

Unofficial translation

**MINISTRY OF FOREIGN AFFAIRS
OF THE RUSSIAN FEDERATION**

**REPORT
ON THE HUMAN RIGHTS SITUATION
IN THE EUROPEAN UNION**

Moscow, 2013

Netherlands

Among the areas of concern in terms of respect for human rights in the Kingdom of the Netherlands attention is still drawn to the situation with illegal immigrants and asylum seekers, persistent discrimination against legal immigrants from developing countries as well as ensuring security of citizens' personal data (first of all, electronic data) when used by public authorities. In the Caribbean part of the Kingdom (the islands of Aruba, Curaçao, Sint Maarten, Bonaire, Saba and Sint Eustatius), trafficking in persons and prison conditions continue to cause concern.

These problematic aspects of the human rights situation in the country were noted, in particular, in the proceedings of the second cycle of the Universal Periodic Review of the Human Rights Council (2012), the report of the Institute for Human Rights for 2012¹, reports of the media and reputable international human rights NGOs, among others.

The situation with safeguarding the rights of foreigners held in detention remains in the focus of attention of human rights defenders. According to statistics from the Ministry of Security and Justice of the Netherlands, the authorities detain about 8-10 thousand foreigners each year, with many of them being detained on repeated occasions and for prolonged periods of time. In its reports, Amnesty International has been pointing to the fact that detention in the Netherlands has in effect turned into a "tool of intimidation and punishment" and is used by the authorities too frequently, including against vulnerable groups, such as victims of torture and trafficking in persons, pregnant women, etc. The report of the Amnesty International on the situation with human rights in the world in 2012 once again states that this coercive measure is used too frequently in the Netherlands, with conditions of detention of illegal migrants in special centers remaining worse in some respects than in the prisons of the

¹ The full text of the report (hereinafter the "report of the Institute for 2012") is available on the website: <http://www.mensenrechten.nl/publicaties/detail/18415>

Netherlands.

The National Ombudsman of the Netherlands specifically emphasized in a report on violation of the rights of foreigners illegally residing in the Netherlands and held in detention (August 2012) and in his statements in early 2013 that detention shall be applied to foreigners only as an extreme coercive measure and criticized the authorities for insufficient attention to developing alternative ways of ensuring deportation.

In August 2012, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) published a report based on the results of the visits to Dutch confinement facilities, in which it was indicated to the authorities of the Netherlands that families subject to deportation that had minor children were held in detention for excessively long periods of time and that handcuffs were used frequently and unreasonably with regard to detainees when they were being moved beyond special centers (to a court, hospital, etc.).

In June 2013, in its concluding observations regarding the fifth and sixth periodic reports of the Netherlands, the Committee against Torture pointed to such problematic aspects of treatment of illegal migrants and asylum seekers as careless and hasty consideration of asylum claims, insufficient attention to specific medical needs of applicants, prolonged detention in special centers and harsh conditions in them, which periodically provokes hunger strikes and suicides, and others.

In 2011, 40 people died in confinement facilities, including in detention centers for immigrants; 15 of them committed suicide. In 2012, according to preliminary data, 24 people died, 9 of them as a result of suicide. At the same time, the National Ombudsman stated in a special report on this subject (April 2012) that the statistical data of various public authorities on the number of deaths in detention facilities often differ and criticized the authorities for insufficient quality of investigation into the circumstances and causes of such

deaths.

The investigation conducted into the death of a Russian citizen, A. Dolmatov, in a deportation center in Rotterdam in January 2013 revealed not only inaction or negligent actions on the part of certain officers of relevant authorities of the Netherlands with regard to him but also serious flaws in procedures and information systems used by the authorities when dealing with immigration matters. In particular, the main conclusion of the investigation was that from time to time failures occurred which resulted in false information being registered in the applicants' dossiers. These revealed facts sparked a wave of criticism from the national human rights community, international human rights bodies and NGOs.

Human rights advocates regularly express concern about insufficient transparency of activities of Dutch authorities responsible for forced expulsion of illegal migrants. The fact that administrative detention of illegal immigrants with a view to expelling them is subject to criminal law in the Netherlands (the Law on the Principles of the Penitentiary System) is also criticized. This leads to a disproportionate restriction of the rights of detainees who are not guilty of any crime, including of their internal movement, private life, as well as access to social services, leisure and contacts with the outside world, marginalizes immigrants and asylum seekers who are treated as "criminals", which creates stereotypical images and xenophobic sentiments among the population.

Furthermore, the Government has drafted a bill that recognizes the illegal stay of foreigners in the country as a criminal offense (maximum penalty – arrest for up to 4 months or a fine of up to 3,900 euros). The rationale for this bill and the disproportionate penalty stipulated by it have been severely criticized by the human rights community, the Council of State of the Netherlands and the Institute for Human Rights.

In his turn, the Ombudsman for Children noted in a report published in

June 2013 that the practices of migration authorities regarding the consideration in 2008-2013 of children's applications for reunification with their parents restrict the rights and interests of children that are enshrined in the Convention on the Rights of the Child. Concern over the Netherlands' policy on family reunification, which leads to violation of children's rights, as well as over an unacceptable policy of detention of juvenile immigrants or asylum seekers was also expressed in the report of the Institute for Human Rights for 2012.

Concerns remain with respect to the policy of the Netherlands towards immigrants legally residing in the country, including those who acquired the citizenship of the Netherlands. It is noted that members of ethnic, national and religious minorities continue to face discrimination in health care, education, housing and employment. In recent years, the unemployment rate among ethnic minorities consistently exceeds the level of unemployment among native Dutch by nearly three times. According to the Central Bureau of Statistics of the Netherlands, in 2012 it was 15.5 percent (an increase of 2.4 percent compared to 2011), while the unemployment rate among the native population was 5 percent.

Violation of the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (the Lanzarote Convention) by the Netherlands causes serious concern and anxiety. Italian deputies R. Farina and L. Volonte sent appropriate inquiries to the Committee of Ministers of the Council of Europe earlier in this regard. The reason for the first inquiry was the decision of the Court of Appeal of Arnhem to reverse the judgment passed on June 27, 2012, to ban the Dutch pedophile association, the Martijn club (a non-profit organization that promotes the idea of "acceptability" of sexual relations between adults and children; most established members of the "club" have convictions for sexual offenses against children; "kids love it, and they should be thankful for having sex with adults, they will not protest, just give them more gifts" – this is an example of the approaches of the "club",

which the Dutch newspaper quoted with reference to the official Martijn website.

As noted by legal experts, this decision of the Arnhem court became possible due to the lack of legal implementation of the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse in the Netherlands, despite numerous calls of other States Parties to correct that.

It is noted in the decision of the Court of Appeal that the modern Dutch society is developed enough to "counter threats posed by the activities of the club". In the second inquiry on behalf of L. Volonte concern is expressed with regard to the investigation of the case of J. Demmink by the authorities of the Netherlands; before his dismissal he held a senior position in the Ministry of Justice of the Netherlands. It is pointed out that J. Demmink, who had been accused of statutory rape, was not removed from office and had the opportunity to influence the judicial process. Furthermore, according to L. Volonte, the Government of the Netherlands "covered up" for J. Demmink.

It is remarkable that this is the second inquiry of L. Volonte at the CMCE regarding this matter: the parliamentarian was not satisfied with a "watered down" response of the Committee of Ministers to his first inquiry in March this year.

Both inquiries show that the Netherlands violate the Lanzarote Convention, according to which a country shall take all necessary legislative and other measures to prevent sexual exploitation and sexual abuse of children.

In October 2013, the Secretariat of the Council of Europe notified the national delegations of the withdrawal from discussion of draft replies to the questions of PACE deputies L. Volonte and R. Farina in the CE Committee of Ministers on formal grounds. As a justification for the decision not to respond to these inquiries the Secretariat indicated that both Italians are no longer members of the national parliamentary delegation to the PACE, and, therefore, "in

accordance with the arrangements between the PACE and the CMCE", the Committee of Ministers shall not respond to these questions.

The number of complaints about discrimination that are received at regional anti-discrimination centers in the Netherlands is steadily growing. In 2011, 6391 such complaints were registered in the Netherlands (5 percent more than in 2010). In most cases, claimants were victims of discrimination based on race. At the same time, experts emphasize that any official statistics in this area is "only the tip of the iceberg", as an undetermined significant number of people never complain of discrimination against them because they do not believe in the efficacy of filing such complaints or are afraid of "negative consequences".

In its latest report on the Netherlands, the European Commission against Racism and Intolerance (ECRI) claims that the actions of the Dutch authorities lead to marginalization of members of ethnic minorities and discrimination against them. The case when the police, without any apparent reasons, conducted searches among Antilleans living in the Netherlands was given as an example.

The UN Committee on Economic, Social and Cultural Rights draws attention to the lack of anti-discrimination provisions in the legislation of the Netherlands, noting that it does not provide for safeguards against discrimination in all its forms. In this context, the Committee is worried by the growing popularity of racist and xenophobic sentiments that can be seen in the Netherlands.

In 2012, a special website for filing complaints against migrants from Eastern Europe was created by the Party for Freedom, which provoked sharp criticism from Dutch and international human rights organizations.

Disturbing messages about the policy in the field of ensuring equality between men and women continue to appear. Discrimination manifests itself in a considerable pay gap between men and women, less significant presence of

women on the labour market and in political life. In its report for 2012, the Institute for Human Rights also draws attention to the persistent problem of domestic violence against women – according to the police, about 200 thousand women become victims of such violence each year, and the Institute is of the opinion that the Government has not developed a comprehensive approach to solving this problem.

Many questions with regard to legality and compliance with human rights, particularly the right to privacy, arise in connection with the active work of the police and security services of the Netherlands aimed at wiretapping individuals and monitoring their online communication in order to "ensure national security and combat crime". According to a study published in May 2012 by the Research and Documentation Centre of the Ministry of Security and Justice of the Netherlands, about 22,000 phones were wiretapped in the Netherlands in 2010, and it is noted in the report that these figures are higher than in other European countries and that the information obtained by wiretapping in practice rarely contributes to solving the crimes.

In November 2012, the European Court of Human Rights ruled that the Dutch security services violated Article 8 ("The Right to Respect for Private and Family Life") and Article 10 ("Freedom of Expression") of the European Convention on Human Rights by organizing wiretapping and surveillance of two journalists of the Telegraaf newspaper after they prepared a series of materials relating to the work of the security services².

In June 2013, in connection with the scandal over PRISM surveillance program, a number of Internet providers revealed that they had to give information about their customers to law enforcement agencies at their request on a regular basis³ (though it remained unclear to them how exactly these data were then used by public authorities).

² Telegraaf Media Nederland Landelijke Media B. V. and Others v. the Netherlands, *complaint № 39315/06*.

³ See: <http://www.volkskrant.nl/vk/nl/2686/Binnenland/article/detail/3471627/2013/07/06/Spionagepraktijken-in-de-VS-Kijk-eerst-eens-naar-Nederland.dhtml>. <http://nos.nl/artikel/528320-xs4all-150-verzoeken-diensten.html>

Large-scale collection and accumulation of personal data, such as movement of vehicles (with the help of navigators and roadside cameras), logs of phone calls, Internet usage statistics, including the content of websites visited, can result in too detailed "profiling" of individuals, which, for all technological development, does not exclude inaccuracies and serious mistakes. Extensive subsequent use of information from such dossiers on citizens by public authorities may lead to incorrect results and sometimes to violation of citizens' rights.

In its report for 2012⁴, the Data Protection Authority indicated that the gathering and linking of personal data by various public authorities is often exercised in violation of the law, and as a result citizens are not able to determine what data about them are stored, where and for what purpose.

In the report of the Institute for 2012 attention was drawn to essentially the same problems in the sphere of ensuring security of citizens' personal data – the "secondary use" of the collected data for purposes other than those for which they were initially gathered, possible discrimination against persons on the basis of the collected data, accumulation of such data leading to serious violation of the right to privacy, etc.

Human rights activists continue to express concern about the situation with human rights in the Caribbean part of the Kingdom of the Netherlands. In 2007, the European Committee for the Prevention of Torture made a number of recommendations in order to improve the conditions of detention in prisons on Aruba and in the Netherlands Antilles (the islands of Curaçao, Sint Maarten and the BES islands). In 2008, the Council of Ministers of the Kingdom of the Netherlands decided to oblige the governors of both countries (Aruba and the Netherlands Antilles)⁵ to report on the implementation of the CPT

⁴ http://www.cbpweb.nl/Pages/jv_2012.aspx

⁵ Since October 10, 2010, as a result of a constitutional reform, the status of the Netherlands Antilles (previously a single constituent country within the Kingdom) has been changed: Curaçao and Sint Maarten are now separate

recommendations every six months. The recent reports (July 2011) note a partial improvement in the conditions of detention as well as the willingness of the authorities to work in this direction. At the same time, in some facilities a number of significant violations are still not corrected (lack of ventilation, overcrowded cells, poor quality of health care, long-term detention, etc.). Beyond that, there are doubts that during interrogations detainees are provided with adequate legal assistance.

International NGOs indicate that in these territories problems exist with trafficking in persons for sexual exploitation as well as for domestic servitude and forced labour in construction and agriculture.

The Committee on Economic, Social and Cultural Rights notes that in violation of Article 8 of the International Covenant on Economic, Social and Cultural Rights there is a legal ban on strikes on Curaçao and Sint Maarten, and in the Netherlands themselves, although strikes are not prohibited, the right to conduct them is not stipulated. Corporal punishment, which shall be abolished in accordance with Article 10 of the Covenant, still exists on Aruba. Concern about the absence of the ban on corporal punishment on Aruba as well as the lack of respect for this ban on other Netherlands Antilles islands has been voiced by a number of countries, including within the framework of the Universal Periodic Review of the UN Human Rights Council.

constituent countries, and the islands of Bonaire, Sint Eustatius and Saba (the BES islands) received the status of special municipalities within the Netherlands.