2021 Annual Report

International Human Rights Proceedings

International Law Division
Ministry of Foreign Affairs

Contents

Foreword

Like previous reports, this 2021 annual report contains summaries of all the judgments and decisions handed down in international human rights proceedings to which the Kingdom of the Netherlands was a party. It also contains information that is connected or directly relevant to proceedings, as well as overviews and statistics.

On 1 August 2021, just over eight years after its adoption, Protocol No. 15 amending the Convention for the Protection of Human Rights and Fundamental Freedoms (the Convention) entered into force. Protocol No. 15 introduces a reference in the Preamble to the Convention to the principle of subsidiarity and the doctrine of the margin of appreciation. It also introduces a number of procedural and technical amendments.

In 2021 the European Court of Human Rights (ECtHR) gave judgment in seven cases involving the Kingdom of the Netherlands. In five cases, it found a violation of the Convention. In one case the United Nations Human Rights Committee established Views concluding that a violation of the International Covenant on Civil and Political Rights (ICCPR) had taken place in the assessment of the risk of female genital mutilation (FGM) faced by a woman and her daughter if they returned to their country of origin. In 2021 the number of findings of violations of human rights instruments such as the ECHR and the ICCPR reached its highest level since 2005.

Six judgments of the ECtHR related to criminal law or criminal procedural law. In one case, the ECtHR concluded that the right to a fair trial had been violated since the defence had not been given the opportunity to cross-examine a number of witnesses. In three cases it concluded that a violation had taken place because the decisions to extend pre-trial detention had not been sufficiently substantiated. In one case the ECtHR ruled that the right to a fair trial had been violated since the court had given insufficient reasons for disposing of the case in the absence of the defendant, despite his clearly expressed desire to attend. In contrast, in another case, the ECtHR concluded that sufficient attempts had been made to ensure the defendant's presence at the hearing.

Another interesting judgment was handed down in a case involving the online publication of a decision to grant a permit. The applicants had not seen the publication of the decision on the website and as a result failed to lodge an objection in time. The ECtHR ruled that no violation of the right to a fair trial had taken place. Electronic publication was sufficient.

Two written responses were submitted to documents lodged by Russia in answer to the inter-state application brought before the ECtHR against the Russian Federation concerning Russia's role in the downing of flight MH17. A hearing on admissibility was planned for November 2021 but postponed at the last minute, when the judge appointed in respect of the Russian Federation withdrew from the case. It is now scheduled for January 2022.

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 in 2021 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 Ministry of Justice and Security; Social Affairs and Employment; Health, Welfare and Sport; and the Interior and Kingdom Relations, as well as the Immigration and Naturalisation Service, the Public Prosecution Service and our colleagues in Curaçao, Aruba and St Maarten.

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 2022

Human Rights Group
International Law Division
Legal Affairs Department

Council of Europe

European Court of Human Rights

Judgments

V.K. (2205/16, 19 January 2021)
The applicant complained before the European Court of Human Rights (the Court) that his right to a fair trial laid down in Article 6, paragraph 1 in conjunction with paragraph 3 (d) of the Convention for the Protection of Human Rights and Fundamental Freedoms (the Convention) had been violated since his request to cross-examine seven witnesses had been refused. In addition, the applicant complained that the Supreme Court had dismissed his appeal in cassation without substantiation, relying on section 80a of the Judiciary (Organisation) Act, although the Procurator General had not submitted an advisory opinion in the case.

In 2013 the applicant was convicted in absentia of fraud by Overijssel District Court on the basis of six out of seven witness statements made to the police. The defence had not been present when these statements were given. The witnesses were not summoned to appear at the hearing. On appeal, the applicant repeatedly requested that the seven witnesses be summoned to appear. The Advocate General considered that the request should be granted, but the appeal court rejected the request on the grounds that the interests of the defence (*verdedigingsbelang*) had not been sufficiently substantiated. In this connection the appeal court referred to a general ruling handed down by the Supreme Court regarding the substantiation of requests to examine witnesses. The appeal court convicted the applicant partly on the basis of the witness statements. The applicant lodged an appeal in cassation; the Supreme Court declared his appeal inadmissible, providing only a summary reasoning.

With regard to the first complaint, the Government submitted a unilateral declaration acknowledging a violation of Article 6, paragraph 1 in conjunction with Article 1, paragraph 3 (d) of the Convention. In relation to this first complaint and referring to the case law, the Court held that where a violation of Article 6 of the Convention has been found, a retrial or reopening of proceedings is in principle the most appropriate form of redress. In the Court's view, it is uncertain whether article 457, paragraph 1 (b) of the Code of Criminal Procedure offers scope to apply for a reopening of national proceedings after a strike-out decision by the Court following a unilateral declaration. The Court therefore dismissed the Government's request that this part of the application be struck out of the list of cases and proceeded to an examination of the merits.

The Court reiterated that defendants have the right to examine witnesses for the prosecution under Article 6, paragraph 3 of the Convention. This right is not absolute, but the Court assesses cases where the defendant was not afforded this opportunity for compatibility with the right to a fair trial according to three principles: (1) whether there was a good reason for the defendant not having the opportunity to examine the witness; (2) whether the sole or decisive basis for the conviction was the evidence of an absent witness and (3) whether there were sufficient counterbalancing factors. In its judgment, the Court made clear that the defence is not obliged to demonstrate the importance of a prosecution witness. If the prosecution decides that a particular person is a source of relevant information and relies on their testimony in criminal proceedings, and if their testimony is used by the court in support of a conviction, it must in principle be assumed that to guarantee a fair trial it is necessary to summon and examine this witness.

Since the appeal court had justified its refusal of the applicant's request to summon the seven witnesses on the basis that he had failed to sufficiently substantiate the interests of the defence, the Court concluded that there was no good reason for the refusal. It further noted that the relevant witness statements were probably decisive to the final judgment in the case. In answering the question of whether there were counterbalancing factors, the Court held that the judgment of the appeal court did not indicate that only limited evidentiary value could be ascribed to the witness statements, nor did it contain any reasoning as to why the court considered them to be reliable. In addition, in the Court's view, there was no corroborative evidence. Although the applicant had the opportunity to challenge and rebut the statements, this could not compensate sufficiently for the restrictions experienced by the defence as a result of being denied the opportunity to question the witnesses. The Court concluded that the inability of the applicant to cross-examine the seven witnesses rendered his trial as a whole unfair. It accordingly found a violation of Article 6, paragraphs 1 and 3 of the Convention.

With regard to the second complaint, the Court referred to a recent judgment in the case of *E.K. v. the Netherlands* (no. 37164/17), in which similar complaints were declared inadmissible. In the Court's view, it was acceptable for the Supreme Court to dismiss an appeal in cassation by mere reference to section 80a of the Judiciary (Organisation) Act, even if the appeal in question alleged a violation of a right protected by the Convention. The Court saw no reason to reach a different conclusion in this case and declared the complaint manifestly ill-founded.

F.E.H. (73329/16, 9 February 2021)
The applicant claimed that his pre-trial detention was in violation of Article 5, paragraphs 1 and 3 of the Convention (right to liberty and security) because there had been inadequate justification for its extension or, alternatively, because the various decisions made in this regard had been insufficiently substantiated. Furthermore, in the applicant's view, the courts had not exercised due care: it had taken the district court 22 days and the appeal court 26 days to decide on his applications for suspension of his pre-trial detention.

After his arrest the applicant was remanded in police custody (*inverzekeringstelling*) and then remanded in custody (*bewaring*) for fourteen days. Rotterdam District Court based the subsequent order for extended remand in custody (*gevangenhouding*) on the consideration that there were compelling public-safety reasons for pre-trial detention. The applicant subsequently applied for the order to be suspended or lifted. The district and appeal courts held that the serious grounds for suspicion and other reasons that had led to the remand order were still present. After the applicant had been acquitted of all the charges against him, the President of Rotterdam District Court informed him that the scheduling of his applications for the suspension or lifting of pre-trial detention had not been conducted with the habitual diligence and offered her apologies. In addition, the district court awarded the applicant compensation for his pre-trial detention.

Referring to its established case law, the Court reiterated the principle that it is primarily the responsibility of the national authorities to ensure that pre-trial detention does not exceed a reasonable time. Reasonable suspicion is a basis for pre-trial detention but is not in itself a sufficient foundation for decisions regarding its continuation. In this context, it is also important to ascertain whether there are other grounds that would justify the deprivation of a person's liberty. If such grounds are present, and in addition are relevant and sufficient, it must then be determined whether the authorities displayed special diligence in the conduct of proceedings. In that context,

justification for pre-trial detention must always be convincingly demonstrated on the basis of specific facts and individual circumstances.

The Court noted that in this case the original decision on pre-trial detention was based on the risk of reoffending, on the fact that the offence constituted an affront to the legal order and the risk that the applicant would take action to prejudice the administration of justice. In their decisions refusing to suspend or lift pre-trial detention, the national courts merely referred back to the basis for the initial remand in custody without taking into account the arguments put forward by the applicant regarding the diminished seriousness of the suspicions. The Court also remarked that its conclusions had to be based on the written decisions and the established facts. It could not therefore accept the Government's contention that the depth of the discussions at the hearing must be considered sufficient.

Due to the absence of an express consideration of the specific facts and individual circumstances, the decisions refusing to suspend or lift the applicant's pre-trial detention had been insufficiently substantiated. This constituted a violation of Article 5, paragraph 3 of the Convention. The Court further held that the periods of 22 and 26 days taken by the district court and the appeal court respectively to reach a decision did not comply with the speediness requirement. A violation of Article 5, paragraph 4 of the Convention was therefore also found.

M.M. (10982/15, 9 February 2021)
The applicant complained before the Court of a violation of Article 5, paragraphs 1 and 3 of the Convention (right to liberty and security). He claimed that there had been insufficient grounds for his pre-trial detention or, alternatively, that the various decisions on its extension had been insufficiently substantiated.

Following his arrest, the applicant was remanded in police custody (*inverzekeringstelling*) and then remanded in custody (*bewaring*) for fourteen days. Since he was suspected of committing a criminal offence which entailed an affront to the legal order and there was a risk of reoffending, the court based the subsequent order for extended remand in custody (*gevangenhouding*) on the consideration that there were compelling public-safety reasons for his detention (in accordance with article 67a of the Code of Criminal Procedure). The applicant subsequently applied for the order to be suspended or lifted. The district and appeal courts held that the grounds stated in the remand order were still present.

The applicant was sentenced to 18 months' imprisonment, with credit for time spent on remand.

Referring to its established case law, the Court reiterated the principle that it is primarily the responsibility of the national authorities to ensure that pre-trial detention does not exceed a reasonable time. Reasonable suspicion is a basis for pre-trial detention but is not in itself a sufficient foundation for decisions regarding its continuation. In this context, it is also important to ascertain whether there are other grounds that would justify the deprivation of a person's liberty. If such grounds are present, and in addition are relevant and sufficient, it must then be determined whether the authorities displayed special diligence in the conduct of proceedings. In that context, justification for pre-trial detention must always be convincingly demonstrated on the basis of specific facts and individual circumstances.

The Court held that in this case the original decision on pre-trial detention had been sufficiently substantiated. However, the subsequent decisions refusing to suspend or lift pre-trial detention paid insufficient attention to the specific circumstances. In particular, the Court held that the district and appeal courts did not demonstrate that releasing the applicant would constitute an affront to the legal order. In addition, these decisions lacked further explanation and did not address the arguments put forward by the applicant and the public prosecutor. The Court could not therefore accept the Government's contention that the depth of the discussions at the hearing compensated for the lack of detail in the written decisions. The Court concluded that there had been a violation of Article 5, paragraph 3 of the Convention.

F.G.Z. (69491/16, 9 February 2021)
The applicant claimed that there were insufficient grounds for extension of his pre-trial detention and furthermore that the various decisions in this respect had been insufficiently substantiated. The likelihood of reoffending was based solely on his criminal record.

In his view, therefore, his pre-trial detention was incompatible with Article 5, paragraph 3 of the Convention (right to liberty and security).

After his arrest the applicant was remanded in police custody (*inverzekeringstelling*) and then remanded in custody (*bewaring*) for two weeks. The district court held that there were compelling public-safety reasons for pre-trial detention. The applicant subsequently applied for the order to be suspended or lifted. The district and appeal courts held that the grounds for extending the remand order (*bevel tot gevangenhouding*) were still present and that the interests of criminal justice outweighed the applicant's personal interests. The applicant was sentenced to ten months' imprisonment, with credit for the time spent in pre-trial detention.

Referring to its established case law, the Court reiterated the principle that it is primarily the responsibility of the national authorities to ensure that pre-trial detention does not exceed a reasonable time. Reasonable suspicion is a basis for pre-trial detention but is not in itself a sufficient foundation for decisions regarding its continuation. In this context, it is also important to ascertain whether there are other grounds that would justify the deprivation of a person's liberty. If such grounds are present, and in addition are relevant and sufficient, it must then be determined whether the authorities displayed special diligence in the conduct of proceedings. In that context, justification for pre-trial detention must always be convincingly demonstrated on the basis of specific facts and individual circumstances.

The Court noted that the original decision on pre-trial detention was based on the risk of reoffending. In their decisions refusing to suspend or lift pre-trial detention, the national courts merely referred back to the basis for the initial remand in custody without taking into account the arguments put forward by the applicant. The Court also remarked that its conclusions had to be based on the written decisions and the established facts. It could not therefore accept the Government's contention that the depth of the discussions at the hearing must be considered sufficient.

Due to the absence of an express consideration of the specific facts and individual circumstances, the decisions refusing to suspend or lift the applicant's pre-trial detention had been insufficiently substantiated. This constituted a violation of Article 5, paragraph 3 of the Convention.

S.L.S. and others (19732/17, 16 February 2021)
The applicants complained before the Court of a violation of Articles 6 (right to a fair trial), 8 (right to respect for private and family life) and 13 (right to an effective remedy) of the Convention. With regard to Articles 6 and 8, the applicants claimed that the communication of decisions solely by electronic means limited their right to access to the courts and breached their right to respect for private and family life because not everyone had access to a computer or the internet. In their view, it could not therefore be expected that citizens of the Netherlands actively monitor all the online publications of regional and local authorities.

The applicants contended that the limitation of their right to access to the courts served no legitimate aim and was disproportionate, in that digital notification did not have the same reach as a printed publication, and there were less far-reaching ways of facilitating communication between government and citizens.

The individual applicants were owners of properties and the applicant foundation owned an estate in Wapenveld, all of which were located in Natura 2000, a designated Special Area of Conservation under EU Directive 92/43/EEC. Since 1987, a motocross association had held races on a motocross track located close to their properties under a permit granted by the Provincial Executive of Gelderland. The association applied for a new permit to enable it to expand its activities, with more motocross bikes and extended opening times. On 4 December 2013 the Provincial Executive published notification of its intention to grant the permit application on its website. It also stated that the draft decision and relevant documents could be viewed from 9 December 2013 to 20 January 2014 at the provincial government building and on the website. Interested parties could submit their views on the draft decision within that same period.

Only interested parties who had submitted their views could challenge the decision. No views were submitted and the Provincial Executive granted the permit on 27 January 2014. The decision was published on the provincial website. Applications for review of the decision could be lodged up to 13 March 2014. On 12 November 2014 the applicants lodged an application for review with the Administrative Jurisdiction Division of the Council of State, which declared their application inadmissible.

With regard to the complaint under Article 6 of the Convention, the Court noted in its judgment that the right to access to the courts includes an entitlement to receive adequate notification of administrative and judicial decisions. This is of particular importance in cases where a legal remedy has to be used within a specific period. However, the right to access to the courts is not an absolute right; it may be subjected to limitations and must be regulated by the national authorities. In such cases, the Court assesses whether the applicants had a clear, practical and effective opportunity to challenge the decision in question. In principle, the way in which this is regulated falls within the margin of appreciation enjoyed by the contracting states, provided there are sufficient guarantees in place to protect access.

In the present case the notification was based on the Electronic Publication Ordinance (*Verordening elektronische bekendmaking*) adopted by the Province of Gelderland. The Court held that the ordinance constituted a sufficiently coherent and clear system.

The Court further examined whether a fair balance had been struck between the importance of a modern and efficient publication system and the interests of the applicants. In this context it took

into account the fact that over 92% of the Dutch population over the age of 12 had access to the internet. In addition, the applicants had not argued that they themselves had no access to a computer or the internet. In this light, the Court concluded that the system of electronic publication in Gelderland was a coherent system that struck a fair balance between the interests of the community as a whole and those of the applicants. There had therefore been no violation of Article 6 of the Convention.

The Court declared the complaint under Article 8 of the Convention inadmissible since the applicants' failure to lodge an application for review within the time limits meant that domestic remedies had not been exhausted. As no violation of Article 6 of the Convention had been found, the Court concluded that it was unnecessary to examine separately the complaint under Article 13.

M.F.D. (61591/16, 8 June 2021)
The applicant complained before the Court that his absence at his appeal hearing constituted a violation of Article 6 (right to a fair trial) of the Convention. He argued that the Government should have done more to ensure that he could attend the hearing. The applicant had been sentenced to nine years' imprisonment by Rotterdam District Court for his involvement in importing 1623 kilos of a substance containing cocaine, but acquitted on other charges.

The Public Prosecution Service and the applicant, as well as his six co-defendants, appealed. During the appeal proceedings the applicant's pre-trial detention was suspended and his passport returned so that he could travel within the EU in connection with his work. The applicant subsequently travelled to Peru, in contravention of the condition set by the appeal court that required him to remain available at all times for the criminal proceedings. According to the applicant, he had intended to fly back to the Netherlands from Ecuador in time for the appeal, but was arrested at the border by the Peruvian authorities and placed in pre-trial detention on suspicion of money laundering related to the illegal narcotics trade.

On behalf of his client, the applicant's counsel asked the appeal court to adjourn the proceedings on the merits and request his extradition to the Netherlands. He informed the court that the applicant wished to be heard in person. The hearing was adjourned. It later transpired that Peruvian legislation did not allow for the transfer, even temporarily, of the applicant to the Netherlands.

The Advocate General informed the applicant's counsel that no formal request would be made for the extradition of the applicant because it was not permitted under Peruvian law. Counsel then informed the appeal court that the applicant wished to make a statement by means of a video conference. The subsequent hearing took place in the applicant's absence and without a video conference. The applicant's arguments against the proceedings being conducted in this way were not successful. He was sentenced to seven years and six months in prison. His appeal in cassation against the judgment was declared unfounded by the Supreme Court.

Referring to established case law, the Court reiterated the principle that it is of capital importance that defendants be given the opportunity to be present at their trial. At the same time, it noted that the personal attendance of a defendant at an appeal hearing is of less crucial significance than in proceedings at first instance. This also applies where the appeal court has jurisdiction to review the case both as to facts and as to law. The application of Article 6 of the Convention in appeal proceedings depends on the special features of the relevant proceedings within the domestic legal order. In the present case, it had been established that the applicant could not be physically present

at the appeal hearing. The Court was satisfied that extradition or temporary transfer was not possible under Peruvian law. In this light, it could not be said that the Government had failed to display due diligence in pursuing the possibilities of international legal assistance. The Court concluded that under the specific circumstances the appeal court was entitled to allow the defendant to participate in the hearing by video conference since he could not be physically present. In the Court's view, by repeatedly and unambiguously refusing to participate in this way, the defendant waived his right to take part in the hearing of his case. It concluded that there had been no violation of Article 6 of the Convention.

X (72631/17, 27 July 2021)
The applicant complained before the Court of a violation of Article 6, paragraph 3 (c) (right to a fair trial) of the Convention since she had been unable to attend the hearing in her appeal proceedings in person. The applicant argued that she had stated the explicit wish to appear before the appeal court in person and that, due to a mistake made by her counsel, the hearing took place on a date when she was out of the country. She contended that she had not waived her right to be present at the hearing.

The applicant was convicted on two counts of shoplifting and sentenced to two months' imprisonment, suspended for two years subject to a special condition that she seek treatment. She lodged an appeal against this judgment with the Arnhem-Leeuwarden Court of Appeal. The appeal hearing began on 4 June 2015 but was adjourned *sine die*, as the applicant was travelling abroad for her work and could not attend. After consultations between the applicant's counsel and the court registry, a new date (20 July 2015) was set for the resumption of the hearing. However, after the new date had been set, the applicant informed the court that she would be abroad for her work on that date too. At the hearing the applicant's counsel was not authorised to act on her behalf and admitted to having made a professional mistake in not asking the applicant if she could be present on the rescheduled date. He once again requested an adjournment and made it clear that the applicant set great store by being personally present at the hearing to give her own account. The appeal court denied this request and gave judgment in default of appearance, on the grounds that a further adjournment would not be in the interests of an effective and expeditious trial and the proper organisation of judicial proceedings.

The appeal court found the applicant guilty of shoplifting and imposed a non-suspended sentence of two weeks. The applicant then lodged an appeal in cassation with the Supreme Court, claiming that insufficient account had been taken at the hearing of her right to be heard in person under Article 6 of the Convention. The Supreme Court declared her appeal unfounded on the grounds that it was implicit in the considerations of the appeal court that it had weighed the various interests at issue, including the applicant's interest in being present at the hearing.

The Court reiterated that it is of capital importance that defendants be given the opportunity to be present at their trial. At the same time, it noted that the personal attendance of a defendant at an appeal hearing is of less crucial significance than in proceedings at first instance. The application of Article 6 of the Convention in appeal proceedings depends on the special features of the relevant proceedings within the domestic legal order. Furthermore, the contracting states have a broad margin of appreciation in determining the way in which the requirements of Article 6 of the Convention are implemented in their legal systems. The Court's task is to determine whether the result called for by the Convention has been achieved and in particular whether the procedural means offered by national legislation and practice are effective where a defendant has not

personally waived their right to be present nor attempted to escape trial. The Court further held that the contracting states cannot be held responsible for every shortcoming of lawyers representing defendants.

The Court noted that the applicant had neither personally waived her right to attend the hearing, nor had she tried to evade justice. On the contrary, she had stated that it was important to her to be present and to make a statement. The appeal court was called upon to weigh her interests against the interest of an effective and expeditious trial and the proper organisation of judicial proceedings. In the Court's view, the appeal court had not given sufficient reasons for its conclusion that the latter interests outweighed the applicant's interest in exercising her right to attend the hearing. In this context the Court took into account the brevity of the period in which the appeal proceedings were pending and the fact that there was no need for the adjournment to be of a long duration. The weight of the interest in an effective and expeditious trial and the proper organisation of judicial proceedings was therefore modest, in contrast to the applicant's express wish to attend in person, which she had substantiated on the basis of her personal circumstances and which was the reason why she had not authorised her counsel to conduct the defence.

The Court also took into account the fact that in imposing the sentence, the appeal court had attached relevance to an probation report which stated that the applicant was not willing to cooperate in treatment within the framework of probation. The appeal court was aware that the applicant wished to explain in person why she had reoffended and express her willingness to work towards preventing any reoccurrence. In the Court's view, she should have been given the opportunity to do so.

The Court considered that although the interests cited by the appeal court were undoubtedly relevant, in the circumstances of the case they should not have outweighed the applicant's interests. It therefore concluded that there had been a violation of Article 6, paragraph 1 and paragraph 3 (c) of the Convention.

Decisions

A.M.A. (23244/19, 11 March 2021)
The applicant complained under Articles 3 (prohibition of torture and inhuman or degrading treatment or punishment) and 8 (right to respect for private and family life) of the Convention after her asylum application was denied.

On 18 December 2020 the applicant informed the Registry that she wanted to withdraw her application to the Court since she had emigrated to the United Kingdom. The Court decided to strike the case out of the list since it could be assumed that the applicant did not wish to pursue it. Furthermore, there were no special circumstances which would require continued examination of the application.

M.T. (46595/19, 23 March 2021)
The applicant complained that her transfer and that of her minor children to Italy would constitute a violation of Article 3 (prohibition of torture and inhuman or degrading treatment or punishment) of the Convention. She alleged that, in comparison to the period in which the Italian authorities provided individual guarantees, the situation in Italy had deteriorated to such an extent that she and her children would be exposed to inhuman or degrading treatment. Furthermore, since she had left

the accommodation in Italy where she was initially housed, it was uncertain whether she would now be eligible for suitable reception facilities for herself and her minor children. For these reasons she argued that instead of relying on general information from the Italian authorities, the Government should have conducted a thorough investigation of the situation of the applicant and her children as well as the situation in Italy. The applicant claimed that the Government should have obtained individual guarantees that the applicant and her children would receive adequate accommodation in Italy before announcing their transfer. In addition, the applicant asked the Court for an interim measure under Rule 39 of the Rules of the Court preventing their transfer to Italy.

The interim measure was granted; as a result the applicant could not be transferred to Italy while her application to the Court was pending.

The applicant and her children had entered the Netherlands in March 2018 and applied for asylum. According to Eurodac, an EU database containing the fingerprints of registered asylum seekers, she had made an earlier application for asylum in Italy in January 2018. The Government accordingly requested that Italy take back the applicant under the Dublin III Regulation. Once the Italian authorities approved this request, the Government decided not to examine the asylum application because Italy was the responsible member state under the Dublin Regulation. The applicant's application for review of this decision was declared unfounded; she did not lodge an appeal.

Shortly afterwards the applicant left with her children for an unknown destination, and could not therefore be transferred to Italy. She subsequently submitted a second asylum application, in which she argued that legislative changes in Italy meant that she would no longer be eligible for access to suitable reception facilities.

The Government again decided not to examine her application on the basis that Italy was the responsible member state. Her application for review of this decision and her appeal were declared unfounded.

The Court reiterated that ill-treatment must attain a minimum level of severity to fall within the scope of Article 3 of the Convention. This minimum level is relative and depends on all the circumstances of the case. In addition, the Court noted that it had concluded in previous cases that specific assurances were needed from the authorities in the receiving member state that vulnerable asylum seekers, including children, would be housed in suitable facilities and that families would be kept together. From 8 June 2015 onwards, a general guarantee was provided by the Italian authorities in circular letters. In several cases the Court had concluded that this general guarantee was sufficient if the Italian authorities had been duly informed of the family situation and scheduled arrival of the persons to be transferred; in such circumstances, the persons concerned would be placed in one of the SPRAR facilities earmarked for families with minor children.

The Court further noted that the Italian reception system had changed in October 2020. As a result, the applicant and her children were now eligible for placement in appropriate facilities within the SAI network. In addition, the Court saw no reason to assume that the Government would not inform the Italian authorities of the scheduled arrival date of the applicant and her children, their family situation and any special medical needs. In this context the Court noted that the applicant had not argued that her younger daughter required medical treatment that is unavailable in Italy. For these reasons, the Court concluded that the applicant had failed to demonstrate that her situation following transfer to Italy, whether viewed from a material, physical or psychological perspective,

would lead to a sufficiently real and imminent risk of treatment severe enough to fall within the scope of Article 3 of the Convention.

The complaint of a violation of Article 3 of the Convention was manifestly ill-founded. The interim measure therefore came to an end and the Court declared the application inadmissible.

H.M.H. (71507/16, 25 March 2021)
The applicant was convicted by the criminal courts. He complained before the Court that the criminal proceedings were unfair since he had not been assisted by a lawyer when he was first questioned by the police, while the evidence thus obtained was used by the district and appeal courts. He argued that this was in violation of Article 6, paragraphs 1 and 3 (c) (right to a fair trial) of the Convention. The applicant and the Government reached a friendly settlement. The Court was satisfied that the settlement was based on respect for human rights as defined in the Convention and its protocols, and saw no reason to continue examination of the application. It therefore struck the case out of the list.

O.D.G., C.V.R. and A.N.J. (63169/19, 64133/19, 7320/20, 25 March 2021)
The applicants were held in detention in Sint Maarten. They complained before the Court that their detention conditions were so poor that they amounted to a violation of Article 3 (prohibition of torture and inhuman or degrading treatment or punishment) of the Convention. The applicants reached a friendly settlement with the Government. The Court struck the cases out of the list.

N.F.K. (39513/20, 8 April 2021)
The applicant complained under Article 8 (right to respect for private and family life) of the Convention concerning the denial of her application for family reunification with her brothers and sisters. After the application had been communicated to the Government, the latter informed the Court that the applicant's siblings had been granted authorisations for temporary stay and temporary residence permits. In view of this development the applicant informed the Court that she wished to withdraw her application. The Court therefore struck the case out of the list.

I.B. (35751/20, 22 June 2021)
The applicant complained that his rights under Article 5, paragraphs 1 (f), 3 and 5 (right to liberty and security) and Article 6, paragraph 1 (right to a fair trial) of the Convention had been violated, since he was not heard in person in connection with his application for review before the district court concerning the lawfulness of holding him in immigration detention. He claimed that there were no special circumstances to justify this.

After the applicant's asylum application was denied, he was placed in immigration detention with a view to his expulsion. He lodged an application for review of the detention order. A hearing took place in connection with his application, but due to the COVID-19 pandemic he was not permitted to be physically present. Nor was it possible to attend by video conference and the court was unable to provide an interpreter. His counsel was able to attend the hearing by telephone.

On 30 March 2020 the district court dismissed the application for review of the immigration detention order. With regard to the applicant's right to attend the hearing in person, the district court held that this right was not absolute and that exceptions were justified in special circumstances. It held that in the special circumstances of the pandemic, it had been impossible for the applicant to attend the hearing in person, despite the considerable efforts made by the court.

The applicant lodged an appeal against this judgment. The Administrative Jurisdiction Division of the Council of State upheld the district court's judgment.

The Court held that the applicant's complaints were formulated in such a way that they could only be assessed by reference to Article 5, paragraph 4 of the Convention. It reiterated the principle that the judicial proceedings referred to in Article 5, paragraph 4 need not always provide the same guarantees as those required for civil and criminal proceedings under Article 6, paragraph 1 of the Convention. It is nevertheless essential that the person in question has access to a court and the opportunity to be heard in person or, if necessary, through some form of representation.

The Court further noted that at the hearing regarding his detention the applicant had been represented by counsel, who made written submissions on his behalf and took part in the hearing by telephone.

The Court noted that the hearing in question took place in the first few weeks of the COVID-19 pandemic, a time when the immigration detention centres were largely unprepared for observing the required 1.5 metre distance in rooms suitable for teleconferencing and video conferencing. In this context it was also relevant that the court made specific efforts to enable the applicant to be present at the hearing. When this proved impossible, it explained in detail why it had been unable to hear him either in person or by video conference.

The Court took into account the difficult and unforeseen practical problems that arose in the first few weeks of the pandemic and the fact that the applicant was represented and able to make his views known through counsel at the hearing, as well as the importance of other applicable fundamental rights and the general public health interest. In this light, the Court concluded that hearing the applicant's application for review without him being present in person or by video conference had not been incompatible with Article 5, paragraph 4 of the Convention. In this context the Court pointed out once again that Article 5, paragraph 4 does not impose the same stringent requirements on hearings as Article 6 of the Convention. The Court declared the application inadmissible.

L.C. (56450/19, 9 September 2021)
The applicant complained before the Court that the life sentence imposed on him in January 1989 was *de jure* and *de facto* irreducible. In other words, he had been deprived of any prospect of release, which in his view was contrary to Article 3 of the Convention (prohibition of torture and inhuman or degrading treatment or punishment) read both alone and in conjunction with Article 13 (right to an effective remedy).

In 1989 the applicant was convicted by The Hague Court of Appeal of being a co-perpetrator of manslaughter and of a triple murder. He was sentenced to life imprisonment. This judgment was upheld by the Supreme Court on 5 December 1989. Prior to this, the applicant had been held in pre-trial detention in relation to these offences since 9 October 1987.

Between 1996 and 2015 the applicant lodged six requests for a pardon, all of which were denied.

After the Court had ascertained from information in public sources that the applicant had been granted a pardon, it asked the applicant if he wished to maintain his application. His representative informed the Court that he no longer wished to do so. In this light, and as there were no special

circumstances requiring the continued examination of the application, the Court decided to strike the case out of the list.

M.J. (49259/18, 21 October 2021)
The applicant complained before the Court under Articles 3 (prohibition of torture and inhuman or degrading treatment or punishment) and 13 (right to an effective remedy) of the Convention. He claimed he would face the risk of treatment incompatible with Article 3 of the Convention if he was removed to Afghanistan. He further argued that he had had no effective remedy. On 3 September 2021 the Government informed the Court that a six-month moratorium on decisions on the merits of asylum applications submitted by Afghan nationals and on removals to Afghanistan had entered into force on 26 August 2021. The applicant then informed the Court that he wished to maintain his application because he might face removal once again after the six-month period had elapsed. The Court decided to strike the case out of the list since the risk of the applicant being expelled, and thus potentially being exposed to treatment in breach of Article 3 had, at least temporarily, been removed. The Court observed that it was competent to restore the case to the list if this was justified by the circumstances.

R.H.S.N. (585/19, 19 October 2021)
The applicant complained that his rights under Article 6, paragraph 1 of the Convention (right to a fair trial) had been violated since the criminal proceedings in his case exceeded the reasonable time requirement. In addition, he had as a result suffered a significant disadvantage. The time taken by the appeal court to supplement its abridged judgment with a detailed enumeration of the items of evidence relied on had caused him a long period of uncertainty, also because it had been temporarily impossible in that period for him and his counsel to formulate the grounds for his appeal in cassation. The applicant further argued that the judgment of the Supreme Court was based on a summary reasoning and that the Supreme Court had taken this decision simply to avoid any further delay in the proceedings. Finally, the applicant claimed that his rights under Article 13 of the Convention had been violated: he had had no effective domestic remedy for his complaint about the length of proceedings because the Supreme Court had refused to rule on that complaint.

Limburg District Court convicted the applicant of stalking, issuing threats of homicide, assault and damage to property. The applicant lodged an appeal with ’s-Hertogenbosch Court of Appeal, which in an abridged judgment acquitted him of threatening homicide and convicted him on five counts of stalking and damage to property. He then lodged an appeal in cassation with the Supreme Court, which meant that the appeal court was required to prepare a fully substantiated judgment. This judgment was submitted almost a year later, which triggered the period for lodging the grounds for appeal in cassation. In his written statement of the grounds for appeal in cassation the applicant argued that the appeal court’s considerations regarding the evidence relating to three of the five counts of stalking were incomprehensible (*onbegrijpelijk*).

The applicant further complained of a violation of the Code of Criminal Procedure and of Article 6 of the Convention since the appeal court had failed to provide a fully substantiated judgment within four months of the appeal in cassation being lodged. He claimed that he consequently had a right to a reduction in his sentence.

The Supreme Court declared the appeal in cassation inadmissible under section 80a of the Judiciary (Organisation) Act.

With regard to the complaint under Article 6 of the Convention, the Court noted that a violation of a right under the Convention must have led to a significant disadvantage, as provided for in Article 35, paragraph 3 (b) of the Convention. Declaring an appeal inadmissible under section 80a of the Judiciary (Organisation) Act was not incompatible with Articles 6 or 13 of the Convention. The applicant had failed to substantiate his argument that the Supreme Court applied this provision only to remedy the delay in the proceedings. The Court concluded that although the applicant's subjective perception of the Supreme Court's judgment as unfair was relevant, it was not sufficient to enable the Court to conclude that he had suffered a significant disadvantage. The applicant's subjective perception had to be supported by objective grounds and convincing arguments.

The Court therefore concluded that the applicant had not suffered a significant disadvantage. Nor was there any reason to examine the complaint on its merits, since there was already a substantial body of case law on the length of criminal proceedings. The Court therefore declared the complaint under Article 6, paragraph 1 of the Convention inadmissible.

With regard to the complaint under Article 13 of the Convention, the Court pointed out that a legal remedy is required only against a claimed breach of the Convention that is arguable. Since it had been established that the applicant had suffered no significant disadvantage as a result of the claimed breach, there was no arguable claim. The Court concluded that the application was manifestly ill-founded and should be rejected.

H.G.D.W. (9476/19, 9 November 2021)
The applicant took the view that the refusal to accept her photo for a driving licence and identity card constituted a violation of Article 9 of the Convention (freedom of thought, conscience and religion). She wished to use a photo showing her with a colander on her head, this being one of the requirements she had to comply with as a Pastafarian, a follower of the Church of the Flying Spaghetti Monster. The applicant complained under Article 9 of the Convention that there was no basis in domestic law for the requirement that a religion or philosophical conviction be officially recognised. She further complained under Article 14 (prohibition of discrimination) in conjunction with Article 9 of the Convention that this requirement was imposed only on Pastafarians and not on followers of other religions. Alternatively, the applicant argued that the Administrative Jurisdiction Division of the Council of State had misapplied the standards developed by the Court with regard to Article 9, read alone and in conjunction with Article 14 of the Convention, and had taken no account of her *forum internum* (the internal and private realm of the individual in which the State may not interfere). Furthermore, the applicant argued that Pastafarianism had been disqualified as a religion on grounds not applied to other religions in similar situations.

The Court noted that although the term 'religion or belief' must be interpreted broadly, only views that attain a certain level of cogency, seriousness, cohesion and importance are protected by Article 9 of the Convention. The Court observed that the Administrative Jurisdiction Division had applied the Court's standards correctly, noting in particular a lack of the required seriousness and coherence. The Court saw no reason to depart from the conclusions of the Administrative Jurisdiction Division, whose decision appeared to be carefully measured and in no way arbitrary or illogical. The Court concluded that Pastafarianism, particularly in view of the movement's original aim (parody), could not be considered a religion or belief within the meaning of Article 9 of the Convention. As a result, the wearing of a colander could not be protected under that article as a manifestation of a religion or belief. The Court declared the complaint ill-founded**.** Since Article 9 was not applicable, no question could arise under Article 9 in conjunction with Article 14 of the

Convention either. The Court also rejected this complaint under Article 35, paragraph 3 (a) and paragraph 4 of the Convention and declared it inadmissible.

W.P.W. (57294/16, 9 November 2021)
The applicant complained that his rights under Article 8 of the Convention (right to respect for private and family life) and Article 2 of Protocol No. 4 to the Convention (freedom of movement) had been violated, since he had been obliged to provide fingerprints when applying for a passport and the fingerprints had then been stored on an RFID chip in his passport. In addition, he argued that his rights under Article 6 (right to a fair trial) and 13 (right to an effective remedy) in conjunction with Article 8 of the Convention had been violated. In the domestic proceedings the Administrative Jurisdiction Division of the Council of State had requested a preliminary ruling from the Court of Justice of the European Union (CJEU) but later wrongly withdrew a question from the request. The applicant had been unable to challenge this decision.

With regard to Article 8 of the Convention, the Court held that it was necessary to determine the extent to which taking and storing fingerprints served a legitimate aim and if this interference was necessary in a democratic society. In the Court's view, combating identity fraud and falsification of passports, and therefore preventing crime, is a legitimate aim within the meaning Article 8 of the Convention. In addition, the Court cited its established case law, according to which compliance with EU law by an EU member state constitutes a legitimate general-interest objective.

With regard to the principle of necessity, the Court examined whether the presumption of equivalent protection applies to the protection of fundamental rights provided by the EU. Its application is subject to two conditions: (i) the interference must have been a matter of strict international legal obligation for the respondent State and (ii) the full potential of the supervisory human rights mechanism provided for by EU law must have been deployed. The presumption of equivalent protection can be rebutted if the protection of Convention rights is manifestly deficient. The Court concluded that the applicant had failed to demonstrate that the protection of his Convention rights in this case had been manifestly deficient.

The Court declared the complaints under Article 8 of the Convention and Article 2 of Protocol No. 4 manifestly ill-founded. It further found that the complaints under Article 6 and 13 fell outside the scope of the Convention.

Interventions

B.B.W. and others v. the United Kingdom (58170/13, 62322/14 and 24960/15, 25 May 2021)
The applicants, a group of non-governmental organisations and journalists, complained before the Court about the scope and magnitude of electronic surveillance programmes in the United Kingdom, relying on Article 8 (right to respect for private and family life) and Article 10 (freedom of expression) of the Convention. They argued that due to the nature of their activities, their electronic communications were likely to have either been intercepted or obtained by the UK intelligence services.

The Government submitted a third-party intervention regarding a number of more general issues that arise in connection with bulk interception of data.

The Court held that the decision by national authorities to employ bulk interception was not in itself incompatible with Article 8 of the Convention. However, bulk interception constitutes a gradual interference in privacy rights that increases as the process progresses. The Court described four stages in this process: 1) interception of data; 2) application of selectors to data; 3) examination of selected data and 4) retention and use of data (including sharing with third parties). According to the Court, all four stages fall within the scope of Article 8 of the Convention. In light of the rapidly changing nature of modern communications technology, the customary method of assessing surveillance systems will have to be adapted to reflect the specific features of a bulk interception regime, given that there is an inherent risk of abuse but at the same time a legitimate need for secrecy.

The Court held that the domestic legislation regulating bulk interception must provide sufficient clarity to citizens on the grounds for authorising bulk interception and the conditions governing such activity. In addition, the scope of the national authorities' mandate has to be sufficiently clear so as to provide protection to the individual against arbitrary interference. Based on the six safeguards it had previously developed for application in criminal cases and later in cases involving national security, the Court formulated eight criteria:

i. the grounds on which bulk interception may be authorised;
ii. the circumstances in which an individual's communications may be intercepted;
iii. the procedure to be followed for granting authorisation;
iv. the procedures to be followed for selecting, examining and using intercept material;
v. the precautions to be taken when communicating the material to other parties;
vi. the limits on the duration of interception, the storage of intercept material and the circumstances in which such material must be erased and destroyed;
vii. the procedures and modalities for supervision by an independent authority of compliance with the above safeguards and its powers to address non-compliance;
viii. the procedures for independent ex post facto review of such compliance and the powers vested in the competent body addressing instances of non-compliance.

The Court noted that the UK bulk interception regime in force between 2000 and 2016 did not, on the whole, contain sufficient end-to-end safeguards to provide adequate and effective protection against arbitrary interference. More specifically, it identified three fundamental deficiencies: (i) the absence of independent authorisation of a warrant for bulk interception; (ii) the failure to include the categories of selectors in the application for a warrant and (iii) the failure to subject selectors linked to an individual to prior internal authorisation.

The Court acknowledged that the Interception of Communications Commissioner provided independent and effective oversight of the regime and that the Investigatory Powers Tribunal offered a robust legal remedy to those who suspected their communications had been intercepted. Nevertheless, these safeguards did not outweigh the shortcomings in the UK system. In this light, the Court concluded that UK legislation did not meet the quality of law requirement under Article 7 of the Convention and that the interference of the UK bulk interception regime in the private lives of individuals went further than was necessary in a democratic society. There had therefore been a violation of Article 8 of the Convention.

Centrum för rättvisa v. Sweden (35252/08, 25 May 2021)

The applicant, a non-governmental organisation, complained before the Court regarding Swedish legislation in the field of mass surveillance by security services, relying on Article 8 of the Convention (right to respect for private and family life).

The Government submitted a third-party intervention regarding a number of more general issues that arise in connection with bulk interception of data.

The Court held that the decision by national authorities to employ bulk interception was not in itself incompatible with Article 8 of the Convention. However, bulk interception constitutes a gradual interference in privacy rights that increases as the process progresses. The Court described four stages in this process: 1) interception of data; 2) application of selectors to data; 3) examination of selected data and 4) retention and use of data (including sharing with third parties). According to the Court, all four stages fall within the scope of Article 8 of the Convention. In light of the rapidly changing nature of modern communications technology, the customary method of assessing surveillance systems will have to be adapted to reflect the specific features of a bulk interception regime, given that there is an inherent risk of abuse but at the same time a legitimate need for secrecy.

The Court held that the domestic legislation regulating bulk interception must provide sufficient clarity to citizens on the grounds for authorising bulk interception and the conditions governing such activity. In addition, the scope of the national authorities' mandate has to be sufficiently clear so as to provide protection to the individual against arbitrary interference. Based on the six safeguards it had previously developed for application in criminal cases and later in cases involving national security, the Court formulated eight criteria:

i. the grounds on which bulk interception may be authorised;
ii. the circumstances in which an individual's communications may be intercepted;
iii. the procedure to be followed for granting authorisation;
iv. the procedures to be followed for selecting, examining and using intercept material;
v. the precautions to be taken when communicating the material to other parties;
vi. the limits on the duration of interception, the storage of intercept material and the circumstances in which such material must be erased and destroyed;
vii. the procedures and modalities for supervision by an independent authority of compliance with the above safeguards and its powers to address non-compliance;
viii. the procedures for independent ex post facto review of such compliance and the powers vested in the competent body addressing instances of non-compliance.

The Court concluded that the Swedish system was based on detailed legal rules, was clearly delimited in scope and provided for safeguards. The Swedish authorities had made considerable efforts to ensure that the Swedish bulk interception regime complied with the requirements of the Convention. Nevertheless, the Court identified three shortcomings in the regime: (i) the absence of a clear rule on destroying intercepted material which does not contain personal data; (ii) the absence of a requirement in the relevant legislation that, when making a decision to transmit material to foreign partners, consideration be given to the privacy interests of individuals and (iii) the absence of an effective ex post facto review. In this light, the Swedish bulk interception regime exceeded the margin of appreciation enjoyed by the national authorities in this kind of situation and did not contain sufficient safeguards against arbitrariness and the risk of abuse.

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

A.S. v. Denmark (57467/15, 7 December 2021)
The applicant complained before the Court that his removal to the Republic of Türkiye constituted a violation of his rights under Article 3 of the Convention (prohibition of torture and inhuman or degrading treatment or punishment) and that the refusal to withdraw the expulsion order in combination with the imposition of an entry ban was incompatible with Article 8 of the Convention (right to respect for private and family life).

The Government submitted a third-party intervention regarding a number of more general issues that arise in connection with the removal of persons who are seriously ill.

The applicant, a national of Türkiye, entered Denmark in 1991. In 2007 he was convicted of aggravated assault by the High Court of Eastern Denmark and sentenced to seven years' imprisonment and expulsion from Denmark with a permanent ban on re-entry. In 2008 the Supreme Court quashed this judgment. The medical information available had given rise to doubts as to whether a term of imprisonment was justified in this case. The High Court then re-examined the criminal case against the applicant. It established on the basis of a report drawn up in 2009 that the applicant was suffering from a mental disorder (schizophrenia). He was sentenced to committal for an indefinite period in a secure unit for people who were severely mentally impaired. At the same time the court ordered his removal from Denmark with a permanent ban on re-entry. The applicant appealed. The Supreme Court changed the sentence to committal to forensic psychiatric care but upheld the expulsion order. A few years later the applicant requested a review of his sentence. A court was asked to end his committal to forensic psychiatric care and send him to a psychiatric unit instead; it was also asked to revoke the expulsion order. The court agreed to change the applicant's sentence as requested. On the basis of all the medical reports and statements received, the court further held that it would not be appropriate to uphold the expulsion order in light of the applicant's mental health problems and the medical treatment available in Türkiye. It therefore revoked the expulsion order. The Danish authorities appealed against the court's decision in so far as it referred to the expulsion order. The High Court quashed this part of the decision and reversed the revocation of the expulsion order, noting that the applicant would be eligible for the same medical treatment as he had received in Denmark, free of charge, in the region of Konya (Türkiye), not far from the village where he had been born. The applicant was subsequently removed to Türkiye.

On 1 October 2019 a Chamber of the Fourth Section gave judgment. With regard to Article 3 of the Convention, the Chamber reiterated the principles that apply to the removal of seriously ill persons. The Chamber held that it was essential to assess the extent to which the medical care available in the receiving State was sufficient and appropriate for the treatment of the applicant's illness in order to prevent exposure to treatment incompatible with Article 3 of the Convention. Such an assessment had to take into account whether the individual actually had access to this care and to related facilities in the receiving State. Relevant factors in this regard included the distance to be travelled, costs of medication and treatment, and the existence of a social or family network. The Chamber concluded that without specific assurances concerning access to a contact person, there was insufficient certainty that the removal of the applicant would not lead to a violation of Article 3 of the Convention.

The case was subsequently referred to the Grand Chamber. In these proceedings the Government submitted a third-party intervention regarding the point of law under Article 3, emphasising that in

all cases where Article 3 is invoked, the question that first must be examined is whether the applicant would be exposed to a serious and irreversible decline in their health which met the threshold applicable to Article 3 (minimum level of severity). Only once this threshold has been reached should States make an assessment in light of positive obligations, such as examining the availability and accessibility of appropriate treatment.

The Grand Chamber observed that the Chamber of the Fourth Section had not separately considered whether the threshold established in the *Paposhvili v. Belgium* judgment had been met; while schizophrenia is a serious mental illness, the disease in itself could not be regarded as sufficient to bring the applicant's complaint within the scope of Article 3 of the Convention. The Grand Chamber found that the applicant had not sufficiently demonstrated that removal to Türkiye would expose him to a serious, rapid and irreversible decline in his state of health resulting in intense suffering or a significant reduction in life expectancy. It therefore concluded that the high threshold set by Article 3 of the Convention had not been met. On this basis, there was no call to address any other related issues; the applicant's removal to Türkiye had not been in violation of Article 3.

European Committee of Social Rights

In 2021 a new complaint was lodged with the European Committee of Social Rights under the collective complaints procedure of the European Social Charter. The complainants are the European Trade Union Confederation (ETUC), the Netherlands Trade Union Federation (FNV) and the National Federation of Christian Trade Unions (CNV). The complaint concerns the right to strike in the Netherlands.

University Women of Europe (UWE) (134/2016, 6 December 2019)
In its report of 6 December 2019 concerning the complaint lodged by the UWE, the Committee concluded that with regard to the promotion of equal pay for men and women, the Netherlands had failed to meet its obligations under the European Social Charter in two areas: measures to achieve pay transparency and to eliminate the pay gap.

On 23 December 2021, the Government informed the Committee of measures taken and measures envisaged.

With regard to pay transparency, the Government referred to the proposal for a directive presented by the European Union in March 2021. The proposal aims to promote equal pay between men and women through pay transparency and enforcement mechanisms. It contains a number of measures to increase transparency, including a right to information for workers and a reporting obligation for companies with at least 250 employees. The Government has responded positively to the broad lines of the proposal. A coordinated approach at EU level to promote equal pay and pay transparency can contribute to enforcing the fundamental right to equal pay throughout the EU and guarantee an equal level of protection for all EU citizens. The negotiations on the proposal are ongoing. On 6 December 2021, the Council of the European Union adopted a General Approach to the proposal, to which the Netherlands agreed. Negotiations will continue after voting in the European Parliament.

The Government also informed the Committee with regard to the amended bill on equal pay for men and women introduced to the House of Representatives on 5 October 2020 by a number of members of parliament from opposition parties. The bill includes a requirement to report on the scale of pay disparities. In addition, companies regularly employing at least 250 people must obtain a certificate stating that women and men receive equal pay within the company. The bill is still before the House of Representatives.

In preparation for the introduction of EU legislation relating to pay transparency, a study of job evaluation methods is expected to be carried out in 2022. This will include an analysis of the systems and methods currently used by employers as well as a survey of methods already in use to promote equal pay in the Netherlands. The results of the study should provide an overview of the instruments available to employers enabling them to ensure that their pay systems are objective. Furthermore, in consultation with the stakeholders concerned, including employers' organisations and trade unions, efforts will be made to assist employers and employees in developing and applying methods and instruments to reduce pay disparities.

With regard to the pay gap, the Government acknowledged that although studies by Statistics Netherlands (CBS) showed that the pay disparities between men and women had been steadily decreasing since 2008, progress was slow. A large proportion of the pay gap stems from the different

positions of men and women on the labour market. In the Netherlands, many women work fewer hours in part-time jobs, which means they earn less than men and have fewer opportunities for promotion. As a result, various measures have been taken to encourage women to increase their hours of work through, for example, expanding parental leave for partners, investing in child care, reducing the tax burden on labour, encouraging employees to take advantage of the existing Flexible Working Arrangements Act, and publicity campaigns. In addition, in 2021 legislation was passed introducing paid parental leave. This is expected to enter into force in August 2022.

Another reason for the different positions of men and women on the labour market is that men often occupy more senior posts or work in sectors where salaries are higher. The promotion of women to senior positions lags behind that of men in both the public and private sectors. In 2021 a government bill introducing a quota for the supervisory boards of listed companies was approved by Parliament. The bill requires that men and women each hold at least a third of the seats on the board. As long as this ratio has not been achieved, any appointment that does not contribute to balanced representation will be invalid. Large companies will also be obliged to set appropriate and ambitious target ratios for their boards and senior management, to report on progress and to develop an action plan on how and when they intend to reach their stated goals. This information will be published on a website which the Social and Economic Council is developing. The Act enters into force on 1 January 2022.

Promoting equal pay for work of equal value was also part of the 2018-2021 Action Plan on Labour Market Discrimination, which entailed a variety of measures, some of which are still ongoing. In 2021 a grant was again awarded to WOMEN Inc. to promote equal pay. In the next few years the organisation will undertake a range of activities aimed at raising awareness among employers and making instruments available for achieving equal pay.

European Federation of National Organisations Working with the Homeless (FEANTSA) (86/2012, 2 July 2014)
In this case the Committee concluded that Articles 13 (right to social and medical assistance), 19 (right of migrant workers and their families to protection and assistance), 30 (right to protection against poverty and social exclusion) and 31 (right to housing) of the European Social Charter had been violated because the Dutch Social Support Act provided insufficient guarantees that the facilities to which these rights refer were available in practice and of sufficient quality for anyone in need.

In 2021 the Government submitted a report on further measures that had been taken regarding shelter for homeless persons. In 2020 central government launched a plan to combat homelessness entitled ‘A home, a future’ and released €200 million over and above the regular shelter in the community funds for investment in preventing homelessness, improving shelter facilities and creating supported housing. The results of the plan are monitored and incorporated in a detailed survey that includes figures from municipalities relating to numbers of homeless people and places in shelters, as well as qualitative indicators such as progress in converting large dormitories into single or double rooms. In addition, the Ministry of the Interior and Kingdom Relations has provided funding for housing vulnerable groups, including homeless persons. During the COVID-19 pandemic, extra measures were taken to protect the homeless: shelters were converted to allow for social distancing and access to shelter made as easy as possible. As a result, the municipalities were able to accommodate several hundred more people during the lockdowns. After the lockdowns ended, many municipalities decided to continue with smaller-scale accommodation. According to figures

published by Statistics Netherlands, the number of homeless people declined from 39,300 in 2018 to 32,000 in 2021.

In the next few years central government will continue to work with municipalities, housing providers and other stakeholders to further reduce homelessness.

Committee of Ministers

Supervision of ECtHR judgments[1]

J.C.M. (10511/10, 26 April 2016)
In this case the Court 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 (prohibition of torture and inhuman or degrading treatment or punishment) of the Convention. In 2014 the applicant was granted a pardon and in 2016 his costs and expenses were reimbursed. In 2017 and 2019 the Committee of Ministers was informed of general measures taken or envisaged by Curaçao and Aruba to execute the judgment. On 2 March 2021 the Government reported on progress with regard to these measures.

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 will be appointed in each of the four countries. In addition, a dedicated detention task force will draw up proposals for alternatives to detention and preparing ex-detainees for their return to the community. Prison governors in all four countries work together to gather knowledge about rehabilitation in general and forensic care in particular. Curaçao is preparing legislation with regard to care in custodial clinics, as well as the status of persons subject to a TBS (hospital) order and designating the location where such care can be provided. Adoption of the legislation is dependent on decisions taken within the JVO regarding forensic care and TBS orders. As part of the periodic review of life imprisonment, guidelines are being developed to provide insight in the way on which such sentences are carried out and how the rehabilitation process works in the case of prisoners serving life sentences.

Aruba has already introduced TBS orders and taken measures to provide mental health services for prisoners. It has also presented a plan to the JVO for a dedicated forensic psychiatric wing in the Aruban Correctional Facility, setting out the requirements regarding staffing, renovating the present psychiatric wing and the necessary structural changes to the building. Curaçao has indicated that it wishes to learn from Aruban expertise and experience in this field.

A.J.H. (30749/12, 14 February 2017)
In this case the Court held that the Article 6 of the Convention (right to a fair trial) had been violated since the applicant had not been given the opportunity to attend in person the hearing of the appeal in the criminal case against him. On 18 November 2019 the Government informed the Committee of Ministers that the applicant had availed himself 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. The Supreme Court had allowed his application and the retrial was at that time pending before The Hague Court of Appeal. On 4 February 2021 the Committee of Ministers was informed of the progress of proceedings before the appeal court and that the hearing on the merits was scheduled for 16 February 2021.

[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.

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

On 19 October 2021 the Government informed the Council of Ministers about the measures taken to execute the judgment. The amount awarded to the applicant for costs and expenses by the Court had been paid. In addition, the applicant had availed himself 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. The Supreme Court has not yet decided on his retrial application.

With regard to general measures, the Government noted that national legislation was not incompatible with the Convention. The Court's judgment had been brought to the attention of the Council for the Judiciary, the Supreme Court and the Public Prosecution Service. Experts had provided a more detailed interpretation of what the judgment entails and made the necessary adjustments to internal procedures with regard to requests to examine witnesses. In addition, the Government outlined the changes that had taken place in legal practice following the Court's judgment. On 20 April 2021, in a new leading judgment based on the Court's judgment in the present case, the Supreme Court provided a detailed interpretation of the rights related to the examination of witnesses, in particular the right to cross-examine witnesses for the prosecution. As more recent judgments have shown, the lower courts have adopted the Supreme Court's new case law.

M.M. (10982/15, 9 February 2021), F.G.Z. (69491/16, 9 February 2021) and F.E.H. (73329/16, 9 February 2021)
In these three cases the Court held that there had been a violation of Article 5 of the Convention (right to liberty and security) since insufficient reasons had been provided for the decisions of the domestic courts made between 2014 and 2017 regarding the extension of the applicants' pre-trial detention (violation of Article 5, paragraph 3 of the Convention). In addition, the case of F.E.H. concerned a violation of the applicant's right to have the lawfulness of his pre-trial detention speedily decided by a court (violation of Article 5, paragraph 4 of the Convention).

On 9 November 2021 the Government informed the Committee of Ministers of the measures taken to execute the judgments. The amount awarded to M.M. and F.E.H. by the Court for non-pecuniary damage had been paid. With respect to general measures, the Government noted that national legislation was not incompatible with the Convention. The Court's judgments in the three cases had been brought to the attention of the Council for the Judiciary, the Supreme Court and the Public Prosecution Service. 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 recent years improvements have been implemented, including the introduction of professional standards developed by the courts to supplement general and specific legislation. These standards show how the courts jointly fulfil their responsibility for the quality of judicial practice. They 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 (risk that the defendant would abscond, for example) 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. The issue has been the focus of considerable attention within the district courts. 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 and appeals courts 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.

Supervision of European Committee for Social Rights decisions[2]

University Women of Europe (UWE) (134/2016, 6 December 2019)
In its report of 6 December 2019 concerning the complaint lodged by the UWE, the European Committee of Social Rights concluded that with regard to the promotion of equal pay between men and women, the Netherlands had failed to meet its obligations under the European Social Charter (in particular Articles 4, paragraph 3 and 20.c). In response, the Committee of Ministers adopted a recommendation on 17 March 2021 calling on the Netherlands to (1) pursue and finalise the adoption of measures to improve pay transparency, taking into account parameters for establishing the equal value of the work performed, such as the nature of the work, training and working conditions; (2) review and reinforce existing measures aimed at reducing and eliminating the pay gap and consider adopting new measures that may bring about measurable progress within a reasonable time.

In 2021 the Government informed the Committee on the measures taken and envisaged in its regular reports on compliance with its obligations under the European Social Charter.

[2] Under Article 9 of the Additional Protocol to the European Social Charter Providing for a System of Collective Complaints the Committee of Ministers adopts a resolution or a recommendation on the basis of a report by the ECSR.

United Nations

Human Rights Committee

Views

J.O.Z. and E.E.I.Z. (2796/2016, 13 October 2021)
The author submitted a communication on her own behalf and that of her daughter claiming that their removal to Nigeria would violate their rights under Articles 1 (right to self-determination), 2 (prohibition of discrimination), 7 (prohibition of torture, or cruel, inhuman or degrading treatment), 9 (right to liberty and security of person) and 24 (rights of the child) of the International Covenant on Civil and Political Rights (the Covenant).

The author alleged that their return to Nigeria would expose her daughter to female genital mutilation (FGM), which in her view constituted a violation of Articles 2,7 and 24 of the Covenant. In addition, she argued that she faced the risk of being accused of kidnapping her daughter and consequently of being arrested in contravention of Articles 1 and 9 of the Covenant.

The Human Rights Committee declared the communication inadmissible with respect to Articles 1, 2 and 9. Referring to General Comment No. 31 (2004), the Committee reiterated that under Articles 6 and 7 of the Covenant, the States Parties are obliged not to expel persons to a territory where there are substantial grounds for believing they face a real risk of irreparable harm. The Committee also recalled that this risk must be personal and that the threshold for determining the risk of irreparable harm is high. In the Committee's view, FGM is a form of treatment prohibited by Article 7.

In determining whether the State party's assessment of the risk was arbitrary or amounted to a manifest error or denial of justice, the Committee examined the following issues: (a) the credibility of the author's alleged marriage; (b) the risk faced by the author and her daughter of being subjected to FGM; (c) the general situation in Nigeria, where FGM is still a current practice and (d) the existence of a flight alternative or alternative place of residence, bearing in mind the mental state of the author. With regard to the alleged marriage, the Committee noted that the Immigration and Naturalisation Service gave insufficient reasons for concluding that the marriage was not credible and that this conclusion could have had a significant impact on the real and personal risk of being subjected to FGM faced by the author's daughter if she was expelled to Nigeria. With regard to the risk of FGM faced by the author and her daughter, the Committee noted that the father could decide to have his daughter subjected to FGM even if the mother (who has official custody) opposed it. FGM is prohibited in Nigeria but remains a common practice, particularly in the southern part of the country, and perpetrators are rarely prosecuted. Finally, it was impossible for the author to find a flight alternative or alternative place of residence for two reasons: first because there was no part of Nigeria where they would be safe from the risk of FGM and second, because she suffered from mental illness and had no social network. She would therefore be unable to survive on her own.

The Committee concluded that the State party had not properly assessed the risk faced by the author's daughter of being subjected to FGM upon their return to Nigeria. It was therefore of the view that the removal of the author and her daughter to Nigeria would constitute a violation of Article 7, read alone and in conjunction with Article 24 of the Covenant.

Decisions

A.G. (3052/2017, 7 April 2021)
The author claimed that the State party had violated Article 2, paragraph 3 (right to an effective remedy) in conjunction with Article 8 (prohibition of slavery, servitude and forced labour) of the Covenant because it had failed to protect her against slavery, servitude and forced labour. She argued that the Public Prosecution Service did not properly investigate the complaint she lodged against her employer. In addition, she had not had an effective legal remedy because the decision not to prosecute was insufficiently substantiated.

The author claimed she was smuggled from Morocco to the Netherlands in 2003 to care for the children of the family that employed her and do household work, in return for board and lodging. In 2015 she lodged a criminal complaint regarding human trafficking and exploitation with the police. The Public Prosecution Service decided not to prosecute on the grounds that there were no indications of forced labour. The author lodged a complaint with the appeal court against the decision not to prosecute. By decision of 12 July 2017 the appeal court declared that complaint unfounded and upheld the decision of the Public Prosecution Service.

The Committee took into account the argument of the State party that the author's criminal complaint was carefully examined by a specialised public prosecutor and designated manager of the human trafficking portfolio at the Public Prosecution Service. The merits of that criminal complaint were examined and she was given a temporary residence permit for the duration of the proceedings. The Committee further noted that forced labour is explicitly prohibited under Dutch law.

With regard to the author's claim that the State party had offered her insufficient protection, the Committee observed that she was interviewed by the police, who then gave her three months in which to lodge a criminal complaint. It noted that, at an early stage, the State party recognised that she might have been subjected to forced labour but that the Public Prosecution Service ultimately decided that her situation did not fall within the scope of human trafficking and did not therefore institute criminal proceedings.

The Committee further reiterated that it was not a court of final instance competent to re-evaluate findings of fact, except where it could be ascertained that the proceedings before the domestic courts were clearly arbitrary or amounted to a manifest error or denial of justice. The Committee took the view that this was not the case in the present situation.

The Committee observed that the information presented by the author did not allow it to conclude that the criminal investigation was ineffective or that the complaint proceedings challenging the public prosecutor's decision not to prosecute were insufficiently substantiated, transparent, independent or impartial, or were clearly arbitrary or amounted to a manifest error or denial of justice. The Committee therefore concluded that the author had provided insufficient information to substantiate her claims and declared the communication inadmissible.

H.J.T. (3004/2017, 5 November 2021)
The author claimed that his rights under Article 2, paragraph 3 (right to an effective remedy) in conjunction with Article 14, paragraph 5 (right to have conviction and sentence reviewed by a higher

tribunal) of the Covenant had been violated because he was unable to appeal against the judgment of the single judge trying criminal cases (*politierechter*; single judge).

The author was convicted by the single judge of assaulting a police officer and failing to comply with an order to identify himself. He was ordered to pay fines of €170 for the first and €50 for the second offence. The author requested leave to appeal against this judgment. Arnhem Court of Appeal denied his request under article 410a of the Code of Criminal Procedure, which provides that in cases involving a fine of less than €500 the appeal will only be heard by the court if this is required in the interests of the proper administration of justice. The author subsequently lodged an extraordinary request with the Supreme Court to revise the lower court decisions. The Supreme Court denied this request.

The State party referred to a legislative proposal to abolish the system of leave to appeal provided for by article 410a of the Code of Criminal Procedure. The proposal is currently under review as part of broader measures to modernise the Code. Pending completion of this process, the State party has introduced a civil procedure offering a remedy in cases such as that of the author. The author did not avail himself of this option and had therefore failed to exhaust effective domestic remedies, in the State party's view.

With regard to admissibility, the Committee noted that under Article 5, paragraph 2 (a) of the First Optional Protocol to the Covenant it will not consider any communication where the same matter is being examined under another procedure of international investigation or settlement. However, despite the author's statement that this was not the case, it noted that in October 2009 the European Court of Human Rights had declared his application regarding the self-same facts inadmissible.

The Committee then discussed a possible abuse of the right of submission, referring to rule 99 (c) of its Rules of Procedure. This rule provides that a communication can constitute an abuse of the right of submission if it is submitted more than five years from the date on which all domestic remedies have been exhausted or, where applicable, more than three years from the conclusion of another procedure of international investigation or settlement, unless there are reasons justifying the delay. The Committee noted that the author had submitted the present communication almost seven years after the European Court of Human Rights issued its decision. It also noted that the author had stated that he had exhausted domestic remedies when his request for leave to appeal was denied by the President of Arnhem Court of Appeal. The author was therefore claiming that he had exhausted domestic remedies over eight years before submitting his communication to the Committee. Since the author had exceeded the time limits set in the rule of procedure for submitting a communication, the Committee declared his communication inadmissible.

Implementation of earlier Views

D.Z. (2918/2016, 19 October 2020)

In its Views in this case the Human Rights Committee concluded that the rights of the author under Article 24, paragraph 3 (rights of the child) of the Covenant had been violated as he had been unable to exercise his right as a minor to acquire a nationality. Since he had also had no access to an

effective remedy, there had been a violation of Article 24, paragraph 3, in conjunction with Article 2, paragraph 3 (right to an effective remedy) of the Covenant.

The Committee asked the State party to review its decision on the author's request to be registered as stateless in the register of Births, Deaths, Marriages and Registered Partnerships as well as its decision on his request that it recognise him as a Dutch national. To avoid such violations in the future, the State party was required to bring its legislation and procedures into line with Article 24 of the Covenant.

On 25 August 2021 the State party responded to the Committee's Views. First, it drew the Committee's attention to facts relating to the author's nationality which had come to its attention only after the Committee had established its Views. These facts indicate that on 6 July 2020, with retroactive effect to his date of birth, the author was registered in the Personal Records Database of the municipality of Katwijk as a Chinese national. Since the author did not inform the Committee of the change to his nationality status, the State party takes the view that there was no factual basis for the Committee's finding of a violation of Article 24, paragraph 3, read alone and in conjunction with Article 2, paragraph 3 of the Covenant. Since the Committee's Views were not applicable to the author's situation, the State party did not find it appropriate to take any measures regarding his nationality.

Nevertheless, the State party recognised that the author's communication to the Committee had once again brought to its attention the lack of a procedure for determining statelessness. For this reason, it had decided to award the author financial compensation.

To remedy this gap in the legislation, two bills have been introduced in the House of Representatives. The first concerns a special procedure for determining statelessness before a civil court.

The second bill introduces a new right to acquire Dutch nationality for minors who were born in the Netherlands, have been stateless since birth and have had their main residence in the Netherlands for at least ten years. Lawful residence is not a requirement. The 2022-2025 coalition agreement drawn up in December 2021 expressed explicit support for this bill. The Committee's attention was drawn to these developments.

Committee against Torture

Decisions

T.S. (896/2018, 19 July 2021)
The complainant, a Sri Lankan national, asserted that in view of the risk he faced of torture if returned to Sri Lanka, his removal to that country would constitute a violation of his rights under Article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

The complainant claimed that between 2005 and 2009 he was forced to perform work for the Liberation Tigers of Tamil Eelam (LTTE). He stated that he and his sister handed themselves over to the Sri Lankan army in 2009, after which they were both detained and interrogated about their suspected involvement with the LTTE.

The claimant further alleged that he was subjected to sexual assault while he was at the Ananthukumarsamy refugee camp in Vavuniya and was tortured during interrogations at the Joseph detention camp. He consistently denied involvement with the LTTE. He claimed that he escaped from the detention camp in February 2011 and fled to the Netherlands. After his arrival in the Netherlands he lodged a number of asylum applications, all of which were denied.

The issue before the Committee against Torture was whether there were substantial grounds for believing that the complainant would be personally at risk of being subjected to torture if he was expelled to Sri Lanka. The Committee held that even if it disregarded the inconsistencies in the complainant's account (because according to him, these were the result of translation errors) and accepted as credible the complainant's statements with regard to his past experiences in Sri Lanka, he had nevertheless failed to demonstrate that that he would currently be of interest to the Sri Lankan authorities. In the Committee's view, there were insufficient grounds for assuming that that he faced a real, personal and foreseeable risk of being subjected to torture if he returned to Sri Lanka. In this context, the Committee attached importance to the complainant's statements that he never took part in the armed conflict and when questioned by the Sri Lankan authorities had always denied any involvement in the LTTE. The documents submitted to prove the Sri Lankan authorities' interest in the complainant dated from 2011 and were not drawn up and issued by the competent authorities. Nor had it been established that the complainant had left the country illegally or that the Sri Lankan authorities would have any genuine interest in events that took place ten years ago. Finally, the complainant's current activities were too marginal to be of interest to the Sri Lankan authorities.

In the Committee's view, there were insufficient grounds for assuming that the complainant's return to Sri Lanka would expose him to a real, personal and foreseeable risk of torture. It therefore concluded that his removal to Sri Lanka would not constitute a violation of Article 3 of the Convention.

S.R. (834/2017, 22 July 2021)

The complainant, a Sri Lankan national, complained before the Committee against Torture that his scheduled removal to Sri Lanka would constitute a violation of his rights under Article 3 of the Convention in view of the risk he faced of being subjected to torture or cruel, inhuman or degrading treatment if returned to that country. In this context he cited his vulnerable position as an ethnic Tamil and the fact that he was suspected of involvement in the LTTE, which meant that if he was detained, he would face the risk of poor detention conditions and degrading treatment.

The complainant claimed that in November 2010, while driving three customers of Tamil origin in his taxi to the international airport in Colombo, he was arrested by the Sri Lankan army on suspicion of involvement in the LTTE, and was detained and interrogated. He was also beaten and ill-treated. After a month he was released in return for payment. After travelling to the Netherlands he lodged several asylum applications, all of which were denied.

The Committee held that the complainant had not provided sufficient evidence to enable it to conclude that his return to Sri Lanka would expose him to a real, personal and foreseeable risk of torture. It noted that he had submitted no information indicating that he or members of his family had at any point played a significant role in the LTTE or encountered problems with the Sri Lankan authorities. The Committee referred to the State party's findings in the asylum procedures, pointing out that the complainant had made conflicting statements and had failed to demonstrate satisfactorily that the Sri Lankan authorities had taken an interest in him. Furthermore, it was possible that the scars adduced by the complainant were caused by events other than the alleged beatings. Finally, the Committee noted that even if the Sri Lankan authorities were aware of the complainant's attendance at an LTTE event in the Netherlands, this was too marginal to conclude that he was an activist.

The Committee took the view that the complainant had not demonstrated that the Sri Lankan authorities had ever taken any interest in him, while the risk factors he mentioned did not lead to the conclusion that his return to Sri Lanka would expose him to a real, personal and foreseeable risk of being subjected to torture. It therefore concluded that his removal to Sri Lanka would not constitute a violation of Article 3 of the Convention.

D.B. (824/2017, 19 November 2021)
The complainant claimed that her rights under Article 3 of the Convention would be violated if she was expelled to Guinea as this would expose her to a real and foreseeable risk of being forced to undergo female genital mutilation (FGM) in that country. She argued that 96% of women in Guinea undergo FGM. In addition, she claimed that neither the Guinean authorities nor her family were able or willing to protect her against FGM.

The Committee emphasised that for a finding of a violation of Article 3 of the Convention there must be substantial grounds for believing that the complainant would be personally in danger of being subjected to torture or inhuman treatment on her return to Guinea. The existence of a pattern of gross, flagrant or mass violations of human rights in a country does not as such constitute sufficient reason for determining that a particular person would be at risk of being subjected to torture on their return. Additional grounds must be adduced to demonstrate a personal risk in the specific case. The Committee emphasised that substantial grounds exist for assuming the presence of a risk of being subjected to treatment incompatible with Article 3 of the Convention when that risk is 'foreseeable, personal, present and real'.

The Committee noted that although FGM is prohibited by law, it is still widespread in Guinea, with a prevalence of approximately 95% of the female population. With regard to the State party's argument that the complainant faces a smaller risk because she is an adult, the Committee held that the fact that only 1.2% of cases of FGM occurred in women over the age of 19 could be explained by the fact that the vast majority of women undergoing FGM were subjected to it before their fourteenth birthday when they were not yet married. The figure of 1.2% therefore did not by definition mean that unmarried women over the age of 19 face less of a risk of being subjected to FGM. Nor did the possibility of relocation within the country always offer a reliable or safe solution. In addition, the Committee noted that FGM caused permanent physical harm and severe psychological damage to victims which could last for the rest of their lives. The practice of FGM was therefore incompatible with the obligations enshrined in the Convention.

The Committee noted that the complainant was not only inconsistent in describing her own situation but also made conflicting and implausible statements with regard to the very essence of her asylum application, namely the circumstances that would establish that she would be at risk of being subjected to FGM on her return to Guinea. The Committee noted in particular the following discrepancies: the complainant (a) stated on the one hand that she believed she had undergone FGM and on the other that her mother had told her when she was a child that she wanted to wait until the complainant was a little older; (b) said that her family were in favour of FGM while the family did not force her to undergo FGM in the 20 years she lived in Guinea, during which period she had already been married once; (c) explained that she could be forced by her family to undergo FGM, while at the same time stating that her family believed she had already undergone FGM and (d) expressed her fear of FGM only four years after her arrival in the Netherlands and after her first two asylum applications (based on the fear of being subjected to forced marriage and human trafficking) had been denied. With regard to the possibility of being subjected to FGM at a later age, the Committee noted that the complainant had been able to marry and enter into a relationship without having undergone FGM or being subjected to pressure from her family or society to do so.

In view of the conflicting and implausible statements with regard to the essence of her asylum application, the Committee held that the complainant had adduced insufficient grounds for assuming that she would be exposed to a foreseeable, personal, present and real risk of torture or inhuman treatment on her return to Guinea. It therefore concluded that the removal of the complainant to Guinea would not constitute a violation of Article 3 of the Convention.

Other developments

Council of Europe[3]

ECHR system: efforts to secure continuing effectiveness

The evaluation of the Interlaken process (2010-2020), which aimed to reform the functioning of the ECHR system, concluded that far-reaching changes were not required, but that the Council of Europe as a whole needed to make further efforts to ensure that the system remains effective. Due to their complexity, issues arising from inter-state conflicts remain a constant challenge, as do repetitive cases that overburden the system through sheer numbers. In April 2021, under the German presidency of the Committee of Ministers, a conference on inter-state cases under the ECHR discussed experiences and existing challenges. In November 2021, under the authority of the Steering Committee for Human Rights (CDDH), an initial report on the effective processing and resolution of cases relating to inter-state disputes was published. The problems in this area were identified on the basis of existing case law, and Court and member state practice. The final report containing recommendations is expected to be published in 2022. In addition, on 22 September 2021, the Committee of Ministers adopted a recommendation of the CDDH calling on the member states to publish and disseminate the European Convention on Human Rights, the case law of the European Court of Human Rights and other relevant texts (CM/Rec(2021)4. The aim is to improve national implementation of the Convention and of Court judgments, resulting in fewer repetitive cases.

Protocols Nos. 15 and 16 to the Convention
Following ratification by Italy in April 2021, Protocol No. 15 amending the Convention on the Protection of Human Rights and Fundamental Freedoms entered into force on 1 August 2021. The protocol, adopted in 2013, introduces a reference to the principle of subsidiarity and the doctrine of the margin of appreciation in the preamble to the Convention. Further amendments are as follows:

- the period of six months for submitting an application to the Court after the final decision by domestic courts laid down in Article 35, paragraph 1 of the Convention has been reduced to four months (as of 1 February 2022);
- in the admissibility criterion of 'significant disadvantage' in Article 35, paragraph 3 (b) of the Convention, the second proviso that the case has been duly considered by a domestic tribunal has been deleted;
- the parties to a case can no longer object to a Chamber of the Court relinquishing jurisdiction in favour of the Grand Chamber (Article 30 ECHR);
- candidate judges must be under 65 years of age on the date by which the Parliamentary Assembly has requested the submission of the list of three candidates nominated by each member state. This criterion has been added to Article 21; the age limit of 70 years contained in Article 23, paragraph 2 has been deleted.

Protocol No. 16 entered into force for the Netherlands on 1 June 2019. The protocol allows the highest courts and tribunals of the member states to request the Court to give an advisory opinion on questions of principle relating to the interpretation or application of the rights and freedoms defined in the Convention or its protocols, in the context of a case pending before them. In 2021 the Court accepted three requests for an advisory opinion. The first was from the Supreme

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

Administrative Court of Lithuania and related to Article 3 of Protocol No. 1 to the Convention (right to free elections), the second a request from the Armenian Constitutional Court relating to Article 7 of the Convention (no punishment without law) and the third a request from the French *Conseil d'État* concerning Article 14 of the Convention (prohibition of discrimination) and Article 1 of Protocol No. 1 to the Convention (protection of property). By the end of 2021, the Court had received a total of six requests for an advisory opinion (two from France, two from Armenia, one from Slovakia and one from Lithuania) and issued two opinions (one to the French court and one to the Armenian court). The request from Slovakia was denied, while three requests received in 2021 are still pending.

In response to a request from the Committee of Ministers made at its 130th session on 4 November 2020 for an evaluation of the initial effects of Protocols Nos. 15 and 16 five years after their entry into force, a decision was taken in 2021 to include the preparatory work necessary for such an evaluation in the 2022-2025 programme of activities of the CDDH.

Accession of the EU to the Convention
After a break of over seven years, the negotiations on the accession of the EU to the Convention resumed in 2020 and continued in 2021. In its Opinion 2/13 of 18 December 2014, the Court of Justice of the European Union (CJEU) held that the outcome of negotiations reached in 2013 was not compatible with EU law. While taking into account the concerns of the CJEU, the EU continues to work towards accession on terms that will not undermine the effective system of human rights protection developed under the Convention. In this process, the aim is to find sound legal solutions to the CJEU's concerns that are politically feasible for the parties (Brussels and Strasbourg). In 2021 five negotiating rounds took place in hybrid form (remotely and face-to-face). Negotiations will continue in 2022.

European Social Charter (ESC)/Collective complaints procedure
Following decisions taken by the Committee of Ministers on 11 December 2019 and reform proposals made by the Secretary General on 22 April 2021, discussions began on measures to strengthen the ESC complaints system.

Discussions focused on ways to improve the procedural aspects of the collective complaints system and bring about more efficient supervision of follow-up to decisions taken by the European Committee of Social Rights (ECSR) and the Committee of Ministers in that context.

The ECSR has already introduced measures to improve the processing of collective complaints. For example, the admissibility conditions are being applied more strictly and efforts are being made to improve the accessibility of information on these criteria and the legal standards applied by the ECSR. This is expected to improve predictability with regard to the admissibility of complaints. In addition, the ECSR is being more consistent in its application of the adversarial principle, which is now explicitly enshrined in the rules of procedure regarding admissibility and immediate measures to prevent irreparable harm to the persons concerned.

With regard to the regular obligation on states to report on compliance with the ESC, the proposals explore how the administrative burden of reporting can be alleviated for states that have accepted the additional monitoring instrument of the collective complaints procedure. Furthermore, the Committee of Ministers might take on a greater supervisory role in cases where the ECSR has concluded that the member state has not met its obligations under the ESC, or has not met them

sufficiently. A step was taken in this direction with the recommendations adopted in 2021 by the Committee of Ministers in the follow-up to the complaint submitted in 2017 by University Women of Europe (UWE) against all fifteen member states that had accepted the collective complaints procedure at that time.

On 17 May 2021 Spain became the 16th member state to accept the procedure.

United Nations

New complaints form
Early in 2021 a new form (including guidance) became available on www.ohchr.org for submitting an individual complaint to one of the UN treaty bodies. The page providing information on how to complain about human rights violations recommends using the form. To date, no new cases have been submitted in which the form has been used.

Annexes: Overviews and statistics

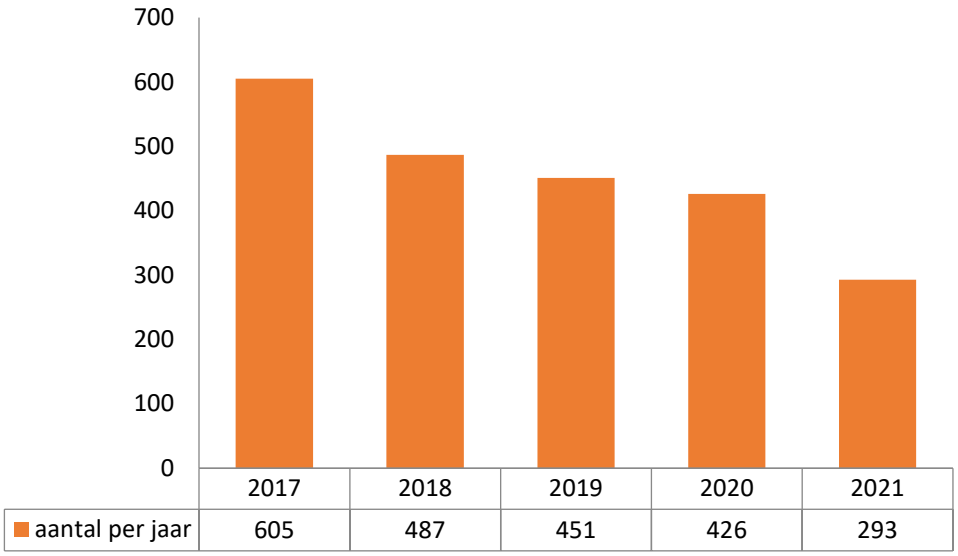
Annexe I

Council of Europe

European Court of Human Rights[4]

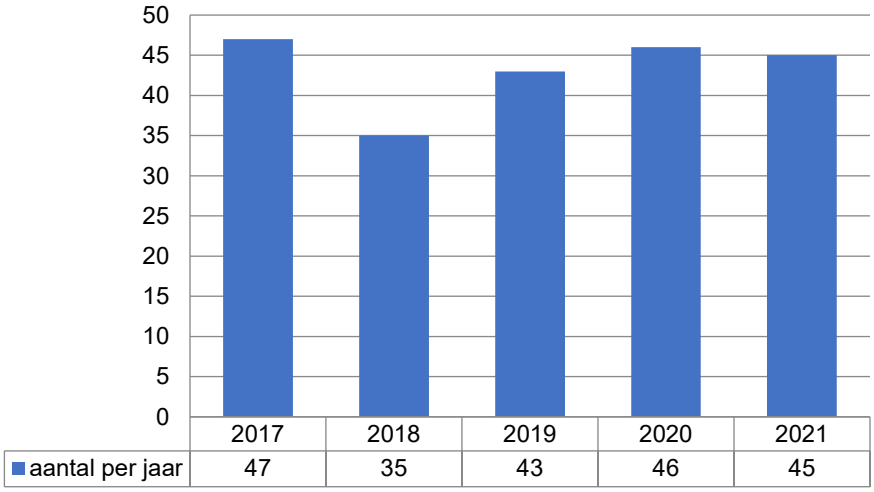
Statistics[5]

Cases pending against the Kingdom of the Netherlands



[Annual total]

Cases being processed by the Kingdom of the Netherlands

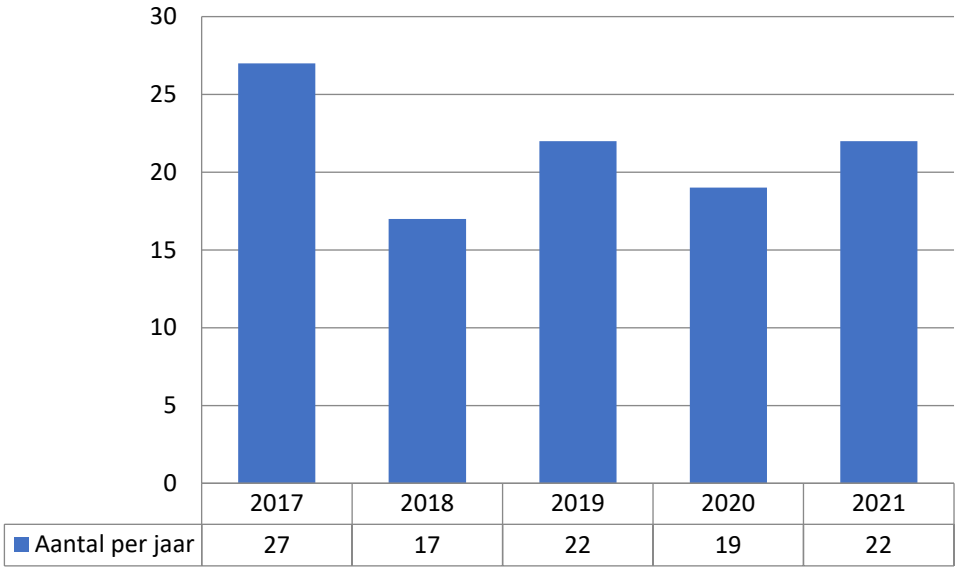


[Annual total]

[4] Statistics for all the member states of the Council of Europe are contained in *Analysis of Statistics 2021,* published by the Court Registry: https://www.echr.coe.int/Pages/home.aspx?p=reports&c.

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

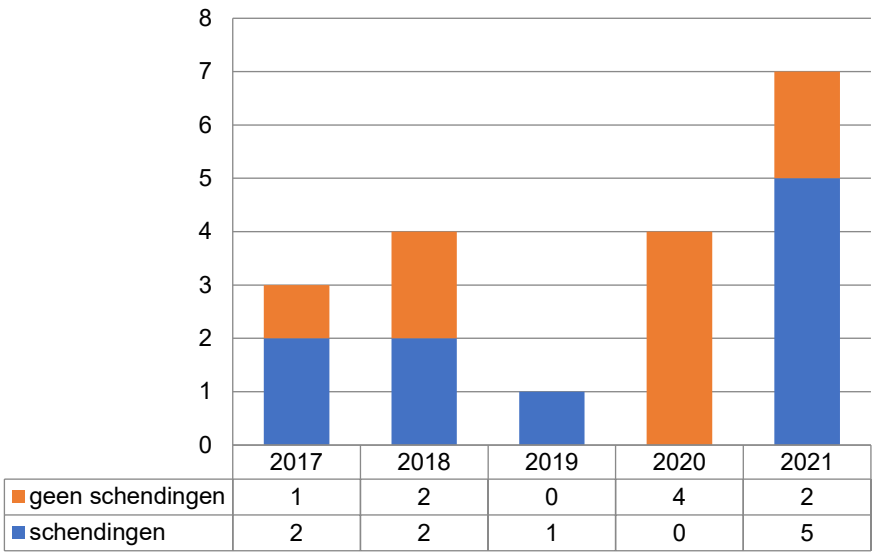
New cases communicated to the Kingdom of the Netherlands



	2017	2018	2019	2020	2021
Aantal per jaar	27	17	22	19	22

[Annual total]

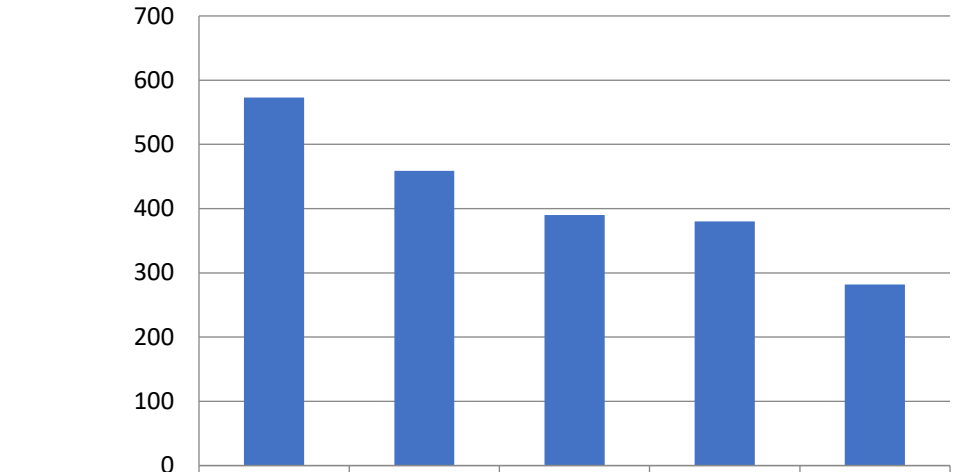
Judgments



	2017	2018	2019	2020	2021
geen schendingen	1	2	0	4	2
schendingen	2	2	1	0	5

[No violation
Violation]

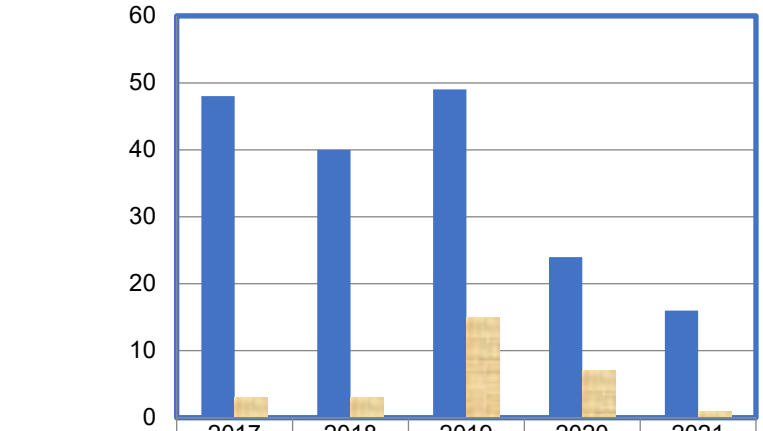
Admissibility decisions and decisions to strike applications out of the list



	2017	2018	2019	2020	2021
aantal per jaar	573	459	390	380	282

[Annual total]

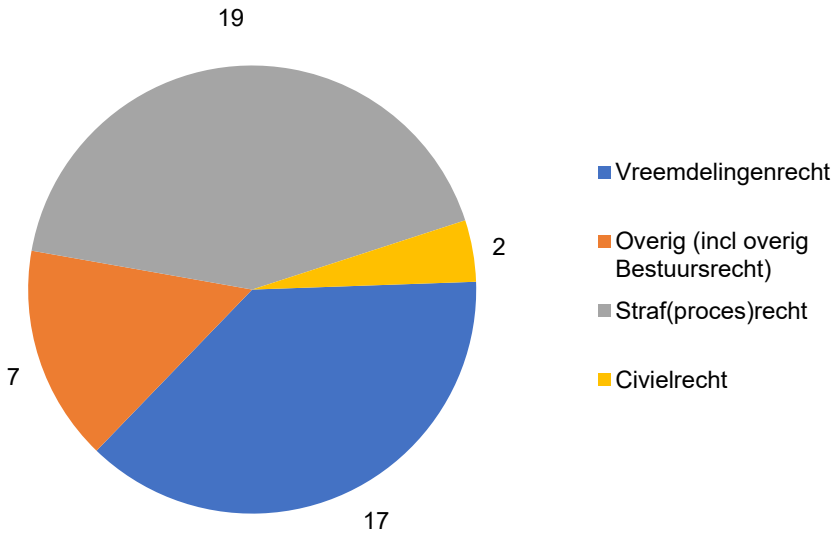
Interim measures under Rule 39



	2017	2018	2019	2020	2021
aangevraagd	48	40	49	24	16
toegewezen	3	3	15	7	1

[Applied for
Granted]

Cases pending, numbers per category as at 31 December 2021



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

Judgement and decisions[6]

Judgements

Name	App. number	Date
V.K.	2205/16	19 January 2021
F.E.H.	73329/16	9 February 2021
M.M.	10982/15	9 February 2021
F.G.Z.	69491/16	9 February 2021
S.L.S. e.a.	19732/17	16 February 2021
M.F.D.	61591/16	8 June 2021
X	72631/17	27 July 2021

Decisions

Name	App. number	Date
C.P.	65064/19	18 February 2021 (*)
M.A.	23244/19	11 March 2021
J.G.C. e.a.	48435/20	18 March 2021 (*)
H.M.H.	71507/16	25 March 2021
O.D.G., C.V.R. en A.N.J.	63169/19, 64133/19, 7320/20	25 March 2021
M.T.	46595/19	13 March 2021
N.F.K.	39513/20	8 April 2021
O.	55680/20	27 May 2021 (*)
H.M. e.a.	53810/20	27 May 2021 (*)
I.B.	35751/20	22 June 2021
L.C.	56540/19	9 September 2021
M.J.	49259/18	21 October 2021
R.H.S.N.	585/19	19 October 2021
H.G.W.	9476/19	9 November 2021
W.P.W.	57294/16	9 November 2021
S.O.	49569/19	10 November 2021 (*)
Z.M.	57885/19	10 November 2021 (*)
J.C. and M.W.E.	63593/19	10 November 2021 (*)
A.S.	48397/19	10 November 2021 (*)
D.N.	4487/20	10 November 2021 (*)

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

A.T.	52741/19	10 November 2021 (*)
P.T.	50389/19	10 November 2021 (*)
Y.	36898/21	2 December 2021 (*)

Interventions

Name	**App. number**	**Date**
BBW t. UK	58170/13,62322/14,24960/15	25 May 2021
Centrum för rättvisa t. Zweden	35252/08	25 May 2021
A.S. t. Denemarken	57467/15	7 December 2021

Cases against the Kingdom of the Netherlands being processed as at 31 December 2021

Name	**App. number**	**Article ECHR**
A.A.	31007/20	art. 3
A.A.Z. e.a.	53128/20	artt. 2, 3 en 13
A.A.M.	64534/19	art. 8
A.H.L.	2445/17	art. 3
A.M.A.	23048/19	artt. 3, 5 en 6
A.O.J.	22615/21	art. 3
B.H. B.V.	3124/16	art. 8
B.J.	51027/19	artt. 3 en 13
B.T.	45257/19	art. 5
C.D.A.	39371/20	art. 2, 8 en 14
C.H.P.	58403/17	artt. 1, 4, 6, 7 en 8
C.J.J.L. e.a.	56896/17, 56910/17, 56914/17, 56917/17 en 57307/17	art. 11
C.M.C.	34507/16	art. 6
D.D.J.	23106/19	art. 7
E.G.E.	52053/18	artt. 2, 3 en 8
E.M. en S.M.H.	47878/20	art. 8
F.J.	57264/18	artt. 6, 7, 9, 10 en 11 en art. 2 van Prot. 4
F.L.	57766/19	art. 8
I.M. e.a.	16395/18	art. 7
J.d.J.G. B.V. e.a.	2800/16	art. 8
J.N.J.F.	10797/18	art. 5
J.K.	19365/19	artt. 6, 10 en 11
J.S.	56440/15	art. 6
K.A.	8757/20	art. 8
K.D. e.a.	52334/19	artt. 2, 3, 6 en 13
L.A.D.L.	58342/15	art. 6
L.C.S.	27014/20	art. 5
M.B.	71008/16	art. 5
M.M.G.	32651/21	art. 8
M.Ö.	45036/18	art. 2
N.S.S.	45644/18	artt. 6 en 8
O.T.D.	49837/20	art. 3
P.I. B.V.	3205/16	art. 8
P.Z.	27231/19	art. 7
R.R.C.	21464/15	artt. 3 en 13
S.A.	46534/14	artt. 5 en 13
S.W.O.C. B.V.	2799/16	art. 8
S.S.	61125/19	art. 6
T.K.	298/15	art. 2
T.M. en S.Y.M.	33515/16	artt. 3, 8 en 14

V.A. e.a.	48062/19	art. 3 en art. 4 Handvest grondrechten EU
W.R.	989/18	art. 6
Y.F.C. e.a.	21325/19	artt. 3, 5 en 13 en art. 4 van Prot. 4
Z.	64772/19	art. 1 van Prot. 1

Cases against other State Parties in which the Netherlands submitted a third-party intervention; being processed as at 31 December 2021[7]

Name	**App. number**	**Article ECHR**
S.A. e.a. en A. e.a. t. Rusland	25714/16 en 56328/18	artt. 2, 3 en 41
K.J.B. e.a. t. Rusland	22515/14	artt. 5 en 10
H.F. en M.F. t. Frankrijk	24384/19	artt. 1 en 3 van Prot. 4
S-V e.a. t. Rusland	26302/10	artt. 2 en 3
G. t. Polen	43572/18	artt. 6 en 13
T. t. Polen	51751/20	artt. 6, 8 and 10

Inter-state application lodged by the Kingdom of the Netherlands

Name	**App. number**	**Article ECHR**
Ukraine and The Netherlands v. Russia	8019/16, 43800/14 en 28525/20	artt. 2, 3 en 13

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

European Committee of Social Rights

Cases being processed as at 31 December 2021

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

Cases under supervision as at 31 December 2021

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

Commitee of Ministers

ECtHR cases under supervision as at 31 December 2021

Name	App. number	Date of judgement
J.C.M.	10511/10	26 April 2016
I.Ő.	69810/12	28 June 2016
A.J.H.	30749/12	14 February 2017
F.C.	29593/17	9 October 2018
H.J.C.K.	23192/15	28 May 2019
V.K.	2205/16	19 January 2021
F.E.H.	73329/16	9 February 2021
F.G.Z.	69491/16	9 February 2021
M.M.	10982/15	9 February 2021
X.	72631/17	27 July 2021

ECtHR cases where supervision ended in 2021

Name	App. number	Date of resolution
H.M.H.	71507/16	13 October 2021
O.D.G., C.V.R. en A.N.J.	63169/19, 64133/19, 7320/20	13 October 2021

Annexe II

United Nations

General[8]

In 2021 the UN treaty bodies:

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

Human Rights Committee

Views

Name	**Comm. No.**	**Date**
J.O.Z. en E.E.I.Y.	2796/2016	13 October 2021

Decisions

Name	**Comm. No.**	**Date**
A.G.	3052/2017	6 November 2020[9]
H.J.T.	3004/2017	5 November 2021

Cases being processed as at 31 December 2021

Name	**Comm. No.**	**Article ICCPR**
A.D.N.	2894/2016	art. 7
A.Z.	3868/2021	art. 14
D.J.	3256/2018	art. 14
D.K.	3768/2020	artt. 2, 7 en 8
F.K.F.	3907/2021	artt. 2 en 17
G.F.S.	3650/2019	artt. 2, 10, 14, 15, 17, 25 en 26
G.R.M.J.	2958/2017	artt. 2, 14 en 25
G.V.B.	3720/2020	artt. 14 en 17
J.O.Z. en E.E.I.Z.	2796/2016	artt. 1, 2, 7, 9 en 24
J.P.M.L. en M.K.	4019/2021	artt. 7, 9, 10, 14, 15 en 17
J.S.	3210/2018	artt. 2, 4, 7, 9 en 10
N.J.S.C.	4015/2021	artt. 2, 6 en 7
R.E.I.	3015/2017	artt. 14, 15 en 26
R.L.K.	3721/2020	artt. 2, 14 en 17
S.E.H.	3236/2018	artt. 12 en 26
S.H. e.a.	3281/2018	artt. 2, 6, 7, 17, 19, 24 en 26
V.G.	3856/2020	artt. 2, 15 en 26
W.S.J.	3077/2017	artt. 2 en 26

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

[9] Adopted before 2021 but communicated to the Government only in 2021.

Committee on the Elimination of Discrimination against women

In 2021 no Views or Decisions were published.

Cases being processed as at 31 December 2021

Name	Comm. No.	Article CEDAW
S.V.	162/2020	art. 16

Committee against Torture

Decisions

Name	Comm. No.	Date
T.S.	896/2018	19 July 2021
S.R.	834/2017	22 July 2021
D.B.	824/2017	19 November 2021

Cases being processed as at 31 December 2021

Name	Comm. No.	Article CAT
F.K.M.	954/2019	art. 3
J.T.	991/2020	art. 3
M.K.B.	1008/2020	art. 3
V.R.	1103/2021	art. 3