Court of Human Rights would denounce the act if a complaint were filed.¹¹

After the Roma families left the municipality they tried to settle down in many places in the province but were forced to leave. They applied to a court to force the municipality of Utrecht to allocate a suitable place for them to stay, but the court rejected the claim. The judge held that it was not proven that the Roma families could not live separately from each other. Moreover, the judge stated that they had left the municipality Driebergen of their own free will with restitution. The fact that they did not have a place to stay was a risk they had to bear. Most importantly, the judge stated that Roma families would not have priority over other trailer park residents on the Utrecht municipality waiting list for lots in the local trailer park.

A few weeks later, the municipality of Driebergen offered three of the Roma families the possibility to return to the municipality; the other two families had found a place to stay elsewhere. The three Roma families have to pay back a substantial amount of the restitution money they had

received. The deal included an agreement about the certain accommodation of the wandering families.¹²

Homosexuals' Rights

In December 2000 the First Chamber of Parliament passed legislation allowing same - sex couples to marry and adopt Dutch children.¹³ The legislation had already been approved by the Second Chamber of Parliament, which, by a large majority, gave homosexual marriages the same legal status as heterosexual marriages in September. The law will come into force on 1 April 2001.

Co-habitation, or civil partnerships, between homosexuals has been legal in the Netherlands for more than two years, along with the appropriate tax, pension, inheritance and other legal rights. Under the Dutch Constitution, all citizens are equal before the law, including the right to marriage. The new legislation is aimed at granting this right to all persons, including same sex couples. Only successors to the throne are not allowed to marry someone of the same sex – a fact that is discriminatory according to two political parties.¹⁴

The new law also gives gay couples the right to adopt Dutch children. Critics claim there is a risk that same sex couples could run into legal problems abroad, because the Netherlands is one of the first countries in the world to make it possible for homosexuals to marry under the law. But the Dutch Ministry of Foreign Affairs has given assurances that legal safeguards for gay couples both within and outside the country can be guaranteed.

Endnotes

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.

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- ² www.vluchtelingenwerk.nl; press release, 6 September 2000.
- ³ *The Times*, "Driver Denies 58 Charges of Manslaughter", 30 November 2000.
- ⁴ *De Volkskrant*, "Partijen houden twijfels over werkwijze politie", 14 December 2000.
- ⁵ Fact sheet Ministry of Foreign Affairs, "The Schengen Agreement", November 2000.
- ⁶ *IND-Info*, "Visum kort verblijf", 25 March 1999.
- ⁷ *De Volkskrant*, "Scandinavische landen nu ook in Schengen-zone", 2 December 2000.
- ⁸ *De Volkskrant*, "Bouterse ook in Nederland vervolgd om decembermoorden", 21 November 2000.
- ⁹ Mr.C.J.R. Dugard, "Opinion on the Bouterse case", report of 7 July 2000.
- ¹⁰ Statement of the Board of Procurators General on 23 February 2001. This procedure is called "the appeal in cassation in the interests of the law."
- ¹¹ *Utrechts Nieuwsblad*, Voorzitter Roma-commissie Raad voor Europa: "Aanpak van zigeuners blamage voor Nederland", 25 August 2000.
- ¹² *Utrechts Nieuwsblad*, "Zigeuners betalen een ton terug", 5 January 2001.
- ¹³ Ministry of Justice, "Eerste Kamer akkoord met openstelling huwelijk voor personen van gelijk geslacht", press release, 19 December 2000.
- ¹⁴ *De Volkskrant*, "Homo's en lesbiennes kunnen trouwen en adopteren", 19 December 2000.