Workstream 2 – National Reports – THE NETHERLANDS

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Abstract

Dutch prison conditions are framed by the European Prison Rules and prisoners have the protection of the European Convention and the domestic law of the Penitentiary Principles Act 1999 (PPA) and Penitentiary Rules. The PPA gives prisoners minimum rights to certain activities and resources and operates on the assumption that the prisoner should be subject to as few restrictions as possible beyond the loss of liberty. The rights encompass both substantive and procedural rights and include access to visits, classes, complaints procedures and access to libraries. Since 1977, the penitentiary act has introduced a complaints procedure for detainees. Under this act, a detainee can complain about decisions taken against him by the penitentiary institution.

Introduction: Prison conditions in The Netherlands

According to S. Easton in her book "Prisoners' Rights : Principles and Practice", Dutch prison conditions have the reputation of being generally more humane than other European countries, prisoners' rights were well developed there relatively early and have been held out as a model for other European societies. The reasons for this humanitarianism include the tradition of Dutch tolerance and more specifically the influence of the so-called Utrecht school which rejected positivistic criminological approaches in favor of a rehabilitative and humane and anti-punitive approach.
Since the early 1990s, there have been a number of changes in the Dutch prison system which have been charted by Tak and others (Tak, 2003, Tak, 2008, Boone and Moerings, 2007). Prison buildings in the Netherlands has expanded to meet the increased population. The pressure of prison expansion has meant financial pressure on prison budgets with fewer resources in prison, and more cell sharing. New prisons have been built to meet demand for places and formal limits on prison capacity have been removed. The quality of prison regimes has declined with fewer activities and the degree of penal austerity has increased. There are fewer rehabilitative programmes which are now limited to specific offenders and the rehabilitative ideal has declined but not disappeared as rehabilitation has been combined with more punitive regimes. Faced with more prisoners serving longer sentences and more prisoners with drugs and mental health problems, as well as more aggressive prisoners, there is now more emphasis on security and preventing escapes but also on individualized treatment and detention.

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The increase in the number of prisoners and changes in the composition of the prison population since the early 1990s has led to changes in the Dutch system.

The Dutch government has said that it is committed to modernization of the prison system. This modernization agenda 2007-2010 focused on reoffending and aftercare, better treatment of prisoners with psychiatric and addiction problems but also increasing the efficient use of prison capacity to reduce the costs, but also to a more individualized approach. The emphasis was on achieving cost-effectiveness through cell sharing, and simplification of detention regimes, improved screening for mental health and risk factors, and improved allocation procedures to ensure that prisoners serving short sentences and those nearing the end of longer sentences can be housed near their local area. The system of care is also being reorganized with additional care places and to deal with drug dependency.

1. ECHR case law on prisoners' rights in the Netherlands

The Netherlands is one of the countries implied in the smallest number of case. From 1959, the Netherlands had 141 judgments, corresponding to 0,9% of all the judgments.
The Committee on Legal Affairs and Human Rights pointed out the Netherlands as an example of good dialogue with the Court, as well as a State in which the Parliament follows closely the evolution of the Court, in the Contribution to the Conference on the Principle of Subsidiarity, in Skopje, the 1st and 2nd October 2010

Over the years, cases have been brought to Strasbourg by Dutch prisoners challenging aspects of prison conditions within the Netherlands and its overseas territories. According to S. Easton (2007), the prisoners' rights claims have achieved mixed results. A challenge to the treatment of prisoners in a Dutch maximum security prison failed in *Baybasin v. The Netherlands* Application No. 13600/2 (6 July 2006) on issues other than routine strip-searching. However, in the key case of *Van der Ven v. The Netherlands* and *Lorsé and Others v. The Netherlands* Application Nos. 50901/99, 52750/99 (4 February 2003), the applicants were routinely and regularly strip-searched regardless of whether there had been contact with the outside world or any reason to suspect possession of objects which might compromise prison security and a refusal to comply resulted in punishment. The Court found clear breaches of Article 3. The cases also followed criticism by the CPT (see below) of the regimes in high security units in the Netherlands in its reports on 1997 and 2001 visits. One should notice that in the case of *Warren v. the Netherlands* (October, 6 2010, Dec., n° 21604/02), the Court made it clear under the Article 35 of the Convention that the applicant failed to exhaust of domestic remedies and declared his application inadmissible in that regard. Among others, this case in the Court's opinion is a reminder of the existence and the pre-eminence of a binding remedies system in the Netherlands.

Significant cases

- ECHR, 4 February 2003, *Van der Ven v. The Netherlands*, appl. N° 50901/99

Mr. van der Ven alleged that the detention regime to which he was subjected in a maximum security prison (EBI) was equivalent to inhuman treatment and / or degrading violated his right to respect for his private and family life. A CPT report alleged inhuman and degrading treatment in the EBI.

The Court ruled as "inhuman" treatment mainly on the grounds that it was premeditated, applied for hours and it caused either actual bodily injury or intense physical or mental suffering. The Court stated that, as the CPT report said (see below), the situation in the EBI is problematic and concerning. Accordingly, the Court concludes that the combination of routine body searches and other draconian security measures in effect in the EBI amounted to inhuman or degrading treatment contrary to Article 3 of the Convention. There has therefore been a violation of this provision. Regarding article 8, the Court concluded there was no violation.

Turning to the circumstances of the present case, the Court observes first of all that the applicant's complaints about the conditions of his detention do not concern the material conditions within the EBI but rather the regime to which he was subjected.

The Court does not diverge from the view expressed by the CPT that the situation in the EBI is problematic and gives cause for concern. The practice of weekly strip-searches that was applied to the applicant for a period of approximately three and a half years diminished his human dignity and must have given rise to feelings of anguish and inferiority capable of humiliating and debasing him. The Court is struck by the fact that the applicant was subjected to the weekly strip-search in addition to all the other strict security measures within the EBI. In that regard, the Court is of the view that the systematic strip-searching of the applicant required more justification than has been put forward by the Government in the present case.

The Court, bearing in mind its findings above regarding the applicant's complaints, considers that he suffered some non-pecuniary damage as a result of the treatment to which he was subjected in the EBI. The Court therefore awards the applicant EUR 3,000 on an equitable basis under this head.

- ECHR, 4 February 2003, *Lorsé and Others v. The Netherlands*, appl. N° 52750/99

This case is very similar of the *Van der Ven* case above in that the Court considered that in the situation where Mr Lorsé was already subjected to a great number of control measures, and in the absence of convincing security needs – bearing in mind that at no time during Mr Lorsé's stay in the EBI did it appear that anything untoward was found in the course of a strip search – the practice of systematic (weekly) strip searches that was applied to Mr Lorsé for a period of more than six years diminished his human dignity and must have given rise to feelings of anguish and inferiority capable of humiliating and debasing him. The complaint also concerned the members of his family who felt that visit conditions were an infringement of their privacy and were a source of anxiety. Although the Court found that there was no violation of Article 8 in that regard.

In this connection the Court emphasises that, although public order considerations may lead states to introduce high security prisons for particular categories of detainees, Article 3 nevertheless requires those states to ensure that a person is detained in conditions which are compatible with respect for his human dignity, that the manner and method of the execution of the measure do not subject him to distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention and that, given the practical demands of imprisonment, his health and well-being are adequately secured.

As in the previous case, the Court does not diverge from the view expressed by the CPT. This must be even more so if detainees are subjected to the EBI regime for protracted periods of time – like Mr Lorsé in the present case, who was held in the EBI for approximately six and a quarter years. The Court is thus of the view that the systematic strip-searching of Mr Lorsé required more justification than has been put forward by the Government.

In addition, the applicants submitted that the refusal by the Appeals Board of the Central Council for the Administration of Criminal Justice, in its decision of 22 November 2000, to examine their complaint of a violation of Article 3 of the Convention meant that they did not have an effective remedy within the meaning of Article 13 of the Convention at their disposal. Given that the word "remedy" within the meaning of Article 13 does not mean a remedy bound to succeed, but simply an accessible remedy before an authority competent to examine the merits of a complaint, the Court considers that the proceedings before the Appeals Board and the possibility of interim injunction proceedings taken together provided the applicants with an effective remedy. The access to an effective remedy is thus acknowledged by the Court.

- ECHR, 29 September 2005, *Mathew v. The Netherlands*, appl. N° 24919/03

Most of the concerns of the CPT and the European Court of Human Rights have focused on the Dutch overseas territories which have much worse physical conditions, funding and resources. The CPT has been very critical of conditions in the Netherlands Antilles, including the amount of food provided (Council of Europe 1996, § 87). It criticized the poor physical conditions, the lack of physical space and raised concerns over the impact of such conditions on prisoner's mental health and found conditions in Curaçao's prisons were inhuman and degrading. In *Mathew v. The Netherlands* Application No. 4919/03 (29 September 2005), the segregation of prisoners in Aruba was deemed inhuman treatment in breach of Article 3.

In this case, the Court held, unanimously, that there had been a violation of Article 3, in that the applicant was detained in solitary confinement for an excessive and unnecessarily protracted period; he was detained for at least seven months in a cell which failed to provide adequate protection against the weather and the climate; and, he had had to endure unnecessary and avoidable physical suffering in order to gain access to outdoor exercise and fresh air.

In addition, the Court considers it established that external violence was used against the applicant on more than one occasion. And in respect of a person deprived of his liberty, recourse to physical force which has not been made strictly necessary by his own conduct diminishes human dignity and is in principle an infringement of the right set forth in Article 3. The Court reiterates that conditions of detention may sometimes amount to inhuman or degrading treatment. It agrees with the CPT that even for difficult and dangerous prisoners, periods of solitary confinement should be as short as possible. However, the prohibition of contact with other prisoners for security, disciplinary or protective reasons does not in itself amount to inhuman treatment or punishment

However, the Court accepts that accommodation suitable for prisoners of the applicant's unfortunate disposition did not exist on Aruba at the relevant time; it has been built since then. However, it is not Aruba but the Kingdom of the Netherlands which is the Party responsible under the Convention for ensuring compliance with its standards. Judicial orders given in one of the three countries of the Kingdom – the Realm in Europe, the Netherlands Antilles and Aruba – can be executed throughout the Kingdom (Article 40 of the Charter for the Kingdom of the Netherlands – see paragraph 125 above). The Court is concerned to find that, despite a request to that effect from the applicant, no attempt appears to have been made to find a place of detention appropriate to the applicant in one of the other two countries of the Kingdom.

As it was the case in Aruba's prison, the Court found it unacceptable that anyone should be detained in conditions involving a lack of adequate protection against precipitation and extreme temperatures. In addition to the CPT reports, detention conditions and prison facilities have been under close monitoring by Dutch authorities and are on the mend of being improved (see Government's response of CPT reports).

- ECHR, 6 July 2006, *Baybasin v. The Netherlands*, appl. N°13600/02

Based on the *Van der Ven* and *Lorsé and Others* cases, the applicant initially complained that his detention in the EBI detention facility as from 26 June 1998 constituted "inhuman" or at the very least "degrading" treatment and punishment within the meaning of Article 3 of the Convention and, furthermore, that his detention there entailed unjustified interferences with his right to respect for his family and private life under Article 8 of the Convention in that he was subjected to a great number of control measures in the EBI, including routine strip-searches, and in that he was not allowed to communicate with his close relatives – in particular his mother and his youngest child – in Kurmancî.

The Court recalls that, in its judgements of 4 February 2003 in the cases of *Van der Ven* and *Lorsé and Others*, cited above, it found that this practice amounted to treatment contrary to Article 3 of the Convention and that, in view of this conclusion, no separate examination under Article 8 was necessary. As regards the routine weekly strip-searches to which the applicant

was subjected between 16 July 2001 and 21 November 2002, the Court sees no reason to distinguish the present case from the cases of *Van der Ven* and *Lorsé and Others*. It found that the instant case could be qualified as repetitive or "clone" case and ruled that there was a violation of Article 3 but no violation of Article 8.

- ECHR, 6 July 2006, *Sylla v. The Netherlands*, appl. N°14683/03

In a judgment of 6 July 2006, the Court held that there had been a violation of Article 3 concerning weekly routine strip-searches to which Mr Sylla had been subjected while in a maximum-security prison. At that time, it considered that the question of just satisfaction was not ready for decision.
In the three July 2006 judgements against the Netherlands concerning strip-searches of prisoners (*Baybasin v. the Netherlands, Salah v. the Netherlands* and *Sylla v. The Netherlands*), given the unusual situation, in which the applications had commenced national proceedings to obtain just satisfaction for violation of the Convention even before the Court itself had delivered its judgments on the merits, the Court lid down the principle that it could not allow the existence of two parallel sets of proceedings designed to achieve the same result: it made little difference whether such domestic proceedings were already pending at the time when the application was lodged with the Court or whether the application was lodged with the Court first although, under Article 35 §1 of the Convention, the application would be found inadmissible in the former case. To settle this question, the Court considered that it must go back to the principle of subsidiarity under the Convention and, rather surprisingly, inferred from Article 41 that affording just satisfaction to applicants was not central to its role (whereas it is only power conferred on it by the Convention). According to the Court, Article 46 was of greater importance than Article 41. It also pointed out that the state remained free to grant compensation in addition to awards made at European level. Consequently, the Court decided to defer examination of the case in respect of Article 41 and to take into account any compensation awarded under domestic law before delivering its own judgement[1].

- ECHR, 10 December 2013, Murray v. The Netherlands, appl. N°10511/10

The case concerns the legality and conditions of Murray's imprisonment, which began following his conviction for murder in March 1980. Finding that he had killed a 6 year-old niece of a former girlfriend as revenge for her ending of their relationship, the court of the Netherlands Antilles imposed a life sentence on Murray. He launched an appeal, filed a request for revision, and has submitted repeated requests for pardons; however, all of these have been unsuccessful.

Murray served his sentence in a state prison on Curaçao until around 2000, when he was transferred to the Aruba Correctional Institution. In September 2012 the Aruba courts submitted Murray's sentence to periodic review. Taking into account a number of

[1] ECtHR, Third Section, judgments of 6 July 2006, *Baybasin v. the Netherlands, Salah v. the Netherlands* and *Sylla v. The Netherlands.*

psychological reports, which found that he suffers from mental health problems, the court decided that Mr Murray's imprisonment should continue as it still served a purpose after 33 years.

In its Chamber judgment of 10 December 2013 the Court held, unanimously, that there had been no violation of Article 3 either in respect of the life sentence, as a legal mechanism for reviewing life sentences had been introduced in Curaçao in November 2011, or in respect of Murray's conditions of detention, as he had not developed his complaints in sufficient detail or provided sufficient information to prove that the conditions in which he was held had been inhuman and degrading.

In this last case, the applicant argued that the imposition on him of the life sentence was in violation of article 3, as there was no possibility of a review. Therefore he had no hope of release, either *de facto* or *de jure*. The possibility to have a pardon granted by the Governor was inadequate and ineffective. As the Court has stated, it is not its role to decide what is the appropriate term of detention applicable to a particular offence or to pronounce on the appropriate length of detention or other sentence which should be served by a person after conviction by a competent court.

At the same time, however, the Court has also held that the imposition of an irreducible life sentence on an adult may raise an issue under Article 3. There are two particular but related aspects of this principle that the Court considers necessary to emphasize and to reaffirm.

First, a life sentence does not become irreducible by the mere fact that in practice it may be served in full. No issue arise under Article 3 if a life sentence is *de jure* and *de facto* reducible.

Second, in determining whether a life sentence in a given case can be regarded as irreducible, the Court has sought to ascertain whether a life prisoner can be said to have any prospect of release. Where national law affords the possibility of review of a life sentence with a review to its commutation, remission, termination or the conditional release of the prisoner, this will be sufficient to satisfy Article 3.

But in the light of the foregoing, the applicant's life sentence cannot be said to be in breach of Article 3 of the Convention. Accordingly, the Court finds that there has been no violation of that provision.

Lately, on April 14, 2014, the case has been referred to the Grand Chamber at the applicant's request.

Impact of decisions

Regarding the political impact of those cases, it appears difficult to have detailed information, particularly in regard to in-process adjustments (if any). The statement of the Government about the measures taken in execution of the judgments of the ECHR is however available. The Netherlands had responded jointly to Lorsé & al., Van der Ven, Baybasin, Salah and Sylla. Having recognized the inhuman and degrading regime that have endured these prisoners in

high security prisons (see above), the Netherlands pledged to take individual and general measures to put an end to the violations found, to erase their consequences and to prevent similar violations.

First, the litigants received financial compensation for their moral damage (and, for some, reimbursement of costs and expenses). Furthermore, as individual measures, the Government argued that the applicants "are no longer subject" to the impugned regime (which does not prejudice the maintenance of such regime in Dutch prisons ...). As general measures, after *Van der Ven* and *Lorsé,* the rules were modified and prisoners were no longer routinely strip-searched. On 1 March 2003, the EBI house rules (huisregels) were amended, with the result that the practice of weekly routine strip-searches accompanying the weekly cell inspections was abandoned. Under the amended Article 6(4) of the EBI house rules, strip-searches could be carried out at random during or directly after a weekly cell inspection.

Furthermore, the Dutch authorities have put forward the results of a study about the effects of detention in EBI, study which concludes a mixed effect of this regime on psychological tensions. On this basis, the authorities claim that "contacts between the prison staff and the detainees would be subject of continuing attention and that the living environment of detainees was being modified" (renovation and adaptation of the prison yard). A training program entitled "Safety at the door" was expected to increase the communication between staff and inmates. The CPT also recognizes that activities for prisoners have been diversified.

2. Dutch legal system for prisoner's rights protection

History of the right to complain and to appeal in Dutch prisons

In her book "Prisoners' rights", Susan Easton exposed the evolution of prisoners' rights in the Netherlands throughout History, starting in the nineteenth century. Prisoners in the Netherlands had then no formal rights but lost their civil rights by committing their crimes and were at the mercy of prison governors with few opportunities for complaint although there was some oversight of prison conditions through a prison inspection process. By the early twentieth century there was more interest by politicians in the impact of imprisonment and as the century progressed, international standards for imprisonment gradually developed. During the post-war period there was much more interest in the impact of imprisonment and judges were more aware of this literature and its findings.

The humanity of Dutch prison system has been attributed to a number of factors including the tradition of Dutch tolerance, the experience of internment during the German occupation, and more specifically the influence of the so-called Utrecht School, associated with the Institute of Criminology at Utrecht University and originally founded in 1934 (Easton, 2011; Serrarens, 2007). This school rejected positivistic criminological approaches and favoured rehabilitation

rather than punishment and on developing alternatives to custody and was a major influence on the development of Dutch penal policy in the post-war period.

Since 1851, Dutch law includes rules about the execution of imprisonment. In 1886 the first Prison Act was established. This law charged the Minister of Justice with the supreme management of prisons. The daily management was entrusted to a prison director. The law also provided rules about the classification of detainees in categories (the so-called differentiation). Moreover, the law contained rules on subjects like disciplinary punishment, working hours in prison, visits, correspondence, exercises in the open air, medical care, education and religious service.

Every prison included a Board of Regents, charged with the supervision of the prison. The director of the prison was supervised by this Board of Regents. The boards controlled the staff, order and discipline on the prison and the observance of rules in the prison.

In the first decades of the 20th century the Boards of Regents were still responsible for the supervision of the prisons. Gradually however, the responsibility for the policy of the prisons shifted to the director, being the one in charge of the actual management of the prison.

As an effect of the Second World War, in which a lot of 'good' Dutch have been taken prisoner by the Germans having been active in the resistance movement, the prison system was reformed drastically after the war. In 1953, a new Prison Act and Prison Measure were introduced. This law introduced an advisory board for the Ministry of Justice, which had to give advice to the ministry about the prison system, the care for psychopaths and the probation. This advisory board was called the Council for the Administration of Criminal Justice and Protection of Juveniles (in Dutch abbreviated as: RSJ).

In the prison Act of 1953, a new system of selection and differentiation was laid down as well. Convicted detainees were given the possibility to appeal against decisions by the Ministry of Justice about their selection or transfer for the first time. Their appeal was dealt with by a justice administering section of what is now the RSJ. This section is called the Appeals Board. The director of the prison was officially charged with the supervision of the prison.

In addition, all penitentiary institutions set up a Supervision Board. These boards still function under the present law. They are independent from the penitentiary institutions as well as from the management of the institution. Unlike the former Boards of Regents they can not give orders to the director. Initially the Supervision Boards only had the task to give advice to the director and supervise the daily affairs in prison.

The supervision board is meant to be a reflection of Dutch society. Nevertheless, the members, who are appointed by the Minister of Justice, are mainly members of the judiciary, lawyers, physicians, social workers, university graduates, teachers and representatives of trade and industry. A member of the judiciary preferably functions as chairman of the board.

Because of their advisory and supervising task, the Supervision Boards have free admission to the prison. On account of their function the boards also frequently consult with the director

and other staff of the institution. In turn, the members of the Supervision Board visit the prison as a so-called 'month commissioner' in order to speak with detainees and staff about the customary routine in the institution. There is an advantage in that the Supervision Boards have close relations with the institution; it helps them to be familiar with the specific situation in a certain institution. Sometimes, though, detainees show a certain distrust in the independence of the Supervision Board. They sometimes experience that the board has a stronger affinity with the director than with them, the detainees.

The Prison Act of 1953 further contained various provisions about the detainees' actual legal status. In general it can be stated that the legislator strived to improve this legal status and to thus realize a more humane detention.

Prisoners themselves became more assertive in the 1950s and a book *Prisoners' Opinions* was published in 1959. A prisoner's rights movement emerged in the late 1960s in the Netherlands and was followed by similar developments in France, Belgium and the UK in the 1970s. Prisoners started to form unions in 1960s and 1970s, to publish their views and campaign for improvements, equal treatment and civil rights. Groups of activists outside prison took up the struggle for those inside.

In the 1960s, along with the first version of the European Prison Rules, the then Minister of Justice advocated an improvement of the detainees' formal legal status. Till then this legal status was not satisfactory. Finally, in 1977, the Prison Act was changed to introduce provisions to guarantee the detainee the right to complain about certain decisions by the director. It is true that the detainees could bring complaints under the attention of the Supervision Board before 1977 too, but only informally. A formal-juridical right to complain was absent.

This changed in 1977. The detainee got the right to complain about:

- a disciplinary punishment, imposed by the director;

- a refusal to distribute or send correspondence, addressed to or written by the detainee or the refusal of the visit of certain people;

- any other measure taken by the director that was an infringement of the detainees' rights, as guaranteed by the prison rules.

Complaints had to be lodged with the complaint committee, a judging committee elected out of members of the Supervision Board. The director as well as the detainee could appeal against negative decisions by the complaints committee at the former Central Board for the Administration of Criminal Justice.

In 1977, the grounds to complain were summed up imitatively in the Prison Act. In practice the third ground to complain was interpreted very broadly, so that in fact detainees could complain about every decision by the director that implied an infringement of the rights of the individual detainee.

In 1999, the current law, the Penitentiary Principles Act was passed. With respect to the right to complain and to appeal this law did not change much. During the parliamentary discussion of the new law it became clear that the actual complaints and appeal procedures functioned satisfactory and, therefore, did not have to be reviewed radically. The three grounds for complaint that were formulated in the Prison Act were replaced by one right to complain."[2]

Legal remedies

List of national and international legal groundings available to detainees in The Netherlands :

- international treaties such as the *European Convention on Human Rights and Fundamental Freedoms* (Rome 1950), the *International Covenant on Civil and Political Rights* (United Nations, 1966 - in the Netherlands came into force in 1979), and others;
- the *European Prison Rules*, formerly called the Standard Minimum Rules for the Treatment of Prisoners, established in Geneva in 1955 in the framework of the United Nations.
- the entire Dutch law (Constitution, Criminal Code, Criminal Procedure Code, electoral law social security laws and other scattered laws), where legislation about social security takes a special place for prisoners' rights;
- specific royal decrees;
- Penitentiaire Beginselenwet (PBW) (*Wet van 18 juni 1998 tot vaststelling van een Penitentiaire beginselenwet en daarmee verband houdende intrekking van de Beginselenwet gevangeniswezen met uitzondering van de artikelen 2 tot en met 5 en wijzigingen van het Wetboek van Strafrecht en het Wetboek van Strafvordering alsmede enige andere wetten*;
- Penitentiaire Maatregel (PM); (*Besluit van 23 februari 1998, houdende vaststelling van de Penitentiaire maatregel en daarmee verband houdende wijziging van enige andere regelingen*;
- Ministeriële regelingen en besluiten (internal regulations established following the ministerial standards);
- other specific ministerial regulations and circulars.

National Prevention Mechanism

The Optional Protocol to the UN Convention against Torture Protocol (OPCAT) became effective in the Netherlands in 2010. According to this protocol, each State Party has to designate or establish an independent National Prevention Mechanism (NPM) in order to prevent torture at the domestic level. According to the CPT[3], the Netherlands have provided their prison system with several avenues of complaints and implemented specific inspection and monitoring bodies among their National Preventive Mechanism (NPM). However, since the 2011 CPT report, a new ministerial regulation following the coalition agreement of 2010 has changed how tasks were formerly dispatched. The agreement stipulated that all security-related tasks were to be assigned to the Ministry of Security and Justice.

[2] *For further developments on prisoners' rights evolution, read Susan Easton "Prisoners' rights", 2011.*
[3] See CPT report to the Government of the Netherlands of 2011 published in 2012: CPT/Inf (2012) 21.

Supervisors:

Along with the international level of supervision guaranteed by the CPT, supervision bodies are insured both at the national and the local level.

→ ***National:***

- **The Inspectorate of Security and Justice**[4] (Inspectie Veiligheid en Justitie - IVENJ): The Inspectorate examines on behalf of the Ministry of Security and Justice if organisations in the security and justice domain carry out their work correctly. It makes suggestions for improvement to the Minister and to the public administrations involved, identifies risks and contributes to the learning ability of organisations. The Inspectorate does not evaluate laws or government policy. However, research of the Inspectorate can be used for policy evaluation. In its case, monitoring means collecting information about the quality of organisations with an executive task, analysing this information and formulating a judgement, based on this analysis. The Inspectorate does not have the authority to intervene at organisations. However, it can make recommendations or give advice about policy amendment (rules) to the ministers, or make practice-oriented recommendations to the executive organisations.
  The Inspectorate is the main supervisor in those matters in the Netherlands.

- **The Council for Administration of Criminal Justice and Protection of Juveniles** (Raad voor Strafrechtstoepassing en Jeugdbescherming - RSJ): The Council for the Administration of Criminal Justice and Protection of Juveniles is an independent body established by law. The Council has two tasks: giving advice and administering justice. The Council consists of about 75 members or deputy members, including experts on penitentiary law, juvenile and family law, behavioural scientists, members of the judiciary and the legal profession and medical experts.
  Advice: The Council gives advice, in the form of recommendations, to the Minister and the State Secretary of Security and Justice and the State Secretary for Health, Welfare and Sport. Recommendations concern issues in the areas of the prison system, the forensic care system and youth protection. The Council gives this advice on its own initiative as well as on request.
  Administration of justice: As a Court of Appeal, the Council reviews decisions made regarding persons serving a prison sentence or custodial measure: prisoners, offenders under a hospital order and juveniles in young offenders' institutions and secure youth care centres. The judgments given by the Council are binding: there are no further possibilities of appeal. In addition to decisions made by the Director of a penal institution, the Council may also be asked to give judgment on the medical treatment

[4] The Inspectorate of Security and Justice was established when the (former) Public Order and Safety Inspectorate and the (former) Inspectorate for the implementation of Sanctions were merged in 2012. Furthermore, the tasks of the Commission for Comprehensive Supervision of Repatriation (CITT) have been assigned to the Inspectorate of Security and Justice as well since 1 January 2014. By doing so, the responsibilities of the Inspectorate expanded with monitoring the process of repatriating foreigners.

given by the institution's doctor or on the decisions made by the Selection Officer or the Minister of Security and Justice.
Mission Statement of the Council : The Council for the Administration of Criminal Justice and Protection of Juveniles sees to it that the government enforces sanctions in a legally correct manner and in accordance with principles of proper treatment of individuals.
Along with its supervisory role, the RSJ intervenes directly in the process of complaints (see below).

- **The Health-Care Inspectorate** (Inspectie voor Gezondheidszorg - IGZ) : The Health Care Inspectorate (IGZ) promotes public health through effective enforcement of the quality of health services, prevention measures and medical products in all health-related institution (including prison). It advises the responsible ministers and applies various measures, including advice, encouragement, pressure and coercion, to ensure that health care providers offer only 'responsible' care. The Inspectorate has various measures at its disposal to ensure compliance with legislation, (professional) standards and guidelines. It can offer advice and recommendations to encourage improvement and/or it can impose corrective or coercive measures. In the most serious cases, the Inspectorate can institute disciplinary or criminal proceedings.

- **The National Ombudsman** (Nationale Ombudsman – N.o.): The National Ombudsman deals with citizens' complaints against improper conduct of government and is appointed by cabinet on the advice of the House of Representatives (*Tweede Kamer*). One of its tasks is to make sure that legislation, regulations and administrative procedures are correctly implemented and applied. If a conflict arises between a citizen and the public administration, the citizen has the right to seek help and complaint to the National Ombudsman. He also keeps a critical eye on the government by editing recommendations on several themes in its reports.
  The National ombudsman has a supervisory role as well as a role to play in the remedies available to detainees (see below).

→ Local:

- **The Supervision Boards** (Commissie van Toezicht): each prison benefits from a Supervision Board with its complaint committee. These CvT's are appointed by the Minister of Justice for each correctional institution. They are the first way of lodging a complaint (see below).

  The CvT's - as intended - are compiled as a reflection of society and consist of at least 6 or more persons depending on the number of members determined by the Minister of Justice. Current CvT's are no longer responsible in the management of the institution. Instead, they are independent thereof. In all cases, each CvT includes a member of the judiciary (in its capacity as independent citizen), a doctor, a lawyer and expert in the social work community. Moreover, everyone can not join, especially those whose

independence could be questioned for example by the position they occupy in the justice process (Article 13).

Members monitor the treatment of detainees and may have contact with them to this end, and make suggestions if necessary to the director and possibly give advice to the Minister of Justice. Members have access at all times to all places of the institution and in all places where prisoners are. They regularly stay informed of the lives of inmates, their wishes and feelings (art. 7, paragraph 3 pp). Per month, a member of the CVT is designated "Commissioner of the month", which means that he provides at least once the duty hours at the office, he perceives letters of complaint, and he first tries to solve these complaints more or less in the intermediate area between inmates and officers of the institution and then reports to the plenary CvT, which meets monthly with the director of the institution. In some (large) institutions, it even requires a "Commissioner of the week".

Observers:

Some organizations or partnerships are not designated as NPM, but participate as observers in the consultations of the NPM. Their findings are included in the annual report. These observers are:

- the Advisory boards of the Committees of Surveillance in correctional facilities;
- the Committees of Surveillance on police cells;
- the Committees of Surveillance of detention facilities of Royal Military Police;
- the National Ombudsman.

→ For more information (in Dutch) about the NPM : http://www.rsj.nl/over_de_raad/Nationaal_preventiemechanisme/

Classification of legal remedies

As Constantijn Kelk explained in his book "Nederlands Detentierecht" (2008), legal remedies available to prisoners to defend their position and rights can be classified in different ways. These legal remedies vary according to both the extent to which they are bound by rules of legal procedure and the extent to which they are specifically of a criminal nature or of a more general nature. This variety gives the following summary[5]:

	a. Non-formally-legal
	1. Committee of Surveillance (*Commissie van Toezicht – CvT)* : general surveillance 2. Council for the Administration of Criminal Justice and

[5] Kelk Nederlands detentierecht, p. 65

Specific penitentiary ways	Protection of Juveniles (*Raad voor Strafrechtstoepassing en Jeugdbescherming – RSJ*) : advisory
	b. Formally-legal
	3. Committee of Surveillance (*Commissie van Toezicht – CvT)* : complaints committee 4. RSJ : appeals committee 5. Selection Officer : objection 6. RSJ : appeals committee and transfer of appeals 7. Medical Advisor and RSJ : medical complaints and appeals
Non-specific penitentiary ways	*c. Non-formally-legal*
	8. Parliament : general task of political control 9. National Ombudsman
	d. Formally-legal
	10. Urgent application Court (summary injunction proceedings): emergency 11. ECHR : on basis of European Convention of Human Rights 12. Criminal procedure

First, the prisoner himself can file a – uncensored - complaint with (1)(3) **CvT**. *See the procedure in details below by J. Serrarens (2007)*.

Then the prisoner himself can file a complaint and summon the (2) **Council for the Administration of Criminal Justice and Protection of Juveniles (RSJ)** in The Hague (which may make proposals to the Minister) and (indirectly, not by the specific penitentiary road) the (8) **Parliament** which may ask questions to the minister. All these bodies can be approached in an uncensored way (art. 37 PBW).
Similarly, the (9) **National Ombudsman** (N. o.) for detainees can be contacted in writing in an uncensored way, if the government could be accused of illegal or inappropriate conduct and that there was no administrative provision legal (more) open. Prisoners can also complain about how they are treated by staff in a sensitive situation for them.
In addition, special provisions exist regarding telephone contact between prisoners and the National Ombudsman. Although there are not a lot of requests to the N.o. identified each year, it can often concern very serious complaints (see below). The reports of the N.o. are public and - despite the absence of formal binding – have a lot of authority.
In particular, in the time that the detainee has not yet received any response from any instance of enforceable right, it is not surprising that sometimes one (10) **emergency action against the State** (due to negligence) is filed or a complaint is filed with (11) the **European Court of Human Rights** in Strasbourg, in the case of a violation of the rights contained in the ECHR. Since 1979, a complaint may also be filed with the Commission on Human Rights of the United Nations under the International Covenant on Civil and Political Rights, hereinafter ICCPR. These remedies do not intersect yet. An inmate may also introduce (12) **criminal proceedings** against a prison officer. It is also conceivable that an inmate accused one or more other inmates (for theft or assault) or one or more wardens (for example, for an abuse

in the management of a prisoner who has a dangerous behaviour). In short, more than once were used less specific penitentiary ways for complaints.

The first formal and specific prison legal means, which was created at the same time that the law on prisons (1951-1953), was the right of convicted to prison to appeal to the (6) **RSJ** against the ministerial decision of assignment to / in a specific prison.

Subsequently, another specific remedy to prison is established in May 1977, namely that of the formal complaint to the (4) **Complaints Commission of the CvT** with the right of appeal to the (5) **commission of Appeal of the RSJ**.

Finally, there is a (7) **penitentiary specific formal legal proceeding** brought by the PBW and the PM limited to complaints about the medical practices of the penitentiary doctor. This means that there will be a first attempt at mediation by the medical officer of the Department of Justice between the complainant and the doctor of the institution, after that an appeal is possible from a commission of appeals for medical complaints by RSJ (consisting of two doctors and a lawyer).

In addition to all remedies, there is also the monitoring by the Inspectorate of Health for medical care of prisoners and the possibility that it submits a complaint to one of the regional disciplinary councils for health care and an appeal to the Central Disciplinary Commission for Healthcare. The international is of importance by the control exercised by the CPT during unannounced visits to the States parties to the Convention against torture and inhuman or degrading treatment (CAT). Dutch prison was visited in 1992, 1997, 2002, 2007 and 2011 (see the hyperlink to the last report here). The prisons in the Netherlands Antilles and Aruba were also visited by the CPT.

About the* Penitentiaire Beginselenwet *(PBW)

The PBW includes a fairly clear set of standards, even though other legal and normative sources administer the detainees condition. The general spirit of the PBW is that each detainee is seen as a citizen, and not only and exclusively as a detainee. The idea is to provide a social framework for detainees. The PBW mainly contains a number of general principles for the implementation of custodial sanctions: the principle of rehabilitation, the principle of minimum restrictions and the principle that the deprivation of liberty will take place as soon as possible after the imposition or application of the latter (art. 2 PBW).

The substantive rights provided by the PBW for detainees are sometimes subject to reductions in the interest of good order or security of the facility, prevention or detection of crime and protection of victims. This applies, for example, to the right of freedom of correspondence, the right to receive regular visits and the right to make phone calls. The detainee has the right to have access to health care and spiritual, medical and social assistance, good food, wear their own clothes, have a personal hygiene, get fresh air in an open space daily, have some objects in their cell, participate in sports and recreational activities and - under certain conditions - to education.

The right to complain highlighted the following key elements[6]:

a. *a general basis for complaints is proposed and complaints are limited to decisions;*
b. *the obligation to motivate the complaint and the possibility of mediation are included;*
c. *President of the Appeal Committee has the power to suspend the decision of the director;*
d. *President of the Appeal Committee has the power to suspend the decision of the Complaints Committee;*
e. *the decision on compensation is combined with the decision on the groundings;*
f. *the possibility of a public treatment and statement is provided.*

As explained by S. Easton, prisoners have access to an independent complaints committee from which they can appeal to a central body, and these bodies make decisions which affect not only the complainants individually but affect prisoners more generally in providing a source of standards and recommendations.

Complaints are sent to the Complaints Committee, elected by the Minister of the Supervision Board, and both the Director and the prisoner can appeal against their decision. Complaints should be made within seven days of the incident. So prisoners can complain about being sent to a particular prison or being transferred to a particular institution (Tak, 2008). As well as complaints over disciplinary sanctions, they can complain over refusals relating to prison visits, controls on letters, or any measures which breach the prisoner's statutory rights. Complaints should be made in writing within one week of receiving the decision and the Committee should respond within four weeks. The Complaints Committee meets in private and both parties can give their views to the Committee in person and the prisoner has the right to legal assistance, if required. If the Committee finds in the prisoner's favour it can quash the decision, order the Director to take a new decision, reject a complaint, or award compensation. Appeals against the Committee's decision may be made by either party to the Appeal Committee of the Council for the Administration of Criminal Justice and Youth Protection. There are different Appeal Boards for prisoners, mental health law and medical law in which prisoners can challenge decisions and bring complaints. The Appeal Committee is the final stage of Appeal within domestic law before going to court for a criminal procedure, and while prisoners could go to the European Court of Human Rights, and also to the Ombudsman, they are rarely used.

The complaints submitted cover issues including disciplinary sanctions, denial of leave, or medical issues, so in practice this means that prisoners can complain about every decision which implies an infringement or the absence of a decision, but not about the actual rules themselves (Serrarens, 2007). This would be the main weakness of the rule (see below).

[6] Memorie van Toelichting Penitentiaire Beginselenwet, p. 75., www.rijksoverheid.nl.

Disciplinary measures can be imposed on prisoners by the governor for behaviour which undermines the security, good order or discipline of the prison. The sanctions may range from loss of access to activities for up to two weeks, loss or restrictions on leave, fines which will mean loss of wages, loss of visits if the misbehaviour related to visits and where necessary, segregation (Tak, 2008). The prisoner has the right to be notified of the governor's decisions and reasons for it and the prisoner can if he wishes take the matter to the Complaints Committee.

Practical details

The specific and formal modalities for introducing a complaint to the complaint committee of the Supervision Board (*Commissie van Toezicht*) has been well explained, as well as analysed, in Boone & Moerings' book "Dutch prisons" in 2007. The system described remained the same since then.

> "*3. Current provisions concerning the right to complain*
>
> *3.1. Decision of the director*
>
> As long as he is incarcerated, every detainee has the right to lodge complaints with the Complaint Committee of the Supervision Board connected to the penitentiary institution about decisions of the director regarding himself. The absence of a decision is equivalent to a decision.
> In practice penitentiary institutions have a general director and a certain amount of unit directors. The directors are all hierarchically subordinate to the Minister of Justice. They are tied to the penitentiary law and regulations in force, but have great freedom in the way they apply and execute those rules. Of course the application of the rules entails that regularly individual decisions with respect to detainees have to be taken. Primarily it's the unit directors who take those decisions within their unit.
> By using the term 'decisions', the legislator aimed to exclude complaints against purely factual acts of the staff, as far as they are not based on a decision by the director. Acts (or lack of acts) of staff in the execution of their duty in principle can be seen as acts of the director.
> When staff members, for instance, use violence towards a detainee when they put him in isolation, this behavior will be seen as a decision of the director, as staff members put detainees in isolation on the director's command. Sometimes it is not clear whether certain acts of the staff are based on instructions or consent or the director. In that case the detainee may try to elicit a decision of the director about a staff member's behavior. Such a decision of the director is open to complaint.
>
> The term 'decision' also implies that it is not possible to complain to advice of the director, for instance advice given to the selection officer of the Ministry of Justice, a functionary who decides about the selection and transfer of detainees.
> Finally the application of the criterion 'decision of the director' means that detainees can not complain successfully about general rules like the house rules that are in force in the institution. When, for example, the director has stated in the house rules that it is forbidden to smoke in certain areas of the prison, it is

> impossible to complain about this rule. Of course, things would be different if only one detainee were to be forbidden to smoke on a location whereas all other detainees were allowed to smoke. In that case an exception to a general rule would have been made for one detainee only. Naturally he can complain about that individual decision."

About this 'decision criteria', one could say that detainees thus have not the possibility to complain specifically about their detention conditions. To be able to appeal, it is indeed necessary that it concerns a decision by the prison director. **This is an important restriction**. Still, in practice this can more or less be 'avoided', in the case of a certain treatment by a prison guard, for example, the prisoner can go to the head of the department of the governor to ask his opinion about this matter. This decision then can be appealed to. This is called the 'hink-stap sprong' in Dutch, or 'triple jump'.

> **"Only in specific cases one can complain successfully about general rules**, namely in cases where the general rules are contrary to higher rules, for instance the rules codified in the ECtHR, or in case the general rules has been published too late. In some cases the penitentiary judge has ruled that the detainee who complained about general rules in fact meant to complain about the way general rules had been applied in their particular case. These were mostly cases where the director did not state that the complaint was not admissible.
> When a complaint is declared inadmissible in the penitentiary procedure because it concerns general rules, the supplementary legal protection of the civil judge can be invoked.
> (…)
>
> *3.2. Lodging complaints*
>
> Each complaint procedure starts with the **lodging of a complaint**. Therefore standard complaint form must be available in all penitentiary institutions. Incidentally, it is not obligatory to use this form. The complaint only has to be put in **writing**.
> It is essential that the complaint is verbalized and motivated as well as possible or it could be declared inadmissible. The complaint must specify **what decision** of the director the detainee complains and the reasons of the complaint. (…)
> A complaint **does not by all means have to be written in Dutch.**
> (…) complaints have to be lodged **within seven days** after the detainee has taken note of the decision of the director that he wants to challenge. When this term is exceeded the complaint will normally be declared inadmissible.
> (…)
> The complaint must be **addressed to the secretary of the complaint committee** of the institution.
>
> 3.3. Receipt of the complaint
>
> The law does not prescribe that the receipt of a complaint has to be confirmed to the plaintiff. Some complaint committees do send a confirmation, others don't. It goes without saying that it is pleasant for the detainee to learn that his complaint has reached the committee in good order.

The secretary of the complaint committee sends a copy of the complaint to the director. The director is given the opportunity to react to the complaint by means of a written defence.
(…)

3.4. Mediation

The secretary of the complaint committee may also use the possibility to hand over the complaint to a member of the Supervision Board, the so-called month commissioner[7], with the request to try to reach a friendly settlement between the detainee and the director.
(…)
In practice the possibility of mediation is not used frequently by all complaint committees.

3.5. The treatment of complaints by the complaint committee

Complaints of a simple nature can be dealt with by the chairman of the complaint committee or a member of the committee appointed by the chairman. This can happen even without hearing the detainee. In that case the complaint will be declared manifestly well-founded, manifestly inadmissible or manifestly ill-founded. If the chairman finally judges the complaint to be more complicated than he initially thought, he can still refer the complaint to the entire committee.
For organizational reasons (mostly because of a lack of manpower) sometimes not only simple complaints but also complex complaints are treated by one judge. This is undesirable.
The complete committee consists in three members and a secretary. (…)
Detainees occasionally raise the complaint that they experience an attitude of prejudice in their contacts with the complaint committee. Complaint committees indeed seem to be taking the director's side sometimes. The Penitentiary Principles Act nevertheless does not offer possibilities to penalize any possible prejudice of the complaint committee. Therefore, if the detainee is not satisfied about the attitude of the complaint committee the only solution is to lodge appeal.

3.6. Hearings

The committee always holds its sessions within the penitentiary institution. In principle the hearings are not in public, but the chairman can decide that the hearing has to take place in public, for instance because of article 6 of the European Convention for the Human Rights requires a hearing in public.
At the hearing are, apart from the members of the complaint committee, the following present: an official secretary of the committee, a staff member (the unit director or assistant director), the plaintiff and, possibly, in his wake a lawyer or other trusted representative. Sometimes guards are present. The detainee and director are not obliged to be present at the hearing.
(…)

[7] The possibility of mediation by the month commissioner is explicitly laid down in the Penitentiary Principles Act. The underlying thought of this option of mediation is that it is preferable that the director and detainees find a solution for their disputes amongst themselves instead of letting the complaints committee settle their dispute.

According to the law the plaintiff and the director can make oral remarks about the complaint during the hearing. Moreover, they have the opportunity to provide the questions they want to pose each other via the chairman. Often the committee also leaves room for any other business.
(…)
For detainees the law lacks a possibility to summon witnesses and hear then under oath. After all the burden of proof, in view of their powerless position in the prison, is very problematic. This difficult position could be compensated a little bit if detainees could summon and hear witnesses.
In this respect the criminal procedure, according to Dutch law, offers much more guarantees than the penitentiary procedure. (…)
At the hearing the detainee can be assisted by a legal advisor or another trusted representative who has got the complaint committee's permission to assist.
(…)

3.7. Judgment of the complaint committee

According to the law the complaint committee has to decide on a complaint as soon as possible, but in any event within **four weeks** after the receipt of the complaint. That term can be prolonged with another four weeks. In practice the term to finish the procedure is often exceeded. (…)
The complaint committee first has to determine whether the complaint is admissible. Complaints that have been lodged too late or do not concern the director's decisions are declared inadmissible. If the complaint is declared admissible the complaint committee decides whether the decision of the director concerned is:
a. contrary to a regulation that is in force in the prison or a provision in a treaty that is in force in the Netherlands or
b. unreasonable or unjust, if all interests in the case are balanced.
The test as meant under a is a test of the decision on lawfulness, the test under b is a test on reasonableness. If a decision is judged unlawful or unreasonable, the complaint will be declared well founded. The committee can then destroy the decision concerned, but can also take a decision themselves which then replaces the director's decision. The director can also be demanded to take a new decision, taking the decision of the committee into consideration. If the director's decision has been judged lawful and reasonable, the complaint will be declared ill-founded.

3.8. Compensation

If a complaint is judged wholly or partly well-founded the director has to undo his decision. If that is not possible any more, the chairman of the committee can award compensation to the plaintiff.
The compensation can be given in kind, for instance as an extra visit or extra telephone call, but the compensation can be financial too. The compensation does not have the character of a real or full compensation but rather has a symbolic character. For complete compensation the civil judge can be approached.

3.9. Immediate execution of the decision of the complaint committee

If the complaint committee has decided in favour of the detainee and the decision of the director is overruled wholly or partly, the director has to execute this decision of the committee immediately. Even when he appeals against the decision of the committee he has to do so, for lodging appeal does not suspend the complaint committee's decision. Only a given compensation does not have to be paid pending the appeal. (…)

4. Appeal against the complaint committee's decision

4.1. Lodging appeal

The detainee and director can appeal to the RSJ appeals board at the latest on the 7th day after receipt of the oral or written decision on the complaint. When this term is exceeded the appeal will be deemed inadmissible.
(…)
One can only lodge appeal against (a part of) a decision in which a complaint has been declared ill-founded or inadmissible. The appeal must be lodged in writing. On penalty of inadmissibility the appeal writing has to motivate on what grounds the decision of the complaint committee is considered to be incorrect.
The appeal writing can be sent via the prison, like the complaint.
(…)

4.2. The RSJ appeals board

This board is made up by three RSJ members (about the RSJ, see above). Apart from the board that treats 'normal' complaints (complaints concerning director's decisions) there is a board that deals with complaints about medical treatment, a board that judges decisions on selection and leave, a board that deals with complaints of people with a TBS measure (penal detention measure for the detention of the mentally disturbed) and a board that deals with complaints by juveniles detainees.
Contrary to the complaint committee the appeals board is not connected with one particular penitentiary institution. The RSJ resides in The Hague. The appeals boards deal with appeals concerning all Dutch penitentiary institutions, juvenile institutions and institutions for people with a TBS measure. (…)

4.3. The treatment of the appeal

Generally the appeal is dealt with the same way as the complaints are by the complaint committee. Nevertheless there are some important differences. In appeal, for instance, mediation no longer takes place. Moreover, the appeal writing is always dealt with by a board of three members and never by one single judge.
(…)
Hearings in appeal are held in the same way as the complaint procedure. However, in appeal the hearing does not always take place in the institution where the detainee is staying. Usually the appeals board collects a certain amount of appeals, concerning several institutions in a specific region of the country. Those appeals are then dealt with at one hearing in a particular institution, situated in that region.
(…)

4.4. Judgement of the appeals board

Unlike the complaint committee, the appeals board always passes judgement in writing. The Penitentiary Principles Act stipulates no term within which the board has to decide on the appeal. The decision has to be taken 'as soon as possible'. In practice the treatment of the appeal takes a period of two to four months. If a hearing takes place, the decision usually follows within six weeks after the hearing.
The decision has to be motivated and can contain three kinds of decisions. In the first place the appeal can be declared **inadmissible**, for example because the appeal has been lodged too late or without motivation. In the second place the appeal can be declared **ill-founded**. In that case the complaint committee's decision is confirmed, if necessary with improvement of the grounds of the decision. In the third place the appeal can be declared **well-founded**, which means that the decision of the complaint committee is reversed. If it comes to the latter the appeals board provides a new decision to replace the complaint committee's decision.
According to Dutch law no legal remedies can be applied against decisions of the RSJ appeals board. However, occasionally it is possible to bring complaints before international courts like the European Court of Human Rights in Strasbourg or the Human Rights Committee in Geneva. A necessary prerequisite for the admissibility is that **all domestic remedies have been exhausted**.

5. Temporary provisions

5.1. In general

As described above, the settlement of a complaint or appeal takes a lot of time. In the complaint procedure the time limit to decide on complaints is almost always exceeded. Because decisions on complaints as well as appeals use to be taken after a rather long time, it is - from a point of view of legal protection - very important that temporary provisions can be asked and taken. The penitentiary Principles Act provides for a procedure for temporary provisions.

5.2. Suspension of the execution of a director's decision

First, it is possible for the detainee to ask the chairman of the appeals board to suspend the execution of the decision of the director totally or partly pending a complaint procedure. At the risk of being deemed inadmissible the suspension can only be requested after a complaint has been lodged or is lodged simultaneously with the submission.
(…)

5.3. Suspension of the execution of a decision of the complaint committee

The lodging of an appeal writing does not suspend the execution of the decision of the complaint committee, except from the part of the decision that concerns compensation. However, the person who has lodged appeal against a decision of the complaint committee can ask the chairman of the appeals board (the suspension chairman) to suspend a decision of the complaint committee entirely or partly

pending the appeal procedure. In the decision of the complaint committee this possibility should be pointed out.
(…)

Map of complaints covered by national legal remedies

Rights protected by legal remedies:

According to the *Penitentiaire Beginselenwet*, detainees have the right to present a reasoned objection to the decision of placement transfer. They can also contest the end of their participation in a penitentiary program (art. 17). The request of a placement in special locations or the participation in a program is also possible (art 18).

The body searches (art. 27 & ss), the use of CCTV's (art 34) and of disciplinary sentences (Ch IX) are subject to strict regulations.

The penitentiary law also provides different rules concerning:
- Contacts with the outside (Ch VII);
- Care, work and other activities (Ch VIII)
- Information to the detainees (Ch X)
- The right of complaint (Ch XI).

The *Penitentiaire Maatregel* (PM) of 2014 rules the following areas: the regimes and the penitentiary program, the medical treatments, the monitoring of telephone calls, the spiritual and religious care, the personal data collection limits.
Concerning the Surveillance committees (Lünnemann & Raijer, 2004), they are authorized to handle appeals against the decisions of wardens in particular about:
- imposition of a disciplinary sanction
- restricting movement inside the prison
- restriction of the contact with the outside world
- the entry of a child in the prison
- withdrawal of (trial) prison leave or any decisions involving a curtailment of any right conferred by law or any official rule

Inmates can also contest decisions of "placement-officers" concerning:
- the extension of the placement term
- their placement or transfer
- the participation in education and training programs
- the use of force/violence or use of restraints resources

As surveillance committees have a doctor in their teams, she/he treats all health care related queries. For more information about the surveillance comitees, see [De RSJ en zijn taken: rechtspraak, advies en toezicht – Verwey-Jonker Instituut]

Areas of problems and of prison litigation in practice

First of all and regardless of the information given by legal remedies, we can notice that *De Ministerie van Veiligheid en Justicie* published in 2012 the results of a survey of the entire prison population (Henneken-Hordijk & van Gemmert, 2012). This survey presents (among

others) the contrasting results of a satisfaction survey of inmates (including institutions by institutions) about issues such as security; compliance with the rules; follow up complaints; rehabilitation work; contacts with the outside; the relationship with the children etc.
See : Rapport Gedetineerd in Nederland 2011 – Dienst Justitiele Inrichtingen
http://www.dji.nl/Perskamer/publicaties/#paragraph3

The problems that arise today in custody in the Netherlands have evolved since the late 1980. As highlighted by Kruttschnitt & Dirkzwager (2011: 288), the Dutch are today more influenced by the English than before. They "became increasingly supportive and have more repressive attitudes towards offenders. (…) [They] call for punishment in lieu of treatment" (288).

In another field of intervention, we noticed that during the last visit by the CPT to the Netherlands prison of Tilburg, institution which hosts Belgian detainees on the basis of an interstate agreement, some problems were pointed (see below). CPT pointed a set of issues including : the large number of beds in the dormitories (which promotes inter-prisoner violence); the presence of bunk beds in solo-cells; the bad food quality; the reduced supply of activities in the education, professional, training and cultural fields; medical and nursing staff shortages; distribution of drugs by non-medical staff; non-respect of medical confidentiality; slow night interventions in the dormitories; bad access to the file in case of disciplinary proceedings; lack of multilingual information ...
See: http://www.cpt.coe.int/documents/nld/2012-21-inf-eng.pdf

Finally, we note that according to article 69 of the Dutch Prisons Law (PBW), prisoners may appeal against the decisions of the complaints committee established by the law. The motivated appeal must be introduced no later than the seventh day after the receipt of the copy of the judgment or after the verbal notification. The appeal is then managed by a committee of professionals. A quantitative and qualitative recent study (undated) conducted by the Erasmus School of Law (Bleichrodt & van Leeuwen) reported on the possibility of appeal. It contains various datas about the matters concerned by these complaints. It includes no less than 47 units (see p. 31) from medical and disciplinary problems to the contestation of isolation measures or urine tests, through light problems, mail or contacts with journalists.
See Rapport toenemend appel – RSJ

3. Non-jurisdictional structure and authorities

The National Ombudsman (N.o.)

The Netherlands have a National Ombudsman (N.o.) since 1982[8]. The N.o. is independent and impartial. He helps citizens if they encounter a problem with the public administration and authorities in general. The National Ombudsman can only deal with complaints about

[8] For other information (in Dutch), see the Official website of the National Ombudsman of the Netherlands.

government. People with questions or complaints[9] about other matters are helped to find their way to the right body for them.
The National Ombudsman investigates in response to complaints from citizens, but he can also initiate an investigation on its own initiative. This can he do if he gets a lot of complaints about a particular topic. Signals from the media or civil society may also be a reason for starting an investigation.All stakeholders are required to cooperate in the investigations. He does his job along with about 170 employees, two substitute - ombudsmen.

The National Ombudsman has almost all government as work area: the ministries and judicial institutions, as well as other administrative bodies (such as the Social Insurance and the Office of Education, police, water boards, provinces and municipalities). The National Ombudsman deals with complaints only when it comes to behaviors of governing bodies: how authorities carry out their public tasks.
The opinion of the Ombudsman is not binding, but in practice, many authorities there responded to it.

The National Ombudsman helps only if:

- the complaint is about the government;
- there has already been a complain to the public authority itself;
- the complaint was treated less than a year ago;
- the complainant hasn't been able to make an objection or appeal;
- the complaint is not about the content of a law or rule;
- the complaint is not about a ruling by a judge.

→ Key statistics for 2013[10]:

- 38,033 complaints: 25,574 oral and 12,459 written
- Most complaints about the Tax Department
- 76% of complaints accepted for investigation resolved via intervention
- 79% of complainants found to be at least partly in the right
- Most decisions concerned lack of government fairness and trustworthiness
- 227 reports, 75 reports contained recommendations

The main issues treated by the N.o. in 2013 concerned:

- Digital government
- Recommendations on Government Information
- (Public Access) Act
- Debts to government
- Medical care for foreigners
- Acceptable use of force by police officers
- Violations of protected earnings levels by sheriff's officers

[9] A Complaint form can be found on the N.o. website.
[10] For more statistics, see the Annual report on the N.o. official website.

Complaints from detainees

The National Ombudsman can also play an important role for detainees. This is the case if they have a complaint, but they do not (anymore) can contact the complaints committee or appeals committee. Important is the fact that the Ombudsman can only be activated if the regular complaints procedure with the authorities is not satisfactory. This means that a prisoner first have to submit a complaint with the Supervision Board of the establishment concerned (see above). There is no appeal from the decision of the complaints committee, the detainee may appeal to the Ombudsman provided it has an acceptable reason for not appealing. Here you will look at the reasonableness and fairness of the reasons. If the detainee has made no complaint, he can go to the ombudsman. However, the National Ombudsman is not required to conduct an investigation. The detainee will have to explain why he or she did not submit a complaint. If it turns out that it is still open to appeal or complaint, the Ombudsman will forward the request to the competent authority.

In short, the Ombudsman is there for detainees for those issues which the complaint and appeals committee do not have any (more) opinion to give. This is for example the case when there is no determination of a decision by or on behalf of the Director or when someone other than the inmate wants to complain. The National Ombudsman can play a role when it comes to things that are not worthy of his complaint under Article 60 of the Prisons Act. It is also important to mention that the National Ombudsman considers itself not competent to give an opinion on the medical treatment of medical device. However, he can assess the way the director organizes medical care in the facility.

Until a year after the alleged behaviour, there may be a request to be submitted to examination. When the application is admissible and the Ombudsman decided to open an investigation, the penitentiary will have the opportunity to respond. The detainee also get the opportunity to present his application. If the Ombudsman considers that it has sufficient information, he sums it up in his 'findings'. Then, the parties may respond again. Eventually, the Ombudsman provides an opinion and he can possibly make recommendations to the penitentiary. These recommendations are not binding, but generally the establishments commit to the conclusions.

4. Other sources

Reports on the dutch systems concerning prisoners' conditions of detention

Let's have first a look at the general prison statistics in the Netherlands. The Council of Europe Annual Penal Statistics (Aebi & Delgrande, 2014) gives us some indicators:

- The capacity of penal institution for adults (on 1st September 2013) is 12.441 (Total)
- The total number of adults inmates (including pre-trial detainees) is 10.547 (20% are foreigners)
- The prison adult population rate per 100.000 inhabitants is 62,9%
- The average age of the prison population is 35
- The % of adult females in the total number of inmates is 5,4 % (24,8% are foreigners)

See in http://wp.unil.ch/space/space-i/annual-reports/ a large numbers of others indicators.
See also Dutch statistics: Centraal Bureau voor de Statistiek

CPT reports – The Netherlands

In its 2002 Report, the CPT found no evidence of torture or inhuman or degrading treatment in the prisons it visited, but did recommend offering more work and education activities in high security prisons (Council of Europe, 2002). It also wanted clearer criteria for allocation to high-security prisons. It has subsequently expressed concern at increased pressure on staff with the number of prisoners although the government responded with a commitment to increase staff recruitment and training, but as the emphasis now is on electronic monitoring and surveillance there may be less contact between staff and prisoners. If a prisoner is disruptive he can be held in isolation for two weeks during which time he cannot work or take part in recreational activities, but must still have access to fresh air for one hour a day, be allowed to attend religious services and have access to visits unless the disruptive behaviour is related to visits.

In its 2007 report, the CPT expressed some concern about the use of double cells and recording of disciplinary sanctions in prison, the lack of provision for recreation and other facilities fort short-term prisoners and the problems with the growns provided for prisoners who were in isolation (Council of Europe 2008). It also criticized, among other things, the physical conditions, the lack of activities and overcrowding in prisons in Aruba and ill-treatment and medical care in the prisons of the Netherlands Antilles. The Government provided information about those issues in its response to the CPT.

The Court relied on the 2007 report to substantiate its judgments. For example, in the cases of *Van der Ven*, *Lorsé and Others*, *Mathew* and *Murray v. the Netherlands*, the CPT reports were explicitly supported by the Court. Especially on facilities situated in the Netherlands overseas territories such as Aruba, it provides a description of conditions of detention in those facilities :

> "(…)
> 43. The following extracts are taken from the Report to the authorities of the Kingdom of the Netherlands on the visits carried out to the Kingdom in Europe, Aruba, and the Netherlands Antilles by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment ("CPT") (CPT/Inf (2008) 2). These visits were carried out on Aruba from 4 to 7 June 2007 and on the Netherlands Antilles from 7 to 13 June 2007.
> "PART II: VISIT TO ARUBA
> (…)
> 3. Conditions of detention
> a. material conditions
> 64. ... Each cell measured less than $9m^2$ - not counting the partly partitioned sanitary annexe consisting of a shower, toilet and washbasin - and was occupied by up to three persons. As in the rest of the prison, each cell was closed off (on the doorway side) by floor-to-ceiling bars, offering virtually no privacy. The cells were furnished with triple bunk beds and good-quality bedding and in-cell artificial lighting was good. The openings in the concrete structure provided sufficient natural light to the section, but insufficient ventilation (and no possibility to see outside the building).
> b. regime

69. Two prisoners were serving life sentences at the time of the visit, and 26 inmates were serving long sentences of 10 to 22 years duration. Yet such prisoners, who formed over 12% of the sentenced prisoners, did not appear to benefit from a richer regime than the rather meagre one on offer to all prisoners; nor did they benefit from adequate psychological support.
...The CPT recommends that the Aruban authorities develop a policy vis-à-vis life-sentenced and other long-term prisoners.
f. psychiatric and psychological care
79. In principle, a psychiatrist attended KIA once a month; however, the delegation noted that he had not visited for several months. The lack of provision of psychiatric care was essentially a budgetary issue.
... A psychiatric and forensic observation and assistance centre (FOBA) within the prison, with a capacity to hold 10 prisoners, had recently been established. However, due to a shortage of staff, both medical and custodial, the FOBA had not been brought into service. In theory, prisoners could receive acute psychiatric treatment at the PAAZ Unit at Oduber Hospital, but resort to hospitalisation was very infrequent.
...
PART 3 VISIT TO THE NETHERLANDS ANTILLES
...
3. Material conditions
45. Moreover, the phenomenon of inter-prisoner violence had increased. The number of lesions recorded annually during detention (i.e. not on admission) appeared to have doubled since 2002. Further, the delegation received allegations of inter-prisoner sexual violence, most incidents of which were not reported. ...
46. The CPT has grave concerns about the levels of violence at Bon Futuro Prison, an establishment which was clearly dangerous and unsafe for both prisoners and staff.
(…)."

In the *Van der* Ven and *Lorsé and* Others cases, the CPT report of 1998 provided a good insight of the conditions of detention as well as the regime in the (T)EBI facilities (high security prison) in the Netherlands.

"(…)
32. The CPT visited the Netherlands from 17 to 27 November 1997. Its findings with regard to the (T)EBI (Tijdelijke Extra Beveiligde Inrichting – "temporary maximum-security institution") and the EBI were the following (Report to the Netherlands Government on the visit to the Netherlands carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 17 to 27 November 1997, CPT/Inf (98) 15, excerpt):
"(…)
b. material conditions
59. The cells seen by the CPT's delegation in both the (T)EBI and EBI buildings were of a reasonable size for single occupancy (some 9 m^2), appropriately furnished (bed, chair, storage cupboard and table) and equipped with a lavatory and wash basin.
In-cell artificial lighting was of a good standard in both buildings; however, access to natural light was noticeably poorer in the (T)EBI (where the cell windows are partially obscured by frosted glass panels) than in the EBI. The ventilation in the (T)EBI cells also left something to be desired. A number of the (T)EBI prisoners interviewed by the delegation complained about these shortcomings.
The CPT recommends that steps be taken to improve access to natural light in cells in the (T)EBI. The visiting delegation was informed that work to improve the ventilation system in the (T)EBI was due to begin in January 1998; the Committee would like to receive confirmation that this work has now been completed, together with details of the improvements involved.

60. More generally, while the EBI was located in bright and reasonably spacious premises, the (T)EBI (which is also known as the 'oud bouw' or 'old building') was a markedly more cramped facility. The CPT would like to be informed of whether the Dutch authorities plan to close the 'temporary' extra security institution in the foreseeable future.

c. regime

(…)

63. The delegation found that, in practice, out-of-cell time in the (T)EBI and EBI on a given day varied from a minimum of one hour (of outdoor exercise) to a maximum of some four and a half hours (of outdoor exercise/recreation and/or sport). Depending upon the regime in which an inmate had been placed (A/B) and the group to which they had been allocated, these activities would take place with between one and three other inmates.

The outdoor exercise yards in the EBI were of a reasonable size and a 'running strip' was available for inmates who wished to engage in more strenuous physical activities. The exercise yards in the (T)EBI were also large enough to enable prisoners to exert themselves physically; however, their cage-like design rendered them rather oppressive facilities.

During recreation periods (of one to two hours), inmates were allowed access to communal areas where they could associate with each other, cook and eat their own food, use a computer and/or play games including table tennis.

As regards facilities for sport, each of the four units in the EBI was equipped with an impressive array of exercise equipment, located in a lofty glass atrium. However, inmates only had access to this equipment for one or two 45 minute sessions per week. Again, the equivalent facilities in the (T)EBI were of a lower standard. The EBI also had a large and well-equipped gymnasium but, at the time of the visit, it appeared that comparatively little use was being made of this facility.

There were no organised education activities. There was also no out-of-cell work; some in-cell work was offered to inmates, but it was of a very unchallenging nature (e.g. stringing plastic curtain hooks onto short rods).

64. All inmate activities within the (T)EBI and EBI were subject to a high level of staff surveillance (which is perfectly understandable in a unit of this type); however, direct contacts between staff and inmates were very limited (staff and inmate usually being separated by armoured glass panels). This is not conducive to building positive relations between staff and prisoners. Contact with non-custodial staff – including medical staff – was also subject to a number of very significant restrictions ...

65. It should also be noted that prisoners were regularly strip-searched (a practice euphemistically referred to as 'visitatie'). Such searches – which included anal inspections – were carried out at least once a week on all prisoners, regardless of whether the persons concerned had had any contact with the outside world.

66. Concerning contact with the outside world, it should be noted that the house rules for the (T)EBI and EBI units provide that prisoners have the right to receive one visit of one hour per week from family members and other persons approved in advance by prison management. In principle, visits took place under 'closed' conditions (i.e. through an armoured glass panel in a visiting booth). Prisoners also had the right to request one 'open' visit per month from family members; however, physical contact during such visits was limited to a handshake on arrival and leaving. Prisoners and their families remained separated by a table equipped with a chest-high barrier and prison staff stood directly behind the prisoner throughout the visit. A number of inmates interviewed by the delegation indicated that, given the upsetting effects which these restrictions had had upon their families, they no longer requested 'open' visits.

67. To sum up, prisoners held in the (T)EBI and EBI units were subject to a very impoverished regime. They spent too little time out of their cells; when out of their cells they associated with only a small number of fellow inmates and their relations with staff and visitors were very limited; consequently, they did not have adequate human contact. Further, the programme of activities was underdeveloped. This was particularly the case as regards education and work. However, even as regards sport, inmates had insufficient access to the very good facilities available. Moreover, certain aspects of the regime (in

particular, systematic strip-searching) did not appear to respond to legitimate security needs, and are humiliating for prisoners.
(…)
69. In the light of all of the information at its disposal, the CPT has been led to conclude that the regime currently being applied in the (T)EBI and EBI **could be considered to amount to inhuman treatment**. To subject prisoners classified as dangerous to such a regime could well render them more dangerous still.
70. The facilities in the extra security institution are of a high standard. They are quite capable of offering a regime meeting the criteria set out in paragraph 61 without jeopardising legitimate security concerns.
The CPT recommends that the regime currently applied in the extra security institution be revised in the light of the remarks set out in paragraphs 61 to 67. In particular, the existing group system, if not discarded, should at least be relaxed and inmates should be allowed more out-of-cell time and a broader range of activities. Further, the current searching policies should be reviewed in order to ensure that they are strictly necessary from a security standpoint. Similarly, current visiting arrangements should be reviewed; the objective should be to have visits taking place under more open conditions."

In its last report of 2011, the CPT made specific comments and recommendations toward prison establishments.
As comments

- lifers and other long-term prisoners should not be systematically segregated from other prisoners.

Although measures has been taken after ECHR cases regarding strip searches (see above), the 2011 report shows again that complaints about the frequency of strip searches were found :

"32. Numerous complaints were received throughout the visit, from various sources, concerning the frequency of strip searches carried out in prison establishments in the Netherlands and the manner in which they were performed. A strip search is a very invasive - and potentially degrading - measure. Therefore, resort to strip searches should be based on an individual risk assessment and subject to rigorous criteria and supervision. Every reasonable effort should be made to minimise embarrassment; detained persons who are searched should not normally be required to remove all their clothes at the same time, e.g. a person should be allowed to remove clothing above the waist and to get dressed before removing further clothing. In addition, more than one officer should, as a rule, be present during any strip search as a protection to detained persons and staff alike. Further, inmates should not be required to undress in the presence of custodial staff of the opposite sex. **The CPT recommends that steps be taken to ensure that the above-mentioned principles are applied throughout the prison system in the Netherlands**."

NGO's for Human Rights

There is a wide variety of organizations involved in the protection of human rights in prison. Human rights are supposed to play an important role in the protection of prisoners, so they must be taken into account by the official supervisory mechanisms. Besides, there are many organizations that are not government-bound in the protection of human rights of prisoners.

Some of them also have also 'official' tasks, for example when prisoners lodge complaints about the way they have been treated in prison, such as the National ombudsman.

Non exhaustive list :

- **http://fr.justitiaetpax.nl/**
- **https://www.johannes-wier.nl/**
- **http://www.mensenrechten.nl/**
- **http://www.ligarechtenvandemens.nl/**
- **http://www.prisonlaw.nl/**
- **http://bondvanwetsovertreders.nl**
- **http://www.bonjo.nl/**
- **http://www.stichtingdoor.nl/**
- **http://www.gedeco.nl/**
- **http://www.humanistischverbond.nl/mensenrechten**
- **http://www.njcm.nl/**
- **http://www.surant.org/**

NGO's reports

As underlined in the annual report of the Netherlands Institute for Human Rights[11], suspects and convicted persons can be restricted in their freedom, but do not lose all claims to the protection of their human rights. When it concerns detention conditions, medical and other facilities for detainees and the application of interrogation methods, the requirements that have been developed in the case law regarding article 3 of the ECHR play an important role. The treatment of and care for detainees has been investigated by various supervisory bodies. Their reports show that the Netherlands does not come off badly with regard to the conditions in detention, but that there is still room for improvement. Despite the fact that things are relatively well in the Netherlands, there are certainly still some points that require improvement, in particular regarding the detention of aliens.

Persons with a prison sentence or who are treated in a forensic hospital come under the responsibility of the state and entirely depend on the state during their deprivation of liberty, which means that they are potentially in a vulnerable position. In order to see to it that this does not lead to a situation in which inhuman or degrading treatment takes place (which is

[11] Annual Status Report Human Rights in the Netherlands 2012, Netherlands Institute for Human Rights, http://www.mensenrechten.nl/

forbidden by article 3 of the ECHR, amongst others), there is national and international supervision of detention conditions.

Layout requirements cells

In the Netherlands six cubicles were discovered in the police station Sprang-Capelle by the CPT of the Council of Europe, which had a surface area of two square metres, which did not have any windows and only had a concrete block to sit on. These rooms may only be used for a very short detention on the basis of European standards: for not more than six hours in total. Two minor children were detained in these rooms for more than ten hours, with brief interruptions, between twenty to thirty minutes. This is possible because the night hours are not counted when persons are detained in these cells, according to Dutch police guidelines.

In view of the limited facilities in these cells, this is a curious principle that should be changed at once. The CPT also found that there hardly was any daylight in a new cell complex in Apeldoorn. In the Penal Institution of Arnhem-Zuid there was only a mattress on the floor in an isolation cell. There was no bed, no table or chair, while the CPT thinks that they should be present, also in isolation cells. Moreover, the exercise area consisted of a covered area of about fourteen square metres, with a large window on one side and an opening that was blocked with bars on the other side. The CPT thought that it did not suffice to refer to it as an exercise area that 'offered room for exercise in the outside air'.

Strip searches

The CPT also criticised the frequency with which and the way in which strip searches are carried out in prisons. In order to maintain human dignity, the CPT stresses that such actions always have to comply with certain rules, such as not having to remove all clothes at the same time and undress in the presence of a person of the other sex.

Positive

In its report of August 2012 the CPT is in general positive about the detention conditions in the Netherlands. According to the CPT, the relationship between the population and staff seems to be very good in general. However, the above-mentioned bottlenecks should be solved.

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