

# *Council of Europe contribution for the 27<sup>th</sup> UPR session (April – May 2017) regarding the Netherlands*

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## Prevention of torture (CPT)

The 'European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment' organises country visits in order to visit places of detention to assess how persons deprived of their liberty are treated. After each visit, the CPT sends a detailed report to the State concerned. This report includes the CPT's findings, and its recommendations, comments and requests for information.

A CPT delegation conducted an [ad hoc visit](#) to the Netherlands from 16 to 18 October 2013 to monitor an operation of deportation of foreign nationals by air. In the [full report](#) on the forced return flight from Rotterdam to Lagos (Nigeria) [published on 5 February 2015](#), the CPT delegation examined the preparation and execution of the removal, the handover to the Nigerian authorities as well as other issues related to the CPT's mandate, such as the use of force, the role of national monitoring bodies, staff related issues and complaints procedures. The CPT's recommendations include, inter alia, a review of excessive restraint practices and a deficiency in medical staff and equipment. The Government of the Netherlands' [response](#) was published the same day as the CPT report. **See also:** [News Flash 22.10.2013](#)

From 12 to 22 May 2014 a CPT delegation conducted the [sixth visit to the Caribbean](#) as part of the Kingdom of the Netherlands. In the course of the visit, the CPT's delegation visited Bonaire, Aruba, Curaçao and Sint Maarten. It examined the treatment of inmates and the conditions of detention in the prison establishments located on each of the four islands visited, taking due account of the recommendations made by the CPT in its previous visit reports of 2002 and 2007. It also focused on the situation of persons deprived of their liberty by the police. In addition, in Aruba and Curaçao, the delegation looked at the treatment of involuntary patients placed in psychiatric facilities and the situation of irregular migrants in immigration detention centres. The situation of juveniles deprived of their liberty was also examined. The findings of the 2014 visit were [published on 25 August 2015](#) suggest that progress could be identified on a number of issues, but continued efforts are needed to ensure full implementation of all CPT recommendations. The [executive summary](#) contains an overview of the findings in the [full report](#).

The Government of the Netherlands' [response](#) to the CPT report on the visit to the Caribbean from 12 to 22 May was published on 25 August 2015.

A delegation of the Committee carried out the [sixth periodic visit](#) to the Netherlands from 2 to 13 May 2016. One of the main objectives of the visit was to examine the treatment and care of patients placed in penitentiary psychiatric centres. The CPT's delegation also examined, for the first time, the situation of patients placed against their will in two civil psychiatric hospitals. Further, three prisons were visited to review the conditions of detention and the regime applied to prisoners, including persons sentenced to life imprisonment. The treatment of persons in police custody and the safeguards applicable to them was also reviewed. Observations from this visit have not yet been made public.

## **Council of Europe Commissioner for Human Rights**

*The Commissioner for Human Rights is an independent and impartial non-judicial institution established by the Council of Europe to promote awareness of and respect for human rights in the 47 Council of Europe member States.*

In the [report](#) following his visit to the Netherlands from 20 to 22 May 2014, the Commissioner for Human Rights found that although the Netherlands had a solid human rights protection system, in practice there were several shortcomings concerning migrants and children that needed to be addressed.

The Commissioner was pleased to note that since the 2009 report the Netherlands had ratified a number of international and European conventions of relevance to human rights. However, he urged the Dutch authorities to ratify several additional human rights instruments including the additional protocol to the UN Convention on the Rights of Persons with Disabilities, the Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure and the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights.

Regarding asylum seekers and migrants the Commissioner was concerned at the extensive use of administrative detention. He called on the Dutch authorities to ensure that detention of asylum seekers and migrants was used as a last resort, for the shortest possible period of time and only after first reviewing all other alternatives and finding that there is no effective alternative, in accordance with international standards. Furthermore, the Commissioner urged the Dutch authorities to stop the detention of all asylum seeker children and stressed that asylum seekers in particularly vulnerable situations should not be kept in border detention.

Another issue of serious concern to the Commissioner was the situation of legal limbo for many persons in an irregular situation, including children. An unidentified number of irregular immigrants end up in destitution on the streets or in camps as they do not manage to access existing emergency shelters. (The situation and difficulties experienced by these irregular migrants in the Netherlands was also referenced in the Commissioner's [Human Rights Comment](#) on 20 August 2015.)

The Commissioner welcomed the steps taken by the government to grant residence permits to some of the immigrants who could not be returned, as well as to child asylum seekers whose applications were rejected but who had been living in the country for a certain period of time (Children's Pardon). However, he invited the Dutch authorities to review the conditions applying to these schemes which were very restrictive.

With regards to children's rights the Commissioner called on the Dutch authorities to increase the minimum age of criminal responsibility, currently at 12 years, and change the law which allows, by way of exception, some 16 or 17-year-old children to be treated as adult criminals. Child abuse and growing child poverty continued to remain issues of concern for the Commissioner. He was also seriously concerned about the fact that many children with disabilities were segregated from their peers in the Dutch education system. He considered that the Appropriate Education Act which entered into force in 2014 represented a step in the right direction. However, the Commissioner was of the opinion that the new arrangements fell short of adopting inclusive education as a fundamental principle.

The Netherlands Government released a [response](#) to the report of the Commissioner for Human Rights.

See also: [Report Infographic](#) [Press Release 14.10.2014](#)

### ***Fight against racism and intolerance (ECRI)***

*The European Commission against Racism and Intolerance (ECRI) is a human rights body of the Council of Europe, composed of independent experts, which monitors problems of racism, xenophobia, antisemitism, intolerance and discrimination on grounds such as "race", national/ethnic origin, colour, citizenship, religion and language. It prepares reports and issues recommendations to member States, in which its findings, along with recommendations are published. These reports are drawn up after a contact visit to the country in question and a confidential dialogue with the national authorities. The country monitoring takes place in five-year cycles. As part of the fourth round of ECRI's monitoring work, a new process of interim follow-up has been introduced with respect to a small number of specific recommendations made in each of ECRI's country reports.*

ECRI's [fourth monitoring cycle report](#) on the Netherlands was adopted on 20 June 2013 and published on 15 October 2013. ECRI welcomes the positive developments in the Netherlands including; annual studies on extremism, racism, and racial discrimination, the expanded use of door policy panels to examine customer complaints, the abolishment of the Reference Index Antilleans, and the establishment of a government-funded Platform for Roma municipalities in conjunction with assistance programs for Roma families with issues such as debt relief and education, however some issues continue to give rise to concern.

To address these concerns, ECRI requests that the Dutch authorities take further action in a number of areas and makes a series of recommendations. ECRI recommends changes to the Criminal Code to prohibit racism and racial discrimination on the grounds of citizenship and language, and the introduction of a provision explicitly establishing racist motivation as a specific aggravating circumstance in sentencing. Adequate resources and funding for the Complaints Bureau for Discrimination and Art. 1 should be made available to enable effective functioning. Furthermore ECRI recommends that a national strategy and policy against racism and racial discrimination covering various fields of life, which sets out national common targets, mechanisms for implementation, monitoring and evaluation, should be developed to address the current lack of a comprehensive national action plan for combating racism. The problem of exploitation of temporary agent workers should be addressed by setting up, if need be, a system of licences for temporary employment agencies; regularly inspecting the same; and ensuring that temporary agent workers benefit from the safeguards and work conditions provided for under the law. Finally, ECRI recommends all legislative proposals which provide for different and potentially discriminatory treatment of Dutch citizens and migrants should be abandoned. Integration as a two-way process should be promoted, and certain provisions of the Civic Examination Abroad Act and Civic Integration Act should be repealed.

Three of these recommendations were specified for follow-up review, and ECRI's [conclusions](#) on the implementation of these recommendations were adopted on 17 March 2016 and published on 7 June 2016.

In response to ECRI's recommendation that the authorities introduce a provision to the effect that racist<sup>1</sup> motivation constitutes a specific aggravating circumstance in sentencing. The authorities have informed ECRI that they are not in favour of introducing such a provision in the criminal law, recalling that there are non-binding guidelines for prosecutors to request higher sentences in cases where racial motivation could be proven. ECRI examined this system and found it lacking, and considers that this recommendation has not been implemented.

ECRI acknowledges the efforts of the Dutch authorities to develop a national strategy and policy against racism and racial discrimination with the adoption and implementation of the National Action Programme on Discrimination; however ECRI notes that these were part of a general anti-discrimination programme and that no national strategy exists specifically to address racism and racial discrimination. ECRI considers that this recommendation has been partially implemented.

ECRI considers the recommendation to address the exploitation of temporary agent workers who are not permanently resident in the Netherlands partially implemented. Although several steps have been taken to address this problem, such as the entry into force of the Sham Employment Arrangement Act on 1 June 2015, there are still no provisions in place for authorities to withdraw business licenses from temporary employment agencies when labour exploitation has been discovered.

## **Protection of minorities**

### **Framework Convention for the Protection of National Minorities**

*The monitoring procedure for this convention requires each state party to submit a report within one year following the entry into force of the Framework Convention and additional reports every five subsequent years. State reports are examined by the [Advisory Committee](#), a body composed of 18 independent experts responsible for adopting country-specific opinions. These opinions, on which States Parties have an opportunity to comment, are meant to advise the Committee of Ministers in the preparation of its resolutions, containing conclusions and recommendations to the State concerned.*

The Netherlands submitted their [second report](#) under the Framework Convention for the Protection of National Minorities on 19 September 2012.

The Advisory Committee's [second opinion](#) on the Netherlands was adopted on 20 June 2013. The Committee notes that the Netherlands continues to pay great attention to the protection of the rights of the Frisian minority and provides considerable support to the activities of this community. Frisian language education has significantly improved in recent years although the lack of qualified Frisian language teachers remains a concern among the Frisian minority. The new law declaring Frisian the second national language of the Netherlands will give an important stimulus to the use of Frisian in legal and administrative matters. However, there are reservations among the representatives of the Frisian minority as regards the future administrative reform which might weaken the position of the Frisian language, culture and identity if mergers of the Northern municipalities and provinces are implemented.

Comments by the Netherlands' Cabinet of Ministers responding to the Committee's opinion were received on 20 December 2013 and cover Dutch policies in respect of the Frisians, their language and culture, and the legal and institutional framework in the Netherlands to combat discrimination and intolerance.

The Committee of Ministers concluded in their resolution adopted on 28 May 2014 that the Netherlands has continued an overall constructive approach to the Framework Convention monitoring process, although it has not shifted towards more flexible interpretation of the scope of application of the Framework Convention. Along with adopting conclusions on the positive developments and issues of concern in respect to the Netherlands, the Committee of Ministers also adopts several recommendations in addition to the measures recommended in the Advisory Committee's opinion to improve further the implementation of the Framework Convention.

The 3<sup>rd</sup> State report was due on 1 June 2016.

### ***European Charter for Regional or Minority Languages***

*The Charter's monitoring procedure is based on state reports, as each State Party is required to present its first report within the year following the entry into force of the Charter with respect to the Party concerned. The subsequent reports are presented at three-yearly intervals. A committee of independent experts examines the state's periodical report and addresses an evaluation report to the Committee of Ministers, including proposals for recommendations.*

The Netherlands submitted its 5<sup>th</sup> periodical report on 16 November 2015. The Committee of Experts' evaluation report on the implementation of the Charter in the Netherlands was adopted on 18 March 2016. This report and its recommendation are due to be examined by the Committee of Ministers in December 2016.

At the end of the last monitoring cycle, the Committee of Ministers recommended, in 2012, that the authorities of the Netherlands, as a matter of priority, establish a structured dialogue with representatives of the regional or minority language speakers about the implementation of the Charter and the recommendations evolving from its monitoring mechanism; continue to strengthen the teaching of and in Frisian at all levels of education; upgrade the teaching of Limburgish and Low Saxon to the status of regular school subjects and extend the offer of education in these languages, including in pre-schools; and explore, in co-operation with representatives of the speakers, possibilities to teach Romanes and to secure and extend the teaching of Yiddish.

The next periodical report is due on 1 March 2017.

### ***Action against trafficking in human beings (GRETA)***

*The 'Group of Experts on Action against Trafficking in Human Beings' (GRETA) carries out visits and publishes country reports evaluating legislative and other measures taken by Parties to give effect to the provisions of the Convention on Action against Trafficking in Human Beings (CETS No. 197). GRETA evaluates the implementation of the Convention following a procedure divided into rounds. At the beginning of each round, GRETA selects the specific provisions on which the evaluation procedure is based.*

The first Evaluation Round in respect of the Netherlands has been completed over the period 2012-2014, and has produced [3 documents](#):

- [GRETA's Report and Government's Comments](#), published on 18 June 2014
- [Recommendation of the Committee of the Parties](#), adopted on 7 July 2014
- [Government's Reply to GRETA's Questionnaire, Appendix I, Appendix II](#) published on 5 February 2014.

GRETA welcomes the steps taken by the Dutch authorities to combat trafficking in human beings in terms of legislation, policies and structures. It commends in particular the setting up of the independent National Rapporteur on Trafficking in Human Beings and Sexual Violence against Children, the first institution of its kind in Europe.

The Netherlands has adopted a multi-agency, integrated approach to the fight against trafficking, involving as many public actors as possible that are likely to come into contact with victims. GRETA welcomes the efforts made by the Dutch authorities in training relevant public actors on human trafficking, including officials of the Inspectorate SZW, prosecutors, judges and local actors in particular in municipalities. However, identification rests for the time being exclusively with law enforcement agencies, giving it a criminal-law bias that may be prejudicial to the situation of victims. Further, GRETA underlines the importance of placing the assistance to and protection of possible victims at the heart of the identification procedure and not linking identification to the prospects of the investigation and prosecution. Thus GRETA is of the view that much is to be gained by involving more stakeholders in the identification process, including specialised NGOs who are in daily contact with risk groups. It therefore welcomes the work that has recently begun towards the establishment of a national referral mechanism involving more stakeholders.

GRETA underlines the human rights-based and victim-centred approach that underpins the Convention. It appears that much emphasis is placed in the Dutch system on the co-operation of the victim with the law enforcement authorities from the earliest stages. For example, although the reflection period in the Netherlands is longer than the minimum of 30 days laid down in the convention, in practice, it appears that frequent contacts with the police are organised during this period. According to GRETA, while it is important to obtain the victims' co-operation to increase chances of successfully prosecuting traffickers, a balance should nonetheless be found so as not to jeopardise the victim's recovery from this serious violation of their human rights. Moreover, assistance to and protection of victims should not depend on the potential of investigations and prosecutions or their continuation. For this reason, GRETA sees it as crucial that further be done to ensure that assistance, protection and the legal residence of victims who do not co-operate or whose case cannot be pursued be improved.

As regards child trafficking there needs to be further development to ensure that the best interests of the child are always guaranteed. GRETA welcomes the efforts recently initiated by the Dutch authorities to give greater focus to the specificity of the situation of child victims for the purpose of their identification, assistance and protection.

The Committee of the Parties [recommends](#) that all 23 of the proposals made by GRETA in their report be implemented, requests that the Government of the Netherlands informs the Committee of



the measures taken to comply with this, and invites the Dutch authorities to continue on-going dialogue and cooperation with GRETA.

**See also:** [Response of the Netherlands to the Questionnaire for the evaluation of the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by the parties](#)

### **Preventing and combating violence against women and domestic violence**

*The Council of Europe Convention on preventing and Combating violence against women and domestic violence (Istanbul Convention, CETS No. 210) provides for two types of monitoring procedures: a country-by-country evaluation procedure and a special inquiry procedure in exceptional cases where action is required to prevent a serious, massive or persistent pattern of any acts of violence covered by the Convention. [GREVIO](#), the Group of Experts on Action against violence against women and domestic violence, is the independent body responsible for monitoring the implementation of CETS No. 210. GREVIO launched its first evaluation procedure in spring 2016, after adopting a questionnaire on legislative and other measures giving effect to the Istanbul Convention.*

The Netherlands ratified the Istanbul Convention on 18 November 2015 with a [declaration](#) on the territorial application of the Convention. As a state party to the Convention, it is subject to the evaluation procedure which will be initiated in relation to the Netherlands in September 2018.

### **Fight against corruption (GRECO)**

*The 'Group of States against Corruption' ([GRECO](#)) monitors all its members through a "horizontal" evaluation procedure within thematic evaluation rounds. The evaluation reports contain recommendations aimed at furthering the necessary legislative, institutional and practical reforms. Subsequently, the implementation of those recommendations is examined in the framework of a "compliance procedure", assessing whether they have been implemented satisfactorily, partly or have not been implemented 18 months after the adoption of the evaluation report.*

On 6 February 2013 GRECO published a [second compliance report](#) assessing further measures taken by the authorities of the Netherlands to implement the recommendations contained in the Third Round Evaluation Report published in 2008 covering two distinct themes; [Theme I](#) - Incriminations and [Theme II](#) - Transparency of Party Funding. Given the fact that none of the thirteen recommendations addressed to the Netherlands in the area of Theme II – Transparency of Party Funding had been implemented satisfactorily or dealt with in a satisfactory manner, GRECO considered the overall response as "globally unsatisfactory". An [interim compliance report](#) assessing the further implementation of pending recommendations since the adoption of the first and second Compliance Reports, and providing an overall appraisal of the level of compliance with these recommendations as adopted on 21 June 2013. An [addendum](#) to the second compliance report was published on 15 December 2014.

Following an evaluation visit from 1 to 5 October 2012, GRECO's [fourth evaluation round report](#) concerning "Corruption prevention in respect of members of parliament, judges and prosecutors" was published on 18 July 2013 and found that although the current system preventing corruption amongst these professions in the Netherlands relies to a large degree on mutual trust, openness, and public scrutiny, with few mandatory regulations, restrictions and even less supervision, it appears to be a fairly effective system and public trust in Members of Parliament, judges, and



prosecutors is noticeably higher than the average of EU countries. However GRECO believes that there is room for improvement in the current, reactive system ensuring the integrity of Members of Parliament, and that the Parliament could take on a more proactive role to increase the awareness of its members about ethics, integrity, and possible conflicts of interest. GRECO recommends that a code of conduct be developed, the guidance and training on ethical matters available to parliamentarians be extended, and ensure supervision and enforcement of existing and yet-to-be established rules.

GRECO supports the efforts of the institutions of the judiciary to maintain public trust, but consider that there are a limited number of areas in the Judiciary's comprehensive integrity programme deserved more attention, in particular, the issue of substitute judges. GRECO welcomes the thorough and balanced approach adopted by the prosecution service in a similar integrity policy.

A [compliance report](#) assessing the extent to which the seven recommendations included in the report have been implemented was adopted on 19 June 2015 and published on 26 August 2015. GRECO concludes that the Netherlands has implemented satisfactorily or dealt with in a satisfactory manner only two of the seven recommendations made in the fourth report; a review of disclosure requirements for members of both Chambers of Parliament, and an evaluation of the prosecution's integrity policy and its effects of integrity awareness. Of the other five recommendations, two have been partly implemented and three have not been implemented.

**See also:** [Revised Questionnaire on Corruption Prevention in respect of Members or Parliament, Judges and Prosecutors.](#)

## ***Execution of judgments and decisions of the European Court of Human Rights***

### ***Statistical data***

At 31 December 2015, there were 9 (11 at 31.12.2014) cases against the Netherlands pending before the Committee of Ministers for supervision of their execution. 9 of these cases were "leading cases" (9 at 31.12.2014), i.e. raising a new structural /general problem and requiring the adoption of general measures, the other cases being "repetitive cases" (including a number of friendly settlements) concerning issues already raised before the European Court of Human Rights.

In 2015, the CM was seized by 3 new cases (6 in 2014) against the Netherlands of which 1 leading cases (1 in 2014) and the sums awarded in 2015 as just satisfaction amounted to € 12.320 (€ 85.261 at 31.12.2014).

In 2015, 5 cases (11 in 2014) were closed by the adoption of a Final Resolution, of which 2 leading (5 in 2014).

For a summary of main achievements in the recent years see the [Committee of Ministers' annual reports](#), as well as the [9<sup>th</sup> Annual Report of the Committee of Ministers](#).

### *Main cases /groups of cases pending before the Committee of Ministers for supervision of execution under enhanced procedure*

There are currently (as of 26 July 2016) 14 cases pending before the Committee of Ministers, 8 of which are leading cases i.e. raising a new general problem and requiring the adoption of general measures, and 6 of which are friendly settlements.

The major outstanding issue concerns a case of ineffective investigations carried out by the Dutch authorities into the circumstances surrounding the death of an Iraqi civilian (*Jaloud v. the Netherlands* – see below).

The Committee of Ministers welcomed the measures adopted by the Dutch authorities in order to improve the effectiveness of criminal investigations with respect to operations conducted by Dutch military personnel deployed abroad. It encouraged the Dutch authorities to ensure that certain instructions still to be adopted by the Public Prosecution Service incorporate the Convention standards as regards the investigation of serious human rights violations, including those conducted in difficult security conditions<sup>1</sup>.

#### *Jaloud case*

Application No. 47708/08, judgment final on 20/11/2014, enhanced supervision

**Shortcomings in the investigation into the death of an Iraqi civilian**, who died in Iraq in April 2004 in an incident involving Netherlands Royal Army personnel (Article 2 – procedural limb)

#### **Status of execution:**

The Dutch authorities provided a first action plan on 20 May 2015 ([DH-DD\(2015\)538](#)). Contacts between the Department for the Execution and the authorities in the course of July 2015 led to the submission of a revised action plan on 4 September 2015 ([DH-DD\(2015\)902](#)) which may be summarised as follows:

#### *Individual measures:*

The *just satisfaction* awarded in respect of non-pecuniary damage and of costs and expenses was paid.

#### *Criminal investigation*

On 28 April 2015, the applicant's representative requested the Public Prosecution Service to provide information on the measures taken in response to the Court's judgment. On 26 May 2015, the Public Prosecution Service informed the applicant's representative that the shortcomings established by the European Court do not call into question the public prosecutor's decision of 2004 not to prosecute the army officer in question and, therefore, there were no grounds to re-open the investigation.

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<sup>1</sup> See the [last decision](#) adopted by the Committee of Ministers in March 2016.

Furthermore, on 21 August 2015 the prosecutor responsible for the case issued an official report in which he examined in detail each and every shortcoming identified by the European Court and explained why these shortcomings can no longer be remedied or why no reasonable steps can be taken to remedy them. His general conclusion was that the shortcomings in the investigation as established by the Court do not alter the considerations on which the public prosecutor based his decision not to prosecute in 2004. In particular, the prosecutor indicated that it could not be established lawfully and convincingly in this case that the injury and/or death was caused by a bullet fired by the soldier in question and, in any event, since the soldier in question fired deadly shots in self-defence it was not relevant whether the bullet that killed Mr Jaloud was fired by the Dutch officer or by someone else.

#### *Judicial review of the prosecutor's decision*

In accordance with Article 12 of the Code of Criminal Procedure, the applicant may challenge the prosecutor's above decision before the court of appeal. On 23 December 2015, the Dutch authorities informed the Department for the Execution that the applicant, who has a legal representative practicing in the Netherlands, did not avail himself of this possibility to date, and that there is no legal time-limit for lodging such an appeal.

#### *Criminal complaint lodged by the applicant*

In May 2014 the applicant lodged a criminal complaint against a military investigating officer who had been involved in the investigation of the Jaloud case. The applicant accused him of leaving the ICDC statements out of the file intentionally. Their investigation is pending and it is unknown when the investigation will be completed.

#### General measures:

##### *Measures adopted*

At the request of members of Parliament, the Dutch system of administration of military criminal justice with regard to operations involving Dutch military personnel in high-risk areas in the period 2000-2005 was evaluated by independent experts. This evaluation resulted in a report prepared by a committee to evaluate the administration of military criminal justice concerning military personnel deployed abroad (Borghouts Committee). The Committee made 21 recommendations with a view to improving legislation, policies and procedures concerning the investigation and prosecution of military personnel deployed abroad. As a result, a number of measures were taken, in particular:

- Introduction of the obligation that, prior to a military operation, consultations are to take place between the unit commander, the detachment commander of the Royal Military Constabulary and the public prosecutor;
- Improvement of the quality of the execution of military police tasks in operation areas by providing specific training for military criminal investigators on the ground and establishing an investigation team which can be deployed to a mission area within 24 hours, if necessary;
- Enhancement of trainings on military criminal law and procedure for military commanders;
- Adoption of instructions concerning the procedure to be followed by the Royal Military Constabulary and the Public Prosecution Service in case of use of force by military personnel;
- Trainings for defence personnel on the Convention requirements.

The Court's judgment was also published in several legal journals.

### *Measures envisaged*

The Public Prosecution Service is preparing an investigation manual which will include an overview of key issues and possible courses of action for investigation during military operations. The manual will serve as a reference for the Royal Military Constabulary and as guidance for the Public Prosecution Service.

The Public Prosecution Service is also developing further instructions for the Royal Military Constabulary concerning the coordination and co-operation with the local criminal justice authorities and coalition partners in military areas of operation, in particular as regards the means to be used to gather necessary information.

### *Last Committee of Ministers decision (March 2016)*

The Deputies

1. noted that in the *Jaloud v. the Netherlands* judgment the Court found a procedural violation of Article 2 on account of the ineffectiveness of the investigation into the death of an Iraqi civilian who died of gunshot wounds in Iraq in April 2004;
2. *as regards individual measures*, stressed that the procedural obligation under Article 2 to conduct an effective investigation into an alleged breach of life involving state agents entails, in particular, that the national authorities must take all the reasonable steps available to them in order to secure the evidence concerning the incident and to establish what happened, in particular as regards the cause of the death or the persons responsible;
3. noted, therefore, with regret that the shortcomings identified by the Court during the initial stage of the investigation, namely the failure to prevent any possible collusion before the officer's questioning, the shortcomings related to the autopsy and the loss of bullet fragments, are of an irremediable nature but that it is open to the applicant to put the evidence that was withheld during the initial investigation before the judicial authorities in judicial review proceedings;
4. *as regards general measures*, welcomed the measures adopted by the Dutch authorities in order to improve the effectiveness of criminal investigations with respect to operations conducted by Dutch military personnel deployed abroad;
5. encouraged the Dutch authorities to ensure that the instructions to be adopted by the Public Prosecution Service, including the investigative manual, incorporate the Convention standards as regards the investigation of serious human rights violations, including those conducted in difficult security conditions.

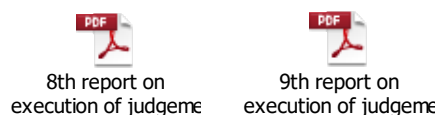
### ***Other cases /groups of cases pending before the Committee of Ministers for supervision of execution***

In three other leading cases concerning the issue of protection of journalists' sources, legislative amendments of the Code of Criminal Procedure and the Intelligence and Security Services Act 2002 are underway<sup>2</sup>. Updated information in this respect is awaited from the Dutch authorities.

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<sup>2</sup> *Voskuil v. Netherlands*, judgment of 22/11/2007; *Sanoma Uitgevers B.V. v. Netherlands*, judgment of 14/09/2010, and *Telegraaf Media Nederland Landelijke Media B.V. and Others v. Netherlands*, judgment of 22/11/2012. See the last [action plan](#) received on 21/08/2013.

A compilation of statistics can be found in the [8th Annual Report \(2014\)](#) on Supervision of the Execution of Judgments and Decisions of the European Court of Human Rights, as well as in the recently published [9th report \(2015\)](#).



## ***Social and economic rights: European Social Charter and European Committee of Social Rights***

The honouring of commitments entered into by the States Parties to the [European Social Charter](#) is subject to the monitoring of the [European Committee of Social Rights](#) (ECSR). This body monitors compliance under the two existing monitoring mechanisms: through collective complaints, lodged by the social partners and other non-governmental organisations ([collective complaints procedure](#)); through national reports drawn up by States Parties ([reporting system](#)).

The aim pursued with the introduction, in 1995, of the **collective complaints procedure** was to increase the effectiveness, speed and impact of the implementation of the Charter. In this view, this procedure has strengthened the role of the social partners and non-governmental organisations by enabling them to directly apply to the ECSR for rulings on possible non-implementation of the Charter in the countries concerned, namely those States which have accepted its provisions and the procedure. The *decisions* adopted by ECSR in the framework of this monitoring mechanism can be consulted using [the European Social Charter Database - HUDOC Charter](#).

In the framework of the **reporting system**, following a decision taken by the Committee of Ministers in 2006, the provisions of the Charter have been divided into four thematic groups. States present a report on the provisions relating to one of the four thematic groups on an annual basis. Consequently each provision of the Charter is reported on once every four years. Following a decision taken by the Committee of Ministers in April 2014, States having accepted the collective complaints procedure are required, in alternation with the abovementioned report, to provide a simplified report on the measures taken to implement the decisions of the Committee adopted in collective complaints concerning their country. The alternation of reports is rotated periodically to ensure coverage of the four thematic groups. The decisions adopted by ECSR in the framework of the reporting system, called *conclusions*, are published every year. They can be consulted using [European Social Charter Database - HUDOC Charter](#).

**The Netherlands** ratified the 1961 European Social Charter (ETS N° 035) on 22/04/1980, the 1988 Additional Protocol to the 1961 Charter (ETS N° 128) on 5/08/1992; the 1991 Amending Protocol (ETS N° 142) on 1/06/1993; the Revised European Social Charter (ETS N° 163) on 03/05/2006, accepting 97 of its 98 paragraphs (only applying to the Kingdom in Europe); 11 paragraphs (namely, Articles 1, 5, 6, 16 of the 1961 Charter and Article 1 of the 1988 Additional Protocol) remain applicable to Aruba, Curaçao, Sint Maarten and the Caribbean Part (special municipalities of Bonaire, Sint Eustatius and Saba). The Netherlands accepted the 1995 Additional Protocol providing for a system of collective complaints (ETS N° 158) on 03/05/2006, but has not yet made a declaration enabling national NGOs to submit collective complaints.

In the **2013 conclusions on Thematic Group 2 “Health, social security and social protection”** over the reference period 2008-2011, ECSR referred to 4 issues of non-conformity relating to the right to safe and healthy working conditions (Article 3§4), the right to social security (Articles 12§§1 and 12§4), and the right of the elderly persons to social protection (Article 23).

In the **2014 conclusions thematic group 3 “Labour rights” over the period 2009-2012**, ECSR referred to 9 situations of non-conformity, relating to the rights to just conditions of work (Articles 2§§1, 2§2, 2§3, 2§4, and 2§5), the right to a fair remuneration (Articles 4§§1, 4§2, and 4§4), and the right to dignity in the workplace, as it has not been established that employees are effectively protected, in law or in practice, against moral (psychological) harassment (Article 26§2).

In the **2015 conclusions regarding thematic group 4 “Children, families, migrants** over the reference period 2010-2013, ECSR referred to 14 situations of non-conformity; the right of children and young persons to protection (Articles 7§§3, 7§5, 7§6, and 7§9), the right of the family to social, legal and economic protection (Article 16), the right of children and young persons to social, legal and economic protection (Article 17§1), the Right of migrant workers and their families to protection and assistance, and equal treatment for the self-employed (Articles 19§§4 and 10, Articles 19§§6 and 10, and Articles 19§§11 and 10), and the right to housing (Articles 31§§1 and 31§2).

The [9th national report](#) submitted by the Government of the Netherlands on 2 November 2015 in the framework of the reporting system. concerns the **follow-up given to the relevant decisions of ECSR in the framework of the collective complaints procedure**, as well as the **information required by the ECSR in the framework of the Conclusions adopted in 2014** (Articles 2, 4, 5, 6, 21, 22, 26, 28, 29 of the Revised Charter, relating to the Thematic group 3 “Labour rights”), in the event of non-conformity for lack of information. ECSR Conclusions with respect to these provisions will be published in January 2017.

Under the collective complaints procedure, there are 2 complaints where the ECSR has found a violation and where progress has been made but not yet examined by the ECSR and 1 complaint where the Committee has found a violation which has not yet been remedied.

[The Netherlands and the European Social Charter](#) (country factsheet, document in progress)

[Further information on the treaty system of the European Social Charter](#)

### Venice Commission

The [European Commission for Democracy through Law](#) (Venice Commission) is the Council of Europe’s advisory body on constitutional matters. It provides States and international organisations working with it (EU, OSCE/ODIHR) with legal advice in the form of opinions.

As at 29 July 2016, no opinions by the Venice Commission were found concerning the Netherlands.