2023 Annual Report

International Human Rights Proceedings

International Law Division
Ministry of Foreign Affairs

Contents

Foreword

For the past decade we have been reporting on international human rights proceedings in the present form. Like previous reports, this 2023 report contains summaries of all the judgments and decisions handed down in international human rights proceedings in which the Kingdom of the Netherlands was involved. It also contains information that is connected with or directly relevant to those proceedings, as well as overviews and statistics. Last year we added an introductory section explaining the various international human rights proceedings. Encouraged by the positive response, we have included an introductory section again this year.

In 2023 Russia's war against Ukraine continued to play a significant role. In conjunction with 25 other member states of the Council of Europe, the Netherlands lodged an intervention with the European Court of Human Rights (ECtHR) in Ukraine's case against Russia concerning the war in Ukraine in the period since 2022. The case has since been joined with other cases brought by Ukraine against Russia and the application lodged by the Netherlands against Russia regarding the downing of Flight MH17. The latter application was declared admissible by the ECtHR and the case is now being heard on the merits. Following a further round of written submissions in 2023, the hearing is scheduled for 12 June 2024.

Another noteworthy hearing on the ECtHR case list in 2023 was held in the case of *Duarte Agostinho and others v. the Netherlands and 32 others* (39371/20). Six Portuguese children and young adults claimed that the respondent States were taking insufficient measures to combat climate change, in violation of Article 2 (right to life), Article 3 (inhuman treatment), Article 8 (right to respect for private and family life) and Article 14 (prohibition of discrimination) of the Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR). In 2023 the Government of the Kingdom of the Netherlands submitted both written and oral submissions in the proceedings before the Grand Chamber and on 9 April 2024 the ECtHR declared the application inadmissible.

In 2022 the ECtHR found no violations of the ECHR by the Netherlands and in only one case did a United Nations treaty body conclude that a human rights violation had taken place. In 2023 the picture was very different: the ECtHR concluded in five cases that the Netherlands had violated the ECHR, but the UN treaty bodies did not find that there had been any human rights violations.

The trend towards greater diversity in human rights proceedings is reflected in the wide range of human rights violations found by the ECtHR in the cases against the Netherlands. These concerned violations of Article 3 (inhuman treatment), Article 6 (hearing of witnesses in two cases), Article 8 (right to respect for private and family life) and Article 11 (right to demonstrate) of the ECHR.

As in previous years, many people were involved in drawing up this report. Alongside staff and trainees working in the International Law Division of the Ministry of Foreign Affairs and the colleague seconded each year from the Council of State, contributors included colleagues at various ministries who took the lead or were closely involved in preparing the cases, namely those working at the Immigration and Naturalisation Service, the Public Prosecution Service and our colleagues in Curaçao, Aruba and St Maarten, as well as colleagues at the Ministry of Justice and Security; Economic Affairs and Climate Policy; Social Affairs and Employment; Health, Welfare and Sport; and the Interior and Kingdom Relations.

If you have any comments or suggestions or would like further information, please contact us at: djz-mensenrechten@minbuza.nl tel. (+31) (0)70 348 6724.

The Hague, April 2024

Human Rights Group
International Law Division
Legal Affairs Department

Representing the Kingdom before the European Court of Human Rights and the UN treaty bodies

The Ministry of Foreign Affairs, in consultation with the other ministries involved, represents the Government of the Kingdom of the Netherlands (the Government) in proceedings before the European Court of Human Rights (ECtHR), the European Committee of Social Rights (ECSR) and the various United Nations treaty bodies, including the Human Rights Committee (CCPR), which monitors implementation of the International Covenant on Civil and Political Rights); the Committee against Torture (CAT), which monitors implementation of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; the Committee on the Elimination of Racial Discrimination (CERD), which monitors implementation of the Convention on the Elimination of All Forms of Racial Discrimination; and the Committee on the Elimination of Discrimination against Women (CEDAW), which monitors implementation of the Convention on the Elimination of All Forms of Discrimination against Women.

Handling of cases

At present two lawyers (known as 'agents') in the Human Rights Group of the International Law Division of the Legal Affairs Department (DJZ/IR) at the Ministry of Foreign Affairs are authorised to act on behalf of the Government in Strasbourg and Geneva. With the support of a number of other lawyers and an administrative assistant in the Human Rights Group, the agents are responsible for coordinating proceedings. The Human Rights Group registers cases, coordinates the flow of documents to and from the ECtHR and the UN treaty bodies and distributes the documents to the relevant ministries. It also coordinates the preparation and formulation of the Government's position before the ECtHR and the UN treaty bodies in the various pending cases, which relate to a broad range of disputes in which the human rights enshrined in the treaties under their supervision have been invoked. The Human Rights Group also provides advice in the field of international human rights treaties and customary international law.

Proceedings before the European Court of Human Rights

Individual applications
The procedure under which individuals can lodge an application with the ECtHR is described in Article 34 of the European Convention on Human Rights (the Convention). Under this article, any person, non-governmental organisation or group of individuals claiming to be the victim of a violation of the rights set forth in the Convention or one of its Protocols can lodge an application with the ECtHR.

Inter-state cases
Under Article 33 of the Convention, contracting states can refer to the ECtHR any alleged breach of the provisions of the Convention and its Protocols by another contracting state in inter-state proceedings. It is not necessary for the individual victims of alleged human rights violations to be nationals of the applicant state. The procedure was used rarely at first, but in recent years there has been a marked increase in the number of inter-state applications; at present, 15 such cases are pending before the ECtHR. The Netherlands has lodged three inter-state applications. The first was lodged against Greece in 1967 when it was ruled by the military junta; the second was lodged against Turkey in 1982 in connection with the coup that had taken place there; and the most recent has been the inter-state application against Russia in connection with the downing of flight MH17.

Interventions
On the basis of Article 36 of the Convention, it is possible for a contracting state or other parties to submit written comments or take part in hearings in cases where the state concerned is not a party to the proceedings or the person concerned is not the applicant. The aim of a third-party intervention is to make an extra contribution to assist decision-making by the ECtHR. An intervening party is therefore sometimes known as an *amicus curiae* (friend of the court).

As stated above, an intervening party is not a party to the case and is therefore not directly bound by the final judgment. However, if the intervening party is a contracting state, the judgment may contain elements relevant to that state, since it may have an influence on the state's legal order. If a Dutch national lodges an application with the ECtHR against a contracting state other than the Netherlands, the Government has the right to intervene. In other cases, the Government can request the ECtHR to grant it leave to intervene. The ECtHR then decides whether to grant the request. In such other cases, the Government regularly requests leave to intervene in order to propose a particular interpretation of the Convention or to promote the development of the law.

Advisory opinions
In addition to judgments and decisions, the ECtHR can give advisory opinions on the interpretation and implementation of the Convention. On the basis of Protocol No. 16 to the Convention, advisory opinions are provided at the request of the highest courts and tribunals of the contracting states and only in the context of a case pending before them. Although the advisory opinions are not binding, they carry great weight in the interpretation of the Convention. When courts in the Kingdom of the Netherlands request an advisory opinion, the Government has the right to submit written comments. When courts in other contracting states request an advisory opinion, the Government can request leave to submit a written contribution to the ECtHR. The Netherlands has been a party to Protocol No. 16 since 2019. No requests for an advisory opinion have yet been submitted by any of the highest courts in the Netherlands, nor has the Government requested leave to intervene in advisory proceedings involving other contracting states.

Committee of Ministers
The strength of the Convention lies not only in the treaty itself and the constantly evolving case law of the ECtHR, but also undoubtedly in the supervision of the execution of ECtHR judgments. Supervision is in the hands of the Council of Europe's member states, supported by the Secretariat's Department for the Execution of Judgments (Execution Department). Together they ensure that the Convention's contracting states execute ECtHR judgments, not only by taking individual measures such as paying compensation awarded by the ECtHR or granting a residence permit, but also by taking general measures aimed at avoiding the occurrence of comparable violations in the future. Depending on the violation found, general measures may, for example, require changes to policy, legislation or case law, improvements to conditions of detention, training for judges or civil servants or a whole series of other measures. After the Committee of Ministers (in a CMDH meeting) has established which individual and/or general measures are required, the respondent state is obliged to report in the form of regular Action Plans on the progress of the measures. In addition to the Execution Department, other parties including NGOs, international organisations and national human rights bodies such as the Netherlands Institute for Human Rights can give their views on the progress and effectiveness of the execution of judgments. If a case has exceptionally serious implications or if it is deemed that insufficient progress is being made in complying with the judgment, the Committee of Ministers may decide to place the case under enhanced supervision.

In cases where far-reaching measures or reforms are required, the procedure can take a number of years, including in cases where the state concerned is committed to protecting human rights and has sufficient financial resources.

Procedures before the European Committee of Social Rights

Collective complaints
The Additional Protocol to the European Social Charter (ESC) entitles social partners and non-governmental organisations to lodge collective complaints of alleged violations of the ESC by a contracting state. The complaint is then examined by the European Committee of Social Rights (ECSR). The ECSR decides on the admissibility of the complaint and, if it is declared admissible, examines whether a violation of the ESC has taken place. On the basis of the ECSR's decision, the Committee of Ministers may adopt a resolution containing recommendations to the contracting state on measures to be taken to rectify the violation.

The network of agents representing governments at the ECtHR and the ECSR
The Human Rights Group actively participates in the network of agents representing governments at the ECtHR. Within the network information is exchanged on pending cases and other issues relevant to proceedings before the ECtHR. In addition, the network makes it possible to draw the attention of other contracting states to relevant new cases, in order to facilitate third-party interventions, and creates scope for coordinating action by different contracting states in a single case.

The aim is for the agents to meet once a year, mostly at the invitation of the agent of the state that holds the autumn presidency of the Committee of Ministers of the Council of Europe. In addition, the ECtHR in principle holds a meeting of agents twice a year in Strasbourg. These meetings feature discussion of various developments and issues relating to proceedings before the ECtHR. The ECSR holds an annual meeting with the agents of the countries that have recognised the right of collective complaint under the ESC.

Proceedings before the UN treaty bodies

The Netherlands is a party to eight UN human rights instruments: the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), the Convention on the Rights of the Child (CRC), the Convention on the Rights of Persons with Disabilities (CRPD) and the International Convention for the Protection of All Persons from Enforced Disappearance (ICPPED).

All these instruments – in some cases by virtue of an optional protocol – enable individuals to lodge a complaint about human rights violations (known as the individual right of complaint). Individuals can lodge a complaint against the Kingdom with five UN treaty bodies: the UN Human Rights Committee (CCPR), the Committee against Torture (CAT), the Committee on the Elimination of Racial Discrimination (CERD), the Committee on Enforced Disappearances (CED) and the Committee on the Elimination of Discrimination against Women (CEDAW).

These treaty bodies consist of independent experts elected by the General Assembly of the United Nations. Although there are differences among these bodies on account of the human rights instrument they monitor, the procedures they follow with regard to individual complaints are generally the same.

Individual complaints

It is possible to lodge an individual complaint against the Kingdom with the five treaty bodies listed above concerning an alleged violation of the relevant human rights instrument. This enables the treaty body concerned to offer protection at individual level. The treaty body establishes what are called 'Views' in which it finds whether or not a violation of the relevant provisions has occurred. These Views are not officially binding but carry great weight. This means that States parties to the instruments must substantiate any decision not to follow them.

Inter-state cases
Inter-state cases can be lodged with a number of the treaty bodies. In such cases a State party lodges a complaint against another State party regarding alleged violations of the relevant instrument. In general, both States parties must have explicitly accepted the competence of the treaty body in this regard. The procedure is rarely used.

Follow-up
If a treaty body establishes that a violation has taken place, the government in question has 180 days to draft and submit an action plan setting out the measures to be taken to end the violation and to prevent new violations. On the basis of the plan, the treaty body adopts a follow-up report indicating the extent to which the government has implemented the recommendations that it set out in its Views. A new follow-up report can be adopted at each session of the treaty body until it is satisfied that the government has taken sufficient measures.

Course of individual cases

The handling of individual cases is broadly the same in the various proceedings. After a new case has been communicated to the Kingdom, it is passed on to the Human Rights Group at the Ministry of Foreign Affairs. Depending on the nature of the case, the Human Rights Group will involve the ministry bearing policy responsibility for the alleged human rights violation.

Important aspects for consideration are the admissibility and merits of the case. Admissibility is the question of whether the case can be accepted for consideration by the ECtHR or UN treaty body on the basis of various criteria, including whether domestic legal remedies have been exhausted, whether it falls within the scope of the relevant article of the instrument concerned, whether it is sufficiently substantiated, whether it is already being heard by another international body, whether it constitutes an abuse of the procedure and whether the party complaining of a violation has suffered damage or loss as a result of the alleged violation. With regard to the merits, the measure that is the object of the complaint must fall within the scope of the relevant article. In the case of some articles, it is necessary to ascertain if restrictions on the freedom enshrined in the instrument can be justified. After it has received the complaint, the Government can submit its observations. The party complaining of a violation (known as applicant, author or complainant, depending on the procedure) can then respond, after which the Government has an opportunity to submit additional observations. A further written response may in some cases be submitted, for example in the event of new developments or in response to specific supplementary questions from the UN treaty body or the ECtHR.

On the basis of all these documents the treaty body establishes Views and the ECtHR gives a judgment or decision. If compensation is sought, the Views or judgment/decision will state whether it should be granted. A hearing may be held in Geneva or Strasbourg. To date, the cases brought against the Netherlands before the UN treaty bodies have never involved a hearing, whereas hearings in Strasbourg have sometimes been held in ECtHR proceedings against the Netherlands, including in cases heard by the Grand Chamber.

An important difference between proceedings is that the UN treaty bodies offer governments the opportunity to enter an initial defence based solely on admissibility.

In the case of the ECtHR, applications must be lodged within four months of the highest national court handing down its judgment in the case. All applications received by the ECtHR are then assessed by the Filtering Section to determine if they are manifestly inadmissible. Once the application has been communicated to the Netherlands, the case enters the non-contentious phase in which parties may still reach a friendly settlement. The period for submitting observations begins after the non-contentious phase ends. This is usually after 12 weeks.

Knowledge transfer

Alongside the Peace and Security, International Rule of Law and International Environment Groups, as well as the Centre for International Law (CIR), the Human Rights Group is part of the International Law Division of the Legal Affairs Department (DJZ/IR). The International Law Division was set up as a knowledge centre with the purpose of supporting Dutch government policy. Division staff regularly give lectures and courses at other ministries and for operational services. In addition, they provide regular courses on practice at the ECtHR and UN treaty bodies, and lectures on developments in international law, for example to universities, the Academy for Legislation, the Academy for Government Lawyers and district courts.

There are various opportunities to gain experience at the Human Rights Group on a temporary basis. For example, every year a lawyer from the Council of State is seconded to the Group. In addition, students can apply for a work placement at DJZ/IR to familiarise themselves with international human rights proceedings before the ECtHR and the UN treaty bodies. In 2023, a total of seven trainees worked at DJZ/IR.

Council of Europe

European Court of Human Rights

Judgments

S.S. (61125/19, 10 January 2023)
The applicant complained that in violation of Article 6, paragraphs 1 and 3 (d) (right to a fair trial) of the Convention for the Protection of Human Rights and Fundamental Freedoms (the Convention), he was not given the opportunity to cross-examine three prosecution witnesses although their witness statements had constituted decisive evidence that led to his conviction.

The District Court had convicted the applicant of fraud and unlawful entry of a dwelling in use by another. The conviction was based on, *inter alia*, the witness statements made by the victims. On appeal, the applicant requested the opportunity to cross-examine those witnesses at the hearing. He repeated this request at the hearing itself. The Court of Appeal rejected the first request because it was submitted too late. Applying the necessity criterion (*noodzakelijkheidscriterium*), it also rejected the second request because in its opinion there was no reason to doubt the accuracy of the statements. In addition, the witness statements were not the sole or decisive evidence, as they were corroborated by other evidence. The Court of Appeal upheld the applicant's conviction. The Supreme Court later dismissed the applicant's appeal in cassation against this judgment.

The European Court of Human Rights (ECtHR) assessed the application on the basis of the general principles established in its settled case law. According to these principles, the following factors must be taken into account in deciding whether there has been a violation of the right to a fair trial: (i) whether there was good reason for the lack of opportunity to cross-examine the prosecution witness(es) at the hearing; (ii) whether the statement(s) of the prosecution witness(es) constituted the sole or decisive evidence on which the conviction was based and (iii) whether there were sufficient counterbalancing factors to compensate for the handicaps faced by the defence as a result of the inability to cross-examine the witnesses at the hearing.

First, the ECtHR noted that the Court of Appeal had established no good factual or legal grounds for not offering the defence the opportunity to cross-examine the witnesses at the hearing. Furthermore, the Court of Appeal attached a degree of significance to the witness statements that made it likely that they were determinative for the outcome of the case. Finally, the ECtHR concluded that were insufficient counterbalancing factors. For example, it had not been established that the Court of Appeal was aware of the reduced evidentiary value of the witness statements due to the fact that there was no opportunity to cross-examine the witnesses. Nor was there any indication in the documents in the case of why the Court of Appeal had concluded that there was no reason to doubt the accuracy of the witness statements. Although the applicant was afforded the opportunity at the hearing to give his own version of events, this alone could not be considered a sufficient counterbalancing factor. The ECtHR concluded that the lack of an opportunity to cross-examine the prosecution witnesses at the hearing or have them cross-examined at any stage of the proceedings had rendered the trial as a whole unfair.

The ECtHR held that there had been a violation of Article 6, paragraphs 1 and 3 (d) of the Convention.

C.M.C. (34507/16, 10 January 2023)

The applicant complained that in violation of Article 6, paragraphs 1 and 3 (d) of the Convention (right to a fair trial), he was not given the opportunity to cross-examine three prosecution witnesses although their witness statements had constituted decisive evidence that led to his conviction.

The District Court had sentenced the applicant, together with others, to nine months' imprisonment for fraud and attempted fraud. The conviction was partly based on witness statements made by three victims of the applicants and his co-defendants. On appeal, Arnhem-Leeuwarden Court of Appeal rejected the applicant's request to have these witnesses cross-examined at the hearing. The Court of Appeal held that the request with respect to one of the witnesses had not been supported by reasons and that the applicant wished to cross-examine the other two witnesses about a legal question that could only be answered by the Court of Appeal itself. Furthermore, since the applicant had invoked his right to remain silent, the Court of Appeal could not see how additional statements by these three witnesses could be relevant to any decision to be taken in the proceedings. The Court of Appeal convicted the applicant on the basis of various items of evidence, including the witness statements of the three victims, and sentenced him to fifteen months' imprisonment. The Supreme Court dismissed the applicant's appeal in cassation against this judgment.

The ECtHR assessed the complaint regarding the right to cross-examine witnesses on the basis of the general principles established in its settled case law. According to these principles, the following factors must be taken into account in deciding whether there has been a violation of the right to a fair trial: (i) whether there was good reason for the lack of opportunity to cross-examine the prosecution witness(es) at the hearing; (ii) whether the statement(s) of the prosecution witness(es) constituted the sole or decisive evidence on which the conviction was based and (iii) whether there were sufficient counterbalancing factors to compensate for the handicaps faced by the defence as a result of the inability to cross-examine the witnesses at the hearing.

First, the ECtHR noted that the Court of Appeal had established no good factual or legal grounds for not offering the defence the opportunity to cross-examine the witnesses at the hearing. Furthermore, the Court of Appeal attached a degree of significance to the statements of the three witnesses that made it likely that they were determinative for the outcome of the case. Finally, the ECtHR concluded that were insufficient counterbalancing factors. For example, it had not been established that the Court of Appeal was aware of the reduced evidentiary value of the witness statements due to the fact that there was no opportunity to cross-examine the witnesses.

Although the applicant was afforded the opportunity at the hearing to give his own version of events, this alone could not be considered a sufficient counterbalancing factor. The ECtHR concluded that the lack of an opportunity to cross-examine the prosecution witnesses at the hearing or have them cross-examined at any stage of the proceedings had rendered the trial as a whole unfair.

The ECtHR held that there had been a violation of Article 6, paragraphs 1 and 3 (d) of the Convention.

F.L. (57766/19, 11 April 2023)
The applicant, a Moroccan national, claimed that the decisions to revoke his residence permit and impose an entry ban on him were in violation of Article 8 of the Convention (right to respect for private and family life) because the result would be to separate him from his children.

The applicant has lived in the Netherlands from a young age (for over 40 years). He has two children with Dutch nationality. Between 2000 and 2017 he was repeatedly convicted of drug-related offences. In 2017 the State Secretary for Justice and Security revoked the applicant's residence permit and imposed an entry ban on him on account of his criminal convictions. The applicant lodged

an objection to this decision, which was dismissed. The District Court declared unfounded an application for review of the decision to dismiss his objection. Finally, the Administrative Jurisdiction Division of the Council of State declared his appeal against the District Court's decision unfounded.

The ECtHR noted that the applicant had acknowledged paternity of only one of his minor children, did not exercise parental responsibility for the children, had spent a large part of their lives in prison and had submitted no information indicating that he had been involved in their upbringing prior to the State Secretary's decision. Nevertheless, like the national authorities, the ECtHR accepted that family life existed between the applicant and his children, observing that the children were born of a genuine relationship and that the applicant had contact with them. Referring to earlier case law, the ECtHR noted that the question of whether the interference with his family life constituted a violation of Article 8 of the Convention depends on whether the contested measure is in accordance with the law, serves a legitimate aim and is necessary in a democratic society. In assessing the proportionality of the measure, the ECtHR took *inter alia* the following factors into account: the nature and seriousness of the offences committed and the risk of reoffending, the limited ties the applicant had with his children and his ties with Morocco. In addition, the ECtHR commented that very serious reasons were required to justify the contested measure because the applicant was a settled migrant who had legally resided in the Netherlands since he was very young. Taking everything into account, the ECtHR came to the conclusion that the Government had adequately weighed up the applicant's right to respect for family life in relation to the importance of protecting public order.

The ECtHR concluded that there had been no violation of Article 8 of the Convention.

J.J. B.V. (2800/16, 16 May 2023)
The applicant company complained that the transmission of criminal case information by the Public Prosecution Service to the then Netherlands Competition Authority (NMA) was in violation of Article 8 of the Convention (right to respect for private and family life). The information had been gathered during the interception of confidential telephone conversations as part of a criminal investigation into official corruption in which the applicant company was deemed a suspect. According to the applicant company, the telephone conversations should not have been admitted as evidence since they did not qualify as 'criminal case information', which could be provided to third parties under the Judicial Data and Criminal Case Information Act. The applicant company claimed that it was not foreseeable that the information would be shared with the NMA because that information was irrelevant to the criminal investigation. Furthermore, it alleged that the Act did not contain sufficient guarantees against arbitrary interference. The applicant company also complained that, in violation of Article 13 of the Convention (right to an effective remedy), it had been denied access to an effective remedy in respect of its complaint under Article 8 of the Convention. Finally, the applicant company claimed there had been no *ex ante* judicial review of the transmission of the information to the NMA.

On 16 May 2023 the Third Section of the ECtHR gave judgment in the case and concluded that there had been no violation of Articles 8 and 13 of the Convention. By decision of 25 September 2023 the case was referred to the Grand Chamber, which will proceed to examine the issues.

S.W.O.C. B.V. (2799/16, 16 May 2023), B.H. B.V. (2799/16, 16 May 2023) and P.I. B.V. (3205/16, 16 May 2023)
The applicant companies complained that that the transmission of criminal case information by the Public Prosecution Service to the then Netherlands Competition Authority (NMA) was in violation of Article 8 of the Convention (right to respect for private and family life). The information had been gathered during the interception of confidential telephone conversations as part of a criminal investigation into breaches of the Environmental Management Act. According to the applicant

companies, the telephone conversations should not have been admitted as evidence since they did not qualify as 'criminal case information', which could be provided to third parties under the Judicial Data and Criminal Case Information Act. The applicant companies alleged that it was not foreseeable that the information would be shared with the NMA since it was irrelevant to the criminal investigation. Furthermore, they complained that the Act did not contain sufficient guarantees against arbitrary interference. The applicant companies also complained that, in violation of Article 13 of the Convention (right to an effective remedy), they had been denied access to an effective remedy in respect of their complaint under Article 8 of the Convention. Finally, the applicant companies claimed there had been no *ex ante* judicial review of the transmission of the information to the NMA.

On 16 May 2023 the Third Section of the ECtHR gave judgment in the case and concluded that there had been no violation of Articles 8 and 13 of the Convention. By decision of 25 September 2023 the case was referred to the Grand Chamber, which will proceed to examine the issues.

K.A. (8757/20, 30 May 2023)
The applicant complained that the revocation of his residence permit and the imposition of an entry ban constituted an unjustified interference with his right to respect for privacy and family life (Article 8 of the Convention).

The applicant is a Moroccan national who has resided in the Netherlands since 1982. In 1996 he was convicted of a sexual offence; the criminal court found that he was suffering from diminished responsibility due to a psychiatric disorder and he was sentenced to two years' imprisonment and placed under an order for confinement in a custodial clinic (TBS order). The TBS order was repeatedly extended but in 2016 the applicant was granted conditional release on the grounds of positive behavioural changes. His treatment to reduce the risk of reoffending continued in an assisted living facility. In 2017 the State Secretary for Justice and Security informed the applicant of his intention to revoke the applicant's residence permit on public order grounds, partly because of the conviction for a sexual offence. Subsequently the applicant's mental health deteriorated. He breached the terms of his conditional release, which led to the TBS order being reimposed. In 2018 the criminal court extended the TBS order in light of the risk of reoffending, which arose, according to the court, from uncertainty about his residence status in the Netherlands. In 2018 the State Secretary revoked the applicant's residence permit and imposed a ten-year entry ban.

The applicant argued that his medical treatment history showed that he did not pose a threat to public order and that since his conviction in 1996 he had committed no further offences. In addition, he claimed that the revocation of his residence permit was not foreseeable, since the authorities had relinquished the right to revoke it by allowing over 20 years to elapse before taking action. The applicant also argued that the various authorities had taken decisions serving contradictory aims, which had led to stagnation in his medical treatment. Furthermore, he claimed that there were insurmountable obstacles to his settling in Morocco as a result of his psychiatric disorder and the lack of prospects of the necessary external guidance available in that country.

The ECtHR held that in the revocation procedure the State Secretary had not sufficiently considered and weighed up the relevant interests. Although the criminal offences constituted very serious reasons for revoking his residence permit after a long period of legal residence, the applicant's diminished responsibility and his good behaviour during the time he was subject to treatment under the TBS order were not taken into account or given sufficient weight. The ECtHR noted that although 20 years after his treatment under the TBS order began the applicant had suffered a serious relapse, this appeared to have been caused by the State Secretary's intention to revoke his residence permit. The ECtHR dismissed the applicant's argument that on account of the lapse of time since the

offences were committed, the State Secretary no longer had the right to revoke his residence permit. Finally, the ECtHR held that the applicant had ended up in a 'status quo' situation that had impacted on his medical treatment, his reintegration and the scope for ending the TBS order. The ECtHR held that the Dutch authorities had a duty to coordinate the various procedures (TBS, revocation of his residence permit and repatriation) and to make a timely and thorough assessment of the practical feasibility of expulsion to Morocco. This assessment should also have taken into account the availability and accessibility of medical treatment there.

The ECtHR found that there had been a violation of Article 8 of the Convention.

A.M.A. (23048/19, 24 October 2023)
The applicant, a Bahraini national, complained that his removal to Bahrein was a violation of Article 3 of the Convention (prohibition of torture or inhuman or degrading treatment or punishment). In his view, the Dutch authorities had not sufficiently assessed the risk that he would be subjected to inhuman and degrading treatment if he was expelled to Bahrain. Relying on Article 13 of the Convention (right to an effective remedy) in conjunction with Article 3, he further alleged that there were no effective domestic remedies available to him to challenge his removal pending the decision on his asylum application. Under Article 46 of the Convention (binding force and execution of judgments) the applicant asked the ECtHR to order the Government to do everything in its power to end his detention in Bahrain.

The applicant had applied for asylum in the Netherlands in 2017. The Immigration and Naturalisation Service (IND) rejected his asylum application on the grounds that his statements regarding the risk he faced in Bahrain as a political activist were not considered credible. On 16 October 2018 the applicant was placed in immigration detention pending his removal to Bahrain. On 19 October 2018 he lodged a new asylum application, at the same time submitting documentation. Since the IND had concluded that it had not been established that the applicant had adduced new facts or circumstances in his second asylum application, it was decided that he would not be permitted to await the processing of his asylum application in the Netherlands. On 20 October 2018 the applicant was expelled to Bahrain. Following his expulsion the Bahrain authorities arrested him and later convicted him of supporting a terrorist group, among other offences. He is currently serving a life sentence in Bahrain.

The ECtHR dismissed the Government's submission with regard to admissibility that the applicant had failed to exhaust every available domestic remedy. It noted that the parties disagreed on the question of whether the applicant was represented by a lawyer in the procedure regarding his second asylum application. The ECtHR concluded that, in any event, no effective legal remedy had been available to the applicant. Even assuming that the applicant was represented by a lawyer, there was no indication in the case file that the authorities had enabled him to contact and consult that lawyer after the final decision of 20 October 2018 had been issued to him.

In considering the merits of the complaint under Article 3 of the Convention, the ECtHR held that the way in which the IND had assessed on 20 October 2018 whether the applicant would face a real risk of torture or inhuman or degrading treatment if he was expelled to Bahrain did not meet the procedural standards required under Article 3. Of particular relevance to this finding was the fact that the IND did not assess the documentation the applicant had submitted with his second asylum application in light of all the information available in the file regarding his individual situation and the general situation in Bahrain. In the ECtHR's view, the authorities therefore took too narrow an approach that did not ensure the careful and rigorous examination expected of them. There had consequently been a violation of Article 3 of the Convention.

In view of its conclusions regarding Article 3 of the Convention, the ECtHR found nothing to justify a separate examination of the complaint under Article 3 in conjunction with Article 13 of the Convention. Finally, with regard to the request made under Article 46 of the Convention, the ECtHR held that it was the Government's task, under the supervision of the Committee of Ministers, to implement such general measures as it considers appropriate to secure the rights of the applicant. The ECtHR did not consider it appropriate to impose (general) measures on the Government.

C.J.J.L. and others (56896/17, 56910/17, 56914/17, 56917/17 and 57307/17, 21 November 2023)
The applicants took part in a gathering in Amsterdam on 5 July 2011 aimed at preventing the eviction of squatters from a building. Under a general municipal bye-law in effect in Amsterdam, they were each sentenced to two fines of €50 for failing to comply with a police order and for disturbing public order.

The applicants complained that their arrest, deprivation of liberty and criminal convictions were incompatible with Article 11 of the Convention (freedom of assembly and association), particularly as they had no violent intentions nor did they commit any acts of violence. On the other hand, the Government argued that the gathering was not peaceful and therefore did not fall within the scope of Article 11.

First, the ECtHR concluded that Article 11 was applicable in the present case. The applicants could therefore invoke their right to freedom of peaceful assembly. Its considerations were as follows. A gathering falls within the concept of a 'peaceful assembly' within the meaning of Article 11 of the Convention if the organisers and participants are deemed not to have violent intentions. Obstructive or disruptive gatherings may also be protected under Article 11 even if such activities are not at the core of the right to peaceful assembly. And even if the applicants had wished to prevent the lawful eviction of the squatters, this was in itself insufficient to remove the applicants' participation in the gathering from the scope of protection of the right to peaceful assembly under Article 11 of the Convention. The ECtHR held that this might be a relevant factor in assessing the necessity for the authorities' intervention. It noted that no violent intentions or behaviour could be inferred from the calls posted online or the slogans chanted during the gathering. Nor could any such intentions or behaviour be inferred in itself from the fact that several participants had brought along air mattresses or wore balaclavas or other disguises. The applicants did not belong to the group of protesters who were arrested and prosecuted on suspicion of committing acts of violence against persons or property. In this context, the ECtHR recalled judgments in which it had determined that individuals are not to be held responsible for acts of violence committed by other participants in a gathering. Finally, the case file contained no indications that the applicants had personally resorted to or incited violence during the gathering. The ECtHR therefore held that the applicants were entitled to invoke the guarantees of Article 11 of the Convention and that their arrest, prosecution and convictions amounted to interference with their right to freedom of assembly.

The ECtHR further concluded that the domestic courts failed to meet the requirements of the Convention when it came to assessing the question of whether the applicants' rights under Article 11 of the Convention had been violated. In this case, the Dutch Supreme Court had confined itself to the finding that there had not been a (peaceful) demonstration; it did not examine the question of whether the applicants' arrest, prosecution and convictions were necessary in a democratic society within the meaning of Article 11, paragraph 2 of the Convention. The ECtHR therefore concluded that there had been a violation of Article 11 of the Convention.

Decisions

Ukraine and the Netherlands v. Russia (8019/16, 43800/14 and 28525/20, Decision of 30 November 2022, published on 25 January 2023) (Grand Chamber)
The Netherlands holds the Russian Federation responsible for the downing of flight MH17 and consequently for the death of the 298 victims on board the flight, for failing to carry out an effective investigation of this event and for its conduct after the downing of the aircraft, which caused the victims' next of kin severe suffering. The Netherlands has invoked Article 2 (right to life), Article 3 (prohibition of torture or inhuman or degrading treatment or punishment) and Article 13 (right to an effective remedy) of the Convention. This decision of the ECtHR is concerned with the admissibility of the Netherlands' inter-state application against Russia.

The ECtHR found that at the time of the downing of flight MH17 the Russian Federation exercised extraterritorial jurisdiction over the region in eastern Ukraine from where the missile was fired that brought flight MH17 down, over the territory above which the aircraft was hit and the area where it crashed. In the ECtHR's view, the Russian Federation exercised effective control over the areas occupied by separatists on the grounds of its active military presence there and its decisive influence over these areas as a result of its considerable military, political and financial support for the two self-declared republics in eastern Ukraine.

Furthermore, the ECtHR found that the Russian Federation had not demonstrated that there were effective legal remedies available in Russia to the victims' next of kin. It therefore dismissed Russia's objections regarding failure to exhaust effective remedies. In addition, the ECtHR held that the Russian Federation's submission that the complaints had not been submitted within the six-month time limit did not result in the application being declared inadmissible, in view of the exceptional circumstances. The ECtHR found it relevant that that there was a large degree of uncertainty after the incident, that the Russian Federation systematically denied any involvement and that the Joint Investigation Team (JIT) launched an investigation immediately after the incident and sought the assistance of the Russian Federation in that investigation. The Russian Federation's objections under Article 35 of the Convention (admissibility criteria) were dismissed.

The ECtHR then considered whether there was sufficient prima facie evidence to justify an examination of the merits.

The ECtHR found that there was sufficient evidence regarding the allegations under Article 2 of the Convention for it to proceed to examine the merits of the Netherlands' complaints. With regard to Article 3 of the Convention, the ECtHR found that, taking into account the facts and the evidence provided, there was sufficient evidence to substantiate the suffering of the victims' next of kin. The question of whether that suffering attained the minimum level of severity required by Article 3 was closely linked to the substance of the complaint under that Article and raised complex issues of fact and law. The ECtHR therefore joined this question to the merits of the case. Finally, the ECtHR also found that sufficient evidence had been adduced to proceed to the examination of the merits of the complaint under Article 13 of the Convention.

In conclusion, the ECtHR held that the Russian Federation exercised jurisdiction over the area from which flight MH17 had been downed, over the territory above which the aircraft was hit and the area in which it crashed. The complaints under Articles 2, 3 and 13 of the Convention were declared admissible. The ECtHR dismissed the Russian Federation's objections under Article 35 of the Convention.

The examination of the merits of the applications will proceed in 2024.

C.T. (20209/19, 4 May 2023)

The applicant complained under Article 6, paragraphs 1 and 3 (d) of the Convention (right to a fair trial) concerning the refusal of the Court of Appeal to re-examine a witness during the hearing in the criminal proceedings against him. The applicant and the Government reached a friendly settlement, after which the ECtHR struck the application out of the list.

G.L.H. (22069/19, 4 May 2023)
The applicant complained under Article 6, paragraphs 1 and 3 (d) of the Convention (right to a fair trial) concerning the refusal of the Court of Appeal to re-examine a witness during the hearing in the criminal proceedings against her. The applicant and the Government reached a friendly settlement, after which the ECtHR struck the application out of the list.

A.A. and others (31007/20, 4 May 2023)
The applicants, a mother and her two minor children, who had all fled from Syria, complained under Article 3 of the Convention (prohibition of torture or inhuman or degrading treatment or punishment) concerning their expulsion to Greece. The applicants had been granted international protection in that country but claimed that if they were returned to Greece they would have to live on the street. At their request, the ECtHR indicated under Rule 39 of the Rules of Court that the applicants should not be expelled to Greece (interim measure). The Government submitted observations in the case. Following two judgments of 28 July 2021 in comparable cases by the Administrative Jurisdiction Division of the Council of State, the Ministry of Foreign Affairs launched an investigation into the situation of beneficiaries of international protection in Greece. After the report of this investigation was published in June 2022, the Government informed the ECtHR that it had withdrawn the decisions that formed the basis for the expulsion of the applicants to Greece. The applicants did not respond to the letter asking if they wished to maintain their application. The ECtHR therefore struck the application out of the list.

F.K. (36141/21, 4 May 2023)
The applicant complained under Article 5, paragraphs 3 and 4 of the Convention (right to liberty and security) regarding the lawfulness of his pre-trial detention, the refusal to suspend his pre-trial detention subject to certain conditions and the speediness of these decisions. The applicant and the Government reached a friendly settlement, after which the ECtHR struck the application out of the list.

K.D. and others (52334/19, 4 May 2023)
The applicants, a Syrian family, complained under Article 2 (right to life) and Article 3 (prohibition of torture or inhuman or degrading treatment or punishment) of the Convention concerning their expulsion to Greece. They had been granted international protection in Greece but claimed that they would have no access to housing and social provision in that country. They further argued that they were vulnerable in that the family had two young children and the mother was suffering from a rare form of skin cancer. At their request, the ECtHR indicated under Rule 39 of the Rules of Court that the applicants should not be expelled to Greece (interim measure). The Government submitted observations in the case. Following two judgments of 28 July 2021 in comparable cases by the Administrative Jurisdiction Division of the Council of State, the Ministry of Foreign Affairs launched an investigation into the situation of beneficiaries of international protection in Greece. After the report of this investigation was published in June 2022, the Government informed the ECtHR that it had withdrawn the decisions that formed the basis for the expulsion of the applicants to Greece. The applicants did not respond to the letter asking if they wished to maintain their application. The ECtHR therefore struck the application out of the list.

S.M. (31212/20, 17 May 2023)

The applicant complained under Article 5, paragraph 3 of the Convention (right to liberty and security) regarding the lawfulness of his pre-trial detention and the refusal to suspend his pre-trial detention subject to certain conditions. The applicant and the Government reached a friendly settlement, after which the ECtHR struck the application out of the list.

R.H. (18138/20, 14 September 2023)
The applicant complained under Article 5, paragraph 3 of the Convention (right to liberty and security) regarding the lawfulness of his pre-trial detention. In response to the application, the Government submitted a proposal for a friendly settlement. The applicant did not respond to the proposal. After being informed by the applicant's (former) lawyer that he no longer represented the applicant, the ECtHR asked the applicant to designate a new representative and to respond to the Government's proposal. The applicant failed to reply. The ECtHR concluded that he no longer wished to pursue the application and struck the case out of the list.

G.G. and others (34425/22, 23 November 2023)
The applicants, Eritrean nationals, complained that the Government's dismissal of their requests for family reunification with their brother, who already resided in the Netherlands, had violated their rights under Article 8 of the Convention (right to respect for privacy and family life).

On 16 August 2023 the Government informed the ECtHR that after further study, it had decided to grant the request for family reunification and asked for the case out to be struck out of the list. The applicants agreed to this. The ECtHR concluded that it was not required to continue the examination of the application, and accordingly struck the application out of the list.

Interventions

K.J.B. and others v. Russia (22515/14, 27 June 2023)
The applicants are 30 Greenpeace activists including two freelance journalists. They had travelled on board the *Arctic Sunrise*, a vessel sailing under the flag of the Netherlands, to the offshore oil production platform *Prirazlomnaya* (located within Russia's exclusive economic zone) in order to stage a peaceful protest. Russian State agents detained two of the applicants who were trying to scale the platform and, after holding them on a Russian vessel for one day, took them back to the *Arctic Sunrise*. The Russian Coast Guard then towed the Arctic Sunrise over a period of five days into Russian territorial waters; the applicants were subsequently arrested and placed in detention pending criminal proceedings on charges of piracy. Following various domestic proceedings, the applicants were released on bail after two months. The applicants complained that the two individuals who were arrested while attempting to scale the platform were detained on the Russian vessel in violation of Article 5 of the Convention (right to liberty and security); and furthermore, that in violation of that same Article, they were all held in detention on the *Arctic Sunrise* while it was being towed. In addition, the applicants complained that their arrest, detention and prosecution were in violation of Article 10 of the Convention (freedom of expression).

Together with a number of other States, the Netherlands lodged a third-party intervention in the case. In its intervention, the Netherlands supported the applicants' complaint that they had been deprived of their liberty in violation of Article 5 of the Convention and that Article 10 had been violated because the applicants' arrest and detention had unlawfully interfered with their right to freedom of expression.

The ECtHR noted that the applicants had been detained on the Russian vessel and the *Arctic Sunrise*. Their detention was not logged or recorded in any way and the Russian Government had given no plausible explanation for this. Subsequently, the Russian courts wrongly failed to address this issue.

The ECtHR concluded that their unacknowledged detention constituted a grave violation of Article 5 of the Convention. It further concluded that although the applicants' detention once they were on Russian territory was recorded, it was arbitrary. In this context, the ECtHR held that the Russian authorities adopted inconsistent and mutually exclusive interpretations of the criminal law provisions on piracy.

The ECtHR then held that the arrest, detention and prosecution of the applicants constituted an interference with their right to express their opinions on a matter of significant social interest. Because the arrest and detention had been arbitrary, they were not prescribed by law. For this reason alone, the ECtHR concluded that the interference had been in violation of Article 10 of the Convention.

In conclusion, the ECtHR held that Articles 5 and 10 of the Convention had been violated.

T. v. Poland (21181/19 and 51751/20, 6 July 2023)
The applicant, a Polish judge, complained that a number of preliminary inquiries concerning him which were initiated by the disciplinary officer for ordinary court judges in Poland, together with the decision of the Disciplinary Chamber of the Supreme Court lifting his immunity from prosecution and suspending him from judicial duties, were in violation of Articles 6, 8 and 10 of the Convention. Relying on Article 6, paragraph 1 of the Convention (right to a fair trial), the applicant alleged that the decisions to lift his immunity from prosecution and suspend him from judicial duties were not taken by an 'independent and impartial tribunal established by law'. He further argued that these measures amounted to legal harassment and cast doubt on his reputation as a judge. In his view, that was incompatible with Article 8 of the Convention (right to respect for privacy and family life). The applicant viewed these measures as retaliation for his public criticism of the authorities and considered that they undermined the independence of the judiciary, in violation of Article 10 of the Convention (freedom of expression). In the applicant's opinion, the measures were designed to intimidate all judges in Poland. Furthermore, he claimed under Article 13 of the Convention (right to an effective remedy) that no legal remedies were available to him to challenge the interference in his private life.

In its intervention the Netherlands emphasised the importance of this judgment for the protection of the rule of law in Europe. In addition, it pointed out that the independence of the judiciary and the rule of law are closely connected. The ECtHR's case law on Article 6 requires, *inter alia*, that the selection and recruitment procedure for judges contains the necessary safeguards. The Netherlands also referred in its intervention to the ECtHR's relevant case law regarding Article 8 of the Convention, which makes it clear that the right to respect for private life also extends to professional relationships. In the context of Article 10 of the Convention, the Netherlands submitted that even if the topic of debate might have political implications, this in itself was not sufficient to prevent judges from expressing their view on the matter.

With regard to the complaint under Article 6 of the Convention relating to the applicant's suspension, the ECtHR held that his reinstatement and the reimbursement of his salary as a result of the Resolution of the Polish Chamber of Professional Liability (which replaced the Disciplinary Chamber of the Supreme Court) constituted sufficient redress. Since the applicant could no longer be regarded as a victim in this context, the ECtHR declared this part of the application inadmissible.

The complaint regarding the lifting of the applicant's immunity from prosecution was declared admissible. Although the Chamber of Professional Liability had found that the applicant had not committed any criminal offence, the lifting of his immunity remained in force and the criminal proceedings against him were still pending. The ECtHR further concluded that the criminal limb of

Article 6, paragraph 1 of the Convention was applicable to the immunity procedure. It held that the Disciplinary Chamber of the Polish Supreme Court, which had examined the case, was not an 'independent and impartial tribunal established by law'. There had therefore been a violation of Article 6, paragraph 1 of the Convention.

The ECtHR noted that the measures had had a considerable impact on the applicant's private life. The measures were not 'in accordance with the law' and thus were incompatible with Article 8 of the Convention. In light of its findings with regard to Article 8, the ECtHR did not consider it necessary to examine separately the complaint under Article 13 of the Convention.

In addition, the ECtHR concluded that there had been an interference with the right to freedom of expression. The lifting of the applicant's immunity was prompted by his criticism of reforms affecting the judiciary in Poland. This interference was not 'prescribed by law'. Nor could the decision to lift his immunity and suspend him from judicial duties be regarded as lawful since the Disciplinary Chamber of the Polish Supreme Court could not be regarded as a 'tribunal' that complied with the Convention. The ECtHR further could not accept that the interference with the applicant's right to freedom of expression pursued any legitimate aim and concluded that there had been a violation of Article 10.

The ECtHR concluded that there had been a violation of Article 6, paragraph 1, Article 8 and Article 10 of the Convention.

European Committee of Social Rights

In 2023 no new complaints were lodged with the European Committee of Social Rights under the collective complaints procedure of the European Social Charter. Nor were there any developments with regard to reporting on decisions with respect to complaints.

Committee of Ministers

End of supervision

In 2023 the Committee of Ministers determined that supervision of execution in a number of cases would be closed. These were: C.T. (20209/19, 4 May 2023), G.L.H. (22069/19, 4 May 2023), S.M. (31212/20, 17 May 2023) and F.K. (36141/21, 4 May 2023).

Supervision of ECtHR judgments[1]

J.C.M. (10511/10, 26 April 2016)
In this case the ECtHR ruled that the life sentence imposed in Curaçao and Aruba on the applicant, who suffered from mental illness, was *de jure* and *de facto* irreducible since no form of treatment was available to him. This constituted a violation of Article 3 of the Convention (prohibition of torture or inhuman or degrading treatment or punishment).

[1] Measures taken by the Government to execute ECtHR judgments in the reporting year which have previously been reported on and which were transmitted to the Committee of Ministers in the framework of its responsibility to supervise the execution of judgments under Article 46, paragraph 2 of the Convention. See Annexe I for an overview of all cases under supervision and those where supervision was closed in the reporting year.

In 2014 the applicant was granted a pardon and in 2016 his costs and expenses were reimbursed. In 2017, 2019 and 2021 the Committee of Ministers was informed of general measures taken or envisaged by Curaçao and Aruba to execute the judgment. On 30 August 2023 the Government again reported in detail on progress with regard to these measures. The situation in St Maarten was also taken into account.

Within the Kingdom of the Netherlands, cooperation in the Judicial Four-Party Consultation (JVO) continues with the aim of achieving forensic care for detainees suffering from serious mental illness. A national forensic care coordinator has been appointed in each of the four countries. In addition, a dedicated detention task force is responsible for drawing up proposals for alternatives to detention and preparing ex-detainees for their return to the community. Furthermore, prison governors in all the countries work together to gather knowledge about rehabilitation in general and forensic care in particular.

On 21 April 2023 guidelines on the enforcement of life sentences (*Richtlijn bij tenuitvoerlegging levenslange gevangenisstraf Curaçao*) were published in the Government Gazette of Curaçao.[2] The guidelines serve to clarify the legal status of life sentence prisoners and to elaborate on article 1:30 of the Criminal Code of Curaçao. Enforcement is reviewed by the Joint Court of Justice of Aruba, Curaçao and St Maarten and of Bonaire, St Eustatius and Saba (Joint Court of Justice). The guidelines are a provisional arrangement pending the enactment of a national ordinance and fulfil Curaçao's obligation to provide life sentence prisoners with the opportunity for rehabilitation, social rehabilitation and reintegration into the community. After the judgment in their case has become final, a plan is drawn up together with the convicted person setting out their future prospects, as well as a treatment plan. Once the prisoner has served 15 years, preparations are made for the review procedure. After 20 years of detention, the Joint Court of Justice examines whether the life sentence prisoner is eligible for release on parole.

Aruba and St Maarten now have a similar review procedure, according to which the Joint Court of Justice decides, after 20 years of a life sentence have been served, whether the prisoner is eligible for release on parole. Aruba has also launched a twinning project in which staff of the Aruban Correctional Facility will receive further training in forensic care.

F.C. (29593/17, 9 October 2018)
The ECtHR ruled in 2018 that the conditions of the applicant's detention in St Maarten were in breach of Article 3 of the Convention (prohibition of torture or inhuman or degrading treatment or punishment) because he had been held in the detention facility for over eight months, while the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) had found the conditions in the facility to be so poor that no-one should be held there for more than 10 days.

Since 2019 the Committee of Ministers has been regularly informed of measures taken to execute the ECtHR's judgment. On 25 October 2023, the Government submitted its latest report to the Committee of Ministers on the execution of the judgment and large-scale reforms to the detention system in St Maarten. The report described steps already taken and envisaged to improve provision in the detention facility of Philipsburg Police Station where the applicant was held, taking into account the most recent recommendations of the CPT. In addition, the Government referred to the policy of the Public Prosecutor's Office, which is that detainees should not be held there for longer than 10 days. However, it also cited the dilemmas faced by the Public Prosecutor's Office because of the limited detention capacity in St Maarten. Furthermore, the Government described cooperation within the Kingdom on improving the overall detention system in St Maarten, including the

[2] https://gobiernu.cw/nl/landscourant/editie-no-16-jaargang-2023/ (in Dutch)).

construction of a new multifunctional detention centre, for which the Ministry of the Interior and Kingdom Relations had made €30 million available, €20 million of which was earmarked for the construction of a new prison. To this end, an agreement was concluded with the United Nations Office for Project Services (UNOPS) for the first phase of the project, which consists of two elements: (1) the design of a long-term facility and (2) the procurement process for this facility. The second phase of the project, for which no contract has yet been signed, consists of the actual construction of the facility.

As part of the country package for St Maarten the Government has earmarked a one-off sum of €10 million spread over five years (2022 - 2026) to introduce broader improvements in the detention system. In addition, ongoing technical and financial support was provided to St Maarten in 2023.

The measures were discussed once again at a meeting of the Committee of Ministers on 6 December 2023. At this meeting, the Minister of Justice of St Maarten, Anne E. Richardson, emphasised once again the importance that St Maarten attaches to the full execution of the ECtHR's judgment in this case, and to the prevention of future violations through a complete reform of the present detention system and the promotion of alternatives to detention.

V.K. (2205/16, 19 January 2021)
In this case the ECtHR ruled that Article 6, paragraphs 1 and 3 (b) of the Convention (right to a fair trial) had been violated since in criminal proceedings for fraud conducted between 2013 and 2015 the domestic courts had refused to allow the applicant to cross-examine seven prosecution witnesses.

On 19 October 2021 the Government informed the Committee of Ministers of the measures it had taken to execute the judgment. The amount in costs and expenses awarded to the applicant by the ECtHR had been paid. The applicant had also made use of the option under article 457, paragraph 1 (b) of the Code of Criminal procedure to lodge an application for a retrial with the Supreme Court.

On 14 December 2021 the Supreme Court granted the application for a retrial and referred the case to 's-Hertogenbosch Court of Appeal. The Court of Appeal heard the case on 5 October 2022 and stayed the proceedings in order to be able to hear witnesses, including the seven prosecution witnesses referred to above.

In the course of 2023 the Government sent further information to the Committee of Ministers regarding the execution of the judgment. With regard to general measures, the Government noted that national legislation was not incompatible with the Convention. The judgment had been brought to the attention of the Council for the Judiciary, the Supreme Court and the Public Prosecution Service. Within the Public Prosecution Service, public prosecutors with special responsibility for training and quality had issued guidelines explaining the ECtHR's judgment in this case and providing advice on its application in practice.

On 20 April 2021 the Supreme Court handed down a new general ruling on the right to cross-examine witnesses. In this ruling, the Supreme Court explained that the ECtHR's judgment in the present case gave reason to amend the requirements formulated in previous Supreme Court judgments regarding the substantiation of requests from the defence to summon and cross-examine witnesses. In cases in which a witness had made statements of an incriminating nature, the Supreme Court held that the defence's interest in summoning and examining that witness must be presumed, so that the defence cannot be required to further substantiate that interest (ECLI:NL:HR:2021:576).

M.M. (10982/15, 9 February 2021)

In this case the ECtHR found a violation of Article 5, paragraph 3 of the Convention (right to liberty and security) as the decisions of the domestic court on the extension of his pre-trial detention had been insufficiently substantiated.

On 18 March 2022 and 25 November 2022 the Government reported on the progress made in the execution of this judgment. The amounts awarded to M.M. by the ECtHR for non-pecuniary damage had been paid in 2021. With regard to general measures, the Government concluded that the violations did not stem from legislation.

More generally, the Government noted that the substantiation of decisions regarding pre-trial detention and its extension had been the subject of debate in the Netherlands for some time, both within and beyond the judiciary. The Netherlands Institute for Human Rights, for example, conducted a study early in 2017 of how the courts substantiate decisions on pre-trial detention. It showed that the courts often gave insufficient written reasons to underpin such decisions. In 2023 further consultations took place with the Netherlands Institute for Human Rights on the implementation of this judgment.

In recent years improvements have been implemented, including the introduction of professional standards developed by the courts. These stipulate that decisions on pre-trial detention must be fully substantiated. In the past courts had made use of a standard form with tick boxes indicating the applicable grounds from the Code of Criminal Procedure and containing standard text blocks. These standard forms have been replaced by orders which leave space for the court to give its own reasoning underpinning the decision on pre-trial detention. In 2016 all Dutch district courts began implementing the professional standards referred to above.

Partly in the light of the improvements introduced, and the fact that the cases at issue are five to six years old**,** the National Committee on Criminal Law Matters (LOVS) sent a questionnaire to the district courts and courts of appeal to obtain a picture of how the new system is working in relation to pre-trial detention decisions. As yet no report has been drawn up on their responses, but the national picture that emerged was that in recent years more attention has been devoted to the substantiation of pre-trial detention decisions and that the standard form with tick boxes seems no longer to be in use.

On 9 November 2021 the Supreme Court gave judgment in a case involving a complaint concerning decisions on pre-trial detention taken by a court of appeal (ECLI:NL:GHSHE:2021:91). In this judgment the Supreme Court held that decisions on pre-trial detention must always give reasons specifically based on the case at hand. In the literature it has been noted that, following the Supreme Court judgment and three ECtHR judgments (including the present judgment), there appears to have been a cautiously positive development in this area.

The ECtHR judgments in this and related cases have been brought to the attention of the Council for the Judiciary, the Supreme Court and the Public Prosecution Service.

On 26 September 2023 the Government again submitted a report to the Committee of Ministers on measures to execute the judgment, enclosing several judgments from district courts and courts of appeal in different parts of the country which demonstrate the new approach taken by them in making their assessment. Supervision continues in this case.

United Nations

Human Rights Committee

Decisions

J.S. (3210/2018, 22 March 2023)
The author claimed that the State party had violated his rights under article 2, paragraph 3 (right to an effective remedy), article 4, paragraph 2 (articles from which no derogation may be made), article 7 (prohibition of torture or cruel, inhuman or degrading treatment or punishment), article 9 (right to liberty and security of person) and article 10 (obligation to treat persons deprived of their liberty with humanity and respect for their inherent dignity) of the International Covenant on Civil and Political Rights (the Covenant).

The author alleged that the violent manner in which he was arrested was incompatible with article 9, paragraph 1 and article 10 of the Covenant. Furthermore, he argued that the police officers involved were not held responsible for their conduct. The author further claimed that the domestic courts failed to sufficiently provide a reason for their rulings that his arrest was lawful. He stated that his request to have his initial statements excluded from the evidence was dismissed without any reasons being given, which in his view constituted a violation of article 7, article 2, paragraph 3 and article 4, paragraph 2 of the Covenant. Moreover, he alleged that, in violation of article 9, paragraph 2 of the Covenant, he was not informed at the time of his arrest of the reasons for his arrest or of the charges against him.

The author had been arrested on charges of rape and illegal restraint of a minor. He was subsequently convicted and sentenced to six years' imprisonment by the District Court. He claimed that his arrest was unlawful because the police officers were not wearing uniforms, did not identify themselves, did not inform him of his rights, pointed a gun at him, blindfolded him and forcefully put him in a car. The author alleged that his initial statements were made under psychological stress; those statements were later used against him in court. The District Court ruled that the arrest was lawful. The author lodged an appeal against this judgment with the Court of Appeal, which upheld the ruling of the District Court. He then lodged an appeal in cassation with the Supreme Court, which found his appeal to be inadmissible. The author subsequently lodged an application before the European Court of Human Rights, claiming violations of his rights under Article 3 (prohibition of torture or inhuman or degrading treatment or punishment, Article 6 (right to a fair trial) and Article 13 (right to an effective remedy) of the European Convention on Human Rights. That Court declared the complaints inadmissible.

The Human Rights Committee (the Committee) concluded that the author did not present any information or adduce any evidence in the domestic proceedings to substantiate his complaints under article 7, article 10, article 2, paragraph 3 and article 4, paragraph 2 of the Covenant. The Committee declared these complaints inadmissible on the grounds that domestic remedies had not been exhausted. It further concluded that the author had failed to sufficiently substantiate his complaints under article 9 of the Covenant, read alone and in conjunction with article 2, paragraph 3 of the Covenant: he had provided no specific information or arguments that would refute the findings of the domestic courts as to the lawfulness of his arrest. The Committee therefore found these complaints too to be inadmissible.

A.D.N. (2894/2016, 22 March 2023)

The author, a Somali national, resides illegally in the Netherlands. He claimed that the State party had violated his rights under article 7 of the Covenant (prohibition of torture or cruel, inhuman or degrading treatment or punishment) by failing to provide him with unconditional accommodation and support and by subjecting him to inhumane conditions in the 'Vluchtgarage' (a squat run by a collective of undocumented migrants) in Amsterdam. He further claimed that access to shelter in restrictive accommodation was not available to him. The Committee held that the author had not exhausted all available domestic remedies and had insufficiently substantiated his complaints. The Committee therefore declared the communication inadmissible.

G.J. (2958/2017, 19 July 2023)
The author, a former Minister of Finance of Curaçao, claimed that the State party had violated his rights under article 14, paragraphs 1, 2 and 3 (c) (right to a fair trial) and article 25 (right to take part in the conduct of public affairs), read in conjunction with article 2, paragraph 3 (right to an effective remedy) of the Covenant.

The author claimed that the State party had violated his right to a fair trial at the pre-trial stage. He was suspected of involvement in the murder of a member of the Curaçao Parliament in 2013. In addition, the author complained under article 25 of the Covenant that his wish to be considered for another position as government minister was being thwarted due to his status as a suspect in a criminal case.

The State party argued that the author's communication was inadmissible for failure to exhaust domestic remedies. It pointed out that the author could have requested the national authorities to discontinue the criminal investigation or impose a time limit for concluding it. In addition, the State party noted that, at the time when the author submitted his communication, no proceedings on the merits had taken place in the criminal case at issue, and that in any such proceedings he would be able to invoke article 14 of the Covenant. He would also be able to invoke article 14 in any appeal proceedings before the Joint Court of Justice and subsequently in an appeal in cassation before the Supreme Court of the Kingdom of the Netherlands. Finally, there was also the option of bringing a civil action against the State.

The Committee concurred with the arguments of the State party and concluded that the author had not exhausted domestic remedies. It further commented that the author had failed to sufficiently substantiate his claim under article 25, read in conjunction with article 2, paragraph 3 of the Covenant. The Committee therefore declared the communication inadmissible.

M.S. and others (4254/2022, 24 October 2023)
The authors, a single mother and her two sons, all from Colombia, claimed that their expulsion to Colombia would be in violation of article 7 (non-refoulement) of the Covenant. They also claimed that no effective remedy had been available to them (article 2, paragraph 3 of the Covenant). The State party decided to grant the authors asylum residence permits, after which the authors informed the Committee that they wished to withdraw their communication. The Committee therefore decided to discontinue consideration of the communication.

S.E.H. (3236/2018, 31 October 2023)
The author is a Dutch national who was born in the European part of the Netherlands. He claimed that the State party had violated his rights under article 7 (prohibition of torture or cruel, inhuman or degrading treatment or punishment), article 12, paragraph 1 (right to liberty of movement) and article 12, paragraph 4 (right to enter one's own country) of the Covenant, read alone and in conjunction with article 2, paragraph 1 (prohibition of discrimination) and article 26 (equality before the law and prohibition of discrimination) by imposing an exclusion order on him and expelling him

from Bonaire to Curaçao. The author claimed that he had the right to stay in Bonaire or, alternatively, that he should have been removed to the European part of the Netherlands. In addition, he argued that the reservation entered by the State party to article 12 of the Covenant is incompatible with the Covenant's object and purpose.

The Committee noted that the author had not exhausted domestic remedies in relation to his claim under article 7 of the Covenant and declared it inadmissible. The Committee further held that the author had failed to sufficiently substantiate his claim that his right to liberty of movement and freedom to choose one's residence had been violated. The decision to expel the author was based on his unlawful residence and repeated criminal activities in Bonaire. Furthermore, the Committee found that the author had not demonstrated that the assessment of his individual circumstances by the national authorities had been arbitrary or disproportionate. It declared his claim under article 12 of the Covenant inadmissible too. The Committee further held that the author's complaint regarding the State party's reservation to article 12 of the Covenant was insufficiently substantiated and declared this part of the author's claim under article 12 inadmissible. Finally, the Committee concluded that the claim regarding the violation of the prohibition of discrimination was inadmissible since the author had failed to sufficiently substantiate his argument that his expulsion was discriminatory.

Implementation of earlier Views

D.J. (3256/2018, 2 September 2022)
In 2022, the Committee concluded in its Views that the author's rights under article 14, paragraph 5 of the Covenant (right to have conviction and sentence reviewed by a higher tribunal) had been violated. The Committee recalled that while States parties are free to determine the modalities of appeal in criminal cases, they are obliged under article 14, paragraph 5 of the Covenant to ensure that a higher tribunal can review substantively the conviction and sentence. A review that is limited to the formal or legal aspects of the conviction without any consideration whatsoever of the facts is not sufficient. According to the Committee's case law, article 14, paragraph 5 of the Covenant does not require a full retrial or a hearing, as long as the tribunal carrying out the review can also look at the factual dimensions of the case. Furthermore, article 14, paragraph 5 of the Covenant is also applicable if the higher tribunal increases the sentence.

In this case the Committee noted that the Supreme Court's judgment dismissing the author's appeal in cassation did not contain any reference to or assessment of the facts or the evidence on which the Court of Appeal had based its conviction of the author. In this light, the Committee held that the Supreme Court had not provided adequate details regarding its consideration of the lawfulness and sufficiency of the facts and evidence, nor had it given sufficient account of the reasons underlying its reassessment of the case. The Committee concluded that the Supreme Court did not properly assess the sufficiency of the facts and the incriminating evidence that supported the author's conviction on appeal for the second murder, since – bearing in mind the nature of cassation proceedings and the absence of any reasoning to the contrary – the main reasons for the dismissal of the author's appeal in cassation were legal considerations, not a review of the facts, as the Committee's case law requires. In these specific circumstances, therefore, the Committee found that it had not been established that the Supreme Court had sufficiently reviewed the facts and evidence. The Committee concluded that there had been a violation of article 14, paragraph 5 of the Covenant.

The State party reported for the first time in 2023 on its implementation of these Views. The report cites a Supreme Court judgment of 24 January 2023 (ECLI:NL:HR:2023:40). In this judgment the Supreme Court considered the Views of the Committee and the disposal of cases under application of sections 80a and 81, subsection 1 of the Judiciary (Organisation) Act where a person is convicted

on appeal of an offence of which they were acquitted at first instance. In its judgment the Supreme Court emphasised that its review of the evidence used by the court deciding questions of fact can extend not only to an assessment of whether there is evidence that satisfies the statutory requirements but also of whether the evidence used by the court deciding questions of fact supports the finding of charges proven. The Supreme Court can also examine whether the factual conclusions drawn by that lower court are understandable and whether the court deciding questions of fact responded satisfactorily to the substantiated views regarding the decision on the evidence, such as views on the reliability of witnesses' statements and the plausibility of the alternative scenarios. The Supreme Court stressed that in cassation proceedings, even in cases in which an abridged statement of reasons is provided, a substantive assessment is made of both the legal and factual grounds of a conviction and sentence. Nevertheless, the Supreme Court considered that, in cases where conviction on appeal follows for an offence for which the defendant was acquitted in first instance and in cassation the evidence of that offence is unsuccessfully challenged, these Views warrant disposing of appeals in cassation more frequently by providing reasoning that relates more specifically to the actual case.

The State party informed the Committee that – as demonstrated by this Supreme Court judgment – the relevant legal framework as well as legal practice in the Netherlands comply with the requirements of article 14, paragraph 5 of the Covenant.

Committee on the Elimination of Discrimination against Women

Decisions

H.O. (178/2022, 19 May 2023)
The author, a Nigerian national, complained that by revoking her residence permit the State party had violated article 6 (suppression of all forms of traffic in women and exploitation of prostitution) of the Convention on the Elimination of All Forms of Discrimination against Women. She claimed that she had received insufficient protection as a victim of human trafficking and that if she was returned to Nigeria she would again become a victim of trafficking. The author informed the Committee that she wished to withdraw her communication because, having been granted a residence permit in the Netherlands, she no longer faced expulsion to Nigeria. The Committee therefore decided to discontinue its consideration of the communication.

Committee against Torture

Decisions

J.T. (991/2020, 21 April 2023)
The complainant, a Sri Lankan national, claimed that he would face a real risk of a violation of article 3 (prohibition of refoulement) of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment if he returned to Sri Lanka.

The complainant alleged that the State party was wrong to conclude that there was no real, personal and imminent risk of being subjected to torture if he was expelled to Sri Lanka. He claimed that the State party did not adequately assess the risk factors in his case and should have viewed them in light of the general situation in Sri Lanka. He specified a number of such factors. For example, he asserted that he was known to the Sri Lankan authorities as a member of the Liberation Tigers of Eelam Tamil (LTTE) or was suspected of participating in its activities. He also claimed that he had scars as result of previous inhuman treatment and that the Netherlands is known as a fund-raising centre for the LTTE. In addition, he stated that he did not possess an identity document and that the Sri Lankan authorities were aware of the fact that he had applied for asylum abroad and had left Sri Lanka illegally. Furthermore, he pointed out that the Sri Lankan authorities knew that some of his family members are active in the LTTE and that he himself had participated in political activities in the Netherlands. Finally, he explained that he had engaged in the voluntary return procedure merely to avoid a forced return.

The Committee against Torture concluded that the expulsion of the complainant to Sri Lanka would not constitute a breach of article 3 of the Convention. On the basis of the information in the case file, the Committee was not in a position to confirm the complainant's account or to determine the existence of a personal, foreseeable, real and present risk of his being subjected to torture if returned to Sri Lanka. The Committee held that the complainant had not convincingly demonstrated that his alleged membership of the LTTE and a meeting at the Sri Lankan Embassy in The Hague had attracted the interest of the authorities in his country of origin. The Committee concluded that the information provided by the complainant did not demonstrate that he would personally be at risk of torture or inhuman or degrading treatment in the event of his return to Sri Lanka.

Other developments

Council of Europe[3]

Summit in Reykjavik

On 16 and 17 May 2023 the fourth summit in the history of the Council of Europe took place in Reykjavik, Iceland. The immediate reason for the summit was the Russian aggression against Ukraine, a member state of the Council of Europe.

In addition to support for Ukraine, which included the establishment of a Register of Damage and a robust final declaration reaffirming the core values on which the Council of Europe is based, the summit focused on the internal organisation of the Council of Europe. The final declaration also resolved to ensure the allocation of more resources to the ECtHR and to continue efforts to improve the supervision of the execution of judgments.

ECHR system: efforts of the working groups under the Steering Committee for Human Rights

At a meeting held in late November 2023, the Steering Committee for Human Rights (CDDH) adopted the report on issues related to judges of the ECtHR drawn up by the drafting group concerned with these issues (DH-SYSC-JC), and presented it to the Committee of Ministers. The report calls for due recognition of the (legal) status of judges during and after their term in Strasbourg, without proposing any far-reaching changes to the selection and election procedure or judges' term of office. In 2023 the drafting group on human rights in situations of crisis (CDDH-SCR) produced a report on member states' practice in relation to derogations from the ECHR in situations of crisis (Article 15 of the ECHR), which also included a toolkit for human rights impact assessment of the measures taken by the State in situations of crisis. In 2024 the drafting group will focus on a non-binding legal instrument on the effective protection of human rights in situations of crisis, based on lessons learned from the COVID-19 pandemic.

After two years of resumed negotiations, provisional agreement was reached in April 2023 by the CDDH ad-hoc negotiation group ('46+1 Group') on the accession of the EU to the ECHR. The negotiations were prompted by an opinion of the Court of Justice of the European Union (CJEU) in which the CJEU held that the previous agreement was incompatible with EU law in a number of respects. The only outstanding issue before a final agreement can be reached and the accession of the EU to the ECHR can be realised is the objection raised by the CJEU regarding the Common Foreign and Security Policy (CFSP). In brief, the CJEU found it problematic that after accession, the ECtHR would be empowered to rule on acts performed in the context of the CFSP whose legality the CJEU would be unable to review for want of jurisdiction. There is no solution to this problem in the provisional agreement, although the EU has undertaken to resolve the matter internally.

At its November 2023 meeting, the CDDH also established three new drafting groups: DH-SYSC-PRO, which will evaluate the first effects of Protocols Nos. 15 and 16; CDDH-IA, which will prepare a draft CDDH handbook on human rights and artificial intelligence; and CDDH-ELI, which will examine the need for and feasibility of additional non-binding instruments to complement the 2011 Committee of Ministers' Guidelines on the eradication of impunity for serious human rights violations.

Protocol No. 16 to the ECHR

[3] Documents relating to these issues can be found at www.coe.int.

In 2023 the ECtHR issued two advisory opinions. The first was issued at the request of the Supreme Court of Finland and related to Article 6 (right to a fair trial) and Article 8 (right to respect for private and family life) of the ECHR. The case concerned the procedural rights of a biological parent in adoption proceedings involving an adult child. The second was requested by the Belgian Council of State and related to Article 9 of the ECHR (right to freedom of thought, conscience and religion). The case concerned the refusal to grant authorisation to work as a security guard to an individual considered to be a supporter of the Salafist ideology. To date, none of the Netherlands' highest courts have submitted a request to the ECtHR for an advisory opinion.

In 2022, in response to an undertaking given to the House of Representatives in 2017 by the then Minister of Security and Justice, the Research and Documentation Centre (WODC) of the Ministry of Justice and Security commissioned an evaluation of the effects of Protocol No. 16. The evaluation was carried out by the University of Utrecht and sent to the House of Representatives by the Minister for Legal Protection in September 2023.

The evaluation report concluded that more experience with the Protocol was needed to be able to assess whether the advisory opinion procedure: (1) makes a positive contribution to implementing the ECHR at national level and enhancing the dialogue between national courts and the ECtHR, and (2) leads to greater efficiency. The initial experiences of courts in other European countries that have made use of the procedure are positive. The Dutch courts too appear to appreciate the added value of the procedure. On the basis of interviews with judges, the evaluation report formulated criteria to determine whether there is good reason to submit a request for an advisory opinion.

Environment and human rights

In 2023, the Netherlands submitted written observations in the Grand Chamber proceedings in the case of *Duarte Agostinho and others v. the Netherlands and 32 others* (39371/20), in which six Portuguese children and young adults complained of the failure of the respondent States to take sufficient measures to combat climate change. In September 2023 it also submitted oral observations at the hearing. On 9 April 2024 the ECtHR declared the application inadmissible. With regard to the right to a clean, healthy and sustainable environment, the Committee of Ministers recommended in 2023 that all the member states of the Council of Europe reflect on the nature and content of this right and on that basis consider recognising this right at national level.

Finally, in 2023 the Netherlands took part in CDDH-ENV, the drafting group that under the mandate of CDDH concerns itself with the environment and human rights. This drafting group is currently considering the need for and feasibility of further instruments in this field. The draft report is expected to be completed in 2024.

Supervision of execution

The Kingdom of the Netherlands has been making every effort to execute the 2018 judgment in the Corallo case, in which the ECtHR found a violation of Article 3 of the ECHR on account of detention conditions in St Maarten. This is the only case against the Kingdom of the Netherlands which is subject to the enhanced supervision procedure of the Committee of Ministers. In December 2023 the Committee of Ministers met to discuss the execution of ECtHR judgments, including in the Corallo case. The Committee of Ministers welcomed the presence of Anne E. Richardson, Minister of Justice of St Maarten, and the positive steps which had been taken to improve detention conditions. These included the start of phase one of a project agreed with the United Nations Office for Project Services (entailing preparations for the construction of a new detention centre). However, the

Committee again expressed concern about the pace at which improvements were taking place. A summary of the efforts being made by St Maarten and the Netherlands to prevent further violations through a complete reorganisation of the detention system can be found earlier in this report, under the heading *Supervision of ECtHR judgments*.

One consequence of rising international tensions is increased pressure on the supervision process. For example, since its exclusion from the Council of Europe in March 2022, Russia has refused to execute the judgments of the ECtHR, even though it remains legally obliged to do so. Similarly, other international conflicts or tensions, such as those between Armenia and Azerbaijan or between Türkiye and Cyprus, complicate the Committee of Ministers' supervisory role. In addition, Türkiye has failed to execute a number of important ECtHR judgments, including in the Kavala case, which has remained high on the Committee's agenda for a considerable time. The case concerns the detention of Mehmet Osman Kavala, the Turkish philanthropist and human rights defender. In 2017 Kavala was arrested by the Turkish authorities on suspicion of involvement in anti-government demonstrations in 2013. In 2019 the ECtHR held that there were no reasonable suspicions against him and that the purposes of his prosecution and detention had been other than those prescribed by the Convention, namely to silence him and to dissuade other human rights defenders. The ECtHR therefore held that Türkiye should immediately release him. Türkiye failed to execute this ruling. The Committee of Ministers launched infringement proceedings and on 11 July 2022 the ECtHR ruled that Türkiye had failed to abide by its judgment. Since then Kavala has been sentenced to life imprisonment on the charges for which the ECtHR had ruled he could not be prosecuted. The Committee of Ministers is now exploring the options for follow-up steps focused primarily on strengthening the political dialogue. The Netherlands continues to raise the matter at high level with the Turkish authorities

In 2023 the Netherlands took an active part in discussions prompted partly by the summit in Reykjavik regarding the strengthening of the ECHR supervision system. Topics included measures to reinforce the tools available to the Committee of Ministers; the role of the Secretary General of the Council of Europe, the national parliaments and the Parliamentary Assembly of the Council of Europe; and efforts to enhance the process of supervision with clear, predictable steps in the event of non-execution of ECtHR judgments.

Changes to the ECtHR Rules of Court

In 2023 the ECtHR adopted a number of amendments to the Rules of Court. The most relevant were a clarification of the rules on the recusal of judges (Rule 28), a change to Rule 44 with a clarification of the time limits for third-party interventions and a new Article 44F on the treatment of highly sensitive documents. New Practice Directions have been adopted on requests for referral to the Grand Chamber, third-party interventions and the recusal of judges.

European Social Charter (ESC)/Collective complaints procedure

There were no developments in 2023 with regard to the European Social Charter and the collective complaints procedure. Work is continuing on strengthening the ESC complaints system.

United Nations

Optional Protocols

By letter to parliament of 26 May 2023 the government informed the House of Representatives of its decision in principle to ratify the Optional Protocol to the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD) and the Optional Protocol to the International Convention on the Rights of the Child (UNCRC). The Optional Protocols provide for the individual right of complaint, the inquiry procedure and, in the case of the Optional Protocol to the UNCRC, the right to submit inter-state communications. The ratification procedure for the Optional Protocol to the UNCRPD is being undertaken first. The procedure to ratify the Optional Protocol to the UNCRC will begin after the ratification procedure for the Optional Protocol to the UNCRPD has concluded and will be preceded by a specific assessment.

Treaty body strengthening process

In 2012 the Office of the United Nations High Commissioner for Human Rights (OHCHR) launched a process for strengthening the treaty body system, which is still ongoing. On 29 May 2023 the OHCHR produced a Working Paper containing a number of proposals in three areas: (i) the schedule of reviews, (ii) harmonisation of working methods and (iii) the 'digital uplift' (including modernisation of IT platforms). On 1 November 2023 the Netherlands took part in an informal briefing by the OHCHR on the Working Paper, in which the Netherlands made a statement: (i) expressing support for maintaining the independent system under which the UN treaty bodies work and the process to strengthen this system; (ii) noting the delay in the examination of individual complaints and identifying overlap between reporting obligations, as well as the need to address both problems; (iii) expressing support for steps to harmonise working methods and the proposal for an 8-year schedule of reviews for the UN treaty bodies that have a reporting cycle; and (iv) expressing concern regarding reprisals against parties engaging with the treaty body system. Further consultations with the OHCHR on these issues will take place in 2024.

Annexes: overviews and statistics

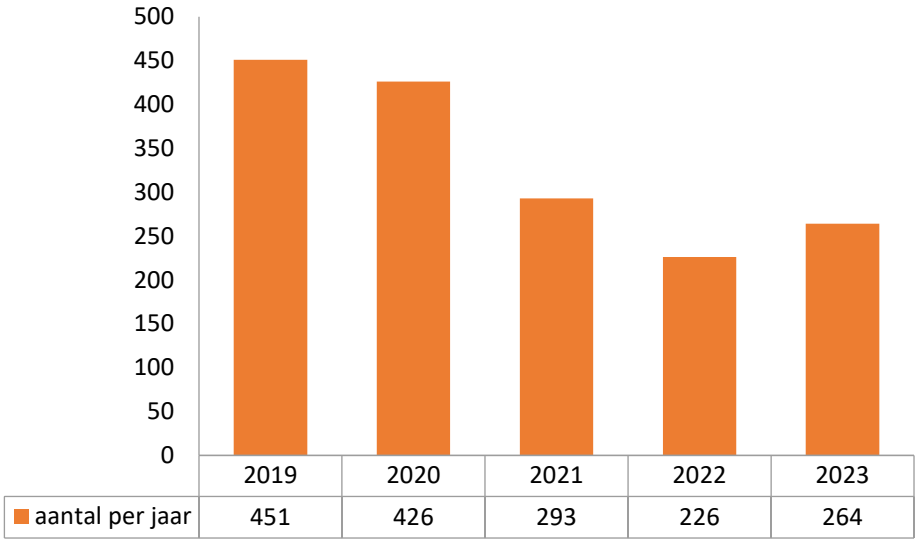
Annexe I

Council of Europe

European Court of Human Rights[4]

Statistics[5]

Figure 1: Cases pending against the Kingdom of the Netherlands

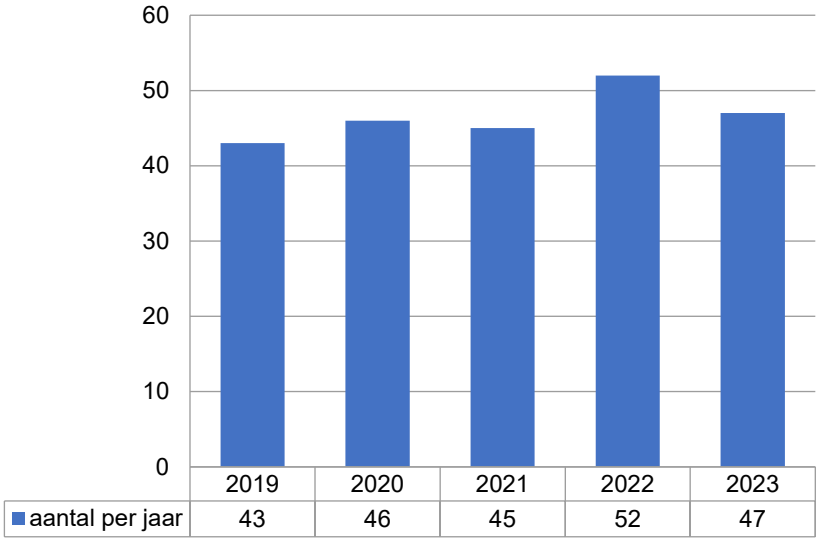


Annual total

[4] Statistics for all the member states of the Council of Europe are contained in *Analysis of Statistics 2023,* published by the ECtHR Registry: https://www.echr.coe.int/Pages/home.aspx?p=reports&c.

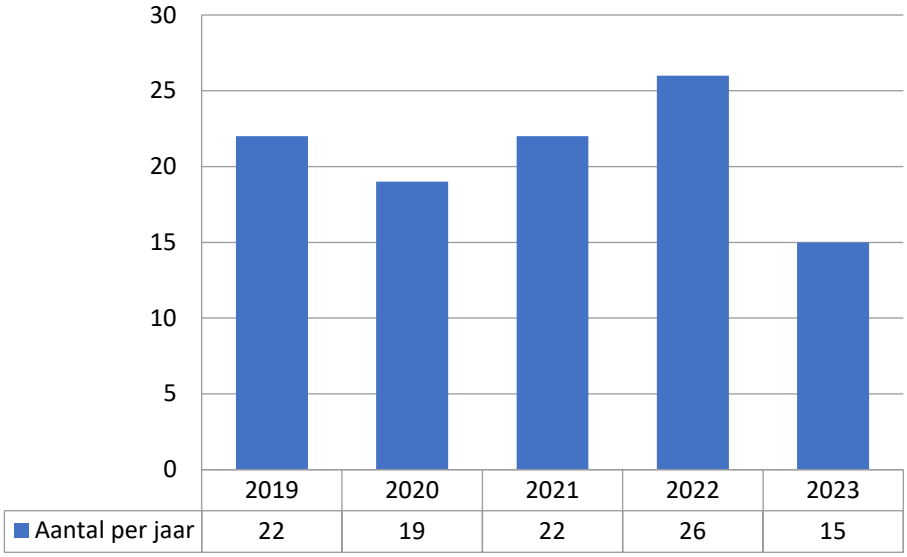
[5] Figures refer to cases against the Kingdom of the Netherlands.

Figure 2: *Cases being processed by the Kingdom of the Netherlands*



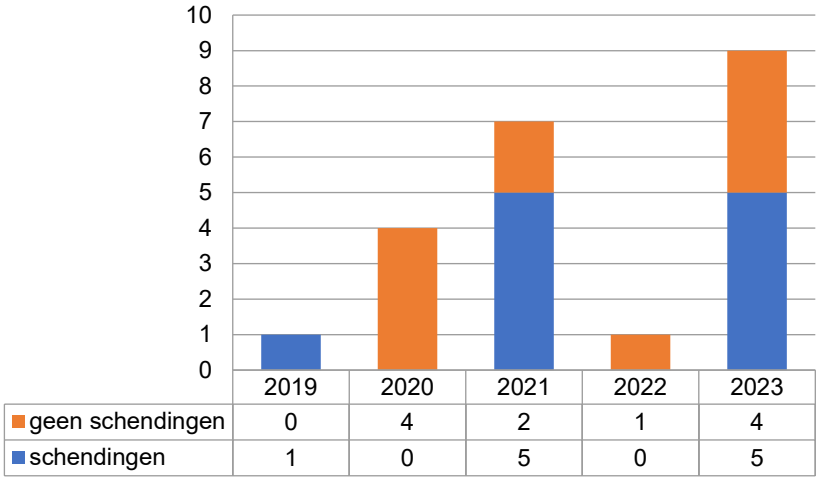
Annual total

Figure 3: *New cases communicated to the Kingdom of the Netherlands*



Annual total

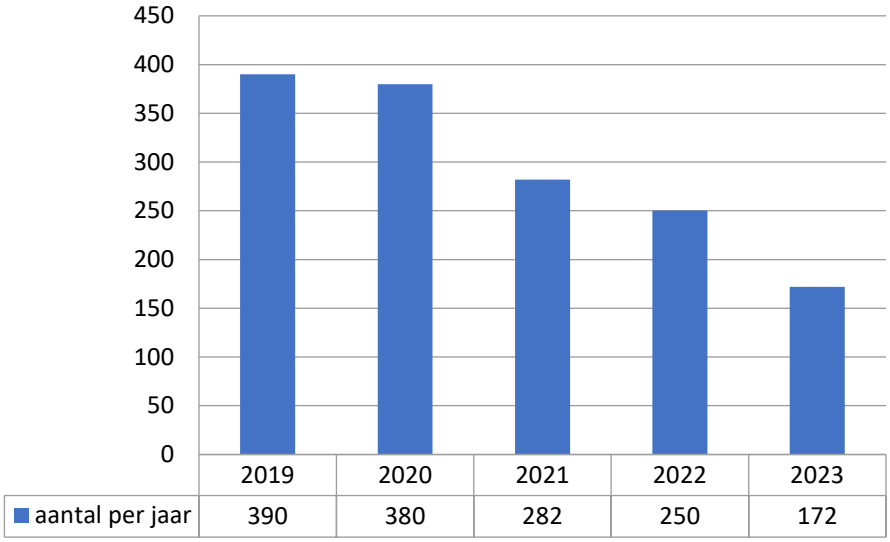
Figure 4: *Judgments*



	2019	2020	2021	2022	2023
geen schendingen	0	4	2	1	4
schendingen	1	0	5	0	5

No violations
Violations

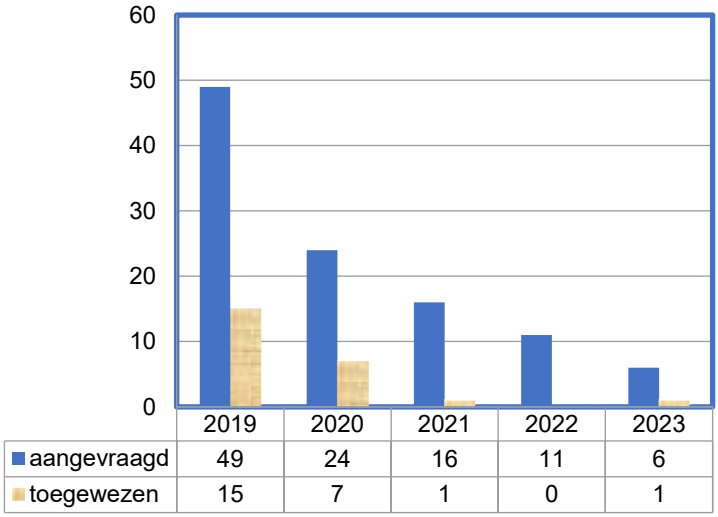
Figure 5: *Admissibility decisions and decisions to strike applications out of the list*



	2019	2020	2021	2022	2023
aantal per jaar	390	380	282	250	172

Annual total

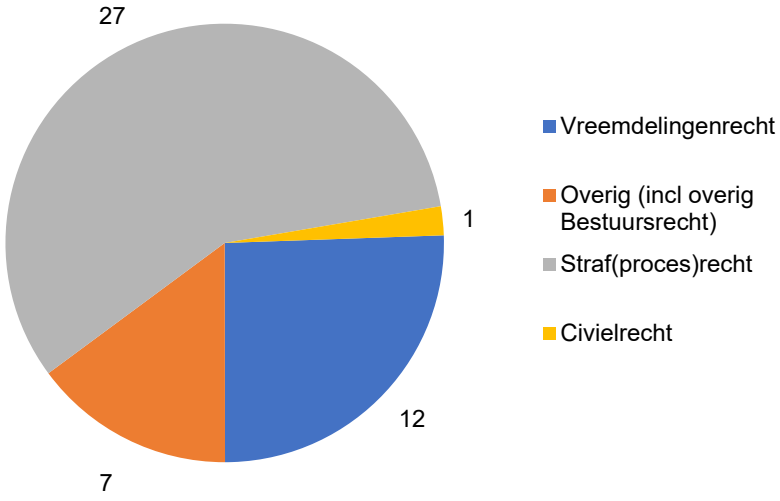
Figure 6: *Interim measures under Rule 39*



	2019	2020	2021	2022	2023
aangevraagd	49	24	16	11	6
toegewezen	15	7	1	0	1

Applied for
Granted

Figure 7: *Cases pending, number per category as at 31 December 2023*



Immigration law
Other (including other administrative law)
Criminal law and criminal procedural law
Civil law

Judgments and decisions[6]

Judgments

Name	Application number	Date
S.S.	61125/19	10 January 2023
C.M.C.	34507/16	10 January 2023
F.L.	57766/19	11 April 2023
J.J. B.V. and others	2800/16	16 May 2023
S.W.O.C. B.V.	2799/16	16 May 2023
B.H. B.V.	3124/16	16 May 2023
P.I. B.V.	3205/16	16 May 2023
K.A.	8757/20	30 May 2023
A.M.A.	23048/19	24 October 2023
C.J.J.L. and others	56996/17, 56910/17, 56914/17, 56917/17 and 57307/17	21 November 2023

Decisions

Name	Application number	Date
B.J.	51027/19	5 December 2019(**)
C.H.P.	58403/17	1 September 2022(**)
A.A.	31007/20	4 May 2023
C.T.	20209/19	4 May 2023
F.K.	36141/21	4 May 2023
G.L.H.	22069/19	4 May 2023
K.D. and others	52334/19	4 May 2023
S.M.	31212/20	17 May 2023
B.Y.A.M.	21461/20	6 July 2023(*)
R.H.	18138/20	14 September 2023
G.G. and others	34425/22	23 November 2023

Interventions

Name	Application number	Date
K.J.B. and others v. Russia	22515/14	27 June 2023
T. v. Poland	21181/19, 51751/20	6 July 2023

Cases against the Kingdom of the Netherlands being processed at 31 December 2023

Name	Application number	Article ECHR
A.A.M.	64534/19	Art. 8
A.R.	59806/19	Art. 3
A.M.M.	34129/21	Art. 2
A.S.M.	29348/18	Art. 3
B.H. B.V.	3124/16	Art. 8
B.M.	31220/20	Arts. 6 and 3

[6] The cases listed here are summarised in the section entitled 'Council of Europe'.
(*) *Single judge decisions* and therefore not summarised.
(**) Adopted before 2023 but notified to the Government only in 2023.

C.D.A.	39371/20	Arts. 2, 8 and 14
C.S.M.	61433/21	Art. 6
D.D.J.	23106/19	Art. 7
D.S.	55021/19	Art. 3
D.V.S.	26337/22	Art. 6
E.G.E.	52053/18	Arts. 2, 3 and 8
E.M. and S.M.H.	47878/20	Art. 8
F.B.	28157/18	Art. 3
F.J.	57264/18, 27124/22	Arts. 6, 7, 9, 10 and 11 and Art. 2 of Prot. No. 4
G.A.H.	15199/20	Art. 3
H.B.	36384/22	Arts. 3 and 8
H.H.	24008/20	Art. 3
I.M. and others	16395/18	Art. 7
J.J. B.V. and others	2800/16	Art. 8
J.B.	36163/21	Art. 8
J.F.R.	55483/19	Art. 3
J.K.	19365/19	Arts. 6, 10 and 11
J.F.M.	27963/18	Art. 3
J.M.H. and others	73411/17, 70630/17	Art. 3
J.S.	56440/15	Art. 6
J.V.S.	16381/23	Art. 6
K.B.	30395/20	Arts. 6 and 3
L.J.G.	30638/22	Art. 8
M.A.	4470/21	Art. 8
M.B.	71008/16	Art. 5
M.Ö.	45036/18	Art. 2
M.K.	9573/23	Art. 5
M.R.	56209/19	Art. 3
M.R.	59814/19	Art. 3
N.O.S. and others	20066/18	Art. 10
N.S.S.	45644/18	Arts. 6 and 8
P.C.K.	43250/22	Arts. 8 and 13
P.I. B.V.	3205/16	Art. 8
P.Z.	27231/19	Art. 7
R.B.H.	34039/22	Art. 3
R.H.Z.	46836/18	Arts. 3 and 6
R.R.K.	22501/23	Art. 6
S.W.O.C. B.V.	2799/16	Art. 8
S.M.E.	16216/23	Art. 3
T.D.	36010/21	Arts. 8 and 13
T.K.	298/15	Art. 2
U.K.	44051/20	Art. 8
W.R.	989/18	Art. 6
Y.F.C. and others	21325/19	Arts. 3, 5 and 13 and Art. 4 of Prot. No. 4
Z.	64772/19	Art. 1 of Prot. No. 1

Cases against other countries in which the Netherlands submitted a third-party intervention; being processed as at 31 December 2023[7]

Name	Application number	Article ECHR
S.A. and others and A. and others v. Russia	25714/16, 56328/18	Arts. 2, 3 and 41
W. and others v. Poland	11000/21	Arts. 6, 8 and 10
Ukraine v. Russia	11055/22	Art. 1

Inter-state application lodged by the Kingdom of the Netherlands

Name	Application number	Article ECHR
Ukraine and the Netherlands v. Russia	8019/16, 43800/14, 28525/20 and 11055/22	Arts. 2, 3 and 13

European Committee of Social Rights

Cases being processed as at 31 December 2023

Name	Complaint number	Article ESC
ETUC, FNV, CNV	201/2021	Art. 6

Cases under supervision as at 31 December 2023

Name	Complaint number	Date of decision
UWE	134/2016	28 February 2020
FEANTSA	86/2012	2 July 2014

Committee of Ministers

ECtHR cases under supervision as at 31 December 2023

Name	Application number	Date of judgment
J.C.M.	10511/10	26 April 2016
F.C.	29593/17	9 October 2018
V.K.	2205/16	19 January 2021
M.M.	10982/15	9 February 2021
R.R.C.	21464/15	15 November 2022
A.H.L.	2445/17	15 November 2022
C.M.C.	34507/16	10 January 2023
S.S.	61125/19	10 January 2023
K.A.	8757/20	30 May 2023
A.M.A.	23048/19	24 October 2023
C.J.J.L. and others	56914/17, 56917/17 and 57307/17	21 November 2023

[7] Cases in which the Kingdom has made a third-party intervention or has indicated its intention to do so.

ECtHR cases where supervision was closed in 2023

Name	Application number	Date of resolution
C.T.	20209/19	4 May 2023
G.L.H.	22069/19	4 May 2023
F.K.	36141/21	4 May 2023
S.M.	31212/20	17 May 2023

Annexe II United Nations

General[8]

In 2023 the UN treaty bodies:

- informed the Government of three new communications.

Human Rights Committee

Decisions

Name	Communication number	Date
A.D.N.	2894/2016	22 March 2023
J.S.	3210/2018	22 March 2023
G.J.	2958/2017	19 July 2023
M.S., B.S. and A.M.	4254/2022	24 October 2023
S.E.H.	3236/2018	31 October 2023

Cases being processed as at 31 December 2023

Name	Communication number	Article ICCPR
A.Z.	3868/2021	art. 14
D.K.	3768/2020	arts. 2, 7 and 8
F.K.F.	3907/2021	arts. 2 and 17
G.F.S.	3650/2019	arts. 2, 10, 14, 15, 17, 25 and 26
G.V.B.	3720/2020	arts. 14 and 17
J.D.A.S.	4477/2023	art. 14
J.P.M.L. and M.K.	4019/2021	arts. 7, 9, 10, 14, 15 and 17
N.J.S.C.	4015/2021	arts. 2, 6 and 7
R.L.K.	3721/2020	arts. 2, 14 and 17
R.V.D.B.	4268/2022	art. 14
S.H. and others	3281/2018	arts. 2, 6, 7, 17, 19, 24 and 26
V.G.	3856/2020	arts. 2, 15 and 26

[8] The Decisions listed here are summarised in the section entitled 'United Nations'.