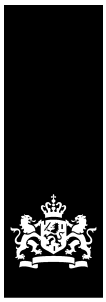

2019 Annual Report

International Human Rights Proceedings

International Law Division
Legal Affairs Department
Ministry of Foreign Affairs

Contents

Foreword

Like preceding reports, this 2019 annual report contains summaries of all the judgments and decisions handed down in international human rights proceedings to which the Netherlands was a party, regardless of the body hearing the case. It also contains information that is connected or directly relevant to proceedings, as well as overviews and statistics.

In 2019 the European Court of Human Rights (ECtHR) gave judgment in only one case involving the Kingdom of the Netherlands. In this case, the Court found a violation of the right to a fair trial. The United Nations Human Rights Committee established Views in two cases against the Kingdom. In one it concluded that a violation of the International Covenant on Civil and Political Rights (ICCPR) had taken place, since the Kingdom had failed to provide for a minimum income for the author's child. In the second case, the Human Rights Committee concluded that there had been no violation of the Covenant.

The Netherlands twice intervened in proceedings as a third party in 2019. As a result, the number of such cases before the ECtHR has almost doubled since 2018 (Annexe I, 'Cases pending against other States Parties as at 31 December 2019').

It is worth noting with regard to supervision of compliance with ECtHR judgments that in cases concerning the Kingdom of the Netherlands, NGOs and national human rights institutions made use for the first time in 2019 of the option of submitting information to the Committee of Ministers. This option was introduced in 2017 as a follow-up to the 2015 Brussels Declaration.

You will no doubt notice that in all cases the names of applicants/authors have been replaced by initials. The General Data Protection Regulation (GDPR) compels us to protect personal data, even in cases where it has not been anonymised by the ECtHR or one of the UN human rights bodies.

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, contributors included a colleague seconded from the Council of State, colleagues at the Ministries of Justice & Security; Social Affairs & Employment; Economic Affairs & Climate Policy; Finance; and the Interior & Kingdom Relations, as well as the Immigration and Naturalisation Service and the Public Prosecution Service.

We hope you will find this report a clear and practical guide to the Netherlands' involvement in human rights proceedings. If you have any comments or suggestions or would like further information, please contact us at djz-ir@minbuza.nl, tel. +31 (0)70 3486724.

The Hague, April 2020

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Judgments

H.J.C.K. (23192/15, 28 May 2019)

The applicant was arrested on 19 August 2009 on suspicion of distributing child pornography earlier that year. The first police interview, which concentrated on the applicant's personal and financial circumstances (*sociaal verhoor*), took place, with the applicant's consent, before he could consult a lawyer. At the start of the second interview on 20 August 2009, the applicant stated that he wanted his lawyer to be present. At the time, however, Dutch legislation did not give suspects, unless they were minors, the right to have a lawyer present during police interviews. Since the applicant was not a minor, his request was refused and the police interview took place without the presence of a lawyer. The applicant was subsequently convicted by The Hague District Court and this judgment was upheld by the appeal court. He lodged an appeal in cassation before the Supreme Court, which was dismissed. In none of these proceedings was it concluded that the applicant had the right to have a lawyer present during police interviews.

In the period after the police interviews and the applicant's conviction but before the submission of the application to the Court, the Supreme Court modified the rules on the right to legal assistance during police interviews following the *Salduz v. Turkey* case (36391/02, 27 November 2008). In 2015 the Supreme Court ruled that a suspect has a right to the presence of a lawyer during police interviews except where there are compelling reasons to limit that right (ECLI:NL:HR:2015:3608). In addition, a bill amending the Code of Criminal Procedure was submitted to the House of Representatives to establish a statutory basis for legal assistance during police interviews, in line with EU Directive 2013/48/EU. To give practitioners in the field time to become acquainted with the judgment, the Supreme Court determined that the right to have a lawyer present should come into effect on 1 March 2016.

Before the Court, the applicant complained that his right to a fair trial, as laid down in article 6 of the Convention, had been violated since his request to have a lawyer present during the police interviews had wrongly been denied. In view of developments with regard to the right in question, the Government did not wish to make any observations at the time.

Referring to *Beuze v. Belgium* (71409/10, 9 November 2018), the Court held that the right to a fair trial as enshrined in article 6 of the Convention includes the right to have a lawyer present during police interviews, unless there are compelling reasons to restrict this right. In the Court's opinion, it had not been established in the present case that such compelling reasons existed when the interviews took place. However, although the absence of compelling reasons did not automatically lead to a finding of a violation of article 6 of the Convention, it did weigh heavily in the Court's assessment of this issue. It was the Government's responsibility to demonstrate convincingly that in the specific circumstances of the case the fairness of the criminal proceedings had not been prejudiced. Since the Government had presented no defence in this respect, the Court concluded that a violation of article 6, paragraphs 1 and 3 (c) of the Convention had taken place.

N.O.V. (68328/17, 8 January 2019)

The applicant, a British national residing in Australia, was suspected in 2001 of being a co-perpetrator in the smuggling of a shipment of MDMA pills over the German border. The shipment was intended to be used in the production of ecstasy pills, ultimately for the Australian market. The plan was to hide the drugs in car engines shipped by the applicant's company to Australia. The applicant's fellow suspect, M, was arrested in Germany and confessed his own involvement and that of the applicant at his trial.

In September 2003, the applicant was convicted by the district court. He appealed against the judgment. M was heard as a witness during the appeal proceedings. M stated that he had been convicted of perjury in the past but refused to give any substantive testimony, invoking his right to decline to give evidence. The conviction was upheld, and the judgment of the appeal court confirmed by the Supreme Court in June 2006. In July 2006 the applicant lodged an application with the Court, arguing that his right to a fair trial, as laid down in article 6 of the Convention, had been violated. The Court concluded in 2012 that there had indeed been a violation of article 6 since the applicant's conviction was based to a decisive extent on M's statement, and he had been given insufficient opportunity to challenge that statement.

In November 2012 the applicant applied to the Supreme Court for a retrial. The Supreme Court granted the application and referred the case to a different appeal court. At the retrial M was again examined as a witness but claimed that due to the lapse of time he could not remember much. However, he stated that he had never been threatened, and he did not retract his original statements to the German police. The applicant was convicted again and received the same sentence (which he had already served). This judgment too was upheld by the Supreme Court.

Before the Court the applicant complained that his rights under article 6, paragraphs 1 and 3 (d) of the Convention had been violated, since his conviction following retrial was again based to a decisive extent on M's statement and he had not been given the opportunity during the retrial to examine M in an appropriate and effective manner. The Court noted that the admissibility and assessment of evidence are primarily a matter for regulation by national law. The fact that a witness changes or retracts statements when cross-examined or says that he cannot remember certain matters does not mean that the cross-examination must be regarded as ineffective. Furthermore, M had incriminated himself as well as the applicant in his statement, which was supported by other evidence. The appeal court's use of M's statement to reconvict the applicant therefore did not affect the fairness of the proceedings. The application was declared manifestly ill-founded and rejected in accordance with article 35, paragraphs 3 (a) and 4 of the Convention.

E.Y. (37115/11, 15 January 2019)

After the applicant, who is of Ethiopian origin, became pregnant in 1986, she was forced to leave her parents' home. She gave birth to a son ('Y') in Ethiopia whom she left in the care of his foster father when she fled to the Netherlands in 1996. The applicant applied for asylum in the Netherlands and obtained Dutch nationality in 2001. In 2002 Y travelled to the Netherlands where he too applied for asylum, his application being initially denied. In 2003 guardianship of Y was granted to the applicant. Following procedures that lasted a number of years, Y was granted a residence permit in 2009.

In 2005 the applicant – who was receiving benefit under the Work and Social Assistance Act – applied for housing benefit, which she was granted. In July 2007 the Tax and Customs Administration informed the applicant that she had been unduly receiving housing benefit since 2006 and therefore had to repay the amounts received because in 2006 and 2007 Y did not have a valid residence permit. The applicant's objection to this decision was dismissed, and the decision was upheld in judicial review and appeal proceedings.

Before the Court the applicant complained that the termination of her means-tested housing benefit violated her right to respect for her private and family life as guaranteed in article 8 of the Convention. She further complained that article 14 in conjunction with article 8 of the Convention had been violated since the termination of her means-tested housing benefit was based on a discriminatory difference in treatment between persons holding a residence permit and those who did not.

The Court noted that article 8 and other provisions of the Convention did not in themselves confer a right to benefit. In addition, the decision of the Tax and Customs Administration to which the application referred did not determine the residence rights of her son, nor did it aim to end her cohabitation with her son. Furthermore, it had no influence on her general welfare benefits. In this light, the termination of housing benefit could not be regarded as a violation of article 8 of the Convention. This part of the application was declared manifestly ill-founded and rejected in accordance with article 35, paragraphs 3 (a) and 4 of the Convention.

With regard to the complaint under article 14 (prohibition of discrimination) in conjunction with article 8 of the Convention, the Court concurred with the judgment in this case handed down by the Administrative Jurisdiction Division of the Council of State, which found no violation of article 14 in conjunction with article 8 of the Convention. The complaint under these articles was accordingly declared manifestly ill-founded and rejected in accordance with article 35, paragraphs 3 (a) and 4 of the Convention.

A.J. and others (82077/17, 17 January 2019)

The applicants, a mother and her two minor sons, are Iraqi nationals. They argued that if they were returned to Iraq they would face a real risk of treatment incompatible with article 3 of the Convention. In addition, they claimed that they had had no access to an effective remedy as referred to in article 13 of the Convention.

During the procedure the applicants were granted residence permits. However, they were opposed to the case being struck out of the list because their application was aimed not only at preventing their removal but also at addressing whether their article 3 claims had been subjected to rigorous scrutiny and whether the Dutch government had complied with the requirements of article 13 of the Convention.

The Court concluded that since the applicants had been granted residence permits there was no longer any risk at this time that they would be returned to Iraq, removing the risk of a violation of article 3 of the Convention. In this light, and given the fact that the complaints under article 13 and the procedural requirements of article 3 were inextricably linked to the proposed removal of the applicants, which was no longer at issue, the Court struck the application out of the list in accordance with article 37, paragraph 1 (c) of the Convention.

A.R.B. (8108/18, 17 January 2019)

The applicant, an Afghan national, complained before the Court that his removal to Afghanistan would expose him to a real risk of treatment incompatible with article 3 of the Convention. He was subsequently granted a residence permit and the Government asked that the case be struck out of the list. However, the applicant was opposed to this, on the grounds that he had a right to financial compensation for the years in which he had been forced to live on the streets.

The Court held that the dispute had been resolved, since the applicant had been granted a residence permit enabling him to remain in the Netherlands. In its view, just satisfaction could be awarded only if a violation of the Convention had taken place. The Court struck the application out of the list in accordance with article 37 of the Convention.

S.A. and A.J. (70475/14 and 70530/14, 12 March 2019)

The applicant in the first case (‘applicant A’) is the mother of the applicant in the second case (‘applicant J’). Both are Afghan nationals. Applicant A travelled to the Netherlands with her husband and three children on an unspecified date. Her fourth child, applicant J, was born in 1999. On 4 July 2001, applicant A, her husband and children were granted residence permits. In 2008 the Immigration and Naturalisation Service (IND) withdrew the husband’s residence permit. This decision was upheld in administrative review proceedings and on appeal. In the meantime applicant A had successfully applied for housing benefit, healthcare benefit and child budget. By decision of 23 October 2012 the Tax and Customs Administration terminated these benefits on the grounds that her husband no longer had a valid residence permit in this period. She lodged an objection, application for judicial review and appeal against this decision, all of which were dismissed.

Before the Court the applicants complained that the refusal to grant the benefits violated their right under article 8 of the Convention to respect for private and family life. The Court noted that article 8 and other articles of the Convention did not in themselves confer a right to receive benefits. In addition, the refusal to grant benefits to which the application referred did not determine the right of applicant A's husband/applicant J's father to reside in the Netherlands, nor did it aim to end his cohabitation with them. In light of this the Court therefore concluded that the refusal to grant benefits did not constitute a violation of article 8 of the Convention. This part of the application was declared manifestly ill-founded and rejected in accordance with article 35, paragraphs 3 (a) and paragraph 4 of the Convention.
The applicants further complained that the refusal to grant benefits constituted a violation of article 14 in conjunction with article 8 of the Convention, on the grounds that terminating the benefits was based on a discriminatory difference in treatment between persons holding a valid residence permit and those who did not. With regard to this complaint, the Court concurred with the judgment in this case handed down by the Administrative Jurisdiction Division of the Council of State, which found no violation of article 14 in conjunction with article 8 of the Convention. The Court also declared this part of the application manifestly ill-founded.

A.D. and L.K. (71815/14 and 71827/14, 12 March 2019)
The first applicant ('applicant D') is the mother of the second applicant ('applicant K'). The applicants are naturalised Dutch nationals of Afghan origin. Applicant D and her children (including applicant K) were granted asylum residence permits in 1998. On an unspecified date applicant D's husband, the father of the children, entered the Netherlands. In 2000 he applied for asylum. His application was denied under article 1F of the Refugee Convention. He unsuccessfully challenged this decision in administrative review and appeal proceedings. He submitted a fresh asylum application, which was also denied, the final decision on this application being given by the Administrative Jurisdiction Division of the Council of State on 28 June 2010.
In the meantime, applicant D had successfully applied for housing benefit and healthcare benefit. By decisions of 14 June 2013 the Tax and Customs Administration halted payment of both benefits on the grounds that her husband was no longer legally resident in the Netherlands in the period in question. Applicant D lodged an objection, application for judicial review and appeal against the revised decision, all of which were rejected.
The applicants complained before the Court that the refusal to grant the two benefits at issue violated their right to respect for their private and family life under article 8 of the Convention, since the decision compelled them to choose between living in poverty or family life with their husband/father.
The Court noted that article 8 and other articles of the Convention did not in themselves confer a right to benefit. In addition, the decisions of the Tax and Customs Administration to which the application referred did not determine the residence rights of applicant D's husband/applicant K's father, nor did they aim to end their cohabitation with him. In light of this, the Court ruled that the refusal to grant benefits did not constitute a violation of article 8 of the Convention. This complaint was declared manifestly ill-founded and rejected in accordance with article 35, paragraphs 3 (a) and 4 of the Convention.

The applicants further claimed that the refusal to grant benefits violated article 14 in conjunction with article 8 of the Convention, on the grounds that it was based on a discriminatory difference in treatment between persons holding a valid residence permit and those who did not. With regard to this complaint, the Court concurred with the judgment in this case handed down by the Administrative Jurisdiction Division of the Council of State, which found no violation of article 14 in conjunction with article 8 of the Convention. The Court also declared this part of the application manifestly ill-founded.

S.H. (36558/14, 12 March 2019)

On an unspecified date the applicant, an Afghan national, fled from Afghanistan with her husband ('B') and her children to the Netherlands, where they applied for and were granted asylum. Suspecting B's involvement in crimes referred to in article 1F of the Refugee Convention, the authorities revoked his asylum residence permit and imposed an exclusion order on him.

On an unspecified date, the applicant applied for housing benefit, healthcare benefit and child budget for the 2012 tax year. These applications were denied on the grounds that B did not hold a valid residence permit. This decision was upheld in judicial review proceedings and on appeal.

Before the Court, the applicant complained that the refusal to grant the benefits violated her rights under article 8 of the Convention, since it compelled her to choose either to live in poverty or to live apart from the father of her children.

The Court noted that article 8 and other articles of the Convention did not in themselves confer a right to benefit. In addition, the refusal to grant benefits to which the application referred did not determine B's residence rights, nor did it aim to end his cohabitation with the applicant and her children. In light of this, the Court ruled that the refusal to grant benefits did not constitute a violation of article 8 of the Convention. This complaint was declared manifestly ill-founded and rejected in accordance with article 35, paragraphs 3 (a) and 4 of the Convention.

The applicant further claimed that the refusal to grant benefits violated article 14 in conjunction with article 8 of the Convention. With regard to this complaint, the Court concurred with the judgment in this case handed down by the Administrative Jurisdiction Division of the Council of State, which found no violation of article 14 in conjunction with article 8 of the Convention. This part of the application was also declared manifestly ill-founded and rejected in accordance with article 35, paragraphs 3 (a) and 4 of the Convention.

G.S. (34299/14, 12 March 2019)

The applicant is a naturalised Dutch national of Afghan origin. Her husband ('A'), was granted asylum in the Netherlands in January 1997. In 2000 he was reunited with the applicant and their three children, 'S', 'O' and 'H' in the Netherlands. In 2002 their fourth child ('M') was born in the Netherlands. On 4 May 2004 the Immigration and Naturalisation Service (IND) withdrew A's asylum residence permit under article 1F of the Refugee Convention. Since A was no longer held a valid residence permit for the Netherlands, their applications for housing benefit and healthcare benefit were denied and their child budget entitlement was set at zero.

Before the Court the applicant complained that the refusal to grant these three types of benefit violated her right to respect for private and family life under article 8 of the Convention. She argued that if the father of her children lived with them in the Netherlands, her children would grow up in poverty due to the lack of benefits. She further complained under article 14 in conjunction with article 8 that the decision on whether to grant benefit was based on a discriminatory difference in treatment between persons holding a valid residence permit and those who did not.
The Court noted that article 8 and other articles of the Convention did not in themselves confer a right to benefit. In addition, the decisions refusing to grant benefits to which the application referred did not determine A's residence rights, nor did they aim to end his cohabitation with his family. In light of this, the Court declared this part of the application manifestly ill-founded and rejected it in accordance with article 35, paragraphs 3 (a) and 4 of the Convention.
With regard to the complaint under article 14 (prohibition of discrimination) read in conjunction with article 8 of the Convention, the Court concurred with the judgment in this case handed down by the Administrative Jurisdiction Division of the Council of State, which found no violation of article 14 in conjunction with article 8 of the Convention. This part of the application was also declared manifestly ill-founded.

N.K. (58572/14, 6 June 2019)
The applicant complained before the Court that his expulsion to Sudan would expose him to a real risk of treatment incompatible with article 3 of the Convention. During the proceedings the applicant moved to Germany, where he was granted a residence permit. The Government of the Netherlands therefore requested the Court to strike the application out of the list.
The Court gave the applicant the opportunity to respond to this request, but he failed to reply. The Court therefore decided to strike the application out of the list in accordance with article 37 of the Convention.

F.B. (54892/16, 25 June 2019)
The applicant was arrested on 11 November 2013 on suspicion of offences under the Opium Act, including smuggling large quantities of cocaine to the Netherlands. On 14 November 2013 the investigating judge at Rotterdam District Court ordered him to be placed in pre-trial detention. The applicant's trial began on 7 February 2014. At the hearing the district court decided to stay the proceedings pending the conclusion of the investigation and subsequently the determination of any requests for further investigative measures. In addition the district court granted the applicant's application for suspension of pre-trial detention, on condition that €25,000 was paid in bail. Suspension was granted subject to the condition that the applicant should not commit any criminal offence during the suspension period.
On 12 March 2016 the applicant was arrested again, this time on suspicion of receiving and handling stolen goods (*opzetheling*) and further offences under the Opium Act. On 21 March 2016 Rotterdam District Court revoked the suspension of the applicant's pre-trial detention on the grounds that he had failed to respect the conditions imposed.

The applicant argued that the district court's decision to revoke the suspension of pre-trial detention was based on the assumption that the applicant had committed further offences even though he had not (yet) been convicted of such offences. In his view, this constituted a violation of the presumption of innocence as enshrined in article 6, paragraph 2 of the Convention.
The Court noted that the suspicion that a defendant has committed a further offence is sufficient to revoke the suspension of pre-trial detention. There is thus no need to wait for a final conviction for such offences. With regard to the presumption of innocence, the Court held that citing the mere fact that the person concerned is suspected of a criminal offence as justification for extending pre-trial detention does not constitute a violation of article 6 of the Convention. Even if the district court's choice of words was unfortunate, the court held that the reasons given by the district court could reasonably be interpreted as an indication that there were serious grounds for suspecting that the applicant had committed a criminal offence. In revoking the suspension of the applicant's pre-trial detention, the district court was not therefore acting in breach of article 6, paragraph 2 of the Convention. The Court declared the application manifestly ill-founded.

J.P.A.N. (59133/16, 25 June 2019)
The applicant was arrested on 15 April 2016 and remanded in police custody on suspicion of theft. On 18 April 2016 the investigating judge at Amsterdam District Court ordered him to be placed in pre-trial detention for 14 days. On the same date the investigating judge suspended the applicant's pre-trial detention on condition that the applicant did not commit any criminal offence during the suspension period. On 25 September 2016 the applicant was again arrested on suspicion of theft. As a result, on 27 September 2016 the suspension was revoked. On 20 December 2016 the applicant was sentenced to four months' imprisonment.
Before the Court the applicant complained that the decision to revoke the suspension of pre-trial detention on the grounds that he had not observed the condition attached (i.e. that he should not commit any criminal offence in that period) had violated the presumption of innocence as enshrined in article 6, paragraph 2 of the Convention. In his view, the suspension could be revoked only after a final judgment had been delivered establishing that he had indeed committed a further offence.
In light of the above, the Court observed that the presumption of innocence would be violated if a court decision or a statement by a public official reflected an opinion that a defendant was guilty before he had been proven guilty according to the law. However, stating that a person is merely suspected of committing a crime is not the same as an explicit declaration that they have committed a crime. The Court concluded that it could be inferred from the wording of the decision to revoke suspension of pre-trial detention that the decision was based on the existence of a reasonable suspicion that the applicant had committed a criminal offence. The Court therefore considered that the decision to revoke suspension of pre-trial detention was not incompatible with the presumption of innocence as referred to in article 6, paragraph 2 of the Convention. The application was declared manifestly ill-founded and rejected in accordance with article 35, paragraphs 3 (a) and 4 of the Convention.

A.A. and others (28190/18, 29 August 2019)

The applicants, a married couple and their minor children, are all Libyan nationals. They complained before the Court that their intended removal to Libya would be incompatible with article 3 of the Convention. During the proceedings the applicants were granted residence permits in the Netherlands. On this basis the application was struck out of the list in accordance with article 37 of the Convention.

T.E. (43462/16, 3 September 2019)

The applicant, who is of Mongolian origin, arrived in the Netherlands with her son in October 2008. On 4 December 2014 the applicant applied for asylum for both her and her son. The applicant claimed that she had been the victim of forced prostitution in Mongolia and that she would be in danger if returned to that country. On 22 May 2015 her asylum application was denied and she was also found to be ineligible for a regular residence permit on humanitarian grounds. Her application for judicial review and her appeal against this decision were also denied, after which she turned to the Court.

Pending the proceedings, the applicant applied on 4 January 2017 for a residence permit under EU law (Directive 2004/38/EC, known as the Citizen's Rights Directive) on the basis of an alleged relationship, since 2012, with a Czech national living in the Netherlands. This application was denied on the grounds that the relationship had been insufficiently substantiated.

On 25 April 2019 the applicant's representative informed the Court that on an unspecified date the applicant had moved to the Czech Republic together with her partner and her son. In 2018 a daughter was born of the relationship who is thus a Czech national. After the birth of this daughter, the relationship ended.

Before the Court, the applicant complained that her expulsion from the Netherlands to Mongolia would be incompatible with article 4 of the Convention, since she would face the risk of becoming the victim of human trafficking. She claimed that the Mongolian authorities would be unable to protect her. The applicant further complained that the refusal to grant her and her son residence permits constituted a violation of article 8 of the Convention.

On the basis of the information supplied by the applicant's representative, the Court established that the applicant had moved to the Czech Republic where she had given birth to a daughter who has Czech nationality. Since she was therefore no longer at risk of being expelled from the Netherlands to Mongolia, the application was declared manifestly ill-founded and rejected in accordance with article 35, paragraphs 3 (a) and 4 of the Convention.

M.A.S. and others (80450/13, 12 September 2019)

Three applicants complained before the Court that two of them had been denied access to the Netherlands for the purpose of family reunification with the third applicant. They claimed that this was a violation of the right to respect for family life as laid down in article 8 of the Convention.

A request from the Court for further information from the applicants received no response. The Court therefore struck the application out of the list in accordance with article 37 of the Convention.

A.M. (37153/17, 24 October 2019)

The applicant, a Guinean national, applied for asylum in the Netherlands. Her application was denied. She complained before the Court that if she and her daughter were returned to Guinea, they would be subjected to female genital mutilation (FGM). The applicant claimed that their removal would be contrary to article 3 of the Convention. She also invoked article 8 of the Convention.

During the proceedings the applicant and her daughter were granted residence permits for the Netherlands. Nevertheless, the applicant informed the Court that she wished to pursue her application.

The Court held that the dispute could be regarded as resolved and struck the application out of the list in accordance with article 37, paragraph 1 (b) of the Convention.

F.O.M. (42922/18, 14 November 2019)

The applicant, a Somali national, lives in the Netherlands and has two minor children who live abroad. The application she submitted for family reunification was denied, following which she complained before the Court that this was incompatible with article 8 of the Convention.

During the proceedings the children were granted an authorisation for temporary stay. On the basis of this decision the Government asked the Court to strike the case out of the list. The applicant also informed the Court that she did not wish to pursue her application. The Court therefore struck the application out of the list in accordance with article 37, paragraph 1 (b) of the Convention.

K.E.K. (37164/17, 26 November 2019)

The applicant was arrested on 28 March 2015 on suspicion of driving under the influence of alcohol or drugs, causing a traffic accident resulting in serious bodily harm, and leaving the scene of an accident. When he was arrested the applicant refused to take a breathalyser test, as he wished to talk to a lawyer first. The district court found him guilty on all the above counts and of refusing to take a breathalyser test. This judgment was upheld on appeal. The applicant lodged an appeal in cassation with the Supreme Court, which ruled that the arguments adduced did not justify consideration in cassation proceedings.

The applicant complained before the Court that his rights under article 6 of the Convention had been violated. He argued that his right to a fair trial had been violated because he had been denied the opportunity to consult a lawyer before deciding whether to comply with an order to undergo a breathalyser test. In addition, he claimed that his right to a fair trial had been violated because the Advocate General at the Supreme Court had not submitted an advisory opinion to which he could have responded. Finally, he complained under articles 6 and 13 of the Convention that the Supreme Court had failed to provide sufficient reasons for the dismissal of his appeal in cassation.

With regard to the first complaint, the Court recalled that it had ruled in earlier cases that the absence of legal representation while blood or breath tests were performed did not affect the right to legal assistance under article 6, paragraph 3 (c) of the Convention. In the present case, it concluded that although the applicant was charged with a criminal offence within the meaning of article 6, paragraph 1 of the Convention, the right to legal assistance laid down in article 6, paragraph 3 (c) did not require that he be allowed to consult a lawyer before undergoing the test. With regard to the second complaint, the Court noted that in the past it had found that the non-communication of written observations or documents during proceedings and the defendant's inability to comment on them did not constitute a violation of article 6 of the Convention. The Court reasoned that granting such rights in the cases in question would have had no effect on the outcome of proceedings. The Court concluded that the same must apply *a fortiori* in the present case, as there was no advisory opinion from the Advocate General to communicate. With regard to the complaint that article 13 had been violated, since the Advocate General submitted no advisory opinion to the Supreme Court, the Court ruled that this complaint had been considered under the discussion of article 6 and required no further examination. With regard to the complaint of a lack of reasoning by the Supreme Court, the Court stated that, as it had previously held, when an appeal in cassation is declared inadmissible or dismissed with summary reasoning in the context of accelerated procedures within the meaning of section 80a or 81 of the Judiciary (Organisation) Act, no issue arises under article 6 of the Convention.
The application was declared manifestly ill-founded and rejected in accordance with article 35, paragraphs 3 (a) and 4 of the Convention.

M.M.S. and others (9933/18, 12 December 2019)
Three applicants, a married couple and their child, complained before the Court that the Government had refused to grant an authorisation for temporary stay to the third applicant, which meant she could not be reunited with her parents. They contended that this refusal was incompatible with article 8 of the Convention. During the proceedings the third applicant was granted an authorisation for temporary stay. In light of this decision, the Government asked the Court to strike the case out of the list. The applicants also informed the Court that they did not wish to pursue their application.
The Court struck the application out of the list in accordance with article 37, paragraph 1 (b) of the Convention.

Committee of Ministers[1]

J.C.M. (10511/10, 26 April 2016)

In this case the Court ruled that the life sentence imposed on the applicant in Curaçao and Aruba was de facto irreducible, contrary to the Court's case law. This constituted a violation of article 3 of the Convention. In 2014 the applicant was granted a pardon and in 2016 his costs and expenses were reimbursed. The most recent Action Plan (29 January 2019) submitted to the Committee of Ministers described the further measures taken by Curaçao and Aruba to execute the judgment. A task force had been set up within the Kingdom to explore the scope for establishing a forensic care system that would provide for treatment of detainees suffering from serious psychiatric illness. In addition, all detainees being held in prison in Curaçao now had access to treatment provided by a psychiatrist or psychologist, while life sentences had been subject to periodic review since 15 November 2011. Legislation relating to care in custodial clinics and the status of persons subject to a TBS order (forensic patients) was presently before parliament in Curaçao. The Aruban Criminal Code, which came into force in 2014, provided for several new modalities with regard to enforcing sentences, including a provision under which life prisoners could be released on parole after 20 years. In addition, TBS orders could be imposed and measures were in place relating to mental health care for detainees. Reforms had also been implemented in the Aruban Correctional Facility (KIA).

On 16 July 2019 and 23 September 2019 the Committee of Ministers received communications from the Dutch section of the International Commission of Jurists (NJCM), the Netherlands Helsinki Committee and the Human Execution of Life Penalties Forum (*Forum Levenslang*). On 18 November 2019, in response to these communications, the Government stated that while the Court had found a violation of article 3 of the Convention relating to life sentences imposed in Aruba and Curaçao, it had not handed down a judgment relating to the other autonomous parts of the Kingdom with their own legislation and judicial systems. For this reason and in line with practice to date, the Government would refer only to Aruba and Curaçao in its reporting on existing and future measures.

[1] Measures taken by the Government to execute Court judgments in the reporting year 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 concluded in the reporting year.

A.J.H. (30749/12, 14 February 2017)

In this case the Court held that the applicant's right to a fair trial had been violated since he had not been given the opportunity to attend in person the hearing of the appeal in the criminal proceedings against him. The Government submitted an Action Report to the Committee of Ministers in 2017, followed by an update submitted on 18 November 2019 stating that the applicant had availed himself of the option under article 457, paragraph 1 (b) of the Code of Criminal Procedure allowing for an application for a retrial to be lodged with the Supreme Court. The Supreme Court declared the application admissible and a retrial was now pending before the appeal court. The Government indicated that it had fully complied with Court's judgment and invited the Committee of Ministers to conclude its supervision of execution in this case.

E.C. (37617/10, 28 August 2018)

In this case the Court ruled that the applicant's right to a fair trial as enshrined in article 6, paragraph 1 and paragraph 3 of the Convention had been violated. The applicant had been unable to effectively question a witness for the prosecution since the witness had declined to give evidence. The Court concluded that the witness's statement was decisive in the conviction of the applicant on the fourth charge against him and that no measures were taken to offset the handicap this placed on his defence. The Court awarded the applicant costs and expenses, which were paid within the set time limit.

The Action Report regarding the resolution of the case submitted to the Committee of Ministers on 9 October 2019 stated that the applicant had not availed himself of the option under article 457, paragraph 1 (b) of the Code of Criminal Procedure allowing for an application for a retrial to be lodged with the Supreme Court within three months. It further stated that no additional individual measures were necessary for the enforcement of the judgment. The Government also noted that the violation found in this case did not stem from national legislation. Therefore the question of amendments to legislation did not arise.

F.C. (29593/17, 9 October 2018)

The Court ruled that the conditions of the applicant's detention were incompatible with article 3 of the Convention, since he had been held for over eight months in a detention centre in which, according to the Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), persons should not be detained for more than 10 days. The sums for non-pecuniary damage and costs and expenses awarded by the Court were paid to the applicant within the set time limit. In the Action Plan submitted to the Committee of Ministers on 9 April 2019, the Government stated that no further individual measures were required for the enforcement of the judgment. With regard to general measures, the Government informed the Court that the detention facility adjacent to Philipsburg Police Station, where the applicant was held, had since been renovated and the amenities improved. St Maarten now adhered to the principle that persons being held in pre-trial detention must not remain for longer than 10 days in the police station cells. The number of detainees per cell was now subject to a maximum. Further improvements were to be implemented. On 14 February 2019 the Netherlands Institute for Human Rights submitted a communication to the Committee of Ministers in this case.

H.J.C.K. (23192/15, 28 May 2019)

The Court ruled in this case that the applicant's right to a fair trial had been violated since he had not been given the opportunity to have a lawyer present during a police interview. The costs and expenses awarded by the Court were paid to the applicant within the set time limit. The Action Report regarding the resolution of the case submitted to the Committee of Ministers on 18 November 2019 stated that the applicant had availed himself of the option under article 457, paragraph 1 (b) of the Code of Criminal Procedure allowing for an application for a retrial to be lodged with the Supreme Court. This application was still pending before the Supreme Court. No further individual measures were necessary for the enforcement of the judgment. The Action Report also outlined changes to national legislation regarding the right of access to a lawyer in criminal cases that should prevent future violations in comparable circumstances.

European Committee of Social Rights

In 2019 no decisions were delivered by the European Committee of Social Rights in proceedings against the Kingdom of the Netherlands in the context of the collective complaints procedure under the European Social Charter.

United Nations

Human Rights Committee

Views

E.A. and Y. (2498/2014, 26 March 2019)

The author was born in Uzbekistan and is presently stateless. She has lived in the Netherlands since 2000. She submitted several applications for asylum but they were all denied. During her stay in the Netherlands her child ('Y') was born, on whose behalf the communication was also submitted. In 2014 temporary residence permits were granted to the author and Y. In 2011 and 2012 the author had applied for various benefits, including child budget. Since the author did not have a valid residence permit, none of these benefits were granted.

The author complained before the Committee that the refusal to grant child budget violated her rights and those of her child Y under article 23, paragraph 1, article 24, paragraph 3, and article 26 in conjunction with article 23, paragraph 1 and article 24 paragraph 1 of the International Covenant on Civil and Political Rights (ICCPR). This amounted to a violation of their right to respect for family life. In addition, both the author and Y were stateless, which should have entitled them to special protection. However, in the author's view, the lack of a procedure in the Netherlands for recognising statelessness and thus granting them access to the rights enjoyed by stateless persons not only violated Y's right to nationality but also the right to respect for family life. Furthermore, Y had a right to protection, for example in the form of child budget, on account of her vulnerable position as a minor. Finally, there was the matter of discrimination, since the authorities make a distinction based on residence status when granting child budget.

The Committee focused solely on the question of whether the refusal to grant child budget violated Y's rights under article 24, paragraph 1 of the Covenant. The Committee held that every child had a right to special measures of protection and that in all decisions affecting a child, the child's best interests must be a primary consideration. States had a positive obligation to safeguard these interests and to protect children from physical and psychological harm. In this context, the Committee emphasised that the absence of social protection for children may in certain circumstances adversely affect their physical and psychological well-being.

The Committee noted that although under Dutch law child budget is not in principle granted to persons without a valid residence permit, exceptions may be made in special circumstances, including those of persons without a valid residence permit. The State had argued that there were no such special circumstances in this case, since *inter alia* the author had not demonstrated that she was stateless or that refusal to grant the benefit in question would lead to a humanitarian emergency. However, the Committee observed that it was unclear how the author could have demonstrated her statelessness. It also noted that the author was dependent on support from others in order to meet her basic needs. In these circumstances, the Committee concluded that the refusal to grant child budget was incompatible with article 24 of the Covenant.

M.H. and J.H. (2489/2014, 26 March 2019)

The authors are Afghan nationals who have lived in the Netherlands since 14 August 2001. Their applications for asylum were denied. The relevant decisions became final in 2005. In 2010 the authors were granted temporary residence permits. Their two children, born during the asylum procedures, were also granted residence permits. On 26 November 2014 the authors acquired Dutch nationality.

The authors submitted a communication to the Committee on their own and their children's behalf. This related to the application they submitted in 2007 for child benefit for their first child, who had medical problems. The application was denied on the grounds that the child had no valid residence permit.

The authors claimed that since the refusal to grant child benefit was based on residence status it violated articles 23, 24, paragraph 1 and 26 of the Covenant. They argued that child benefit could be considered a measure of protection for minors under article 24 of the Covenant and that by refusing to grant such benefit the State party had failed to meet its positive obligations under this provision. The authors further contended that states have an obligation to take account of the particular circumstances of a case. In this context, the State party should have taken more account of the medical condition of the first child, the poverty in which the family lived and the impact this had on the child's health.

The Committee concluded that under article 24 every child has a right to special measures of protection. The principle that in all decisions affecting a child, the child's best interests should be the primary consideration is an integral part of this right. States have a positive obligation to ensure that children's physical and mental wellbeing is protected, which may include guaranteeing minimum subsistence if parents have no other income or assistance.

In this context the Committee noted that in the relevant period the authors received a monthly allowance, and the child received the necessary medical care and had access to education. It further noted that the authors had not established a plausible link between the health situation of the first child and their exclusion from the right to child benefit. More specifically, they had not satisfactorily demonstrated that the alternative financial support to which they did have access placed the child at a material disadvantage with regard to her health compared with the assistance under the child benefit regulations. In light of the above, the Committee did not consider it necessary to examine the merits of the complaints under articles 23 and 26.

The Committee concluded that no violation of articles 23, 24, paragraph 1 and 26 of the Covenant had taken place.

Decisions

S.A. and others (2683/2015, 17 July 2019)

The author is of Roma origin, was born in the former Yugoslavia, and is stateless. She submitted the communication on behalf of herself and her minor daughter ('Z'). Z, like her father, has Dutch nationality. Between 2012 and 2014 the author submitted several applications for child benefit, all of which were denied on the grounds that she had no valid residence permit. The author claimed that the refusal to grant child benefit was a violation of her rights under article 23, paragraph 1, and article 26 in conjunction with article 23, paragraph 1 of the Covenant. She further complained that the refusal was a violation of Z's rights, specifically those under article 23, paragraph 1, article 24, paragraph 1, and article 26 in conjunction with article 23, paragraph 1 and article 24, paragraph 1 of the Covenant.

The Committee concluded that the grounds adduced by the author had failed to sufficiently substantiate her claims, and took into account the fact that Z's father had received child benefit for a period of time. In light of this, it decided that the communication was inadmissible under article 2 of the Optional Protocol to the Covenant.

M.S. (2739/2016, 8 November 2019)

In 2008 the author was convicted of a number of criminal offences. After appealing against this conviction, he lodged an appeal in cassation with the Supreme Court, which partially quashed the conviction and referred the case back to the appeal court. The appeal court ultimately imposed a heavier sentence on the author, who then lodged a second appeal in cassation. During these proceedings the author requested and received the case file. However, one page of the memorandum of oral pleadings contained in the file was missing. The Supreme Court informed the author that according to the appeal court the page was missing and could not be retrieved.

In cassation the author claimed that as a result of the missing page, the appeal court's judgment was null and void. During the proceedings a section of the page was retrieved and sent to the author, who was given the opportunity to lodge further grounds for appeal in cassation. The author submitted two further grounds for appeal concerning his right to have his case heard, in both appeal and appeal in cassation proceedings, without undue delay. The appeal in cassation was dismissed by the Supreme Court on grounds including the fact that the opportunity to lodge two further grounds for appeal should not have been granted to the author. The author subsequently lodged an application with the European Court of Human Rights, which was declared inadmissible.

Before the Committee the author complained that his right to have access to a court and to effective review by a higher tribunal, as guaranteed by article 14, paragraphs 1 and 5 of the Covenant had been violated. He claimed that, initially, he was justified in believing that the entire memorandum of pleadings had been lost and that his appeal in cassation would succeed on that ground alone. In addition, he was justified in believing that should the memorandum be found, he would be given the opportunity to supplement his grounds for appeal and that these additional grounds would be considered in full by the Supreme Court.

By not considering the merits of his additional grounds for appeal, the Supreme Court denied him access to a court and to an effective review by a higher tribunal.

The Committee declared the communication inadmissible on the grounds that it was insufficiently substantiated. In addition, it had not been demonstrated that the domestic courts had acted arbitrarily or that their decision amounted to a denial of justice.

Implementation of earlier Views

S.Y. (2392/2014, 17 July 2018)

In this case the State accepted the Committee's Views, after attempts to reach a friendly settlement with the author had failed. In its Views the Committee had reiterated that convicted persons are entitled to have access to a duly reasoned, written judgment of the trial court, and to sufficient information to enjoy the effective exercise of the right to appeal. It concluded that this had not been the case in the author's proceedings. In accordance with the system requiring leave to appeal in cases where the interests involved are so minor that they may not justify the costs of proceedings, Arnhem Court of Appeal denied the author's application for leave to appeal on the grounds that a hearing of her appeal would not be in the interests of the proper administration of justice. The Committee decided that this constituted a violation of article 14, paragraph 5 of the Covenant (right to appeal), read alone and in conjunction with article 2, paragraph 3 of the Covenant, since she had been given no opportunity to challenge the appeal court's decision not to grant her leave to appeal.

On 31 January 2019 the State party informed the Committee of the measures that had been taken to implement the Committee's Views. The offence which was the subject of the author's communication had been removed from her criminal record and all information pertaining to the offence deleted from police records. The fine and damages paid by the author and the costs she incurred had been reimbursed. To prevent similar violations occurring in the future, a proposal to abolish the system requiring leave to appeal under article 410a of the Code of Criminal Procedure has been included in the legislative process for modernising the Code of Criminal Procedure. Pending the completion of this process, the Council for the Judiciary has established a liability procedure in connection with the above-mentioned system which provides scope for compensation.

E.A. and Y. (2498/2014, 26 March 2019)

In this case the Committee decided that Y's rights under article 24, paragraph 1 of the Covenant had been violated, since the Netherlands had not specified the special circumstances under which individuals without a valid residence permit are eligible to apply for child budget.

On 11 October 2019 the State informed the Committee that the needs of persons who claim that they are or are likely to become victims of a humanitarian emergency are dealt with appropriately under Dutch legislation and implementation. There are dedicated reception facilities in the Netherlands for families with minor children, including those in the author's circumstances, to prevent them ending up in a humanitarian emergency situation. These facilities cater for basic needs such as food, medical care and education. In addition, the threshold for determining the existence of a humanitarian emergency is low. However, the authors did not avail themselves of these facilities, for reasons unclear to the State. The Committee's Views therefore gave no reason to amend Dutch legislation or policy. In this context, the State considered it relevant to note that in the Netherlands, eligibility for benefits under the regular social security system, including child budget, is dependent on possession of a valid residence permit.

This is regulated by the Social Entitlements (Residence Status) Act. Under the Act and national case law, special circumstances might in certain cases play a role in deciding whether the principle of linking payment of benefit to residence status should be applied. Nevertheless, the Administrative Jurisdiction Division of the Council of State has to date ruled in only a single case that the circumstances at issue were such that the principle should be set aside.
The State believed that in light of national case law, the authors' situation did not give rise to special circumstances, and that neither the alleged humanitarian emergency nor the issue of statelessness led to a different conclusion.
The State acknowledged that there are no statutory or other provisions governing situations concerning the granting of child budget in which special circumstances might lead to the principle of linking benefit to residence status being set aside. The State considered that statutory provisions would not be appropriate, precisely because exceptional situations call for an individual approach. In unforeseen situations a standard list of criteria could be disadvantageous to the individual concerned. Furthermore, the question of whether special circumstances exist can always be put before the courts. In its observations the State also discussed the rules regarding the granting of a residence permit subject to certain conditions to stateless persons, like the authors. It outlined the bill introducing a procedure for determining statelessness and some of its implications. Finally, the State stated that the author would be reimbursed for the costs of the proceedings before the Committee but that it saw no reason to offer her any other compensation, on grounds including the fact that, for a time, E.A. had received child benefit erroneously. Repayment was not requested.

Committee against Torture

Decisions

K. and K. (706/2016, 3 May 2019)

The complainants, a mother and daughter, are both nationals of Sierra Leone. They complained before the Committee that their planned removal to Sierra Leone would be a violation of article 3 of the Convention against Torture or Other Cruel, Inhuman and Degrading Treatment or Punishment (CAT). During the procedure the complainants were granted residence permits, and the Committee decided to discontinue consideration of the communication on the grounds that the dispute had been resolved.

M.J.S. (757/2016, 3 May 2019)

The complainant, a national of Côte d'Ivoire, was born in the Netherlands. Her mother had applied on her behalf for asylum in the Netherlands on the grounds that if she were removed to Côte d'Ivoire she would face the risk of being subjected to female genital mutilation (FGM). The application was denied and this decision was upheld in judicial review and appeal proceedings. Before the Committee the complainant argued that her removal to Côte d'Ivoire would expose her to the risk of FGM, in violation of article 3 of the Convention.

The Committee emphasised that for removal to qualify as a violation of article 3 of the Convention, there must be substantial grounds for believing that the complainant would personally be in danger of being subjected to torture or inhuman treatment on being removed to Côte d'Ivoire. The burden of proof in this regard lay with the complainant. The Committee pointed out that the proportion of women forced to undergo FGM in Côte d'Ivoire is declining and that over 80% of the population is opposed to continuing the tradition. The Committee held that the complainant had not sufficiently demonstrated that there was a real risk of her being subjected to FGM. It concluded that her removal to Côte d'Ivoire would not be incompatible with article 3 of the Convention.

J.I. (771/2016, 16 May 2019)

The complainant, who is of Rwandan origin, fled from Rwanda to the Democratic Republic of Congo (DRC) in 1994. In 2003 he fled to the Netherlands with his wife. In July 2013 he was arrested in connection with a criminal investigation into his possible involvement in the Rwandan genocide. In September 2013 Rwanda requested his extradition. The Minister of Security and Justice approved his extradition in 2015. The complainant subsequently challenged this decision before the judge hearing applications for interim relief at The Hague District Court. The district court found in his favour, but this judgment was reversed by The Hague Court of Appeal. The complainant did not lodge an appeal in cassation with the Supreme Court. He subsequently submitted an application to the European Court of Human Rights, also requesting interim measures. The Court denied the request for interim measures and declared his application inadmissible.

On 12 November 2016 the complainant was extradited to Rwanda, but he had lodged his communication with the Committee before that date. He argued that due to his ties with the opposition, the complaint he had made against a high-ranking Rwandan official, and his family history, his extradition to Rwanda would expose him to the risk of treatment incompatible with article 3 of the Convention at the hands of the Rwandan government. He also argued that Rwanda had no independent judiciary and his sentence to life imprisonment was predetermined. Furthermore, any form of protection afforded to him under the Rwandan Transfer Law would end after his trial.

The Committee observed that in cases where a person has already been expelled, it assesses what the State party knew or should have known at the time of expulsion. The Committee concluded that the complainant's claim that he would face the risk of torture or inhuman treatment at the hands of the national authorities was investigated before he was extradited. It noted that after extradition he had been detained in prisons which met international standards and that regular monitoring of the circumstances of his detention was being carried out by the International Commission of Jurists.

The Committee further held that the complainant's claims seemed to be primarily based on the presumption that a person extradited on genocide charges was automatically at risk of torture on return to Rwanda. He had however failed to provide any evidence to support this claim. The Committee further held that he had also failed to provide sufficient evidence that he would face a real, personal and foreseeable risk of torture if extradited to Rwanda. It therefore concluded that his extradition to Rwanda did not constitute a violation of article 3 of the Convention.

J.M. (768/2016, 16 May 2019)

The complainant, who is of Rwandan origin, fled to the Democratic Republic of Congo (DRC) in 1994. He arrived in the Netherlands in 1999, where he lived with his wife and children until 2016. In 2012 the Rwandan authorities requested his extradition on suspicion of genocide and membership of a criminal organisation. On 23 January 2014 he was detained by the Dutch authorities. The Minister of Security and Justice approved his extradition in 2015. He challenged this decision before the judge hearing applications for interim relief at The Hague District Court. The district court found in his favour, but on appeal his extradition was declared permissible. He subsequently lodged an application with the European Court of Human Rights, also requesting interim measures. The Court denied the request for interim measures and declared his application inadmissible. On 12 November 2016 the complainant was extradited to Rwanda, but he had lodged his communication with the Committee before that date.

The complainant argued before the Committee that due to his membership of the Coalition for the Defence of the Republic (CDR), an opposition party, and his active involvement in Rwandan opposition groups in the Netherlands, his extradition to Rwanda would expose him to the risk of treatment incompatible with article 3 of the Convention at the hands of the Rwandan authorities. He also argued that the safeguards guaranteed under the Rwandan Transfer Law would be violated and that any protection it might afford him would end after his trial. He claimed that his sentence to life imprisonment was predetermined, since the Rwandan judiciary was not independent.

The Committee observed that in cases where a person has already been expelled, it assesses what the State party knew or should have known at the time of expulsion. The Committee concluded that the complainant's claim that he would face the risk of torture or inhuman treatment at the hands of national authorities was investigated before he was extradited. It noted that after extradition he had been detained in prisons which met international standards and that regular monitoring of the circumstances of his detention was being carried out by the International Commission of Jurists.

The Committee further held that the complainant's claims seemed to be primarily based on the presumption that a person extradited on genocide charges was automatically at risk of torture on return to Rwanda. He had however failed to provide any evidence to support this claim. The Committee further held that he had also failed to provide sufficient evidence that he would face a real, personal and foreseeable risk of torture if extradited to Rwanda. It therefore concluded that his extradition to Rwanda did not constitute a violation of article 3 of the Convention.

S.S. (800/2017, 26 July 2019)

The complainant argued before the Committee that if he were removed to Sri Lanka he would face a real risk of torture, in violation of article 3 of the Convention. Having been informed that the complainant was no longer in the Netherlands and that he had applied for asylum in another country, the Committee decided to discontinue its consideration of the communication.

X. (863/2018, 5 December 2019)

The complainant, who is of Ivorian origin, has lived in the Netherlands since 2009. She claimed that her removal to Côte d'Ivoire would violate her rights under article 3 of the Convention in view of the risks she would face in that country.

She stated that in December 2005 she was arrested by unidentified armed men wearing military clothes. She was subsequently held in a prison cell for four years. She claimed that during that time she was repeatedly beaten and raped by prison guards. On 7 August 2009 she managed to escape and on 9 August 2009 she arrived in the Netherlands. On 23 October 2009 she applied for a temporary asylum residence permit, which was granted on 8 February 2010 on the basis of the civil war raging in Côte d'Ivoire at the time when her application was being processed. On 30 October 2013 her temporary residence permit was withdrawn as the situation in Côte d'Ivoire had been declared safe. The complainant did not qualify for a residence permit based on the individual risk she would face if returned to Côte d'Ivoire. In addition, the Immigration and Naturalisation Service stated that her account in support of her asylum application was inconsistent, vague and contradictory and therefore lacked credibility. The complainant filed an application for administrative review of the withdrawal of her residence permit, at the same time requesting that her permit be extended. Both applications were denied.

The complainant argued before the Committee that her rights under article 3 of the Convention would be violated if she returned to Côte d'Ivoire. She claimed that the inconsistencies in her account could be explained by the fact that in this period she was taking strong medication to prevent epileptic seizures caused by the alleged torture and rape. The Committee concluded that although this could be a reason for some of the inconsistencies it did not explain all of them.

Furthermore, even if her account were considered sufficiently credible, the complainant had failed to establish that her removal to Côte d'Ivoire would expose her to a personal risk of torture. The Committee therefore decided that the complainant's removal to Côte d'Ivoire would not constitute a violation of article 3 of the Convention.

Other developments

Council of Europe[2]

Interlaken process: reform of the ECHR system

At the end of 2019 the Interlaken process was concluded. This process featured five high-level conferences on the long-term future of the ECHR system, leading to five political declarations: Interlaken (2010), Izmir (2011), Brighton (2012), Brussels (2015) and Copenhagen (2018). Initially, the emphasis lay on reforming the European Court of Human Rights in order for it to successfully manage its extremely heavy workload. Gradually, however, attention was paid to all the actors in the system, including the member states – which bear primary responsibility for the implementation of the Convention – and the Committee of Ministers, which supervises the execution of Court judgments. The Interlaken Declaration requested the Committee of Ministers to decide before the end of 2019 whether the measures adopted in the intervening period were sufficient to ensure that the ECHR system continued to function effectively or whether more profound changes were necessary. At the instruction of the Committee of Ministers, the Steering Committee for Human Rights (CDDH) drafted the 'Contribution of the CDDH to the evaluation provided for by the Interlaken Declaration', focusing on the following issues:

- the Court's workload;
- scope for expediting the processing of cases;
- scope for dealing more effectively with interstate cases;
- the position of judges at the end of their mandate.

In addition, the CDDH considered implementation by member states of the Brussels Declaration, which emphasises the shared responsibility of the member states and the Court. At the 128th session of the Committee of Ministers held in Elsinore, Denmark in May 2018, it was decided to extend the evaluation to include the impact of Protocols No. 15 and 16. The relevant contribution is expected in spring 2020. The main conclusion of the contribution presented to the Committee of Ministers at the end of 2019 was that there is as yet no reason to make fundamental changes to the ECHR system. A number of reforms implemented to date have already produced positive results, while the effects of other reforms have yet to take shape. Since the cases resulting from interstate disputes place a heavy burden on the system, this issue will require further work by the CDDH. Similarly, in the context of shared responsibility, further attention should be focused on practical efforts by the member states to prevent violations and ensure effective legal remedies. The evaluation of the Interlaken process will be part of the agenda for the 130th session of the Committee of Ministers.

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

Report on the ECHR in the European and national legal order

At the end of 2019 the CDDH also presented its 'Report on the place of the European Convention on Human Rights in the European and national legal order' to the Committee of Ministers. The report was produced in the context of the Interlaken process, which regarded differences of interpretation between the Convention and other international instruments as one of the challenges facing the ECHR system. The report analyses the challenges and possible solutions that exist in the following areas: extraterritorial application of the Convention and state responsibility; the methods of interpretation used by the Court; interaction between the Convention and UN Security Council resolutions; interaction between the Convention and international humanitarian law; interaction between the Convention and UN human rights instruments; interaction between the Convention and the legal order of the EU; and interaction between the Convention and the legal order of the Eurasian Economic Union (EAEU).

Protocol No. 16 to the Convention

During his visit to Strasbourg on 11 and 12 February 2019 the Minister of Foreign Affairs, Stef Blok, presented the ratification instrument for Protocol No. 16 to the Secretary-General of the Council of Europe. The Kingdom of the Netherlands thus became the 11th state to allow its highest national courts to ask the Court for advisory opinions on questions of principle relating to the interpretation or application of the rights and freedoms defined in the Convention or its Protocols, within the context of proceedings pending before them. Protocol No. 16 came into force in the Kingdom of the Netherlands on 1 June 2019. The designated highest courts entitled on the basis of the Protocol to request an advisory opinion are: the Supreme Court, the Administrative Jurisdiction Division of the Council of State, the Central Appeals Court for Public Service and Social Security Matters, the Administrative Court for Trade and Industry and the Joint Court of Justice of Curaçao, Aruba, St Maarten, and of Bonaire, St Eustatius and Saba.

During the Minister's talks with the President of the Court, the President stated that, in the long term, the dialogue with national courts which Protocol No. 16 has strengthened is expected to lead to a decline in applications and consequently to a reduced workload for the Court. On 10 April 2019 the Court published its first advisory opinion in response to a request from the French Court of Cassation submitted in October 2018 regarding surrogacy and article 8 of the Convention (right to respect for private and family life). In August 2019 a second request for an advisory opinion was submitted by Armenia's Constitutional Court concerning certain aspects of article 7 of the Convention (no punishment without law).

Supervision of the execution of Court judgments

On 29 May 2019 the Court gave judgment for the first time in proceedings under article 46, paragraph 4 of the Convention. In December 2017, in connection with the case of *Mammadov v. Azerbaijan* (judgment of 22 May 2014) the Committee of Ministers referred to the Court the question of whether Azerbaijan had failed to meet its obligations under article 46, paragraph 1 of the Convention. The Grand Chamber found, unanimously, that Azerbaijan had not fulfilled its obligation to execute the judgment. The case presently lies before the Committee of Ministers.

Dialogue between ECHR agents and the Court

With the aim of reducing its workload, the Court stepped up its use of the non-contentious phase (facilitation of friendly settlements; NCP) in 2019. NCP was used in 81% of communicated cases. In this phase, member states and applicants are first given the opportunity to explore the scope for a settlement. In around 37% of cases in which NCP was used, the Court itself immediately made a friendly settlement proposal that could be accepted or refused. This occurs in relatively straightforward cases. The Court will not make a proposal if the case involves complex legal questions or novel issues, or if the application is sensitive in terms of public opinion. An initial evaluation has revealed that the agents are on the whole positive about the NCP but that there is room for improvement. More specifically, it should be made clear that use of the NCP is not an indication that a violation has occurred. The dialogue will continue to focus on further improvements to the process.

In 2019 the Court finalised an internal guide on writing judgments. Its main aim is to achieve consistency in the way judgments delivered by the various Sections are written and to improve the readability of judgments. One suggestion is to summarise the judgment at the beginning of the text.

European Social Charter/collective complaints procedure

In 2019 no new complaints against the Netherlands were submitted to the European Committee of Social Rights (ECSR) under the collective complaints procedure of the European Social Charter. The only case pending against the Netherlands is a complaint lodged by the international NGO University Women of Europe (UWE).

In 2019 discussions within the CDDH on the protection of social rights in Europe led to the publication of the 'Report identifying good practices and making proposals with a view to improving the implementation of social rights in Europe'. The report also contains proposals for a more effective supervisory mechanism in the context of the collective complaints procedure. The Committee of Ministers is now considering the report to determine the way in which the proposals will be followed up.

United Nations

Reporting to treaty bodies

- On 9 January 2019 the combined 22nd to 24th periodic reports under the International Convention on the Elimination of All Forms of Racial Discrimination were submitted to the Committee on the Elimination of Racial Discrimination.
- On 24 January 2019 the Netherlands submitted an interim report in response to the conclusions and recommendations of the Committee on Economic, Social and Cultural Rights in the framework of the sixth periodic report under the International Covenant on Economic, Social and Cultural Rights.
- On 1 and 2 July 2019 the Human Rights Committee considered the Netherlands' fifth periodic report under the International Covenant on Civil and Political Rights (ICCPR). The delegation representing the Kingdom included representatives from the Netherlands, Aruba and Curaçao.
- On 25 July 2019 the Human Rights Committee published its conclusions and recommendations relating to the fifth periodic report under the ICCPR.

Submissions to other treaty bodies

- In 2019 the Netherlands sent submissions to the Committee on the Rights of the Child with observations on draft general comments on children's rights in relation to the digital environment and in the juvenile justice system, and on the sale of children, child prostitution and child pornography. The submissions are available on the Committee's website.
- In 2019 the Netherlands sent a submission to the Committee on the Elimination of Racial Discrimination with observations on a draft general recommendation on racial profiling. The submission is available on the Committee's website.

Publications by treaty bodies

On 18 September 2019 the Committee on the Rights of the Child published General comment no. 24 (2019) on children's rights in the child justice system.

Annexes: overviews and statistics

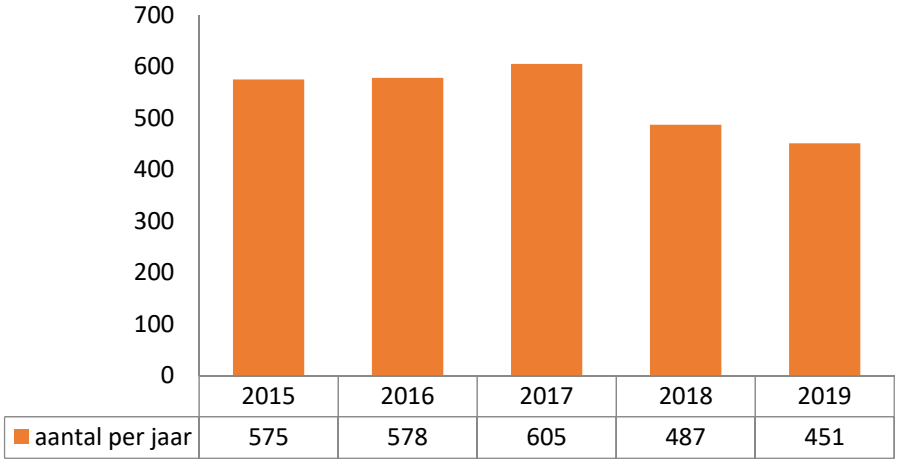
Annexe I

Council of Europe

European Court of Human Rights[3]

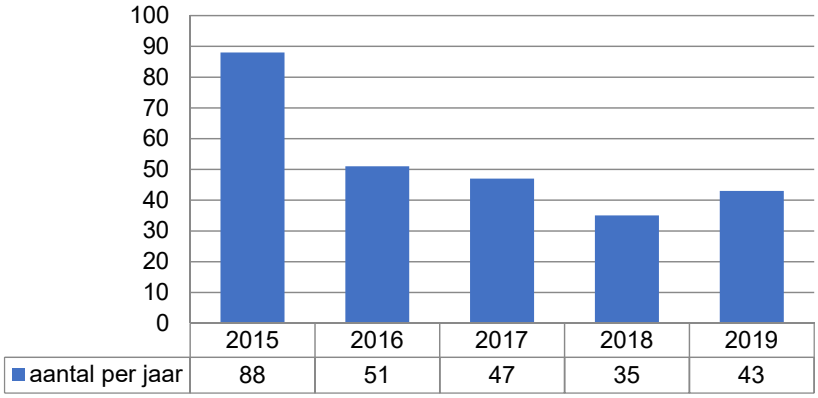
Statistics[4]

Cases pending against the Kingdom of the Netherlands



Red: Annual total

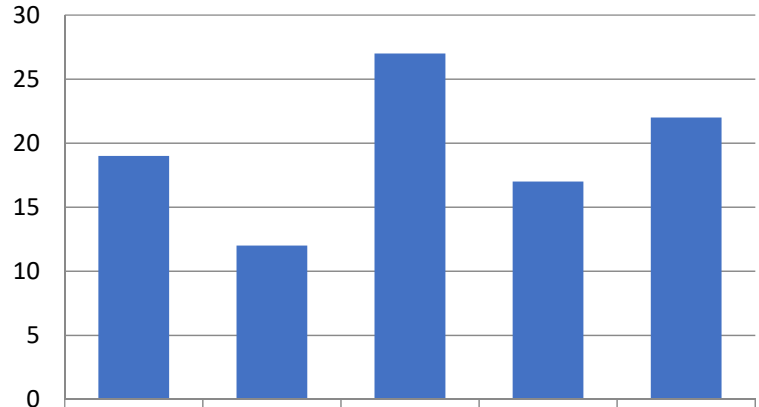
Cases being processed by the Kingdom of the Netherlands



Blue: Annual total

[3] Statistics for all the member states of the Council of Europe are contained in *Survey of Activities 2019,* published by the Court Registry.
[4] Figures refer only to cases against the Kingdom of the Netherlands.

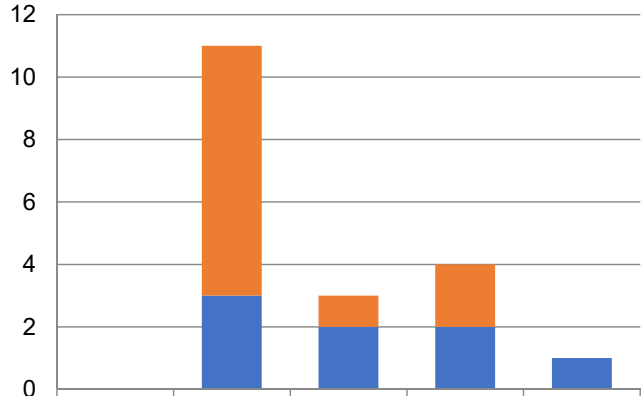
New cases communicated
to the Kingdom of the Netherlands



	2015	2016	2017	2018	2019
Aantal per jaar	19	12	27	17	22

Blue: Annual total

Judgments

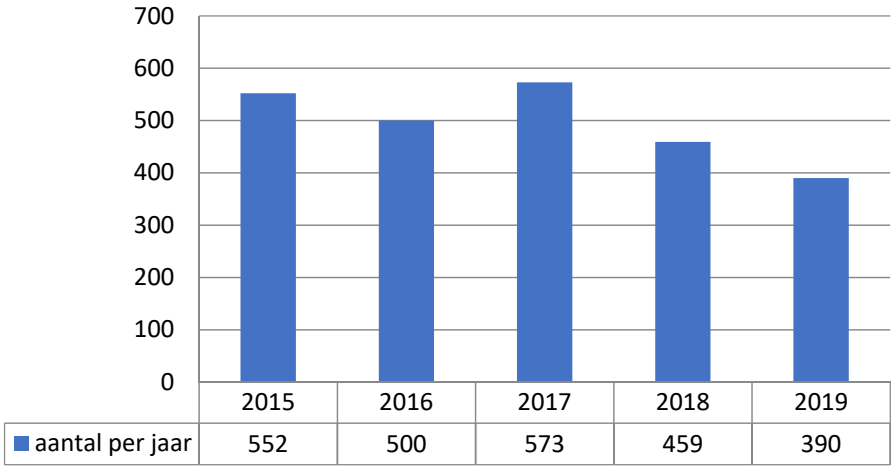


	2015	2016	2017	2018	2019
geen schendingen	0	8	1	2	0
schendingen	0	3	2	2	1

Red: No violation

Blue: Violation

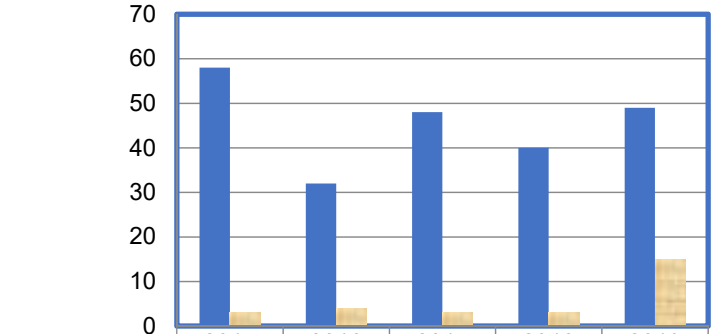
Decisions on admissibility and to strike applications out of the list



	2015	2016	2017	2018	2019
aantal per jaar	552	500	573	459	390

Blue: Annual total

Interim measures under Rule 39

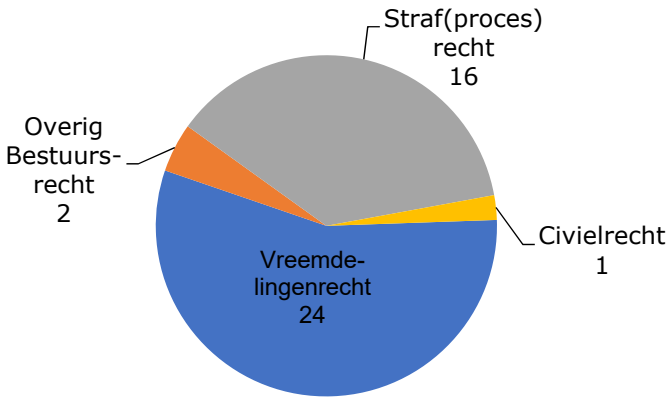


	2015	2016	2017	2018	2019
aangevraagd	58	32	48	40	49
toegewezen	3	4	3	3	15

Blue: Applied for

Pink: Granted

Cases pending, numbers per category as at 31 December 2019



Red: Other administrative law

Grey: Criminal law and criminal procedure law

Yellow: Civil law

Blue: Immigration law

Judgments and decisions[5]

Judgments

Name	App. No.	Date
H.J.C.K.	23192/15	28 May 2019

Decisions

Name	App. No.	Date
A.	24026/18	5 September 2019 (*)
A.A. and others	28190/18	29 August 2019
A.D. and L.K.	71815/14 71827/14	12 March 2019
A.J. and others	82077/17	17 January 2019
A.M.	37153/17	24 October 2019
A.R.B.	8108/18	17 January 2019
D.B.	48671/18	11 July 2019 (*)
E.Y.	37115/11	15 January 2019
F.B.	54892/16	25 June 2019
F.O.M.	42922/18	14 November 2019
G.S.	34299/14	12 March 2019
J.P.A.N.	59133/16	25 June 2019
K.	8087/15	11 July 2019 (*)
K.E.K.	37164/17	26 November 2019
M.A.S. and others	80450/13	12 September 2019
M.M.S. and others	9933/18	12 December 2019
M.T.	18519/19	11 July 2019 (*)
N.K.	58572/14	6 June 2019
N.O.V.	68328/17	8 January 2019
S.A. and A.J.	70475/14 / 70530/14	12 March 2019
S.H.	36558/14	12 March 2019
T.E.	43462/16	3 September 2019

[5] The cases listed here are summarised in the section entitled 'Council of Europe'. Cases marked (*) are single-judge decisions and have therefore not been summarised.

Cases against the Kingdom being processed as at 31 December 2019

Name	App. No.	Article ECHR
A.H.L.	2445/17	art. 3
A.S.	48397/19	arts. 3 and 13
A.S.N. and T.K.M.	68377/17	arts. 2 and 3
B.H. B.V.	3124/16	art. 8
B.J.	51027/19	arts. 3 and 13
B.Y.C. and L.M.C.	7338/16	art. 3
C.H.P.	58403/17	arts. 1, 4, 6, 7 and 8
C.P.	65064/19	arts. 2 and 3
E.G.E.	52053/18	arts. 2, 3 and 8
F.E.H.	73329/16	art. 5
F.G.Z.	69491/16	art. 5
F.O. and others	48125/19	art. 3
H.P.	25402/14	art. 8
J.J.G. B.V. and others	2800/16	art. 8
K.A.	3138/16	art. 8
K.D. and others	52334/19	arts. 2, 3, 6 and 13
L.A.D.L.	58342/15	art. 6
M.B.	71008/16	art. 5
M.F.D.	61591/16	art. 6; art. 4 Prot. No. 7
M.I.M.	42533/19	arts. 3, 5, 8 and 13
M.J.	49259/18	arts. 3 and 13
M.M.	10982/15	art. 5
M.Ö	45036/18	art. 2
M.T.	46595/19	art. 3
R.B. and N.R.	45067/18	arts. 2 and 13
R.H.S.N.	585/19	arts. 6 and 13
R.R.C.	21464/15	arts. 3 and 13
P.I. B.V.	3205/16	art. 8
P.T.	50389/19	art. 3
S.A.	49773/15	art. 3
S.L.S. and others	19732/17	arts. 6 and 8
S.O.	49596/19	art. 3; art. 4 EU Charter of Fundamental Rights
S.S.G. and others	530/18	arts. 2 and 3
S.W.O.C. B.V.	2799/16	art. 8
T.K.	298/15	art. 2
T.M. and S.Y.M.	33515/16	arts. 3, 8 and 14

V.A. and others.	48062/19	art. 3; art. 4 EU Charter of Fundamental Rights
V.K.	2205/16	art. 6
X.	72631/18	art. 6
Y.F.C. and others	21325/19	arts. 3, 5 and 13; art. 4 Prot. No. 4
Z.H.	45582/18	art. 3
Z.N.	71676/14	arts. 3 and 13

Cases against other States Parties being processed as at 31 December 2019[6]

Name	**App. No.**	**Article ECHR**
S.A. and others and A. and others. v. Russia	25714/16 and 56328/18	arts. 2, 3 and 41
BBW v. UK and Centrum för rättvisa v. Sweden	58170/13 and 35252/08	art. 8
K.J.B. and others v. Russia	22515/14	arts. 5 and 10
M.N. and others v. Belgium	3599/18	arts. 1, 3, 6 and 13
S-V. and others v. Russia	26302/10	arts. 2 and 3

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

European Committee of Social Rights

No decisions were delivered by the Committee in 2019.

Cases being processed as at 31 December 2019

Name	Complaint No.	Article ECS
UWE	134/2016	arts. 1, 4, 20 and E

Committee of Ministers

ECtHR cases under supervision as at 31 December 2019

Name	App. No.	Date judgment/decision
J.C.M.	10511/10	26 April 2016
I.Ő.	69810/12	28 June 2016
A.J.H.	30749/12	14 February 2017
H. and K.	70286/14	2 May 2017
E.C.	37617/10	28 August 2018
F.C.	29593/17	9 October 2018
H.J.C.K.	23192/15	28 May 2019

ECtHR cases where supervision ended in 2019[7]

Name	App. No.	Date of resolution
I-M.O.	1704/17	2 May 2019
J.Z.	23179/12	2 May 2019

[7] Cases marked (*) are summarised in the section entitled 'Committee of Ministers'.

Annexe II

United Nations

General[8]

In 2019 the UN treaty bodies:

- informed the Government of two new communications;
- established Views in two cases, in one of which a violation was found, and made Decisions in eight cases.

Human Rights Committee

Views

Name	Comm. No.	Date
E.A. and Y.	2498/2014	26 March 2019
M.H. and J.H.	2489/2014	26 March 2019

Decisions

Name	Comm. No.	Date
M.S.	2739/2016	8 November 2019
S.A. and others	2683/2015	17 July 2019

Cases being processed as at 31 December 2019

Name	Comm. No.	Article ICCPR
A.D.N.	2894/2016	art. 7
A.G.	3052/2017	arts. 2 and 8
B.P. and P.B.	2974/2017	arts. 2, 3, 6, 7, 9, 17 and 26
D.J.	3256/2018	art. 14
D.Z.	2918/2016	art. 24
G.F.S.	3650/2019	arts. 2, 10, 14, 15, 17, 25 and 26
G.R.M.J.	2958/2017	arts. 2, 14 and 25
H.J.T.	3004/2017	art. 14
J.O.Z. and E.E.I.Z.	2796/2016	arts. 1, 2, 7, 9 and 24
J.S.	3210/2018	arts. 2, 4, 7, 9 and 10
O.T.	2782/2016	arts. 2, 13, 17, 23 and 24

[8] Cases marked (*) are summarised in the section entitled 'United Nations'.

R.E.I.	3015/2017	arts. 14, 15 and 26
S.E.H.	3236/2018	arts. 12 and 26
S.H. and others	3281/2018	arts. 2, 6, 7, 17, 19, 24 and 26
W.S.J.	3077/2017	arts. 2 and 26

Committee on the Elimination of Discrimination against Women

In 2019 no Views or Decisions were published.

Cases being processed as at 31 December 2019

Name	Comm. No.	Article CEDAW
G.M.F. and others	117/2017	arts. 1, 6, 9, 15 and 16

Committee against Torture

In 2019 no Views were published.

Decisions

Name	Comm. No.	Date
J.I.	771/2016	16 May 2019
J.M.	768/2016	16 May 2019
K. and K.	760/2016	3 May 2019
M.J.S.	757/2016	3 May 2019
S.S.	800/2017	26 July 2019
X.	863/2018	5 December 2019

Cases being processed as at 31 December 2019

Name	Comm. No.	Article CAT
D.B.	824/2017	art. 3
F.K.M.	954/2019	art. 3
S.R.	834/2017	art. 3
T.S.	96/2018	art. 3