

Summaries

Justitiële verkenningen (Judicial explorations) is published eight times a year by the Research and Documentation Centre of the Dutch Ministry of Security and Justice in cooperation with Boom Lemma uitgevers. Each issue focuses on a central theme related to judicial policy. The section Summaries contains abstracts of the internationally most relevant articles of each issue. The central theme of this issue (no. 6, 2012) is *Human rights in The Netherlands*.

The evaluation of the Netherlands within the Universal Periodic Review

P.A.M. Verrest and T. Dopheide

The Universal Periodic Review (UPR) was created by the Human Rights Council in 2006 as a tool to evaluate human rights standards in all 192 countries of the United Nations. It should be distinguished from the reviews by treaty-based bodies. These bodies are composed of independent experts and monitor the implementation of the human rights treaties. The UPR, on the other hand, is a peer review among countries on the whole spectrum of human rights. The Netherlands was evaluated for the second time in 2012. This article describes the background and procedure of the UPR. It then focuses more specific on the session of the Netherlands, by giving an impression of topics that were raised, as well as some reflections on both the session and the UPR itself.

The contribution of NGOs to the human rights exam of the Netherlands; a look back and forward by Amnesty International

C. Mommers

The UPR is an increasingly important instrument for non-governmental organizations (NGOs) to advocate for the protection and promotion of human rights in the Netherlands. In this article, the way that NGOs have used the UPR in relation to the Netherlands will be discussed. This will be done primarily from the perspective of Amnesty International. The article first outlines how NGOs can contribute to the UPR process. Subsequently, it discusses the substantive input provided by Amnesty International for the review of the Netherlands. Finally, the potential impact of this intervention on the promotion and

protection of human rights on the ground in the Netherlands will be considered. This impact will depend, inter alia, on the de-politicization of the UPR, the credibility of the process, the follow-up of recommendations made during the review and, prominently, the political will of the incoming government.

A national human rights institute for the Netherlands

P.B.C.D.F. van Sasse van Ysselt

At October the 2nd, the Netherlands Human Rights Institute (NHRI) opened its doors in Utrecht. The NHRI has been established by law, which entered into force October the 1st. The object of the Institute is to protect human rights in the Netherlands and promote the observance of such rights. In order to achieve this goal, the Institute has many tasks and competences, such as advising on legislation and regulations, draft legislation and policy, conducting inquiries and investigations, reporting and making recommendations. It will also encourage the ratification, implementation and observance of treaties, guidelines and recommendations. In addition, the NHRI will collaborate with national, European and international institutions and civil society organisations engaged in the protection of one or more human rights and increase awareness and knowledge of human rights through information, teaching and publicity. Finally, the Institute will take over the present duties of the Equal Treatment Commission, namely investigating whether discrimination as referred to in the equal treatment legislation has taken or is taking place and publishing its findings on this. This will be the responsibility of a separate division of the Institute. This article describes the background of the establishment of the NHRI, elaborates the different tasks and considers what is necessary for the NHRI's effectiveness.

Dutch detention law measured by international standards

G. de Jonge

Dutch detention law seems to meet all standards of the normative European Prison Rules. There is however no reason for self-satisfaction, because other relevant international standards have so far received little attention. The author discusses the Bangkok Rules, the Istanbul Protocol, the Declaration of Malta on Hunger Strikers and the European Code of Ethics for Prison Staff. All of these documents give rise to adaptations or additions of existing Dutch penitentiary law. The

author suggests that it would be best to develop a new general detention law containing basic norms for the treatment of everyone deprived of his freedom, irrespective of the detention's legal title.

Human rights restricted: detention in immigration law

G. Cornelisse

This article investigates the practice of immigration detention in the Netherlands, which has been fiercely criticized by international organizations and NGOs. It focuses in particular on three aspects of that measure: justification, implementation, and its use with regard to children. These issues are discussed in the light of human rights law, more in particular the case law by the European Court of Human Rights. It will be shown that this Court, by portraying immigration as a phenomenon implicating first and foremost territorial sovereignty, makes it difficult for immigrants' individual interests to be addressed in substance, let alone to be perceived as rights. It is argued that the European Court of Justice in its application of EU law in this field is perhaps better suited to grant unwanted migrants their human rights than traditional human rights law has done so far.

The Convention on the Rights of the Child and its relevance for minor foreigners

C. van Os

All rights in the Convention on the Rights of the Child (CRC) apply to all children, therefore they also apply to minor foreigners in the Netherlands. Nevertheless precisely for this group a continuous fight needs to be battled to make sure they receive the protection provided by the CRC. This article provides an overview of the most important articles of the CRC where minor asylum seekers and migrants can appeal to. The article also stresses the fact that children who reside unlawfully in the country may not be discriminated against their access to socio-economic rights. Furthermore, the question whether fully integrated children should have the right to a residency permit is dealt with. Subsequently the Dutch policy with regard to family reunification is assessed alongside the CRC. At last the article elaborates on the tension between the 'ultimum remedium' principle (article 37 CRC) on the one hand and the policy concerning children in alien detention on the other.

**International law and closed youth care institutions;
recommendations for practitioners**

S.J. Höfte, G.H.P. van der Helm and G.J.J.M. Stams

During childhood, a child is entitled to receive special care and assistance. The child's best interest should be a primary objective. The Dutch government has an obligation to guarantee the children rights. But do the closed youth care accommodations meet the requirements as stated in the International Child Rights Convention, as far as deprivation of liberty and treatment under coercion are concerned? The study concluded that some closed youth care institutions do not meet the requirements as stated in the above mentioned Convention. There is often no possibility of free expression, physical complaints may not be taken seriously, an adequate standard of living is not always provided and the level of education is often too low. Most of the minors indicate that they are bored during their stay in the accommodations. On this basis, limiting the fundamental rights of these youngsters is currently surrounded with inadequate guarantees.

The state of internet freedom in the Netherlands

O.L. van Daalen

When thinking of restrictions on internet freedom, people often look to countries such as Egypt and Libya. But internet freedom in countries such as the Netherlands also warrants close examination. This article discusses a selection of Dutch measures which infringe on the fundamental right to privacy and communication freedom on the internet. With regard to privacy, it starts with the Dutch law requiring telecommunications providers to retain customer data, such as all records and location data. Also the plans to monitor internet traffic by the intelligence services as well as the lack of transparency on data requests by the Dutch government are discussed. With regard to communications freedom, the new Dutch law on net neutrality is analysed and described as positive for internet freedom. However, the author also sees developments threatening internet freedom. He mentions plans to introduce web blocking for websites facilitating copyright infringement and a draft law to allow the police to take down websites without judicial intervention. The author argues that the Netherlands should significantly improve its own state of internet freedom, especially if it wants to credibly claim that other countries should protect internet freedom.

The fight against ethnic discrimination in the Netherlands: once a hot issue, now a non-issue?

R. Witte and M.P.C. Scheepmaker

This article presents an overview of various measures, initiatives and developments regarding to the fight against discrimination in the Netherlands since 1971. It also gives a short overview of relevant international treaties on discrimination and the obligations for the parties involved. The political and societal attention for combating discrimination has decreased in recent years. There is a tendency to deny that discrimination is a real problem. Also the tone of voice in the public debate on integration of ethnic minorities has hardened. Nowadays, antidiscrimination policies and initiatives take place at the local level and state involvement is limited to facilitating support. The registration of discrimination complaints continues to be a problem and minor progress has been made in the last twenty years.