

Netherlands: Visit 2011

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Appendix I List of the CPT's recommendations, comments and requests for information

Co-operation

comments

- the CPT trusts that the Dutch authorities will take appropriate steps to ensure that, in future, visiting delegations enjoy access without delay to all places of deprivation of liberty, and that visiting delegations are provided with full information on all such places (paragraph 6);
- the CPT trusts that the Dutch authorities will take appropriate steps to ensure that, in future, visiting delegations enjoy unconditional access to all the medical records necessary in order for it to carry out its task and that the Convention's provisions are thus fully implemented (paragraph 7).

National Preventive Mechanism (NPM)

comments

- care should be taken to ensure that all elements of the NPM's structure and all the personnel concerned comply with the requirements laid down by the OPCAT and the Guidelines established by the United Nations Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (SPT) (paragraph 9).

Law enforcement agencies

Preliminary remarks

comments

- the CPT trusts that the positive trend observed as regards the length of stay of persons in police detention facilities will be maintained. In addition, the CPT invites the Dutch authorities to consider revoking Articles 15a of the Penitentiary Principles Act and 16a of the Juvenile Detention Principles Act (paragraph 13).

requests for information

- updated information concerning the reorganisation of the Dutch police forces and, in particular, on any changes that might affect deprivation of liberty by the police (legal framework, police holding facilities and detention units, monitoring bodies entrusted with visiting detention facilities, etc.) (paragraph 11).

Safeguards against ill-treatment

recommendations

- to amend Article 62 of the Code of Criminal Procedure in order to circumscribe more precisely the possibility to delay the exercise of a detained person's right to notify his/her deprivation of liberty to a third party and to set a time-limit on the application of such a measure (paragraph 15);
- to remove the restriction excluding persons suspected of "C category offences" from legal assistance paid by the Legal Aid Board (paragraph 18);
- to remind all police officers of the purpose and content of Article 32 (2) of the Police Guidelines relating to access to a doctor of one's own choice (paragraph 20).

comments

- the CPT trusts that further steps will be taken to ensure the full recognition of the right of access to a lawyer for all detained persons as from the outset of their deprivation of liberty. In addition to the right to talk to the lawyer in private, the person concerned should also, in principle, be entitled to have a lawyer present during any interrogation conducted by the police. Naturally, this should not prevent the police from beginning to question a detained person in those exceptional cases where urgent questioning is necessary, even in the absence of a lawyer (who may not be immediately available), nor rule out the replacement of a lawyer who impedes the proper conduct of an interrogation (paragraph 17).

requests for information

- for the years 2010-2011, the number of cases in which Article 62 (2) b was invoked vis-à-vis criminal suspects (paragraph 15).

Conditions of detention

recommendations

- to take steps to ensure that cells at Apeldoorn Police Station respect Article 6 (1) of the Regulation on police cell complexes (paragraph 22);
- to strictly limit the use of the cubicles described in paragraph 23 to very brief waiting periods, either immediately prior to the questioning of the suspect or immediately before his transfer to a suitable detention facility. The total time actually spent in these facilities should never exceed 6 hours. Furthermore, such cubicles should never be used as overnight accommodation (paragraph 23);
- cubicles of the kind described in paragraph 23 to be fitted with secured translucent doors to avoid as much as possible their oppressive effect and enable direct monitoring of the detained persons (paragraph 23).

comments

- the Dutch authorities are invited to establish whether all police cells in the Netherlands comply with Article 6 (1) of the Regulation on police cell complexes and, if necessary, to remedy any shortcomings. Further, this provision should be taken into account when refurbishment or construction of police stations is carried out in the future (paragraph 22).

requests for information

- the progress of the official investigation that was launched concerning a suspected suicide that occurred at the Hague Central Court detention facility the day before the CPT's visit (paragraph 25).

Prison establishments

Preliminary remarks

comments

- lifers and other long-term prisoners should not be systematically segregated from other prisoners (paragraph 28).

requests for information

- the Dutch authorities' comments concerning the implications of the increase in the female prison population for the prison system (capacity of the female detention units, female staff resources, etc.) (paragraph 26);
- updated information on the evolution and implementation of the "Prison system modernisation project" ("MGW") (paragraph 27);
- updated information on the pilot project aimed at placing lifers and other long-term prisoners in special units in the prison system (paragraph 28).

Ill-treatment

recommendations

- to draw the attention of management and staff working in all establishments under the responsibility of the National Agency for Correctional Institutions to the ministerial circular of 9 January 2003 (ref. 5195514/02/DJI) (paragraph 31);
- to take steps to ensure that the principles outlined in paragraph 32 as regards strips searches are applied throughout the prison system in the Netherlands (paragraph 32).

Conditions of detention

recommendations

- to review the programme of activities available to foreign prisoners with “VRIS” status, in particular in respect of education, vocational training, and re-socialization activities, with a view to ensuring that they are not disadvantaged in comparison with the general prison population in the Netherlands (paragraph 36).

requests for information

- measures taken in order to address the complaints made by prisoners about the food provided to them (paragraph 34).

Health care services

recommendations

- to increase the medical staffing level at Veenhuizen penitentiary establishment to two full time equivalent (FTE) posts of medical doctor (paragraph 37).

comments

- medication should preferably be distributed by health-care staff (paragraph 39);
- the Dutch authorities are invited to draw up a list of medication that should in every case be distributed by health-care staff (such as anti-psychotic and anti-retroviral drugs and methadone) (paragraph 39).

Other issues

recommendations

- to equip the disciplinary cells at Arnhem-Zuid Prison with a table, adequate seating for the daytime (i.e. a chair or bench), and a proper bed and bedding at night (paragraph 43);
- to provide proper “outdoor exercise” facilities for prisoners placed in the disciplinary unit at Arnhem-Zuid Prison (paragraph 43).

comments

- the Dutch authorities are invited to remedy the potentially oppressive effect of the frosted glass installed in the windows in disciplinary cells in both prison establishments visited (paragraph 43);
- visits around a table (with no partition) should be the rule and visits with partitions the exception, based on an individual risk assessment (paragraph 45);

- the Dutch authorities are invited to amend Article 37 of the Penitentiary Principles Act to include the CPT in the list of institutions/bodies with which any prisoner might communicate on a confidential basis (paragraph 48).

requests for information

- the measures taken or envisaged to address the issue of “emotional work stress” of staff at Veenhuizen – Esserheem Prison (paragraph 40);
- Dutch authorities’ comments on the information received that, in some prison establishments in the Netherlands, there was a tendency to delegate the disciplinary power to lower level management (as opposed to the governor or his deputy themselves), including for the imposition of the most severe disciplinary sanctions, such as solitary confinement in a punishment cell (paragraph 42);
- the comments of the Dutch authorities on the impossibility for prisoners to make cheaper international calls by using pre-paid phone cards (paragraph 47);
- clarification as to whether the Inspectorate for Implementation of Sanctions’ mandate covers the investigation of allegations of ill-treatment and issues related to prison disturbances (paragraph 50).

Foreign nationals held under aliens’ legislation

Preliminary remarks

recommendations

- the use of means of restraint to be considered on individual grounds and based on the principle of proportionality (paragraph 56).

comments

- applying handcuffs as a matter of routine to immigration detainees whenever they leave their detention facility is disproportionate (paragraph 56).
- the Dutch authorities are invited to examine the possibility of drawing up a distinct set of rules for facilities accommodating foreign nationals detained under aliens’ legislation (paragraph 59).

requests for information

- further information about the implementation of the legislation according to which an illegal stay in the Netherlands would be regarded as a misdemeanour and could be punished accordingly, and its foreseeable impact as regard the country’s prison population (paragraph 53);

- updated information concerning the legislative proposal pending in Parliament and providing for a maximum time-limit for the administrative detention of aliens (paragraph 54);
- with reference to Article 15 (3) of the EU Return Directive, the review periods of a detention order, either on application of the foreign national concerned or *ex officio*, and of the authority involved (paragraph 54);
- the comments of the Dutch authorities on the practice of re-arresting aliens shortly after they had been released from detention (on the expiry of the 18 month time-limit), if they had not left the country in the meantime (paragraph 54);
- confirmation that the boats which had been used as facilities for holding immigration detainees and the Rotterdam Airport Expulsion Centre visited in 2007 have been taken out of service (paragraph 55);
- the comments of the Dutch authorities on the remarks in paragraph 58 as regards the approach to be followed in cases of hunger (or thirst) strike (paragraph 58).

Rotterdam Airport Detention Centre for foreigners

recommendations

- to avoid, as far as possible, detaining families with children. If, in exceptional circumstances, detention cannot be avoided, its period should not exceed the maximum duration provided by law i.e. 28 days (paragraph 61);
- to review the practice at the Centre of locking up children in their cells, in the light of the remarks in paragraph 63 (paragraph 63);
- to increase the medical staffing level at the Centre to at least 1.5 FTE posts of medical doctors (paragraph 66);
- to review the current practice as regards health-care screening of newly-arrived detainees, in the light of the remarks in paragraph 67 (paragraph 67);
- to take measures to transfer detainees suffering from the most severe forms of psychotic disorders to an appropriate psychiatric facility (paragraph 68);
- to take steps to ensure that foreign nationals receive a written translation, in a language they understand, of the decisions concerning their detention as well as of the modalities and deadlines to appeal against such decisions (paragraph 69);
- to take steps to ensure that foreign nationals detained at the Centre are duly and regularly informed about the status of their case in a language they understand (if necessary, through phone interpretation) (paragraph 71);
- to provide the possibility of unsupervised visits for detainees at the Centre (paragraph 72).

comments

- the Dutch authorities are invited to explore the possibility of offering some education to immigration detainees at the Centre. Emphasis should be placed on the possibility for the detainees concerned to acquire skills that may prepare them for reintegration in their countries of origin upon their return (paragraph 65);
- detainees diagnosed with severe psychiatric disorders but who are in remission should benefit from a special regime of activities conducive to their psychosocial rehabilitation, including more out-of-cell time (paragraph 68).

requests for information

- measures taken in order to address the complaints made by detainees about the food provided to them (paragraph 62).

Deportation of foreign nationals by air

recommendations

- to take the necessary steps to ensure that persons deprived of their liberty are only searched by staff of the same sex and that any search which requires an inmate to undress is conducted out of the sight of custodial staff of the opposite sex (paragraph 78);
- the necessary steps to be taken to ensure that:
 - any foreign national to be deported is given the opportunity to be medically examined prior to the removal operation;
 - all foreign nationals who have been the subject of an abortive deportation operation undergo a medical examination as soon as they are returned to detention (paragraph 80).

comments

- in the interest of transparency, it would be desirable for CITT reports on individual expulsion cases to be made public (paragraph 81).

requests for information

- clarification on the possible use of pepper spray by escort leaders (paragraph 77);
- confirmation that the HIV tests concerning a drug addicted detainee met by the delegation at the Detention and Expulsion Centre Schiphol-Oost have been carried out and information on the follow-up given to the case (paragraph 84).

Mental health institutions

Follow-up visit to the Forensic Psychiatric Centre (FPC) Dr van Mesdag

recommendations

- to take the necessary steps to further develop workshops and other communal therapeutic activities, in parallel with the rising number of patients. This will require both infrastructure development and additional staff resources (paragraph 96);
- to take appropriate measures so that more staff with specific therapeutic skills, in particular psychiatric nurses, treat patients with severe psychiatric disorders in Units Eeems 1 & 2 and Dollard 1 & 2 (paragraph 97);
- to take urgent measures in order to address adequately the situation of ten psychotic patients who had remained in the “instroom” process for more than a year (paragraph 98);
- to pursue vigorously efforts to fill the vacant posts of psychiatrists (paragraph 100);
- the Dutch authorities to train more forensic psychiatrists in the Netherlands (paragraph 100);
- to take measures to ensure an increase in the number of posts for socio-therapists at the FPC (paragraph 101);
- to take steps to ensure that patients who are the subject of an isolation measure are offered outdoor exercise on a daily basis (paragraph 104);
- to review the restraint/immobilisation techniques used vis-à-vis agitated patients, in the light of the remarks in paragraph 106, and adapt the training of the security team accordingly (paragraph 106);
- to take steps with a view to systematically recording the events, as captured by the CCTV system, whenever an incident occurs in the FPC (paragraph 106);
- to ensure that continuous forced medication for more than a year is the subject of a further review by an independent psychiatrist from outside the institution (paragraph 107).

comments

- the rate of “separatie” for patients in “instroom” units is still rather high and the 22-day isolation measure referred to in paragraph 104 is difficult to justify (paragraph 104);
- if a libido suppressant treatment is proposed, the terms of the “therapeutic contract” agreed upon by the psychiatrist and the patient should be recorded in writing and signed by the patient concerned and kept in the patient’s file (paragraph 108).

requests for information

- comments of the Dutch authorities on the remarks in paragraph 99 concerning the application of the principle of “equivalence of care” when assessing the quality of psychiatric care for patients in forensic settings (paragraph 99);
- confirmation that the two cells located on the ground floor of the “old remand prison” have been definitively taken out of service (paragraph 105).

The “long stay” wards for TBS patients of the Pompe Institute in Zeeland

recommendations

- to take immediate steps to ensure the equivalent of one FTE post of fully trained psychiatrist at the “long stay” wards of the Pompe Institute in Zeeland (paragraph 119).

comments

- there is only limited access to natural light (through a semi-transparent glass) in the cells in the two isolation sections (paragraph 121).

requests for information

- a copy of the results of the global review of the status of all “long stay” TBS patients (number of the patients concerned, with details of the decisions taken: proposed return to normal TBS regime, confirmation of “long stay” status, etc.) (paragraph 116);
- the comments of the Dutch authorities on the potential detrimental effect of the envisaged “further tightening of the TBS policy” (paragraph 125).

The Forensic Psychiatric Department (FPD) for mentally disabled patients in Oostrum

recommendations

- to take measures in order to set up a centralised register on the use of means of restraint (including isolation) as well as to develop a policy on such use (paragraph 135);
- to take the necessary steps to ensure that patients are only searched by staff of the same sex and that any search which requires a patient to undress is conducted out of the sight of staff of the opposite sex (paragraph 137).

comments

- the isolation cells at the FPD are very oppressive and should not be used vis-à-vis patients with low IQ’s (50 or lower). Furthermore, they should be equipped with a bed, a table and a chair, if necessary, fixed to the floor (paragraph 136).

requests for information

- the comments of the Dutch authorities on the patient referred to in paragraph 129 (paragraph 129);
- confirmation that the second post of behavioural psychologist has now been filled (paragraph 132).