



# The Netherlands

## Ratified the European Convention on Human Rights in 1954

### National Judge: Jolien Schukking

[Judges' CVs](#) are available on the ECHR Internet site

Previous Judges: Baron Frederik Mari Van Asbeck (1959-1966), Gerard J. Wiarda (1966-1985), André Donner (1986-1987), Sibrand Karel Martens (1988-1996), Petrus Van Dijk (1996-1998), Wilhelmina Thomassen (1998-2004), Egbert Myjer (2004-2012), Johannes Silvis (2012-2016).

The Court dealt with 576 applications concerning The Netherlands in 2017, of which 573 were declared inadmissible or struck out. It delivered 3 judgments (concerning 3 applications), 2 of which found at least one violation of the European Convention on Human Rights.

Applications processed in	2016	2017	2018**
Applications allocated to a judicial formation	494	532	225
Communicated to the Government	12	24	10
Applications decided:	511	576	226
- Declared inadmissible or struck out (Single Judge)	431	512	217
- Declared inadmissible or struck out (Committee)	56	51	7
- Declared inadmissible or struck out (Chamber)	13	10	1
- Decided by judgment	11	3	1

\*\*January to July 2018

For information about the Court's judicial formations and procedure, see the [ECHR internet site](#).

Statistics on interim measures can be found [here](#).

Applications pending before the court on 01/07/2018	
Total pending applications*	237
Applications pending before a judicial formation:	211
Single Judge	88
Committee (3 Judges)	54
Chamber (7 Judges)	69
Grand Chamber (17 Judges)	0

\*including applications for which completed application forms have not yet been received

### The Netherlands and ...

#### The Registry

The task of the Registry is to provide legal and administrative support to the Court in the exercise of its judicial functions. It is composed of lawyers, administrative and technical staff and translators. There are currently **668** Registry staff members.

## Noteworthy cases, judgments delivered

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### Grand Chamber

#### Cases concerning the right to life (Article 2)

##### Violation of Article 2

#### [Jaloud v. the Netherlands](#)

20.11.2014

The case concerned the investigation by the Netherlands authorities into the circumstances surrounding the death of an Iraqi civilian who died of gunshot wounds in Iraq in April 2004 in an incident involving Netherlands Royal Army personnel.

#### [Ramsahai and Others v. the Netherlands](#)

15.05.2007

The case concerned the applicants' relative who, after stealing a motor scooter by threatening its owner with a pistol, was shot dead by a police officer who was trying to arrest him.

#### Cases concerning inhuman or degrading treatment (Article 3)

##### Violation of Article 3

#### [Murray v. the Netherlands](#)

26.04.2016

The case concerned the complaint by a man convicted of murder in 1980, who consecutively served his life sentence on the islands of Curaçao and Aruba (part of the Kingdom of the Netherlands) – until being granted a pardon in 2014 due to his deteriorating health –, about his life sentence without any realistic prospect of release.

Before the Court, Mr Murray initially complained, in particular, that his life sentence was irreducible and that there was no separate regime for life prisoners or a special regime for detainees with psychiatric problems in the prisons where he was being held. Following the conclusion of the periodic review of his sentence in 2012 he complained that even if a

possibility of conditional release had been created under the law, *de facto* he had no hope of release as he had never been provided with any psychiatric treatment and therefore the risk of recidivism was considered too high for him to be eligible for such release.

#### Cases regarding private and family life (Article 8)

##### Violation of Article 8

#### [Jeunesse v. the Netherlands](#)

03.10.2014

The case concerned the refusal by the authorities to allow a Surinamese woman married to a Netherlands national, with whom she had three children, to reside in the Netherlands on the basis of her family life in the country.

##### No violations of Article 8

#### [Van der Heijden v. the Netherlands](#)

03.04.2012

The case concerned the national courts' refusal to exempt Ms van der Heijden from testifying against her long-term partner, who was suspected of killing someone.

#### [Üner v. the Netherlands](#)

18.10.2006

Following criminal conviction, exclusion order imposed on Turkish national whose partner and child reside in the Netherlands.

#### Freedom of expression cases (Article 10)

#### [Sanoma Uitgevers B.V. v. the Netherlands](#)

14.09.2010

Police seizure of material that could have led to identification of journalistic sources.

[Violation of Article 10](#)

#### Case concerning freedom of movement (Article 2 of Protocol No. 4)

#### [Garib v. the Netherlands](#)

06.11.2017

The case concerned the complaint by a woman living on social welfare about residential restrictions in Tarwewijk, a district of Rotterdam with high

unemployment, as a result of which she was unable to freely choose her place of residence. The legislation in question made taking up new residence in designated areas conditional on a housing permit, for which Ms Garib did not qualify since her income was not from work and she had not been a resident in the Rotterdam Metropolitan Region for six years immediately preceding her request.

[No violation of Article 2 of Protocol No. 4](#)

## Chamber

### Cases concerning inhuman and/or degrading treatment (Article 3)

#### Violations of Article 3

#### [A. v. the Netherlands](#) (no. 4900/06)

20.07.2010

Expulsion of acquitted terrorist suspect to Libya.

#### [Salah Sheekh v. the Netherlands](#)

11.01.2007

Alleged risk of being subjected to torture or inhuman or degrading treatment, in case of expulsion, in view of the applicant's situation of belonging to a minority (Ashraf), in the light of the general human rights situation in Somalia.

No violation of Article 3

#### [Mawaka v. the Netherlands](#)

01.06.2010

Alleged risk of ill-treatment in case of expulsion in view of the applicant's past activities in the Democratic Republic of the Congo.

### Cases regarding the right to liberty and security (Article 5)

#### Violations of Article 5

#### [S.T.S. v. the Netherlands](#) (no. 277/05)

07.06.2011

Failure to rule on the legality of the detention of the applicant, a minor, on the ground that the order authorising his detention had already expired – a decision which denied him access to compensation.

#### [Nelissen v. the Netherlands](#)

05.04.2011

Schizophrenic patient's continued detention in remand prison upon completion of sentence unjustified.

### Case concerning Article 6

#### Right to a fair trial

#### [Baydar v. the Netherlands](#)

24.04.2018

The case concerned a complaint by Mr Baydar about the Supreme Court's refusal, based on summary reasoning, to refer his request for a preliminary ruling to the Court of Justice of the European Union (CJEU).

[No violation of Article 6](#)

#### [M v. the Netherlands](#) (no. 2156/10)

25.07.2017

The case concerned a former member of the Netherlands secret service who had been charged with leaking State secrets. The applicant, Mr M, complained before the European Court of Human Rights that the ensuing criminal proceedings had been unfair.

[No violation of Article 6 §§ 1 and 3 \(b\) \(right to legal assistance of own choosing\) as regards redacting of certain documents and the alleged withholding of others](#)

[Violation of Article 6 §§ 1 and 3 \(c\) as regards the restrictions on the applicant's right to give information and instructions to counsel](#)

[No violation of Article 6 §§ 1 and 3 \(d\) as regards the conditions under which certain AIVD<sup>1</sup> members were heard as witnesses and the refusal to call certain other AIVD members as defence witnesses](#)

The Court also decided that that it was not necessary to consider whether there has been a violation of Article 6 §§ 1 and 3 (c) as regards the limitation on revealing the names of AIVD members before the Court of Appeal.

### Cases concerning private and family life (Article 8)

#### Violations of Article 8

<sup>1</sup> Algemene Inlichtingen- en Veiligheidsdienst (AIVD) - General Intelligence and Security Service

**[Telegraaf Media Nederland Landelijke Media B.V. and Others v. the Netherlands](#)**

22.11.2012

The case concerned the protection of journalistic sources.

**[Van Vondel v. the Netherlands](#)**

25.10.2007

The applicant was a police officer for the Criminal Intelligence Service. His telephone conversations with one of his informers had been recorded with devices provided by the National Police Internal Investigation Department, in the context of a parliamentary inquiry brought into criminal investigation methods in the Netherlands due to a controversy surrounding the North-Holland/Utrecht Interregional Criminal Investigation Team.

**Freedom of expression cases  
(Article 10)**

Violations of Article 10

**[Telegraaf Media Nederland Landelijke Media B.V. and Others v. the Netherlands](#)**

22.11.2012

See also the cases dealing with Article 8

**[Voskuil v. the Netherlands](#)**

22.11.2007

Journalist's complaint that he was denied the right not to disclose his source for two articles he had written for the newspaper Spits and that he was detained for more than two weeks in an attempt to compel him to do so.

**Cases concerning the right to an  
effective remedy (Article 13)**

**[A.M. v. the Netherlands  
\(no. 29094/09\)](#)**

05.07.2016

The case concerned the complaint by an asylum seeker that his expulsion to Afghanistan would expose him to a real risk of torture or of inhuman or degrading treatment.

[No violation of Article 13 taken together with Article 3 \(prohibition of torture and of inhuman or degrading treatment\)](#)

[No violation of Article 3 in the event of A.M.'s removal to Afghanistan](#)

**Noteworthy cases, decisions  
delivered**

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**[P. Plaisier B.V. v. the Netherlands and two other applications](#)**

07.12.2017

The applications concerned complaints by three companies about an additional tax which employers had to pay on salaries above 150,000 euros that was part of budget austerity measures approved during an economic crisis.

[Applications declared inadmissible as manifestly ill-founded.](#)

**[Mustafić-Mujić and Others v. the Netherlands](#)**

22.09.2016

The applicants, relatives of men killed in the Srebrenica massacre of July 1995, imputed criminal responsibility to three Netherlands servicemen who were members of the UN peacekeeping force.

They complained that the Netherlands authorities had wrongly refused to investigate and prosecute the servicemen for allegedly sending their relatives to their probable death by ordering them to leave the safety of the UN peacekeepers' compound after the Bosnian Serb forces had overrun Srebrenica and its environs.

[Application declared inadmissible.](#)

**[Adorisio and Others v. the Netherlands](#)**

17.03.2015

The case concerned the accelerated proceedings allowing bond holders to challenge the lawfulness of the Netherlands Government's expropriation of the assets they held in SNS Reaal, a banking and insurance conglomerate.

[Application declared inadmissible.](#)

**[Constancia v. the Netherlands](#)**

03.03.2015

The case concerned Mr Constancia's complaint about being detained as a person of "unsound mind" in the absence of a precise diagnosis of his mental state. Mr Constancia, who was convicted of the violent manslaughter of an eight-year old boy, had refused to be examined, making the assessment of his mental condition impossible.

Application declared inadmissible as manifestly ill-founded.

**A.M.E. v. the Netherlands (no. 51428/10)**

13.01.2015

The case concerned a Somali asylum-seeker's claim that, if transferred to Italy, he would be subjected to harrowing living conditions.

Application declared inadmissible as manifestly ill-founded.

**Stichting Mothers of Srebrenica and Others v. the Netherlands**

11.06.2013

The case concerned the complaint by relatives of victims of the 1995 Srebrenica massacre, and by an NGO representing victims' relatives, of the Netherlands courts' decision to declare their case against the United Nations (UN) inadmissible on the ground that the UN enjoyed immunity from national courts' jurisdiction. The applicants alleged in particular that their right of access to court had been violated by that decision.

Application declared inadmissible as manifestly ill-founded.

**Mohammed Hussein v. the Netherlands and Italy**

02.04.2013

The case concerned a Somali asylum seeker who claimed in particular that she and her two young children would be subjected to ill-treatment if transferred from the Netherlands to Italy under the Dublin Regulation.

Application declared inadmissible: The Court found in particular that, if returned to Italy, the future prospects of Ms Mohammed Hussein and her two children did not disclose a sufficiently real and imminent risk of hardship severe enough to fall within the scope of Article 3.

**Ramaer and van Willigen v. the Netherlands**

23.10.2012

The case concerned the effects of the changes in the Netherlands health insurance system introduced on 1 January 2006 on recipients of Netherlands pensions resident in European Union Member States other than the Netherlands. There are, according to the applicants, 40,000 persons

concerned, particularly in Spain, Portugal, France and Belgium.

Application declared inadmissible

**Schilder v. the Netherlands**

16.10.2012

The parish priest of a Catholic church complained that pursuant to a new by-law the church bell could not be rung between 11 p.m. and 7.30 a.m. above a certain volume.

Application declared inadmissible

**Djokaba Lambi Longa v. the Netherlands**

09.10.2012

The case concerned a Congolese national transferred to the International Criminal Court (ICC) to give evidence as a defence witness, who applied for asylum in the Netherlands after giving testimony.

Application declared inadmissible : ruling for the first time on the issue of the power to keep individuals in custody of international criminal tribunals having their seat within the territory of a Contracting State, the Court concluded that the applicant, detained on the territory of a Contracting State (the Netherlands) by an international criminal tribunal (the ICC) under arrangements entered into with a State not party to the Convention (the Democratic Republic of the Congo) did not fall within the jurisdiction of the Netherlands.

**F.A.K. v. the Netherlands (no. 30112/09)**

23.10.2012

Intended deportation of an imam understood by the Netherlands authorities to preach violent jihad (holy war). He has consistently claimed to be wanted by the authorities of his country of origin for political reasons. Complaints under Articles 3 (prohibition of inhuman or degrading treatment), 8 (right to respect for private life) and 13 (right to an effective remedy).

Application declared inadmissible

**Staatkundig Gereformeerde Partij v. the Netherlands**

10.07.2012

The Supreme Court ruled against the applicant, a political party, for not allowing women members to run for elections.

The applicant complained of an infringement of its right of freedom of



religion (Article 9), freedom of expression (Article 10) and freedom of assembly and association (Article 11).

[Application declared inadmissible](#)

### **Ramzy v. the Netherlands**

20.07.2010

Alleged risk of treatment contrary to Article 3 (prohibition of inhuman or degrading treatment) in case of expulsion of an acquitted terrorist suspect to Algeria.

[Case struck out of the list: applicant no longer in contact with his representatives.](#)

### **Van Anraat v. the Netherlands**

06.07.2010

Criminal conviction of the applicant of having supplied a chemical to Iraq between 1984 and 1988 which was used to produce mustard gas that was subsequently used against civilians in Iraq and Iran. The applicant complained that the Supreme Court had failed to answer his argument that, since Saddam Hussein and Ali Hassan al-Majid al-Tikriti were beyond the jurisdiction of the Netherlands courts, he ought not to have been convicted as their accessory. He also complained that section 8 of the War Crimes Act, in referring to international law, did not comply with the requirement that criminal acts be described with sufficient precision.

[Application declared inadmissible: When the applicant was committing the acts which ultimately led to his prosecution, there was nothing unclear about the criminal nature of the use of mustard gas either against an enemy in an international conflict or against a civilian population in border areas affected by an international conflict. Therefore, the applicant could reasonably have been expected to be aware of the state of the law and, if need be, to take appropriate advice](#)

### **Kemevuako v. the Netherlands**

25.06.2010

Concerned an application submitted out of time by an asylum seeker.

[Application declared inadmissible: The Court emphasised the need for it to receive the originals of the application and authority forms, if the applicant was represented in the Strasbourg proceedings. Transmission by fax of those documents, without the originals, was insufficient to constitute a complete or valid application.](#)

### **Galic v. the Netherlands** and **Blagojevic v. the Netherlands**

09.06.2009

Allegations that proceedings conducted before, and decisions taken by, the International Criminal Tribunal for the Former Yugoslavia violated Article 6 (right to a fair trial).

[Application declared inadmissible: The Court is not competent to examine these allegations.](#)

### **Cooperatieve Producentenorganisatie van de Nederlandse Kokkelvisserij U.A. v. the Netherlands**

20.01.2009

Applicant association's complaint about the unfairness of proceedings before the Court of Justice of the European Communities (ECJ) with regard to its right to dredge cockles in a tidal wetland area, the Wadden Sea.

[Application declared inadmissible: The applicant association had not shown that the fair trial guarantees available to it had been manifestly deficient. It had therefore failed to rebut the presumption that the procedure before the ECJ provided equivalent protection of its fundamental rights.](#)

## **Noteworthy pending cases**

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### **Zaloilo v. the Netherlands (no. 23179/12)**

Case [communicated](#) to the Government on 11 January 2018

Mr Zailo, a Netherlands resident born in Georgia, became stateless after the disintegration of the Soviet Union.

This case concerns the applicant's complaint under Article 5 § 1 (f) (the lawful arrest or detention of a person against whom action is being taken with a view to deportation or extradition) of the Convention that he was kept in detention for an excessive length of time during which no realistic prospect of his actual expulsion existed.

### **Nagpal and Madan v. the Netherlands (no. 68377/17)** and **G. and Others v. the Netherlands (no. 530/18)**

Cases communicated to the Government on 22 November 2017 and 16 January 2018

The applicants are two families, including minor children, from Afghanistan who are

Sikhs. Their applications for asylum in the Netherlands were unsuccessful. The applicants in both cases complain that their expulsion to Afghanistan would be contrary to Articles 2 and 3 of the Convention in view of the ever worsening security situation of Sikhs in that country.

**Canword v. the Netherlands**  
**(no. 21464/15) and Lake v. the Netherlands**  
**(no. 2445/17)**

Cases were both communicated to the Government on 20 October 2017

The applicants were serving life sentences on the Caribbean island of Sint Maarten at the time these applications were lodged. Both applicants rely mainly on Article 3 that they have not had any prospect of release and/or any possibility of review of their life sentences. Furthermore, Mr Canword complains under Article 13 in conjunction

with Article 3 that he was unable to have the lawfulness of his continued detention examined by a court.

**Corallo v. the Netherlands**  
**(no. 29593/17)**

Case [communicated](#) to the Government on 24 April 2017

In his application, Mr Corallo complains that his detention at the Philipsburg police station amounted to inhuman and degrading treatment contrary to Article 3 of the Convention. Under Articles 5 (right to liberty and security) and 6 § 2 (presumption of innocence) he further complains that the Joint Court failed to investigate the possibility of suspending his detention.

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