2017 Annual Report

International Human Rights Proceedings

International Law Division
Legal Affairs Department
Ministry of Foreign Affairs

Contents

Foreword

This is the 2017 annual report on international human rights proceedings in which the Netherlands was involved on the basis of the human rights treaties. It is the fifth annual report in its present form.

As is customary, you will find in this publication summaries of all the judgments and decisions handed down in 2017 in proceedings to which the Netherlands was a party, regardless of the body examining the case. You will also find information connected or directly relevant to proceedings, as well as overviews and statistics.

In 2017 the European Court of Human Rights (ECtHR) gave judgment in three cases involving the Netherlands. One judgment, in the Garib case, was handed down by the Grand Chamber. In this case, the Grand Chamber concluded that the refusal to grant the applicant a housing permit under the Rotterdam Housing Bye-law did not constitute an unjustified interference in her right to liberty of movement and freedom to choose her residence (article 2 of Protocol No. 4 of the ECHR). In the other two cases, the Court found a violation of the right to a fair trial.

The United Nations Human Rights Committee concluded that compelling minors to provide a DNA sample in the context of criminal proceedings constituted an unjustified interference with the right to privacy.

As in many previous years, most of the cases in 2017 concerned asylum issues. In these cases, none of the relevant bodies found there had been a violation. Summaries of the above cases and all other cases dating from 2017 are contained in this annual report.

It is worth mentioning here that, after 20 years as Agent of the Netherlands before the ECtHR and the other human rights bodies, Roeland Böcker took up the post of Permanent Representative of the Kingdom of the Netherlands to the Council of Europe in the summer of 2017. He was succeeded as Agent by Babette Koopman.

Many people were involved in drawing up this report. Alongside staff, seconded staff and interns working in the International Law Division at the Ministry of Foreign Affairs, contributors included colleagues at the Ministries of Justice & Security; Social Affairs & Employment; Economic Affairs & Climate Policy; the Interior & Kingdom Relations and Finance, as well as the Immigration and Naturalisation Service and the Public Prosecution Service.

We hope you will find this report a clear and practical guide to the Netherlands' involvement in human rights proceedings. If you have any comments or suggestions or would like further information, please contact us at djz-ir@minbuza.nl, tel. +31 (0)70 3486742.

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Judgments

Hokkeling (30749/12, 14 February 2017)
In 2007 the applicant was sentenced to term of imprisonment of four years and six months for drug trafficking and aiding and abetting in the death of a person. The applicant was released during the appeal proceedings before Amsterdam Court of Appeal because he had served the prison sentence imposed by the district court. However, while the appeal was in progress he was arrested by the Norwegian authorities on suspicion of drug smuggling. The Dutch authorities made several attempts to have the applicant brought to the Netherlands so that he could attend the appeal proceedings, but without success. The appeal court delayed hearing the merits of the case for several months, but after around seven months it dismissed a request to adjourn the proceedings in the interests of due process and of disposing of the case within a reasonable time. The applicant was ultimately sentenced on appeal to eight years' imprisonment. He then lodged an appeal in cassation, which was dismissed.
The applicant complained before the Court that in breach of his right to a fair trial and to defend himself in person (article 6, paragraphs 1 and 3 (c) ECHR), he had been denied the opportunity of attending, with counsel, the hearings on 1 and 4 June 2010.
The Court held that although a conviction *in absentia* is not, as such, incompatible with article 6, paragraph 1 of the ECHR, great value is attached to the defendant's right to be present. In the applicant's case, it had not been established that he wished to waive this right. The Court noted that the appeal court had taken no measures to enable the applicant to attend the hearing of his case, a fact which was all the more difficult to understand given that the appeal court had increased his sentence. The Court agreed with the Government that the applicant's arrest in Norway was the direct consequence of his own behaviour and recognised the legitimate interest in seeing the criminal proceedings brought to a timely conclusion. The Court also acknowledged that the applicant had been present at the criminal trial and had been able to attend all the hearings of the appeal court prior to his arrest, and that his counsel had been able to conduct an active defence. However, this could not compensate for the applicant's absence.
The Court therefore found that there had been a violation of article 6, paragraphs 1 and 3 (c) of the Convention.

M. (2156/10, 25 July 2017)
The applicant was formerly employed by the General Intelligence and Security Service (AIVD), as an audio editor and interpreter. In this capacity he had access to classified information; he was under a duty not to divulge this information to unauthorised persons. On 30 September 2004 the applicant was arrested on suspicion of having passed copies of classified documents to persons outside the AIVD, including persons under covert investigation by the AIVD in connection with possible involvement in terrorist activities. He was then charged with disclosing State secret information. The district court sentenced the applicant to four years and six months' imprisonment. The appeal court quashed the judgment of the lower court, concluding that the applicant was guilty and sentencing him to a term of four years. In cassation proceedings, the Supreme Court held that the length of the proceedings had been excessive, quashed the judgment of the appeal court in so far as it related to the sentence imposed and reduced the length of that sentence by two months. For the rest, the Supreme Court upheld the appeal court's judgment.
Before the Court the applicant complained that he had not received a fair trial, which constituted a violation of article 6 of the Convention. He alleged that the AIVD had exercised decisive control over the evidence by restricting his and the district court's access to it and controlling its use, thus making it impossible for him to instruct his defence counsel properly or to make effective use of the evidence in his defence (article 6, paragraphs 1 and 3 (b), (c) and (d) ECHR).
The Court identified three elements in the complaint. First, the AIVD allegedly redacted certain documents in the case file and did not disclose an internal report concerning the applicant to the defence. The Court held that the blacked-out passages in the documents in question would not have been of use to the defence since the only question of importance was whether it could be determined that they contained State secrets, and the remaining legible information was sufficient for this purpose. The Court further concluded that no internal AIVD report had been made available to the public prosecutor and that the appeal court did not find it established that the report actually existed. The Court found that no violation of article 6, paragraphs 1 and 3 (b) of the Convention had taken place.

[1] The judgments and decisions summarised here are in chronological order. No summary is provided of those decisions which were disposed of with a standard substantiation. For the full list of judgments and decisions please see Annexe I.

The second element of the complaint related to the restrictions imposed on the applicant regarding his right to provide information and instructions to his defence counsel and the refusal to allow him to name individual AIVD staff members before the appeal court. It was pointed out to him that the duty of confidentiality arising from his work at the AIVD was still in force and that he was liable to prosecution if he revealed classified information to his lawyers which was not already in the case file. The Advocate General had however given the applicant an undertaking that he would not be prosecuted for breaching his duty of confidentiality if such a breach was justified in view of his right to a fair trial.
The Court held that the conditions imposed by the AIVD on communication between the applicant and his lawyers constituted an interference with the defendant's right to communicate freely with defence counsel, since in this case such communication was no longer free and unrestricted as to content, as normally required by due process. The Court accepted that there is no reason, in principle, why secrecy rules should not apply when members of the security services are prosecuted for criminal offences related to their employment. The question for the Court, however, was how a ban on disclosing secret information affects the rights of the defence, both with regard to communication with counsel and to the proceedings in court. Although in the applicant's case the Advocate General had undertaken not to prosecute him for breaching his duty of confidentiality if the breach proved to be justified in light of the applicant's rights under article 6 of the Convention, this placed on the applicant the burden of deciding, without advice from counsel, whether he could share certain information with his lawyers without risking prosecution. The Court held that it cannot be expected of a person charged with serious offences to make such a decision without advice from counsel. As a result, the Court concluded that there had been a violation of article 6, paragraphs 1 and 3 (c) of the Convention, and that it was therefore unnecessary to consider separately whether the refusal to allow the applicant to name members of staff of the AIVD in the proceedings before the appeal court also constituted a violation of the Convention.
The third element of the complaint concerned the conditions under which certain AIVD staff members were heard as witnesses, i.e. with the use of disguise, voice distortion and numbers instead of names. As a result, the applicant could not identify the witnesses and any non-verbal communication was hidden. This part of the complaint also concerned the presence of an AIVD official who was able to veto certain questions put by the defence and the refusal to call certain AIVD staff members as witnesses. In this connection the Court held that the admissibility of evidence is primarily a matter for regulation by national law and it is for the national courts to assess the evidence before them. It is not the Court's role to determine whether certain witness statements were properly admitted in evidence, but rather to ascertain whether the proceedings as a whole, including the way in which evidence was gathered, were fair. The appeal court based its conviction of the applicant on no less than 53 items of evidence, a number of which directly linked him to leaked documents and to persons found to be in possession of them. In these circumstances, the Court was unable to find that the appeal court had acted unreasonably or arbitrarily in refusing to allow the applicant to call all the persons he wished to be heard as witnesses or in holding that the defence was not materially impaired by the conditions under which it was able to question witnesses. There had therefore been no violation of article 6, paragraphs 1 and 3 (d) of the Convention.
In relation to the violation of article 6, paragraphs 1 and 3 (c) it had found, the Court pointed out that it had no jurisdiction to quash convictions pronounced by national courts. A new trial or a reopening of the proceedings is the appropriate way to address such a violation. Since article 457, paragraph 1 (b) of the Code of Criminal Proceedings offers the applicant the opportunity to apply to the Supreme Court to order a retrial, the finding of a violation of article 6 of the Convention constituted in itself sufficient just satisfaction and there were no grounds for further financial compensation.

Garib (43494/09, 6 November 2017, Grand Chamber)
The applicant wished to move with her two children from a one-room property to a three-room property in the district of Rotterdam known as Tarwewijk, where the Urban Areas (Special Measures) Act applies. Pursuant to the Act, the municipality of Rotterdam laid down certain conditions in its Housing Bye-law applying to residence in the area, including the obligation to obtain a housing permit. Her application for a permit was denied on the grounds that, because she was receiving benefit under the Work and Social Assistance Act, she did not meet the income requirement that would have exempted her from applying for such a permit. Nor did she meet the requirement of having resided in Rotterdam for six years preceding the submission of the application.
Following judicial review and appeal proceedings before the national courts, on 28 July 2009 the applicant lodged an application with the Court alleging that her right to liberty of movement and freedom to choose her residence (article 2 of Protocol No. 4, ECHR) had been violated. In its judgment of 23 February 2016, the Court found that there had been no violation of this article.
On 23 May 2016 the applicant requested that the case be referred to the Grand Chamber. On 12 September 2016 the Court complied with this request. After a hearing on 25 January 2017, the Grand Chamber concluded on 6 November 2017 that there had been no violation of article 2, Protocol No. 4 to

the Convention. The Grand Chamber took as its starting point the Court's finding that the applicant's right to freely choose her residence had been restricted. It then examined whether this restriction was justified under article 2, paragraph 4 of Protocol No. 4 to the Convention. The Grand Chamber held that the refusal to issue a housing permit to the applicant was in accordance with law, namely the Urban Areas (Special Measures) Act. The parties had not contested the Court's conclusion in its judgment of 23 February 2016 that the Act served a legitimate aim, namely to address the problems in 'priority neighbourhoods' and to improve the quality of life there. This conclusion could therefore stand. The Grand Chamber further found the restriction to be proportionate. In this connection, the Court had examined whether the interests of the State (in its efforts to establish a better social and economic mix in such areas) and the opposing individual interest (the freedom to choose one's own place of residence) had been properly weighed. Also relevant was the fact that the Act did not deprive anyone of their right to housing nor did it compel them to leave their homes.

The Court had also concluded that the legislative process had been conducted properly and that the Act was part of a large-scale and long-term plan of investment in the city. Furthermore, the measures taken under the Act were temporary in nature, restricted to specific areas and regularly evaluated. The Act also contained safeguards, including provisions to the effect that the authorities must ensure that sufficient housing is available for persons who are not eligible for a housing permit, and a hardship clause protecting persons who are not in a position to seek alternative housing.

Finally, the Grand Chamber held that the applicant's individual circumstances did not lead to the conclusion that the restriction on her right to liberty of movement and to choose her own residence was unjustified. The Chamber noted, inter alia, that the living conditions in the one-room property in Tarwewijk were not such that the refusal to issue a housing permit for the three-room property in the same neighbourhood must be deemed disproportionately harsh. What is more, the applicant, who it appears has since found a job, has occupied a social housing property in Vlaardingen since 2010 and it has not been established that she still wishes to move to Tarwewijk. There were therefore no grounds to conclude that the Government should not have allowed the general interest served by the Urban Areas (Special Measures) Act to prevail over the individual interests of the applicant. The Grand Chamber therefore concluded, by twelve votes to five, that there had been no violation of article 2, Protocol No. 4 to the Convention.

Decisions

El Allati (45892/13, 6 December 2017)
The applicant complained before the Court that his right to a fair trial had been violated since he had not been granted State-sponsored legal aid during his questioning by the police (article 6, paragraph 3 ECHR). The applicant and the Government reached a friendly settlement. The Court struck the application out of its list of cases in accordance with article 39 of the Convention.

Gambier (27787/15, 6 December 2016)
The applicant complained before the Court that his right to a fair trial had been violated since a statement he had made to the police without having been able to consult a lawyer was used in evidence against him (article 6, paragraphs 1 and 3 (c) ECHR). The applicant and the Government reached a friendly settlement. The Court struck the application out of its list of cases in accordance with article 39 of the Convention.

Mucalim (5888/10, 14 March 2017)
The applicant, a Somali national, submitted an asylum application on 24 August 2009. During his first interview it emerged that he had previously applied for asylum in Malta. He stated that he did not wish to return to Malta as he had been detained under poor conditions there. By decision of 29 September 2009, his application was denied pursuant to the Dublin Regulation (Council Regulation (EC) No 343/2003) since Malta was responsible for processing the application and had accepted a request for transfer. The applicant's application for judicial review and his appeal were both declared unfounded.
The applicant complained before the Court that the Government had failed to meet its obligations under the Convention since if returned to Malta, he would face the risk of being expelled to Somalia, where he might be killed (article 2 ECHR). In addition, he claimed that he would be exposed to inhuman treatment in Malta and Somalia (article 3 ECHR). Furthermore, the national proceedings in his case failed to give serious consideration to the information he had supplied concerning the situation in Malta (article 13 ECHR).
By letter of 28 June 2012, Malta informed the Court that the applicant had been granted subsidiary protection on 27 January 2009. For this reason, the Court held that there were no grounds for concluding that after transfer to Malta the applicant would be placed in immigration detention or returned to Somalia. Consequently, the Court found that transfer to Malta would not entail a real risk of a violation of article 3 of the Convention and that this part of the application was manifestly ill-founded. The applicant's other complaints were also declared manifestly ill-founded. The application was therefore declared inadmissible.

A.M. (48294/10, 4 March 2017)
The applicant, an Afghan national, submitted five unsuccessful asylum applications between 2001 and 2010. On 23 August 2010 he complained before the Court that his removal to Afghanistan would expose him to torture or inhuman treatment (article 3 ECHR). On the same day the Court granted an interim measure under article 39 of the Rules of Court to the effect that the applicant could not be expelled for the duration of the proceedings before the Court. The interim measure was subsequently extended, but was lifted on 9 November 2010. A fresh request for an interim measure was rejected, after which the Court asked the applicant whether he wished to pursue his application. A reminder sent in 2012 went unanswered. In 2017, in reply to a further enquiry from the Court the applicant's representative stated that he no longer had any contact with the applicant. The Court therefore concluded that the applicant could be regarded as no longer wishing to pursue his application, within the meaning of article 37, paragraph 1 (a) of the Convention. The Court struck the application out of the list.

Ojei (64724/10, 14 March 2017)
The applicant, a Nigerian national, applied for asylum on 30 March 2010. During the procedure it became clear that he had lodged an earlier asylum application in Malta. He stated that that he had been held for 18 months in a reception centre in Malta, where he was badly treated. He left Malta after his asylum application was denied. On 6 July 2010 the Government denied his application pursuant to the Dublin Regulation (Council Regulation (EC) No 343/2003) since Malta was responsible for processing the application and had accepted a request for transfer made by the Netherlands. The applicant had failed to make a convincing case that transferring him to Malta would result in inhuman treatment (article 3 ECHR). The applicant's application for judicial review and his appeal were both declared unfounded. His scheduled transfer to Malta on 9 November 2010 was cancelled since due to his psychological state he was not considered fit to travel. He was subsequently admitted to a psychiatric institution.

The applicant complained before the Court that if transferred to Malta he would be detained without trial in appalling conditions, or placed in an open reception centre where adequate psychiatric care was unavailable. Furthermore, he would be expelled to Nigeria to face torture or death. His transfer to Malta would therefore be incompatible with article 3 of the Convention.
The Court held that the applicant's claim that he would be detained without trial was entirely unsubstantiated. It further held that the conditions in Maltese reception centres were not such that removal to that country would in itself constitute a violation of article 3 of the Convention. Nor did the applicant's personal circumstances, in the Court's view, provide sufficient grounds for considering his transfer to be incompatible with article 3 of the Convention. Since there was no sufficiently real risk of a violation of article 3, the Court considered the application to be manifestly ill-founded and declared it inadmissible.

Marreel (20496/16, 6 April 2017)
The applicant, a Belgian national, was placed under a TBS order in the Netherlands (placement at the disposal of the Government – *terbeschikkingstelling*). By decision of 22 June 2011, the Minister for Migration imposed an exclusion order on him. By letter of 18 April 2012, the Minister of Security and Justice notified the applicant of his intention to transfer him to Belgium under the Enforcement of Criminal Judgments (Transfer) Act. This meant that the Dutch TBS order would be converted into a Belgian internment order.
The applicant complained before the Court that his transfer to Belgium would constitute inhuman treatment since insufficient account had been taken in making the transfer decision of whether he would actually be placed under an internment order in Belgium and therefore of whether he would receive the necessary treatment. It was also unclear to the applicant how long he would remain in other detention facilities before being placed in a psychiatric institution (article 3 ECHR and article 5, paragraph 1 (e) ECHR).
On 20 December 2016, the Central Netherlands District Court decided that the TBS order imposed on the applicant would end as soon as he left the country, on condition that he did not return to the Netherlands. At the Government's request, the Court struck the application out of the list under article 37, paragraph 1 of the Convention.

A.A. (66848/10, 2 May 2017)
The applicant, a Turkish national, applied for asylum on 22 May 2007. She claimed to have been persecuted in Turkey as a political activist; she further invoked the fact that her husband, who was also a Turkish political activist, was living in the Netherlands, albeit without a residence permit, and that they had a daughter.
The applicant complained before the Court that expulsion to Turkey would expose her to torture or inhuman or degrading treatment (article 3 ECHR). In addition, expulsion would be contrary to her right to respect for family life (article 8 ECHR).
By letter of 9 February 2017 the Government informed the Court that the applicant had been granted a temporary residence permit, valid from 7 February 2017 to 7 February 2022 and that there was no longer any question of her being expelled to Turkey. It therefore requested the Court to strike the case out of the list. By letter of 24 February 2017 the applicant confirmed that she had been granted a residence permit but argued that it should have had retroactive effect from 22 May 2007. Only in this way, she contended, could the violation of the Convention be fully remedied, in particular with regard to applying for a permanent residence permit and naturalisation.
The Court held that the application pertained to the consequences of expulsion to Turkey, that the applicant had acknowledged that this was no longer at issue and that the object of the application had thus been achieved. The Court considered the matter to have been resolved (article 37, paragraph 1 (b) ECHR) and struck the application out of the list.

L. (68613/13, 2 May 2017)
The applicant is a Zimbabwean national. On 7 March 2012, while held in immigration detention, she was subjected to a full body search by two female staff of Zeist detention centre. These two members of staff were assisted by two male staff members. She complained before the Court that the full body search constituted inhuman or degrading treatment (article 3 ECHR) and a breach of her right to privacy (article 8 ECHR). In addition, she claimed that the way her complaint was handled did not constitute an effective remedy (article 13 ECHR).
After unsuccessful negotiations on a settlement, the Government acknowledged in a unilateral declaration (letter of 29 December 2016) that there had been a violation of article 3 of the Convention. It stated that it was prepared to pay an amount in just satisfaction to the applicant and to reimburse her costs incurred in both the domestic proceedings and the proceedings before the Court, provided they were reasonable. By letter of 3 February 2017 the applicant informed the

Court that she was prepared to agree to the terms of the unilateral declaration provided that it be 'part of a decision of [the] Court or might be known publicly otherwise'.
The Court concluded that since the unilateral declaration was set out in the decision and the applicant had agreed to its terms, this amounted to a friendly settlement between the parties. It therefore struck the application out of list of cases pursuant to article 39 of the Convention.

Hannan and Kirakosyan (70286/14, 2 May 2017)
The applicants complained before the Court that the detention of their minor son at the reception centre at Schiphol while their asylum applications were being processed amounted to inhuman treatment (article 3 ECHR). The applicants and the Government reached a friendly settlement. The Court struck the application out of the list of cases pursuant to article 37, paragraph 1 of the Convention.

M.M., A.R., Z.L. and G.G.S. (15993/09, 26268/09, 33314/09 and 53926/09, 16 May 2017)
All the applicants are Afghan nationals. The residence permits of M.M. and A.R. were revoked and the asylum applications of Z.L. and G.G.S were denied on the grounds that there were serious reasons for suspecting they might have committed offences listed in article 1F of the Refugee Convention. M.M., A.R. and G.G.S. had worked for the security service KhAD/WAD under the communist regime of the People's Democratic Party of Afghanistan. Z.L. had occupied a number of administrative posts under the regime. The applicants were all subjected to an entry ban.
The applicants complained before the Court that their expulsion to Afghanistan would expose them to torture or inhuman treatment (article 3 ECHR) on account of their work during the communist regime and because of the general security situation in Afghanistan. In addition, Z.L. complained that article 1F of the Refugee Convention had been applied in his case despite the fact that no criminal proceedings had been instituted against him (article 6 ECHR). A.R., Z.L. and G.G.S. further complained that denying them residence would be incompatible with their right to family life, since their spouses and children had been granted residence rights in the Netherlands and could not be expected to return to Afghanistan with them (article 8 ECHR). Finally, A.R. and G.G.S. claimed that they had not had an effective remedy in respect of their complaints with regard to violations of article 3 and/or article 8 of the Convention (article 13 ECHR).
The Court decided to join the applications in view of their related factual and legal background.
The Court first noted that the applicants had not fled Afghanistan after the fall of the communist regime in 1992. They had stayed until the Taliban seized power. It further noted that there were no indications that since their departure from Afghanistan, the applicants had attracted negative attention from any governmental or non-governmental body or any private individual in Afghanistan on account of their involvement with the former communist regime. The Court also took into account the fact that UNHCR does not include persons involved in the former communist regime in its potential risk profiles in respect of Afghanistan. In addition, the Court did not consider the general security situation in Afghanistan such that there would be a real risk of ill-treatment simply by virtue of an individual being returned there. The Court therefore concluded that expulsion to Afghanistan would not constitute a violation of article 3 of the Convention.
The Court rejected the complaint with regard to a violation of article 6 of the Convention as incompatible *ratione materiae* with the Convention, since it was part of its established case law that decisions concerning the entry, stay and removal of aliens do not fall within the scope of this article.
The Court rejected Z.L.'s complaint under article 8 of the Convention as he had not exhausted domestic remedies. With regard to A.R. and G.G.S., the Court held that their family life with their adult children did not enjoy protection under article 8 of the Convention, since 'more than the normal emotional ties' had not been established. With regard to their family life with their spouses and minor children, the Court held that the decisions that had been taken were in accordance with national law and served a legitimate aim. In view of the gravity of the crimes and acts which led to the application of article 1F, and taking into account the fact that it had not been established that it was impossible for the applicants to exercise their family life outside the Netherlands, the Court concluded that a fair balance had been struck between the interests of the Government and those of the applicants. The infringement of article 8 of the Convention was therefore justified under the terms of the second paragraph of that article.
The Court held that the complaint regarding a violation of article 13 of the Convention was manifestly ill-founded because the applicants had had the opportunity to challenge the decisions at issue in review and appeal proceedings which the Court had previously, in the case of A.A.Q. (42331/05, 30 June 2015), accepted as an effective remedy for the purposes of article 13 of the Convention.
Taking the above into consideration, the Court declared the applications inadmissible.

J.W. (16177/14, 27 June 2017)
The applicant, a Somali national, had been granted permanent residence status in Canada in 1992. In 2010, he was informed that in view of his extensive criminal record he would be deported to Somalia. The applicant lodged a communication with the UN Human Rights Committee, which concluded that his deportation would violate several of his rights under the International Covenant on Civil and Political Rights (ICCPR). Nevertheless, in 2012 the applicant was deported from Canada with the intention of returning him via Amsterdam and Nairobi to Mogadishu, Somalia. During the stopover in Amsterdam the applicant applied for asylum in the Netherlands.
By decision of 23 April 2013 his asylum application was denied. His scheduled expulsion did not go ahead after the Court indicated an interim measure under Rule 39 for the duration of the proceedings before it. The applicant complained before the Court that removal to Canada in effect meant removal to Somalia, where he faced the risk of being tortured or subjected to inhuman treatment (article 3 ECHR). He further alleged that his claim under article 3 of the Convention had not been subjected to rigorous scrutiny and that the review and appeal proceedings aimed at preventing his removal could not be regarded as an effective remedy (article 13 ECHR).
By letter of 14 February 2017 the Government informed the Court that it had been unable to obtain guarantees from Canada that the applicant would not be removed to Somalia if expelled to Canada. The Government therefore undertook not to expel the applicant to Canada or Somalia and asked the Court to strike the case out of the list. The applicant contended that this did not fully resolve the matter since, in his view, the undertaking not to expel him did not address his other complaints. He further argued that striking the case from the list would mean the loss of basic services.
The Court held that in the light of the letter of 14 February 2017 the applicant no longer faced the risk of expulsion to Canada or Somalia, and that therefore the threat of a violation of article 3 of the Convention was no longer present. The Court further held that there was no right to social support as such under the Convention, and that in so far as article 3 of the Convention obliges states to take action in situations of extreme poverty, the Dutch authorities had already adopted practical measures to address such situations, as emerged in the Hunde case (17931/16, 2 May 2016). On the basis of these conclusions, the Court decided that the application should be struck out of the list (article 37 ECHR), observing that if in the future steps were nevertheless taken to remove the applicant to Canada or Somalia, he could challenge such a decision before the national courts or seek to have his application to the Court restored.

E.P. and A.R. (43538/11 and 63104/11, 11 July 2017)
Both applicants are Afghan nationals. Their asylum applications were denied because there were serious reasons for suspecting they might have committed offences listed in article 1F of the Refugee Convention on account of their work for the security service KhAD/WAD under the communist regime of the People's Democratic Party of Afghanistan.
The applicants complained before the Court that their expulsion to Afghanistan would expose them to torture or inhuman treatment (article 3 ECHR) on account of their work for KhAD/WAD and because of the general security situation in Afghanistan. In addition, they claimed that their right to a fair trial (article 6 ECHR) had been violated and that the refusal to grant them residence was incompatible with their right to family life, since their wives and children had been granted residence rights in the Netherlands and could not be expected to return to Afghanistan with them (article 8 ECHR). Finally, the applicants claimed that they had not had an effective remedy in respect of their complaints with regard to violations of article 3 and/or article 8 of the Convention (article 13 ECHR).
The Court decided to join the applications in view of their related factual and legal background. The Court first noted that the applicants had not fled Afghanistan after the fall of the communist regime in 1992. They had stayed even after the Taliban seized power in 1997, only leaving the country in 1999 and 2000 respectively. It further noted that there were no indications that since their departure from Afghanistan, the applicants had attracted negative attention from any governmental or non-governmental body or any private individual in Afghanistan on account of their involvement with the former communist regime. The Court also took into account the fact that UNHCR does not include persons involved in the former communist regime in its potential risk profiles in respect of Afghanistan. In addition, the Court did not consider the general security situation in Afghanistan such that there would be a real risk of ill-treatment simply by virtue of an individual being returned there. The Court therefore concluded that expulsion to Afghanistan would not constitute a violation of article 3 of the Convention.
The Court rejected the complaint with regard to a violation of article 6 of the Convention as incompatible *ratione materiae* with the Convention, since it is part of its established case law that decisions concerning the entry, stay and removal of aliens do not fall within the scope of this article.

In the context of article 8 of the Convention, the Court held that the relationship between the applicants and their spouses and children constituted family life for the purposes of this article. However, with regard to their relationship with their adult children, the Court held that this did not enjoy protection under article 8 of the Convention, since 'more than the normal emotional ties' had not been established. With regard to the applicants' family life with their spouses and minor children, the Court held that the decisions that had been taken were in accordance with national law and served a legitimate aim. As a result, it remained to be determined whether those decisions were necessary in a democratic society. In view of the gravity of the crimes and acts which led to the application of article 1F of the Refugee Convention, the Court concluded that a fair balance had been struck between the interests of the Government and those of the applicants. In this context it took into account the fact that the applicants' residence status in the Netherlands had always been such that the continuance of their family life had always been precarious, that their spouses must have been aware of the activities of the applicants, and that their minor children were now 16 years old. In addition, the Court held that even if it were assumed that there were objective obstacles to the family members returning to Afghanistan with the applicants, it had not been established that it would be impossible for them to settle in a third country where they could exercise their right to family life. The infringement of article 8 of the Convention was therefore justified under the terms of the second paragraph of that article.
The Court held that the complaint regarding a violation of article 13 of the Convention was manifestly ill-founded because the applicants had had the opportunity to challenge the decisions at issue in review and appeal proceedings which the Court had previously, in the case of A.A.Q. (42331/05, 30 June 2015), accepted as an effective remedy for the purposes of article 13 of the Convention.
Taking the above into consideration, the Court declared the applications inadmissible.

E.K. (72586/11, 11 July 2017)
The applicant, who is an Afghan national, applied for asylum in the Netherlands. His asylum application was denied because there were serious reasons for suspecting he might have committed offences listed in article 1F of the Refugee Convention on account of his work for and senior position within the Afghan police (Sarandoy) under the communist regime and the subsequent Mujahideen regime of the People's Democratic Party of Afghanistan between 1992 and 1998.
The applicant complained before the Court that his expulsion to Afghanistan would expose him to a violation of his right to life (article 2 ECHR), or a violation of the prohibition on torture or inhuman treatment (article 3 ECHR) on account of his former activities for the Sarandoy and the general security situation in Afghanistan. In addition, he claimed that owing to their duration, the proceedings concerning his asylum application must be regarded as amounting to degrading treatment (article 3 ECHR) and that the refusal to grant him residence was incompatible with his right to family life, since his spouse and children had been granted residence rights in the Netherlands and could not be expected to return to Afghanistan with him (article 8 ECHR). Finally, the applicant claimed that he had not had an effective remedy in respect of his complaints with regard to violations of article 3 and/or article 8 of the Convention (article 13 ECHR).
The Court found it appropriate to deal with the complaint under article 2 in the context of the complaint under article 3. In that context, it noted that the applicant had not fled Afghanistan after the fall of the communist regime in 1992. He had been able to continue living in the country without encountering any problems and had fled only in 1998, after the Taliban seized power. It further noted that there were no indications that, since his departure from Afghanistan, the applicant had attracted negative attention from any governmental or non-governmental body or any private individual in Afghanistan on account of his involvement with the former communist regime or the regime in Mazar-e Sharif between 1992 and 1998. In this context the Court took into account the fact that UNHCR does not include persons with similar backgrounds to the applicant in its potential risk profiles in respect of Afghanistan. In addition, the Court did not consider the general security situation in Afghanistan such that there would be a real risk of ill-treatment simply by virtue of an individual being returned there. The Court therefore concluded that expulsion to Afghanistan would not constitute a violation of article 3 of the Convention. The Court further held that the circumstances surrounding the applicant's asylum proceedings, more specifically their duration, had not been such as to attain the minimum level of severity required for treatment to fall with the scope of article 3 of the Convention.
In the context of article 8 of the Convention, the Court held that the relationship between the applicant and his spouse and children constituted family life for the purposes of this article. However, with regard to his relationship with his children, who were all adults, the Court held that this did not enjoy protection under article 8 of the Convention, since 'more than the normal emotional ties' had not been established. With regard to the relationship with his spouse, the Court held that the refusal to grant residence was in accordance with national law and served a

legitimate aim. The Court then determined whether that refusal was necessary in a democratic society. In view of the gravity of the crimes and acts which led to the application of article 1F of the Refugee Convention, the Court concluded that a fair balance had been struck between the interests of the Government and those of the applicant. In this context, it took into account the fact that the applicant's residence status was such that continuance of his family life had always been precarious. Furthermore, his spouse must have been aware of his work for the Sarandoy. In addition, the Court held that, even if it had to be assumed that there were objective obstacles to his spouse returning to Afghanistan with the applicant, it had not been established that it would be impossible for them to settle in a third country where they could exercise their right to family life. The infringement of article 8 of the Convention was therefore justified under the terms of the second paragraph of that article.
The Court held that the complaint regarding a violation of article 13 of the Convention was manifestly ill-founded because the applicant had had the opportunity to challenge the decisions at issue in review and appeal proceedings which the Court had previously, in the case of A.A.Q. (42331/05, 30 June 2015), accepted as an effective remedy for the purposes of article 13 of the Convention.
Taking the above into consideration, the Court declared the application inadmissible.

G.R.S. (77691/11, 11 July 2017)
The applicant, an Afghan national, entered the Netherlands in 1998 with his spouse and five children. The applicant applied for asylum. He stated that he had been a member of the People's Democratic Party of Afghanistan (PDPA) and had worked from 1982 to 1992 for the security service KhAD/WAD under the communist regime of the PDPA. His asylum application was denied because there were serious reasons for suspecting he might have committed offences listed in article 1F of the Refugee Convention on account of his activities as a high-ranking officer in the KhAD/WAD. His wife and six children were granted residence permits under an amnesty scheme.
The applicant complained before the Court that his expulsion to Afghanistan would expose him to torture or inhuman treatment (article 3 ECHR) on account of his work for KhAD/WAD and because of the general security situation in Afghanistan. In addition, he claimed that the refusal to grant him residence was incompatible with his right to family life, since his wife and children had been granted residence rights in the Netherlands and could not be expected to return to Afghanistan with him (article 8 ECHR).
The Court noted that after the fall of the communist regime in 1992, the applicant was held for two years by the Mujahideen. It also noted that he did not leave Afghanistan after his release, but lived with his family in Mazar-e Sharif, where he worked as a car dealer until 1998 without encountering any problems. In 1998 he was arrested and then released after two days by the Hezb-e Wahdat, after which he and his family fled Afghanistan. The Court further held that there were no indications that since his departure from Afghanistan the applicant had attracted negative attention from any governmental or non-governmental body or any private individual in Afghanistan on account of his involvement with the former communist regime. In this context the Court took into account the fact that UNHCR does not include persons who were involved with former communist regime in its potential risk profiles in respect of Afghanistan. In addition, the Court did not consider the general security situation in Afghanistan such that there would be a real risk of ill-treatment simply by virtue of an individual being returned there. The Court therefore concluded that expulsion to Afghanistan would not constitute a violation of article 3 of the Convention.
In the context of article 8 of the Convention, the Court held that the relationship between the applicant and his spouse and children constituted family life for the purposes of this article. However, with regard to his relationship with his children, who were all adults, the Court held that this did not enjoy protection under article 8 of the Convention, since 'more than the normal emotional ties' had not been established. With regard to the relationship with his spouse, the Court held that the refusal to grant him residence rights was in accordance with national law and served a legitimate aim. The Court then determined whether that refusal was necessary in a democratic society. In view of the gravity of the crimes and acts which led to the application of article 1F of the Refugee Convention, the Court concluded that a fair balance had been struck between the interests of the Government and those of the applicant. In this context, it took into account the fact that the applicant's residence status was such that continuance of his family life had always been precarious. Furthermore, his spouse must have been aware of his work for the KhAD/WAD. In addition, the Court noted that the applicant's wife had been granted a residence permit under an amnesty scheme rather than an asylum residence permit, so there were no objective obstacles preventing her from following the applicant to Afghanistan. Even if it had to be assumed that there were objective obstacles to the spouse settling in Afghanistan with the applicant, it had not been established that it would be impossible for them to settle in a third country where they could exercise their right to family life. The infringement of article 8 of the Convention was therefore justified under the terms of the second paragraph of that article.

Taking the above into consideration, the Court declared the application inadmissible.

Soleimankheel a.o. (41509/12, 11 July 2017)
The applicants, married parents (father: first applicant, mother: second applicant) and their four children are Afghan nationals. The parents and their eldest child entered the Netherlands in 1998 and applied for asylum. The first applicant, an ethnic Pashtun, stated that in 1987, following six months of military training in the Soviet Union, he had joined the Riasat-e Makhsous, a special unit of the Ministry of Interior Affairs Directorate for combating crime under the communist regime. From 1989 to 1993 he studied in Ukraine and then returned to Afghanistan, where he worked as a farmer. In 1998 he was told that the Taliban were looking for him because he had worked for the communist regime and studied in the Soviet Union/Ukraine. The applicant therefore fled to the Netherlands with his family. His asylum application was denied because there were serious reasons for suspecting he might have committed offences listed in article 1F of the Refugee Convention on account of his work for the Riasat-e Makhsous. The asylum applications of the second applicant and the children were also denied since they were largely based on the first applicant's asylum statement (the account of his reasons for seeking asylum). In 2006, a fresh asylum application by the first applicant was denied. In 2007 the applicants requested a deferral of their removal under section 64 of the Aliens Act 2000 in connection with the state of health of one of the children. In 2009, the second applicant and the children were granted residence permits under an amnesty scheme, after which they withdrew from all pending proceedings in their case. An entry ban was imposed on the first applicant and his request for the application of section 64 of the Aliens Act 2000 was denied. On 21 July 2012 he was removed to Afghanistan. He claimed that after his removal he was threatened and then abducted in Kabul. After his father had paid a ransom, he was freed. When he received a second threat he fled to Belgium, where he was granted a residence permit. The second applicant and their children had in the meantime acquired Dutch nationality.
The applicants complained before the Court that the removal of the first applicant to Afghanistan had exposed him to the risk of torture and inhuman treatment on account of his work for the communist regime, his Westernised lifestyle and his separation from his family (article 3 ECHR). In addition, the first applicant claimed that the entry ban was incompatible with his right to family life (article 8 ECHR) and that he had had no effective remedy in respect of the decision to impose the entry ban (article 13 ECHR).
With regard to article 3 of the Convention, the Court first noted that the applicant's complaint under this article had to be examined on the basis of the situation on 21 July 2012, the date on which he was removed to Afghanistan. It also noted that the first applicant had experienced no problems in Afghanistan after the fall of the communist regime in 1992. He experienced no problems until 1998. Furthermore, there were no indications that since his departure from Afghanistan in 1998 or following his return in 2012 the applicant had attracted negative attention from any governmental or non-governmental body or any private individual in Afghanistan on account of his work for the former communist regime. The Court further held that the first applicant's account of his abduction was insufficiently substantiated. In addition, the Court did not consider the general security situation in Afghanistan to be such that any removal there would necessarily breach article 3 of the Convention. Nor did the applicant's separation from the other applicants as a result of the application of article 1F of the Refugee Convention reach the minimum level of severity required for it to fall within the scope of article 3.
With regard to the complaint under article 8, the Court held that the relationship between the applicants constituted family life for the purposes of this article, and that the application of article 1F of the Refugee Convention and the imposition of an entry ban constituted an infringement of this article. The decisions at issue were nevertheless in accordance with national law and served a legitimate aim. As a result, it remained to be determined whether those decisions were necessary in a democratic society. In this context the Court took into account the fact that the applicant's residence status in the Netherlands had always been such that the continuance of his family life had always been precarious. Furthermore, his wife must have been aware of his work for the communist regime. It had not been established that the second applicant was dependent on her husband or that he played a significant or indispensable role in the care and upbringing of their children. Since the second applicant and their children now had Dutch nationality, and taking into account Directive 2004/38/EC, the Court held that – even if it had to be assumed that there were objective obstacles to returning to Afghanistan with the first applicant – it had not been established that it would be impossible for them to settle in Belgium with him in order to exercise their right to family life. The infringement of article 8 of the Convention was therefore justified under the terms of the second paragraph of that article.

The Court held that the complaint regarding a violation of article 13 of the Convention was manifestly ill-founded because the applicant had had the opportunity to challenge the decisions at issue in review and appeal proceedings which the Court had previously, in the case of A.A.Q. (42331/05, 30 June 2015), accepted as an effective remedy for the purposes of article 13 of the Convention.
Taking the above into consideration, the Court declared the application inadmissible.

S.M.A (46051/13, 11 July 2017)
The applicant, an Afghan national, entered the Netherlands in 1999 with his wife and two children, where he applied for asylum. He stated that he had been a member of the communist People's Democratic Party of Afghanistan (PDPA). He had worked in Kabul as a teacher from 1982 to 1992 under the communist regime when he was dismissed by the Mujahideen, who had come to power three years earlier. He subsequently worked as a money trader until the Taliban attempted to extort money from him. The Taliban arrested him in connection with extortion and during a search of his home found incriminating items revealing his previous involvement with the Revolutionary Guards. He then fled Afghanistan with his family.
After initially denying the asylum application, in 2001 the Government granted the applicant and his family temporary residence permits under the categorial protection policy. In 2002 the applicant applied for a permanent residence permit. In the second interview he stated that he had worked in Russia in a boarding school run by the KhAD/WAD, the security service under the communist regime, whose aim was to raise Afghan orphans as communists and agents of the KhAD/WAD. The Government denied his application on the grounds that, taking into account his active membership of the PDPA, his involvement with the Revolutionary Guards and his work for the KhAD, there were serious reasons for suspecting he might have committed offences listed in article 1F of the Refugee Convention. His application for review of this decision was dismissed, and a second asylum application, an application for a regular residence permit for the purpose of residence with his spouse and an application for deferral of removal on medical grounds (section 64 of the Aliens Act 2000) were all denied. On 21 July 2013 he was removed to Afghanistan.
The applicant complained before the Court that his removal to Afghanistan had led to a violation of the prohibition on torture and inhuman treatment (article 3 ECHR), to which he was exposed on account of his work under the communist regime. In addition, he claimed that the refusal to grant him residence was incompatible with his right to family life, since his wife and three children had been granted residence permits and could not be expected to follow him to Afghanistan (article 8 ECHR). He further claimed that he had had no effective remedy (article 13 ECHR) against the accusations that formed the basis for the application of article 1F of the Refugee Convention. Finally, the applicant complained of violations of articles 1, 5, 6, 7 and 14 of the Convention and article 3 of the United Nations Convention on the Rights of the Child.
The Court held that the complaint under article 3 of the Convention must be examined on the basis of the situation on 21 July 2013, the date on which he was removed to Afghanistan. It further noted that after the fall of the communist regime in 1992 the applicant had continued to work as a teacher and then as money trader without encountering any problems. Furthermore, his treatment by the Mujahideen was not such that it fell within the scope of article 3 of the Convention. Nor did the case file provide any indications that the applicant's work under the communist regime had been the cause of his problems with the Taliban. In addition, that there were no indications that since his departure from Afghanistan in 1999 or following his return in 2013 the applicant had attracted negative attention from any governmental or non-governmental body or any private individual in Afghanistan on account of his work for the former communist regime. The Court also took into account the fact that UNHCR does not include persons involved in the former communist regime in its potential risk profiles in respect of Afghanistan. In addition, the Court did not consider the general security situation in Afghanistan such that there would be a real risk of ill-treatment simply by virtue of an individual being returned there. The Court therefore concluded that his removal to Afghanistan on 21 July 2013 did not constitute a violation of article 3 of the Convention.
The Court declared the complaint under article 8 of the Convention inadmissible for non-exhaustion of domestic remedies.
The Court declared the complaint under article 13 of the Convention inadmissible as incompatible *ratione materiae* with the Convention, since the Court cannot review the correctness of the application of the provisions of the 1951 Refugee Convention and proceedings regarding the entry, stay and removal of aliens fall outside the scope of article 6 of the Convention.
The Court ruled that the alleged violations of articles 1, 5, 6, 7 and 14 of the Convention and article 3 of the United Nations Convention on the Rights of the Child were manifestly ill-founded.
Taking the above into consideration, the Court declared the application inadmissible.

Madiani (29381/11, 12 September 2017)
The applicant, a national of the Democratic Republic of the Congo (DRC), complained before the Court that the refusal to exempt her from the obligation to obtain an authorisation for temporary stay before she could apply for a temporary residence permit in the Netherlands was incompatible with her right to respect for family life (article 8 ECHR). To obtain the authorisation she would have to travel to the DRC and would therefore be separated from her family for an indeterminate period of time.
By letter of 12 May 2017 the Government informed the Court that the applicant had been granted a regular residence permit valid from 5 August 2013. The applicant confirmed this in a letter of 8 June 2017 and indicated that she wished to withdraw her application. The Court then struck the application out of the list.

Ismail (67295/10, 26 September 2017)
In 2007 an exclusion order was imposed on the applicant, a Tunisian national, and in 2011 he was expelled to Tunisia. His Dutch spouse and four children subsequently joined him there.
The applicant complained before the court that the exclusion order constituted a disproportionate interference with his right to respect for family life and that the Government had accorded insufficient weight to his interest, and that of his wife and children, in being able to continue family life in the Netherlands (article 8 ECHR).
By letter of 30 June 2017 the Government informed the Court that the exclusion order had been lifted and the applicant had been granted a residence permit. In reply, the applicant stated that he did not wish to withdraw the application, and claimed an amount of €30,000 for the alleged emotional distress suffered by him and his family.
The Court held that, since the exclusion order had been lifted and the applicant had been granted a residence permit, the object of the application – namely to enable the exercise of family life in the Netherlands –had been achieved. The case had therefore been resolved within the meaning of article 37, paragraph 1 (b) of the Convention. The Court further noted that the award of compensation, as requested by the applicant, was only possible if a violation of the Convention or one of its Protocols had been established, which was not the case in the present situation. Since there were no special circumstances warranting further examination of the case, the Court struck the application out of the list.

Han Aarts B.V. a.o. (43768/17, 10 October 2017)
The 409 applicants, comprising both natural and legal persons, are all involved in professional fur farming in the Netherlands and were represented in the proceedings by the Dutch Federation of Fur Farmers (NFE). On 16 May 2013 the NFE and a number of other organisations launched civil proceedings against the State with the aim of having the Act prohibiting fur farming (which entered into force on 15 January 2013) declared inoperative. In the opinion of the applicants, the Act was incompatible with the right to property (article 1, Protocol No. 1, ECHR) and furthermore was discriminatory (article 14 ECHR). On 21 May 2014 the district court ruled that there had been a violation of article 1, Protocol No. 1 to the Convention. On 10 November 2015 the appeal court quashed this judgment. On 16 December 2016 the Supreme Court dismissed the appeal in cassation against the judgment of the appeal court.
The applicants complained before the Court that the Act constituted a disproportionate interference with their property rights, since a reasonable balance had not been struck between the general interest and their individual interests, in particular because their future earnings were not taken into account. They further complained that not including future earnings as property was arbitrary, which resulted in a violation of the prohibition on discrimination (article 14 ECHR). Finally, they complained that excluding future earnings from the protection of article 1 of Protocol No. 1 rendered the rights guaranteed by this provision illusory and ineffective, which was incompatible with article 13 of the Convention.
The Court held that according to settled case law, future earnings do not fall within the scope of article 1, Protocol No. 1 to the Convention and that no arguments had been presented that would merit a different conclusion in this case. In view of the extensive and detailed substantiation of the judgments of the appeal court and the Supreme Court, in which the principles defined in ECtHR case law were raised, the Court saw no grounds for substituting its own assessment for that of the domestic courts. This complaint was manifestly ill-founded and therefore inadmissible.
In the context of article 14 of the Convention, the Court noted that only differences in treatment based on individual characteristics or the status of a person can amount to discrimination. In the present case, the exclusion of future earnings from the protection of article 1, Protocol No. 1 to the Convention was based on the Court's settled case law and not on any personal characteristics of the applicants. Consequently, no discrimination within the meaning of article 14 of the Convention had taken place. This complaint was therefore also inadmissible.

Finally, the Court held that article 13 requires an effective remedy for 'arguable claims' under the Convention. The Court noted that even if it were assumed there was an arguable claim under article 1 of Protocol No. 1, this had been dealt with by three successive domestic courts, giving the applicants more than sufficient opportunity to argue their case. The fact that the appeal court and the Supreme Court did not accept their arguments does not mean that these remedies were ineffective. On these grounds, the Court also declared this complaint inadmissible.

P. Plaisier B.V., D.E.M. Management Services B.V. and Feyenoord Rotterdam N.V. (46184/16, 47789/16 and 19958/17, 14 November 2017)

The applicants are three companies that as a result of the crisis levy introduced in 2012 had to pay a tax surcharge on salaries above €150,000. The applicants lodged successively an objection, application for review, appeal and appeal in cassation – unsuccessfully – against the surcharge (in the case of P. Plaisier B.V. the case proceeded directly to the Supreme Court after the dismissal of the application for review by means of a 'leapfrog' appeal on points of law). In the national proceedings the applicants argued that the crisis levy was incompatible with their right to protection of property (article 1, Protocol No. 1 to the Convention) and furthermore was discriminatory (article 14 of the Convention). On 29 January 2016 the Supreme Court declared the appeals in cassation inadmissible.

The applicants complained before the Court that contrary to the terms of article 1 of Protocol No. 1 to the Convention they had been subjected to a retrospective tax which, despite the considerable amounts involved, took no account of their individual circumstances. In addition, the surcharge targeted only a small number of employers and was disproportionate in relation to the revenue actually raised.

The Court held that the applications should be examined in the context of the phrase 'to secure the payment of taxes' in article 1 of Protocol No. 1 and that the applicants had not disputed the fact that the levy was lawful in the sense that it had a statutory basis and therefore served a legitimate aim. The complaints solely contested the proportionality of the crisis levy. In this connection the Court noted that the levy was part of a package of measures aimed at meeting the Netherlands' budgetary obligations as an EU member state. The measures were intended to spread the burden equitably over the domestic economy. Although the crisis levy was retrospective, that is not in itself prohibited by article 1 of Protocol No. 1. In the event of specific and compelling reasons – in this case the Netherlands' obligation as a member of the EU to meet its budgetary obligations in a serious financial and economic crisis – the public interest may override the individual's interest in knowing his or her tax liabilities in advance.

The Court then noted that only Feyenoord N.V. had argued that the levy had laid an individual and excessive burden on the company. This argument had been assessed by the appeal court in light of the applicant's individual circumstances; it could therefore not be said that insufficient account was taken of those circumstances.

The Court did not find the fact that only a very small number of employers bore the burden of the crisis levy to be disproportionate. Although other options for increasing tax revenue were available, such as the introduction of an extra tax bracket, given the reasons underlying the imposition of the crisis levy, the decision to impose it could not be deemed unreasonable. Nor did the Court accept the applicants' argument that the levy was disproportionate in light of what they believed to be an insignificant amount of revenue generated.

Taking into account the margin of appreciation which states have in tax matters and in light of the above, the Court ruled that the Government had struck an acceptable balance between the public interest and protection of the applicants' rights. This part of the application was therefore manifestly ill-founded.

With regard to the complaint under article 14 of the Convention, the Court held that, in essence, this coincided with the complaint that the crisis levy affected only a very small group of employers and this argument had already been adequately addressed in the context of article 1, Protocol No. 1 to the Convention. This complaint was therefore likewise manifestly ill-founded.

The Court declared the applications inadmissible in their entirety.

Ballegeer (70043/13, 21 November 2017)

The applicant complained before the Court that the extension of his TBS order (placement at the disposal of the Government – *terbeschikkingstelling*), after it had already expired, was incompatible with his right to liberty and security of person (article 5, paragraph 1 ECHR).

The applicant and the Government reached a friendly settlement and the Court struck the application out of the list in accordance with article 39 of the Convention.

M.B. (63890/16, 28 November 2017)
The applicant, a Guinean national, applied for asylum in the Netherlands in 2010. He claimed to have been prosecuted and imprisoned in Guinea on account of a homosexual relationship and if returned to Guinea would be exposed to the risk of further prosecution or torture because of his sexual orientation.
In 2014 his asylum application was denied on the grounds that he had not plausibly established that he had had a homosexual relationship or that he had been prosecuted. In this context account was taken of the fact that although sexual activities between people of the same sex had been criminalised in Guinea, there was no active prosecution policy in that country. There was therefore no real risk of cruel or inhuman treatment. In 2016 the Council of State dismissed the applicant's appeal against this decision. According to the Council of State, it was reasonable for the Dutch authorities to conclude that the applicant had made vague and contradictory statements. In addition, in the Council's view it had not it been established that in general homosexuals in Guinea had reason to fear prosecution or cruel or inhuman treatment.
After some time spent abroad, in 2016 the applicant submitted a fresh asylum application in the Netherlands. A number of publicly available articles and reports demonstrated, in the applicant's opinion, that homosexuals in Guinea were indeed subjected to discrimination, prosecution and cruel or inhuman treatment. The asylum application was denied in 2016 as it contained no new facts or circumstances. Later that year, the applicant's appeal against this decision was dismissed by the Council of State.
The applicant complained before the Court that if he were forcibly removed to Guinea he would face a real risk of cruel or inhuman treatment prohibited by article 3 of the Convention. He further complained under article 13 of the Convention that he had had no effective remedy.
The Court observed that it was not disputed that Guinean legislation criminalises homosexual activities. Nevertheless, it had to assess whether the specific facts of this case indicated that there was a real risk of cruel or inhuman treatment. In this connection, the Court acknowledged that the national authorities were in principle better placed to assess the credibility of the applicant's account. In the Court's view, the Dutch authorities had made an extensive and careful assessment of the facts adduced by the applicant and he had been given ample opportunity to substantiate his case. Furthermore, according to the Court, the documents available did not show that homosexuals are actively prosecuted in Guinea. It concluded that there were no compelling reasons to believe that the applicant would face a real risk of cruel or inhuman treatment if he returned to Guinea. The Court concluded that the complaints were manifestly ill-founded and declared the application inadmissible.

Committee of Ministers[2]

Vidgen (29353/06, 10 July 2012)
The Court ruled that the applicant's right to a fair trial had been violated because he was convicted solely on the basis of statements made by a witness he was not able to question at the hearing because the witness exercised his right not to testify (article 6, paragraphs 1 and 3 (d) of the ECHR).
The applicant served his sentence and was released. On 4 June 2013 his application for a retrial was granted by the Supreme Court, which referred the case to 's-Hertogenbosch Court of Appeal, a different appeal court than the one which had decided on his appeal. On 28 October 2015 's-Hertogenbosch Court of Appeal gave judgment. The appeal court examined one of the witnesses in the presence of the applicant's counsel. The witness was no longer able to refuse to testify and the defence had the opportunity to question him and to observe him during questioning. According to the appeal court, the fact that the witness stated that he could not remember much and that the defence had only been given the opportunity to question him 15 years later did not constitute a breach of the applicant's right to a fair trial. The appeal court properly examined the credibility of the witness and believed him to be credible. It further concluded that there was sufficient evidence to convict the applicant of being a co-perpetrator in the commission of offences under the Opium Act. The applicant lodged an appeal in cassation with the Supreme Court. The Government informed the Committee of this in an Action Plan of 3 November 2016, stating that the Committee would be informed of the outcome of the proceedings.
The Action Report submitted by the Government on 23 October 2017 announced that in a judgment of 6 June 2017 the Supreme Court had ruled that the appeal court's conclusion that the trial had been fair did not appear to contain any misinterpretation of the law and should not be considered insufficiently comprehensible. The Supreme Court did however quash the appeal court judgment in so far as it concerned the applicant's sentence and reduced this sentence by six months. The Action Report also stated that on 4 July 2017 the Supreme Court handed down a series of judgments which – in light of the case law of the ECtHR – provided further clarification of the relationship between the conditions with which a request to call and question a witness must comply and the right of a defendant to a fair trial within the meaning of article 6 of the Convention.

Jaloud (47708/08, 20 November 2014, Grand Chamber)
The Court ruled that the Netherlands had violated its procedural obligations under article 2 of the Convention (right to life) in that the investigation into a fatal shooting in Iraq in 2004 involving a Dutch soldier had been insufficiently effective. The Government paid the compensation and costs awarded to the applicant within the time limit set. On 20 May 2015 it informed the Committee of Ministers in an Action Plan about the way in which the Netherlands would further execute the judgment. The Government noted that given the passage of time and the fact that certain shortcomings in the investigation were irreparable, it would be impossible to perform a fresh investigation that would comply with the standards laid down by the Court in its judgment. What is more, the public prosecutor's view, expressed in 2004, that the Dutch soldier in question was acting in self-defence was still tenable. Other than criminal prosecution, the Public Prosecution Service had no instruments at its disposal for having the events of 2004 examined by a criminal court. However, the applicant could submit a complaint under article 12 of the Code of Criminal Procedure to Arnhem-Leeuwarden Court of Appeal, which, if it considered the complaint well founded, might then order that criminal proceedings be instituted.
Pending the Committee's examination of the case, at the request of the secretariat the Government submitted a revised Action Plan on 4 September 2015. The revised Plan discussed in some detail the considerations that led to the 2004 decision not to prosecute, as well as those arising from further investigative activities in 2007. Since the shortcomings in the investigation established by the Court had not undermined the 2004 decision of the public prosecutor, the Public Prosecution Service concluded that there were no grounds for regarding the soldier in question as a suspect and there was therefore no reason to prosecute him. With a view to executing the Court's judgment, the Public Prosecution Service sent an official report to the chair of the Board of Prosecutors General in August 2015. This report was also submitted to the Committee of Ministers.

[2] 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 page 43 for an overview of all cases under supervision and those where supervision was concluded in the reporting year.

The revised Action Plan further described how a complaint under article 12 of the Code of Criminal Procedure could be lodged with Arnhem-Leeuwarden Court of Appeal.
In the framework of general measures to execute the judgment and at the request of the Dutch parliament, the system of military criminal law as it applied during operations by Dutch military personnel in high-risk areas between 2000 and 2005 was evaluated by independent experts. The present case was included in the evaluation. The outcome was 21 recommendations in a report presented to parliament by the Borghouts Committee, which in turn led to a number of concrete measures being taken with regard to military operations. The Public Prosecution Service is also currently drafting a manual to safeguard the effectiveness of investigations in this type of situation. In addition further instructions are being developed for the Royal Dutch Military and Border Police on coordination and cooperation with local justice authorities and coalition partners in areas where military operations are under way.
On 3 November 2017 the Government submitted an Action Report, informing the Committee of Ministers that the Public Prosecution Service had now produced a draft investigation manual. The manual was due to be presented to a sounding board composed of representatives of the Public Prosecution Service and the Ministry of Defence. After approval, it would be published and distributed among members of the Royal Dutch Military and Border Police. The Government indicated that with this final measure it had fulfilled the requirements arising from the Court's judgment and that all the measures taken would prevent similar violations in the future.

Gillissen (39966/09, 15 March 2016)
The Court found that the failure of the Central Appeals Court for Public Service and Social Security Matters (CRvB) to accede to the applicant's request to hear witnesses placed him at a disadvantage vis-à-vis the opposing party (article 6, paragraph 1 ECHR). The Government paid the amount awarded by the Court for costs and expenses incurred within the time limit set. On 14 December 2016 the Government submitted an Action Report informing the Committee of Ministers that the Government did not consider individual measures in respect of the applicant necessary. However, the Court's judgment had been discussed internally by the CRvB and would be brought to the attention of the other highest administrative courts. In addition, the judgment had in the meantime been applied by the CRvB and had thus been incorporated into national case law, which would prevent similar violations occurring in the future.
On 13 November 2017 an updated Action Report was sent to the Committee with further information regarding the options under national law for applying for review of a decision given by the Employee Insurance Agency (UVW), or to apply for compensation under article 6:162 of the Civil Code.

Murray (10511/10, 26 April 2016, Grand Chamber)
The Grand Chamber held that the applicant's life sentence was de facto irreducible. Since there was no real possibility for the life sentence to be reviewed, this constituted a violation of article 3 of the Convention.
The applicant had been granted a pardon prior to the judgment of the Court in March 2014. In November of that year he died, which rendered further measures unnecessary. The amount awarded by the Court for costs and expenses incurred were paid to his sister and son, who had pursued the application after his death. On 31 January 2017 the Government submitted an Action Plan to the Committee of Ministers, stating that Aruba and Curaçao had recently set up a working group to investigate the scope for setting up a TBS facility (confinement in a custodial clinic) on one of the islands in order to offer better treatment to detainees suffering from a serious psychiatric illness. In Curaçao steps to give more practical effect (by national ordinance) to existing statutory scope for imposing a TBS order were under way. The Report also pointed to the available psychiatric care in prisons on Aruba and Curaçao and the plans for improvements.

Özçelik (69810/12, 28 June 2016)
The Court ruled that a violation of article 5, paragraphs 4 and 5 of the Convention had taken place in that the applicant's appeal against the extension of his placement in a Persistent Offenders' Institution (ISD) had not been decided speedily. Furthermore, he had not been awarded compensation in the national proceedings.
The Action Report sent to the Committee of Ministers on 24 January 2017 stated that the compensation in question had been paid to the applicant and that further individual measures were unnecessary. The applicant had been released on 16 May 2016, before the end of the ISD placement order. The Report also explained the steps taken within the judicial system to ensure that cases concerning the extension of detention could be dealt with more speedily. In addition, the Report pointed out that the applicant could employ domestic remedies to obtain compensation if his case had not been decided speedily within the meaning of article 5 of the Convention.

Hokkeling (30749/12, 14 February 2017)
The Court ruled that the applicant's right to a fair trial had been violated since he had not been given the opportunity to attend in person the hearing of his case before the appeal court.
On 23 October 2017 the Government submitted an Action Report to the Committee of Ministers pointing out that the applicant had the option of lodging an application for retrial to the Supreme Court under article 457, paragraph 1 (b) of the Code of Criminal Procedure. In addition, it was also possible for him to seek compensation for the violation of article 6 of the Convention found by the Court. Furthermore, the Court's judgment of 14 February 2017 had been distributed within the judicial organisation with the aim of preventing future violations in cases involving similar circumstances.

European Committee of Social Rights

In 2017 no reports were published by the European Committee of Social Rights in proceedings against the Netherlands in the context of the collective complaints procedure under the European Social Charter.

United Nations

Human Rights Committee

N.K. (2326/2013, 18 July 2017)

On 18 March 2009, the author was convicted of street violence – consisting of verbal aggression and theft – committed in association with one or more persons, and was sentenced by the children's judge at Almelo District Court to 36 hours of community service or 18 days in a young offender institution in lieu. On the same day the public prosecutor ordered that a DNA profile of the author be drawn up under section 2, subsection 1 of the DNA Testing (Convicted Persons) Act. On 8 April 2009 a sample of buccal material was taken from the author to determine her DNA profile and to enter it in the DNA database.

On 17 April 2009 the author filed an objection with the district court against the determining and processing of her DNA profile. On 14 May 2009 the district court declared her objection unfounded. The author lodged an appeal with Arnhem Court of Appeal against the judgment of 18 March 2009. On 4 May 2010 the appeal court ruled that although the author had been proven guilty of the offence in question, the sentence should be replaced by a fine of €100, or two days' detention in a young offenders institution. As a result, the author no longer fell within the scope of the DNA Testing (Convicted Persons) Act. Her DNA material and DNA profile therefore had to be destroyed. On 18 August 2010 the Public Prosecution Service confirmed that her tissue sample and her DNA profile had been destroyed.

On 7 September 2009 the author submitted an application to the European Court of Human Rights. On 2 May 2013 this was declared inadmissible by the Court, sitting in a single-judge formation. The author then submitted a communication to the Committee.

The author complained before the Committee that collecting a DNA sample, and determining and processing her DNA profile constituted arbitrary interference in her private life (article 17 ICCPR), since the DNA Testing (Convicted Persons) Act did not allow for a proper balance to be struck between the various interests at stake, and the scope for challenging the collection of DNA material under the law was extremely limited. Furthermore, the authorities took insufficient account of the fact that she was a minor, both in ordering the collection of DNA material and in the way in which this was done (article 14, paragraph 4 ICCPR).

The Committee held that the fact that there had been an earlier application to the European Court of Human Rights which was declared inadmissible was not grounds for declaring the present communication inadmissible, since the case was no longer pending before the European Court of Human Rights. It then considered that the collection of DNA material for the purpose of analysing and storing the collected material in a database that could be used in the future for the purposes of criminal investigation was sufficiently intrusive to constitute interference with the author's privacy under article 17 of the Covenant. The Committee had therefore to determine whether such interference was arbitrary or unlawful under this article.

In this context the Committee noted that although the State party had explained the content and general application of the Act, it had not indicated why it was necessary, in light of the legitimate aim of the Act as adduced by the State party, and the nature of the offences committed by the author, to subject her to compulsory DNA testing. The Committee deemed it relevant that an order for DNA testing was issued automatically for certain categories of offence and that the Act provided for only a limited weighing of interests by the public prosecutor since section 2, subsection 1(b) allowed for collection to be waived only in exceptional circumstances.

The Committee also noted that the Act contained no legal remedy against the collection of cell material, only against the determination and processing of a person's DNA profile. Although the State party had stated that it was possible to lodge a civil-law injunction challenging the collection of a tissue sample on the grounds that by collecting the sample the State was committing an unlawful act, the State party had not demonstrated that such a remedy must be deemed effective. Furthermore, noted the Committee, there was no appeal available against a decision of the district court dismissing an objection to the determining and processing of a DNA profile.

The Committee subsequently noted the State party's position that tissue sample collection involves a very minor interference with a person's privacy because both the sample and the DNA profile are coded and stored anonymously. However, both sample and profile are kept for 30 years in cases involving serious offences and 20 years in the case of less serious offences.

Finally, the Committee noted that the Act did not distinguish between adults and minors. In light of articles 24 and 14, paragraph 4 of the Covenant, it is of particular importance that the interests of the child should be a primary consideration in all decisions taken in the context of juvenile criminal law. Furthermore, specific attention should be paid to protecting children's privacy in criminal proceedings. The author's age was never taken into consideration, even during the collection of DNA material, where she was not informed that she could object to the sample being collected by an investigating officer or that she could be accompanied by her legal representative.

In light of the above, the Committee found that, although lawful under domestic law, the interference with the author's privacy was not proportionate to the legitimate aim of prevention and investigation of serious crimes. The Committee therefore concluded that the interference was arbitrary and in violation of article 17 of the Covenant. Having concluded that there had been a violation of article 17 of the Covenant, the Committee decided that a separate examination of the author's claims under article 14 (4) of the Covenant was no longer necessary.

S.L. (2362/2014, 18 July 2017)

On 26 March 2009, the author was convicted by the children's judge at Utrecht district court of the sexual abuse of a person under the age of 16 and of making a false bomb threat. He was sentenced to 14 days detention, suspended for two years, and 30 hours' community service or 15 days' detention in lieu. On 14 May 2009 the public prosecutor ordered that a DNA sample be collected from the author under section 2, subsection 1 of the DNA Testing (Convicted Persons) Act. On 15 July 2009 a sample of cellular material was collected from the author, by means of a buccal swab, to determine his DNA profile and to process it in the DNA database. On 20 October 2009 the author lodged an objection with the district court against the determining and processing of his DNA profile. On 26 January 2010 the district court declared his objection unfounded.

On 16 June 2010 the author submitted an application to the European Court of Human Rights concerning the collection of a sample of cellular material to determine and process his DNA profile. On 2 May 2013 this was declared inadmissible by the Court, sitting in a single-judge formation. The author then submitted a communication to the Committee on 27 January 2014.

The author complained before the Committee that collecting a DNA sample and determining and processing his DNA profile constituted arbitrary interference in his private life (article 17 ICCPR), and that in doing so, the authorities took insufficient account of the fact that he was a minor (article 14, paragraph 4 ICCPR). Furthermore, he argued that the district court attached insufficient importance in the objection proceedings to the fact that he had never consented to the collection of DNA and had not been given the opportunity to question the investigating officer who collected the sample (article 14, paragraph 3 (e) ICCPR).

The Committee held that, in so far as it related to article 14, paragraph 3 (e) of the Covenant, the communication was insufficiently substantiated and therefore inadmissible. The author's claims under article 17 and 14, paragraph 4 of the Covenant were sufficiently substantiated. In addition, the fact that there had been an earlier application to the European Court of Human Rights which was declared inadmissible was not grounds for declaring the present communication inadmissible, since the case was no longer pending before the European Court of Human Rights.

The Committee then considered that the collection of DNA material for the purpose of analysing and storing the collected material in a database that could be used in the future for the purposes of criminal investigation was sufficiently intrusive to constitute interference with the author's privacy under article 17 of the Covenant. The Committee had therefore to determine whether such interference was arbitrary or unlawful under this article.

In this context the Committee noted that although the State party had explained the content and general application of the Act, it had not indicated why it was necessary, in light of the legitimate aim of the Act as adduced by the State party, and the nature of the offences committed by the author, to subject him to compulsory DNA testing. The Committee deemed it relevant that an order for DNA testing was issued automatically for certain categories of offence and that the Act provided for only a limited weighing of interests by the public prosecutor since section 2, subsection 1 (b) allowed for collection to be waived only in exceptional circumstances.

The Committee also noted that the Act contained no legal remedy against the collection of cell material, only against the determination and processing of a person's DNA profile. Although the State party had stated that it was possible to lodge a civil-law injunction challenging the collection of a tissue sample on the grounds that by collecting the sample the State was committing an unlawful act, the State party had not demonstrated that such a remedy must be deemed effective. Furthermore, noted the Committee, there was no appeal available against a decision of the district court dismissing an objection to the determining and processing of a DNA profile.

The Committee subsequently noted the State party's position that tissue sample collection involves a very minor interference with a person's privacy because both the sample and the DNA profile are coded and stored anonymously. However, both sample and profile are kept for 30 years in cases involving serious offences and 20 years in the case of less serious offences.

Finally, the Committee noted that the Act did not distinguish between adults and minors. In light of articles 24 and 14, paragraph 4 of the Covenant, it is of particular importance that the interests of the child should be a primary consideration in all decisions taken in the context of juvenile criminal law. Furthermore, specific attention should be paid to protecting children's privacy in criminal proceedings. The author's age was never taken into consideration, even during the collection of DNA material, where he was not informed that he could object to the sample being collected by an investigating officer or that he could be accompanied by his legal representative.

In light of the above, the Committee found that, although lawful under domestic law, the interference with the author's privacy was not proportionate to the legitimate aim of prevention and investigation of serious crimes. The Committee therefore concluded that the interference was arbitrary and in violation of article 17 of the Covenant. Having concluded that there had been a violation of article 17 of the Covenant, the Committee decided that a separate examination of the author's claims under article 14 (4) of the Covenant was no longer necessary.

Committee against Torture

N.K. (623/2014, 1 May 2017)

The complainant, a Sri Lankan national of Tamil origin, entered the Netherlands on 9 March 2009 and submitted four asylum applications between 11 March 2009 and July 2014. He claimed that his removal to Sri Lanka would put him at risk of torture by the authorities since he was a young Tamil from the north of Sri Lanka who had ties with the Liberation Tigers of Tamil Eelam (LTTE, or the Tamil Tigers), had received military training from them and had fought for the LTTE. A cousin who had ties with the LTTE had allegedly been killed in the fighting. Furthermore, he would be returned to Sri Lanka by a country known as a fundraising centre for the LTTE, and would arrive as a failed asylum seeker, with visible facial scars, travelling on a temporary passport and without a Sri Lankan identity card. He further claimed that the authorities would recognise him from photos on Facebook and would be able to establish that he had been involved in LTTE activities in the Netherlands.

All his asylum applications were denied since there were no grounds for assuming that the Sri Lankan authorities were aware of his involvement with the LTTE or that he would attract their attention on his return. His applications for review and his appeals against these decisions were declared unfounded.

On 14 August 2014 the complainant submitted a communication to the Committee claiming that if he returned to Sri Lanka he would be exposed to the risk of torture (article 3 of the Convention against Torture or Other Cruel, Inhuman and Degrading Treatment or Punishment; CAT). In addition, he claimed that as a failed asylum seeker he had no right to shelter and benefits, which amounted to inhuman and degrading treatment.

The Committee considered the claim with regard to shelter inadmissible, since the complainant had not provided sufficient information concerning his legal status and it was not clear whether he had ever raised this claim before the domestic authorities.

The Committee then observed that it remained seriously concerned about the continued and consistent allegations of widespread use of torture and other cruel, inhuman or degrading treatment perpetrated by the Sri Lankan authorities in many parts of the country. However, it had to assess whether the individual concerned would be personally at a foreseeable and real risk of being subjected to torture. To establish this, additional grounds had to be adduced over and above those based on the general situation in the country. In this, the burden of proof generally falls on the complainant.

In this context the Committee noted that there was nothing in the communication to indicate that the complainant or members of his family played any significant role in the LTTE or had experienced problems with the Sri Lankan authorities at any point in time. Moreover, the complainant had escaped from the LTTE and had not participated in any of the political protests it organised abroad. The photos on Facebook showed him participating in sports activities organised in the Netherlands by the LTTE and not political events, and therefore the Sri Lankan authorities could not identify him, on this basis, as a significant LTTE supporter. The complainant had provided no information regarding his cousin's involvement in the LTTE and the consequences of this, or regarding how he was killed. Taking all these factors into account, the Committee concluded that even if the complainant were to be checked by the authorities at the airport on account of his temporary passport or facial scars, there was no evidence that he fit the profile of an LTTE supporter and would consequently face a personal risk of torture. He had therefore not established that if returned to Sri Lanka he would be subjected to a violation of article 3 of the Convention. Accordingly, his removal to Sri Lanka would not be incompatible with article 3.

H.I. a.o. (685/2015, 10 November 2017)

The complainants – the husband (hereafter the complainant), his wife and their two children – are all Armenian nationals. The complainant claimed that he had worked in a garage in Armenia. On 3 March 2007 he was asked to deliver a car belonging to a man, known as D.M., who according to the complainant had important connections within the justice system. Drugs were then found in D.M.'s car. The complainant was detained for a day. After his release, he was visited by D.M., who asked him to sign a statement to the effect that the drugs in the car belonged to the complainant. When he refused, he and his father were threatened and beaten by D.M., who also threatened to beat and kill his entire family. At this point he signed the statement, after which D.M. took him to the airport. The complainant fled to Russia. His wife was subsequently questioned by the police. When she too was put under pressure by D.M. to remain silent, she fled to Russia with their children.

The applicants then remained in Russia for three years as undocumented migrants. At a certain point, the complainant was summoned to appear at the police station. Afraid that this was connected with the events in Armenia, the applicants fled to the Netherlands, where they arrived on 26 October 2010. On 17 November 2010 they applied for asylum. Their asylum applications were denied on the grounds that although the facts they described were considered credible, it had not been satisfactorily established that if he returned the complainant would have reason to fear D.M. or that he would face the risk of being tortured by the Armenian police to obtain a confession. The complainants' application for review and their appeal against the decision were declared unfounded. Two subsequent asylum applications were also denied and the legal remedies employed to challenge them declared unfounded.
On 23 February 2015 the complainants submitted a communication to the Committee claiming that if they were removed to Armenia they would be exposed to the risk of being ill-treated or killed by D.M. (article 3 CAT). They further claimed that on returning to Armenia the complainant would be prosecuted for drug trafficking, that he would not receive a fair trial and that he would face the risk of being tortured by the police (article 3 CAT). Furthermore, they argued that for the complainant, conditions in an Armenian detention centre or prison would be inhuman. Finally, they alleged that the State party had not exercised due care in examining their asylum applications.
With regard to the alleged risk of ill-treatment or worse by D.M. the Committee held that ill-treatment by a non-governmental actor without the consent or acquiescence of the authorities falls outside the scope of article 3 of the Convention. The complainants had not satisfactorily established that D.M. worked for a government agency. What is more, the complainant had not reported his ill-treatment at the hands of D.M. to the authorities and it had not been shown that the authorities would have approved of such treatment. Nor had it been demonstrated that the police would be unable or unwilling to protect the applicants from D.M. if they returned to Armenia. To this extent, it had not been established that the complainants would be exposed to a violation of article 3 of the Convention on their return. The same applied to the claim that they would be at risk from persons connected with D.M. This part of the communication was therefore untenable.
The Committee further observed that although there were concerns with regard to continuing allegations of torture and ill-treatment during arrests, detention and questioning by police officers in Armenia, as well as with regard to shortcomings in the investigation and prosecution of such incidents, the mere existence of human rights violations in a country was in itself insufficient grounds for assuming that the complainant faced a personal risk of torture. This part of the communication was therefore also untenable.
The Committee then concluded that the argument that the complainant would not have a fair trial in Armenia was insufficiently substantiated and was therefore also found to be untenable.
Finally, the Committee noted that Armenia had taken measures to improve conditions in detention centres and prisons and that, in this light, the general allegations of the complainant in this respect were insufficient for these conditions to be considered torture within the meaning of article 1 of the Convention. Nor, observed the Committee, did the case file provide grounds for the conclusion that the State party had not assessed the asylum applications with sufficient care. The Committee concluded that the complainants had not made a plausible case that their expulsion would constitute a violation of article 3 of the Convention.

R.P. (696/2015, 4 December 2017)
The complainant, a Sri Lankan national of Tamil origin, fled Sri Lanka in 2010 and applied for asylum in the Netherlands. He claimed that between 2008 and 2010 he had been detained and tortured on several occasions by the Sri Lankan security services and the Karuna Group, which had ties with the security services, on suspicion of being a member of the LTTE. His asylum application was denied in 2011.
Although it was plausible that the complainant had been arrested and tortured twice, other parts of his account were not credible and there were no grounds for assuming that he would be rearrested and/or tortured on his return. In 2014 his appeal against this decision was dismissed by the Council of State. In 2015 a fresh asylum application was denied. The complainant's appeal against this decision was declared inadmissible by the Council of State as the time limit for lodging an appeal had been exceeded.
Before the Committee the complainant claimed that his planned removal to Sri Lanka was contrary to the prohibition on refoulement (article 13 CAT). Before examining the merits of the communication, the Committee considered its admissibility. It concluded that the complainant had not exhausted available domestic remedies. Despite the fact that the time limit for lodging an appeal had been exceeded, the Council of State had offered the complainant the opportunity to further elucidate his appeal. The fact that he failed to do so because in his view the Council of State did not constitute an effective remedy, counted against him: doubt as to the effectiveness of a legal remedy is not grounds for failing to employ that remedy.

The Committee considered the communication inadmissible for non-exhaustion of domestic remedies, in accordance with article 22, paragraph 5 (b) of the Convention.

Other developments

Council of Europe[3]

Reform of the ECHR supervisory system

At the end of 2017 the Steering Committee for Human Rights (CDDH) approved the report on the process of selection and election of judges of the European Court of Human Rights. On 7 March 2018 the report was presented to the Committee of Ministers. The report acknowledges the importance of ensuring that qualitatively outstanding judges are selected and elected to the Court. It points out shortcomings in national selection procedures, including the role played by the Advisory Panel set up by the Committee of Ministers in these procedures, and the concerns felt about the current election procedure in the Parliamentary Assembly. The proposals for improvement set out in the report serve as input for the discussions currently being held in the Assembly itself. Other proposals concern potential improvements in the conditions of employment and working conditions at the Court and the procedure for drawing up the list of ad hoc judges. The report concludes that there is sufficient scope for improvement within existing structures and that it is now up to all relevant actors to take concrete action. Should the response prove insufficient, the report does not rule out a possible amendment to the Convention.

In 2017 a committee of experts tasked with examining the place of the Convention in the European and international legal order started work. The aim is to prevent the Convention system from losing credibility through differences of interpretation between the Convention and other international instruments. The experts identified three themes which would be explored in detail. The first is the interaction between the Convention and other branches of international law, the second the interaction between the Convention and other human rights instruments and the third is the interaction between the Convention and the EU legal order. Work on the first theme started in 2017, more specifically on the sub-theme of state responsibility and extraterritorial application of the Convention. A contribution was made by a Dutch expert, Marten Zwanenburg.

As part of 'Europe in a time of unrest and upheaval – strong values and a future-proof Council of Europe', a programme initiated by the Danish Chairmanship of the Committee of Ministers (November 2017-May 2018), a High-Level Expert Conference was held from 22 to 24 November 2017 entitled 'The European human rights system in a future Europe'. The conference laid the groundwork for the ministerial conference held in April 2018 which led to the Copenhagen Declaration.

In 2017 two significant developments took place with regard to the Committee of Ministers' supervision of the execution of Court judgments by the member states. In the case of *Mammadov v. Azerbaijan*, the Committee of Ministers made use for the first time of the procedure introduced in article 46, paragraph 4 of the Convention under Protocol No. 14. Under this procedure, the Committee of Ministers refers to the Court the question of whether a particular member state has met its obligation under the Convention to execute the Court's judgment. According to Azerbaijan, the Court judgment does not imply that Mr Mammadov should be released. In the case of *Burmych a.o. v. Ukraine*, the Court decided for the first time to discontinue its examination of a group of cases and to transmit them to the Committee of Ministers, which is responsible for supervising the execution by Ukraine of an earlier pilot judgment. Over 12,000 cases against Ukraine concerning the failure to execute national judicial decisions are at issue. This is comparable to what the Court previously addressed as a structural problem in the pilot judgment of 15 October 2009 in the case of *Ivanov v. Ukraine*. The Court decided to strike all these cases out of the list and to transmit them to the Committee of Ministers as the responsible body supervising the general measures to be taken by Ukraine in respect of the pilot judgment in *Ivanov*. This is the appropriate course, according to the Court, taking account of the principle of subsidiarity and the effort to reduce the workload of the Court.

Meeting of ECHR agents with the Court

In 2017 the agents who represent the national governments in proceedings before the Court met with the Court and its Registry to discuss procedural issues. This meeting takes place every two years. At the meeting the Registry informed the agents about ongoing efforts to develop more efficient working methods in the interests of reducing the length of proceedings. Further information was supplied regarding various procedural measures introduced by the Court, including a simpler method for communicating cases to the member states ('immediate simplified communication procedure') and for communicating cases involving an issue which the Court has previously dealt with several times ('well-established case law communication procedure'). In addition, agreements regarding confidential documents and the use of a template for written documents were discussed.

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

European Social Charter/collective complaints procedure
At the end of 2017 a total of 44 complaints were pending before the European Committee of Social Rights (ECSR) which had been submitted under the collective complaints procedure of the European Social Charter. Eighteen of these were submitted in 2017. The only case pending against the Netherlands is a complaint lodged in 2016 by the international NGO University Women of Europe (UWE). The complaint concerns shortcomings in the Netherlands with regard to the position of women on the labour market. UWE has lodged similar complaints against the other 14 states that have recognised the collective right of complaint.

United Nations

Reporting to treaty bodies

- On 15 March 2017, the Netherlands responded to written questions posed by the Committee for Economic, Social and Cultural Rights as part of the sixth periodic report under the International Covenant on Economic, Social and Cultural Rights (ICESCR). The report was considered on 1 and 2 June 2017. On 20 June 2017 the Committee published its concluding observations.
- On 10 May 2017 the UN Human Rights Council considered the report on the Netherlands in the framework of the third cycle of the Universal Periodic Review (UPR). In September 2017 this cycle was concluded for the Netherlands with the publication of the Human Rights Council's recommendations.
- On 31 May 2017 written information was provided to the Committee against Torture under the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT). This was in response to written observations published by the Committee.

Annexes: overviews and statistics

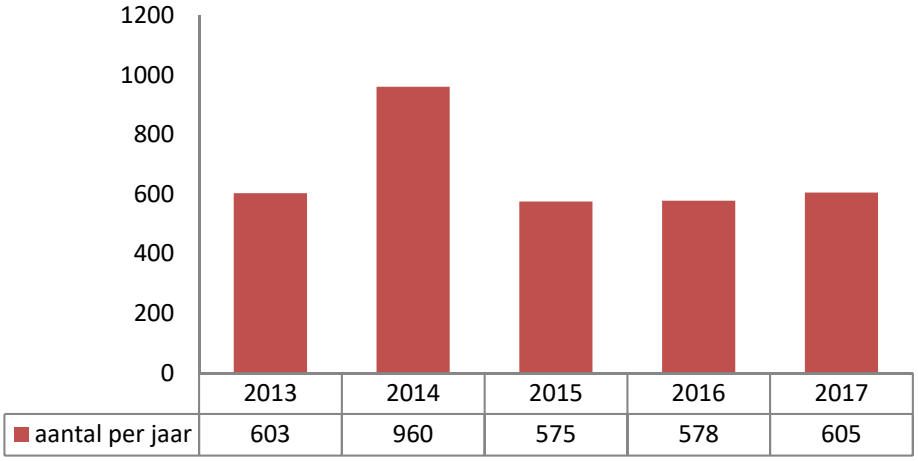
Annexe I

Council of Europe

European Court of Human Rights[4]

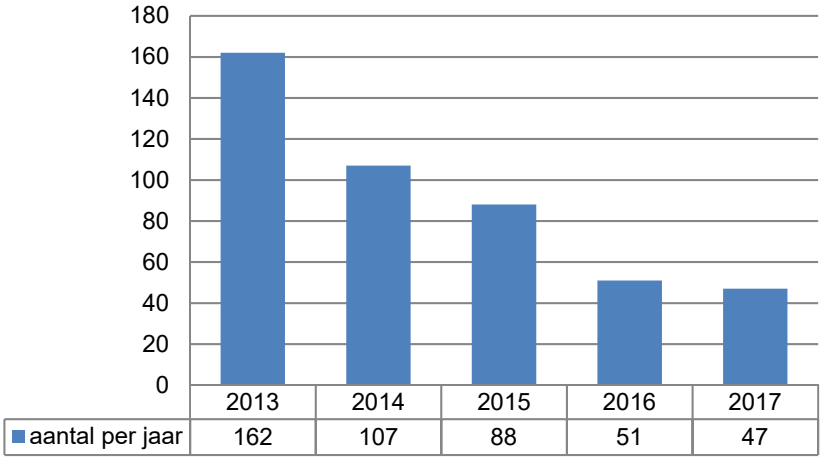
Statistics[5]

Cases against the Netherlands pending before the ECtHR as at 31 December 2017



Red: Annual total

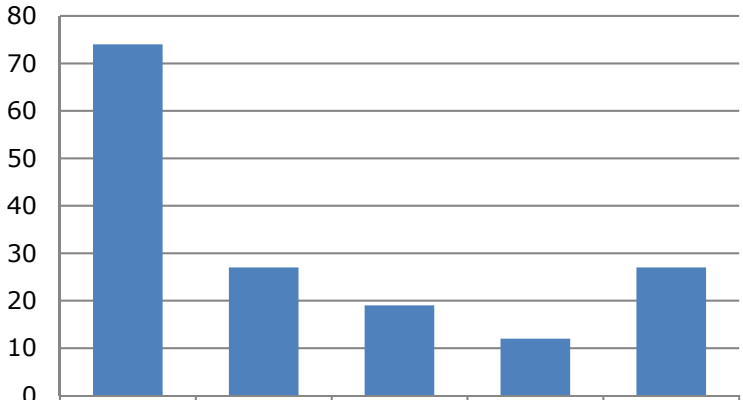
Cases being processed by the Government on 31 December 2017



Blue: Annual total

[4] Statistics for all the member states of the Council of Europe are contained in *Survey of Activities 2017,* published by the Court Registry.
[5] Figures refer only to cases against the Netherlands.

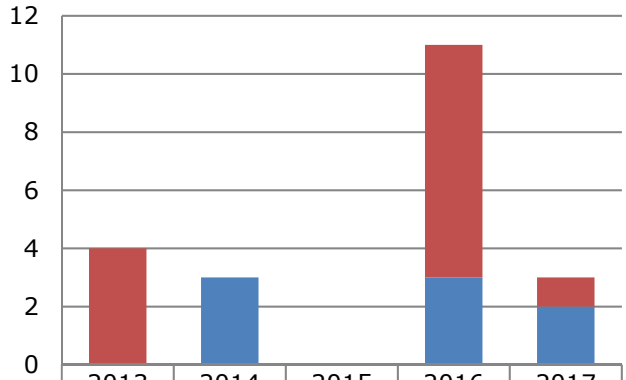
New cases communicated by the ECtHR to the Government



	2013	2014	2015	2016	2017
Aantal per jaar	74	27	19	12	27

Blue: Annual total

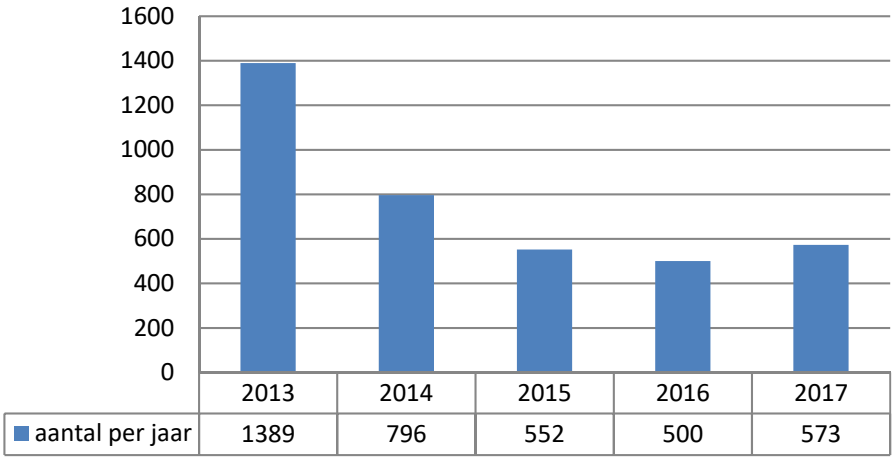
Judgments



	2013	2014	2015	2016	2017
geen schendingen	4	0	0	8	1
schendingen	0	3	0	3	2

Red: No violation
Blue: Violation

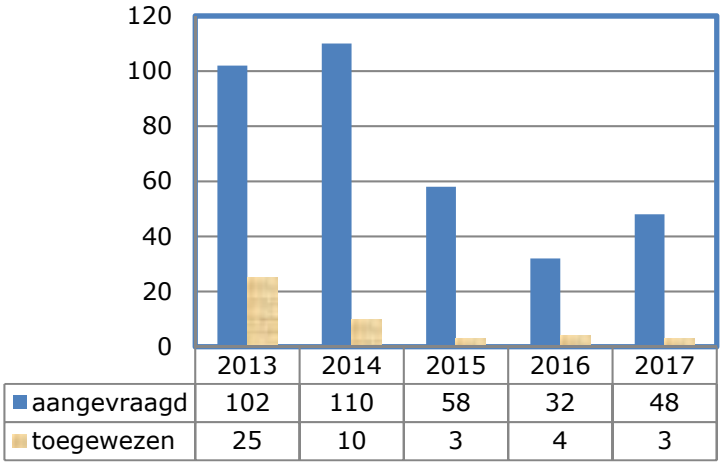
Decisions on admissibility and to strike applications out the list



	2013	2014	2015	2016	2017
aantal per jaar	1389	796	552	500	573

Blue: Annual total

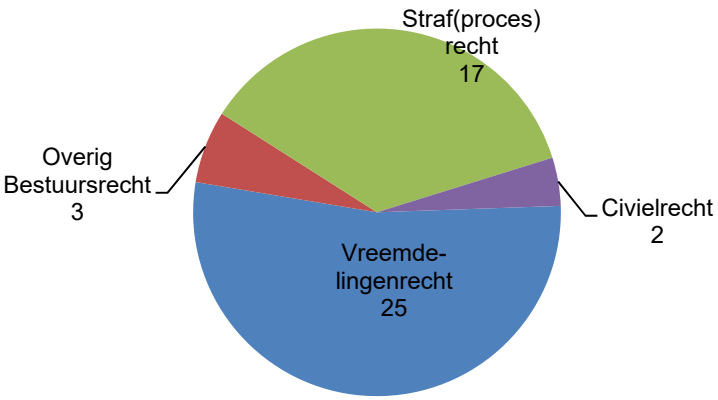
Interim measures (Rule 39)



	2013	2014	2015	2016	2017
aangevraagd	102	110	58	32	48
toegewezen	25	10	3	4	3

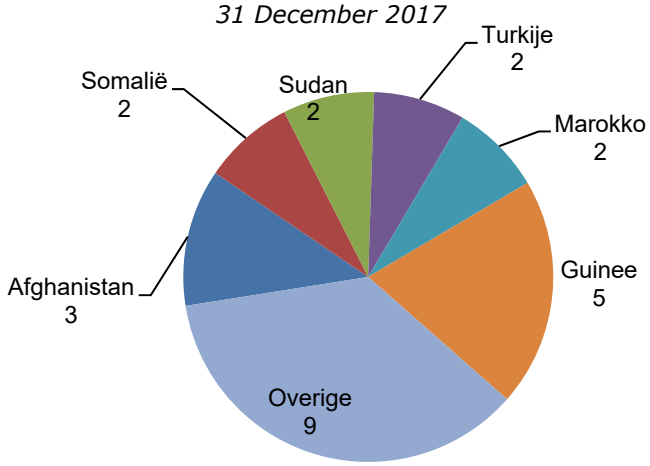
Blue: Applied for
Pink: Granted

Cases being processed by the Government, numbers per category as at 31 December 2017



Red: Other administrative law
Green: Criminal (procedural) law
Purple: Civil law
Blue: Immigration law

Immigration cases by nationality as at 31 December 2017



Dark blue: Afghanistan
Red: Somalia
Green: Sudan
Purple: Turkey
Light blue: Morocco
Orange: Guinea
Grey: Other

Judgments and decisions[6]

Judgments

Name	App. no.	Date
Garib	43494/09	6 November 2017 (*)
Hokkeling	30749/12	14 February 2017 (*)
M.	2156/10	25 July 2017 (*)

Decisions

Name	App. no.	Date
A.A.	66848/10	2 May 2017 (*)
A.M.	48294/10	14 March 2017 (*)
A.R.	26268/09	16 May 2017 (*)
A.R.	63104/11	11 July 2017 (*)
Abdulfatah	55830/10	9 March 2017
Azizi	73877/10	9 March 2017
Ballegeer	70043/13	21 November 2017 (*)
D.E.M. Management Services B.V.	47789/16	14 November 2017 (*)
E.K.	72586/11	11 July 2017 (*)
E.P.	43538/11	11 July 2017 (*)
El Allati	45892/13	6 December 2016 (*)
Feyenoord Rotterdam N.V.	19958/17	14 November 2017 (*)
G.G.S.	53296/09	16 May 2017 (*)
G.R.S.	77691/11	11 July 2017 (*)
Gambier	27787/15	6 December 2016 (*)
Han Aarts B.V. a.o.	43768/17	10 October 2017 (*)
Hannan and Kirakosyan	70286/14	2 May 2017 (*)
Ismail	67295/10	26 September 2017 (*)
J.W.	16177/14	27 June 2017 (*)
Joelie and Anoeka	44898/14	14 September 2017
L.	68613/13	2 May 2017 (*)
M.B.	63890/16	28 November 2017 (*)
M.M.	15993/09	16 May 2017 (*)
Madiani	29381/11	12 September 2017 (*)
Marreel	20496/16	6 April 2017 (*)
Mucalim	5888/10	14 March 2017 (*)
Ojei	64724/10	14 March 2017 (*)
P. Plaisier B.V.	46814/16	14 November 2017 (*)
S.M.A.	46051/13	11 July 2017 (*)
Saraj Zada	3540/11	5 January 2017
Sedieqi	1390/11	5 January 2017
Soleimankheel a.o.	41509/12	11 July 2017 (*)
Temam Yesan	63176/16	9 March 2017
Z.L.	33314/09	16 May 2017 (*)

[6] Cases marked (*) are summarised in the section entitled 'Council of Europe'.

Cases being processed by the Government as at 31 December 2017

Name	App. no.	Article ECHR
A.	34486/17	arts. 3, 8 and 13
A.G. and M.M.	43092/16	art. 3
Ahdour	45140/10	arts. 8 and 14
Ahmed Sheekh	80450/13	art. 8
Alblbesi and Abuzuhri	40907/16	arts. 3 and 8
Badullah	54892/16	art. 6
Barry	66238/16	art. 3
Baydar	55385/14	art. 6
Breijer	41596/13	art. 6
Cabral	37617/10	art. 6
Canword	21464/15	arts. 3 and 13
Cerci	25392/14	art. 8
Cernea	62318/16	art. 5
Chaloub and Camara	7338/16	art. 3
Corallo	29593/17	arts. 3 and 5
Cüzdan	6315/08	art. 8
De Legé	58342/15	art. 6
Haddaouchi	4965/10	art. 2 of Prot. No. 4
Hasselbaink	73329/16	art. 5
Kake and Camara	63913/17	art. 3
Keskin	2205/16	art. 6
Lake	2445/17	art. 3
M.B.	71008/16	art. 5
Maassen	10982/15	art. 5
Magassouba	37153/17	art. 3
Muawad K.	8080/17	arts. 3 and 13
Nagpal and Madan	68377/16	arts. 2 and 3
Nevé	59133/16	art. 6
Orbulescu	1704/17	art. 5
P.N.	10944/13	arts. 3, 8 and 13
Philipszoon	58403/17	arts. 1, 4, 6, 7 and 8
Pormes	25402/14	art. 8
S.A.	49773/15	art. 3
Saber Yacoub	20102/13	arts. 3 and 13
Said Good	50613/12	arts. 3 and 5
Stichting Landgoed Steenbergen a.o.	19732/17	arts. 6 and 8
Storimans v. Russian Federation	26302/10	arts. 2 and 13
Soumah	61452/15	art. 3
T.E.	43462/16	arts. 3, 4 and 8
Van de Kolk	23192/15	art. 6
Van Engel	600/14	art. 8
Voicu	34414/17	art. 5
X.	14319/17	arts. 2 and 3
Yeshtla	37115/11	art. 8
Z.N.	71676/14	arts. 3 and 13
Zainali Gerodi	61442/17	art. 3
Zohlandt	69491/16	art. 5

Committee of Ministers

ECHR cases under supervision as at 31 December 2017

Name	App. no.	Date judgment/decision
Voskuil	64752/01	22 November 2007
Sanoma Uitgevers B.V.	38224/03	14 September 2010
Vidgen	29353/06	10 July 2012
De Telegraaf Media NL Landelijke Media BV a.o. (TMN)	39315/06	22 November 2012
Jaloud	47708/08	20 November 2014
Gillissen	39966/09	15 March 2016
Murray	10511/10	26 April 2016
Özçelik	69810/12	28 June 2016
Hokkeling	30749/12	14 February 2017
Hannan and Kirakosyan	70286/14	2 May 2017
L.	68613/13	2 May 2017
M.	2156/10	25 July 2017
Ballegeer	70043/13	21 November 2017

ECHR cases where supervision ended in 2017

Name	App. no.	Date
El Allati	45892/13	4 October 2017
Gambier	27787/15	4 October 2017

Annexe II

United Nations

General

In 2017 the UN treaty bodies:

- informed the Government of 11 new communications;
- established Views in nine cases, in two of which violations were found.

Human Rights Committee[7]

Views

Name	Comm. no.	Date
S.L.	2362/2014	18 July 2017 (*)
N.K.	2326/2014	18 July 2017 (*)
A.A.A.	2634/2015	8 November 2017
A.B.A.	2823/2016	8 November 2017

Cases being processed by the Government as at 31 December 2017

Name	Comm. no.	Article ICCPR
A.	2498/2014	arts. 23, 24 and 26
A.D.N.	2894/2016	art. 7
A.G.	3052/2017	arts. 2 and 8
B.P. and P.B.	2974/2017	arts. 2, 3, 6, 7, 9, 17 and 26
D.Z.	2918/2016	art. 24
G.R.M.J.	2958/2017	arts. 2, 14 and 25
H.J.T.	3004/2017	art. 14
J.O.Z. and E.E.I.Z.	2796/2016	arts. 1, 2, 7, 9 and 24
M.H. and J.H.	2489/2014	arts. 23, 24 and 26
M.K.H.	2803/2016	arts. 1, 2, 6, 7, 9, 13 and 27
M.S.	2739/2016	art. 15
M.S.P.B. a.o.	2673/2015	arts. 23, 24 and 26
O.T.	2782/2016	arts. 2, 13, 17, 23 and 24
R.E.I.	3015/2017	arts. 14, 15 and 26
S.A. a.o.	2683/2015	arts. 23, 24 and 26
S.Y.	2392/2014	arts. 2 and 14
W.J.S.	3077/2017	arts. 2 and 26

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

Committee on the Elimination of Discrimination against Women

In 2017 no Views were published.

Cases being processed by the Government as at 31 December 2017

Name	Comm. no.	Article CEDAW
G.M.F. a.o.	117/2017	arts. 1, 6, 9, 15 and 16

Committee against Torture

Views

Name	Comm. no.	Date
N.K.	623/2014	1 May 2017 (*)
R.T.	692/2015	6 November 2017
H.I.	685/2015	10 November 2017 (*)
H.H.	781/2016	10 November 2017
R.P.	696/2015	4 December 2017 (*)

Cases being processed by the Government as at 31 December 2017

Name	Comm. no.	Article CAT
H.A. and G.H.	719/2015	art. 3
D.B.	824/2017	art. 3
J.C.I.	771/2016	art. 3
I.K. and M.T.K.	760/2016	art. 3
J.B.M.	768/2016	art. 3
S.R.	834/2017	art. 3
S.S.	800/2017	art. 3
M.J.S.	757/2016	art. 3
E.T.	801/2017	art. 3