

NETHERLANDS HELSINKI COMMITTEE

ANNUAL REPORT 2007

This report was compiled by
Andrea Naphegyi and Antoniya Stoyanova
English Revision by Peter Morris
Printing by Krips Repro Meppel

P.O. Box 11717
2502 AS The Hague
The Netherlands

telephone +31 (0)70 - 3926700
fax +31 (0)70 - 3826550
e-mail office@nhc.nl
website www.nhc.nl

CONTENTS

INTRODUCTION	5
1. OBJECTIVES AND RESULTS.....	9
1.1 Objectives	9
1.2 Results of NHC projects and lobbying efforts in 2007.....	9
2. ACTIVITIES	13
2.1 Research, Monitoring and Lobbying	13
2.2 Helsinki Monitor: Security and Human Rights	20
2.3 Technical Assistance.....	21
3. DONORS, EXPERTS, AND LOCAL PARTNERS OF THE NHC	35
3.1 Donor: Ministry of Foreign Affairs, the Netherlands	35
3.2 Expert: Interview with Mr Jan de Jongh.....	37
3.3 Partner Portrait: Ms Jolanta Blažaitė	40
3.4 Column.....	44
4. INTERNAL ORGANIZATION.....	47
4.1 Board.....	47
4.2 Staff.....	47
4.3 Annual Social Report.....	47
4.4 Finances	48
5. APPENDICES	53
Appendix I Netherlands Helsinki Committees: Background.....	53
Appendix II Projects of the Netherlands Helsinki Committee.....	56
Appendix III Donors	59
Appendix IV Human Rights in the Netherlands	61

INTRODUCTION

The Organization for Security and Co-operation in Europe (OSCE) attained crucial achievements during 2007. At the 15th OSCE Ministerial Council in Madrid held in November 2007, despite some dissent, it was decided that the Chairmanship for 2009-11 would be held by the following countries: 2009 – Greece; 2010 – Kazakhstan and 2011 – Lithuania. According to the statement by the chairman-in-office of the OSCE “the decision taken on Kazakhstan’s candidacy for the Chairmanship reflects the equality that exists among participating States and represents a new factor that will help to strengthen the commitment of the Central Asian countries to our Organization”.¹ Parallel to that, the Chairmanship of 2007 emphasized improved water management and expanded the concept of security in order to include sustainable human development. The above-mentioned policies were adopted in the form of a Declaration on Environment and Security. The decision on OSCE engagement regarding Afghanistan also proved to be of crucial importance, enabling OSCE Parties to strengthen security, while admitting that it was completely linked to that of their partners. Furthermore, a fund intended to finance joint activities with Mediterranean and Asian Partners for Co-operation has been established. The OSCE also adopted a number of decisions in relation to security in the fight against terrorism, *inter alia*, public-private partnerships in countering terrorism, protecting critical energy infrastructure against terrorist attacks, and supporting the United Nations Global Counter-Terrorism Strategy. Likewise, consensus was reached in the fight against human trafficking on the labour market, in the field of combating the sexual exploitation of children on the Internet and in promoting mutual tolerance and understanding.

At the same time, during the above-mentioned annual Ministerial Council² held in Madrid, the participating OSCE Parties acknowledged the crisis which the organization was facing. Due to controversies springing from the activities carried out by the Office for Democratic Institutions and Human Rights (ODIHR) and a lack of will to move forward with establishing a legal personality, the

organization was being “deprived of orientation and the viability of [its] achievements and efficiency – if any remains – is diminished.”³ The high-level forum also saw Russia announcing its intention to suspend the application of the Conventional Armed Forces in Europe (CFE) Treaty, a decision bound to increase the uncertainties surrounding the European security system.



OSCE Chairman Miguel Angel Moratinos at a news conference at the end of the Madrid Ministerial Council, 30 November 2007. (Photo: OSCE/Mikhail Evstafiev)

¹ Statement by the chairman-in-office of the OSCE at the closing session of the fifteenth meeting of the Ministerial Council, Madrid, 30 November 2007.

² The Ministerial Council meets once a year towards the end of every term of chairmanship to consider issues relevant to the OSCE and take appropriate decisions.

³ Statement by the chairman-in-office of the OSCE at the closing session of the fifteenth meeting of the Ministerial Council, Madrid, 30 November 2007.

2007 also saw the International Helsinki Federation of Human Rights (IHF) being faced with the embezzlement of a large amount of money. The situation turned out to be so grave that the umbrella organization for the Helsinki Committees could not evade bankruptcy and had to end its activities.

The troubling developments in the OSCE and their implications were the topic of several articles in the *Helsinki Monitor* (since 2008 entitled *Security and Human Rights*). It was argued that the future of the OSCE will indeed be uncertain as long as it is not expressly recognized by the participating states as a “legal member” of the international community. Increasing nationalism under President Putin was another theme of concern. Amongst other relevant topics, some articles examined the case of Kazakhstan’s application for OSCE Chairmanship and also dealt with the implications (for parliamentary support programmes) of the extension of the OSCE Mission in Kosovo. The quarterly journal published by the Netherlands Helsinki Committee (NHC) also focused on positive developments in certain OSCE countries. For instance, it followed the developments in Armenian-Azeri relations which led to a common statement on Nagorno-Karabagh issued during the Ministerial Council.

On the occasion of its twentieth anniversary the Netherlands Helsinki Committee organized a round-table conference entitled *The Netherlands and the European Values: the role of the Council of Europe and the European Court of Human Rights*. One of the aims of the conference was to examine how a better synergy between the Council of Europe (CoE), the European Union (EU) and OSCE can be achieved, especially in view of the recently established EU Human Rights Agency in Vienna.⁴

The NHC was responsible for the organization of a Dutch delegation of NGOs to participate in the OSCE’s largest European conference on human rights: the Human Dimension Implementation Meeting (HDIM) held in Warsaw during the period 24 September – 5 October 2007. The event focused on a series of widely debated human rights issues, *i.e.* combating intolerance and discrimination and promoting mutual respect and understanding; the protection of human rights and combating terrorism; and humanitarian issues and related commitments.

The *Bridging the Gulf* (BtG) project, which has been an independent foundation since October 2006, still attracts support both in the region and in the Netherlands. On 12-13 May 2007 the first Bridging the Gulf Networking Conference took place in Utrecht. It proved to be a success with participants and contributions from various countries from the Middle East. As a result of the conference, it was decided that BtG will work on supporting the involvement of women from the region in politics, bringing together European organizations working in the Gulf, organizing a summer school in that region with training in human rights and facilitating two more Networking Conferences.

As far as the Netherlands is concerned, human rights questions were publicly debated throughout 2007. *Inter alia*, the following issues were subjected to public debate: the threat to anonymity of voting, restrictions on the freedom of speech and religion, discrimination, and interference with privacy. Several international bodies, amongst which were the UN Committee on the Convention on the Elimination of all Forms of

⁴ For more details about the event, see “Activities”, subsection 2.1.3 in the present report

Discrimination against Women (CEDAW) and the UN Committee against Torture (UNCAT), criticized the country with regard to its human rights record regarding the equality of (foreign and disadvantaged) women on the labour market, politics, public life, parenthood, the protection of women who are victims of trafficking, persons in police detention, asylum seekers under the accelerated asylum procedure, the abuse of prisoners, and assaults by law enforcement officials. Furthermore, the European Court of Human Rights (ECtHR) dealt with a number of cases involving the Netherlands, *i.e.* *Salah Sheekh v. the Netherlands* and *Voskuil v. the Netherlands*. As a result, the ECtHR held that the Netherlands had violated Article 3 of the European Convention on Human Rights (ECHR), respectively Article 10 of the ECHR (for more details see Appendix IV). Other human rights issues concerning the Netherlands were related to the Dutch asylum policy concerning minors, the treatment of immigrants, overall discrimination against women, apostasy, the treatment of detainees, surveillance of persons believed to be involved in terrorist activities and hate speech.

NHC efforts continued to support Central and Eastern European countries in their transition towards the better protection of human rights, securing the rule of law and enhancing the principles of liberal democracy. Projects in, *inter alia*, Bulgaria, Romania, Serbia, Lithuania and the Caucasus sought and continue to seek to strengthen judicial and prison systems, to safeguard children's rights at the local level and also to train human rights advocates. The NHC Project *Strengthening the local branches of*



The steering Committee of the project 'Strengthening the local branches of human rights organizations in Turkey' with representatives of the Human Rights Association, Mazlumder, Amnesty International Turkey section and the Netherlands Helsinki Committee.

human rights organizations in Turkey is both timely and relevant. The *Training programme for human rights lawyers and NGOs* strengthened the commitment to human rights protection in Serbia. Further details regarding the projects implemented by the NHC during 2007 are included in Appendix II in the present report.

Member state governments within the European Union were sometimes criticized for a possible erosion of human rights in the Union and not doing enough to prevent an increasingly polarized and dangerous

world through their anti-terrorism policies. A lack of long-term sustainable solutions and the dominance of discourses of fear have led to manifestations of xenophobia, racism and discrimination in Europe, a dangerous climate that encourages the stigmatization of foreigners and spreads suspicion towards Muslims and immigrants in general.

The NHC environment has changed during the past few years due to several reasons. In a number of Central and Eastern European (and NHC target) countries the rule of law (and the human rights situation) has improved, whilst in other countries it has remained unchanged or even worsened. Also civil society in a large part of this region has strengthened its role as the monitor and protector of certain interests, purposes and values, e.g. human rights. Furthermore, the qualitative and quantitative level of competition in the international development and transformation market has increased. In addition, the national and international donors have adjusted their eligibility criteria for NGOs. Consequently, the NHC continues to adapt its strategy and activities to the changing environment by exploring new countries, topics and intervention strategies.

During year 2007, the NHC benefited from the support of local partners and government institutions from Central and Eastern Europe, and experts and donors, ensuring the necessary financial resources and the reinforcement which was indispensable for continuing to carry out our activities. I would like to express my sincere thanks to all of them.

Tidido Hofstee

Chairman of the Netherlands Helsinki Committee

1. OBJECTIVES AND RESULTS

1.1 Objectives

According to its articles of association of 2007 the NHC is a non-governmental organization whose main objectives are:

1. Promoting the international and social legal order in order to facilitate the complete realization of human rights; and
2. Strengthening and supporting the activities of international and national governmental and non-governmental organizations (NGOs) which promote or used to promote the above-mentioned objectives, including the OSCE, focusing on conflict prevention and the promotion of human rights, the rule of law and democracy.

The NHC was a member organization of the International Helsinki Federation for Human Rights (IHF), which after being subjected to serious embezzlement was forced to cease functioning in 2007.⁵ Since 2004 the NHC has been member of Partos, the umbrella association for Dutch non-governmental organizations in the international development cooperation sector. Partos supports its member organizations in attaining their objectives by working to increase professionalism throughout the sector and helping to place these organizations clearly in the public eye. Furthermore, the NHC is a member of the Coalition for the International Criminal Court (CICC). This network of over 2,000 non-governmental organizations advocates a fair, effective and independent International Criminal Court (ICC). The NHC also participates in the Netherlands NGO Platform for the ICC. The NHC is part of the Board of Trustees of the Centre for International Legal Cooperation (CILC). Finally, in 2007 the NHC became a member of the *Breed Mensenrechtenoverleg (BMO)* a coalition of Dutch human rights organisations that aims to promote human rights in the foreign policy of the Netherlands.

1.2 Results of NHC projects and lobbying efforts in 2007

During its closing press conference the project *Model Legal Aid Board Programme in Hungary* addressed the insufficient Hungarian system of *ex officio*-appointed defence counsel for indigent criminal defendants. The speakers from the Hungarian Ministry of Justice and Bar Association supported the two main conclusions of the project, *i.e.* the function of appointing defence counsel should be taken from the police and the operation of the whole criminal legal aid system should be handed to the newly established independent actor, the Justice Office's Legal Aid Service. A Government resolution has been drafted as the first step towards new legislation.

Within the framework of the project *Strategic Human Rights Litigation in the Caucasus (Georgia, Armenia, Azerbaijan)* cases that address human rights violations are selected by a team of local and international experts. The potential to have an impact on similar cases, the likelihood of success at the ECHR and the anticipated scope of the impact of the case beyond the individual interest are the selection criteria. The project supports these cases financially and with advice and coaching by a lawyer from Interights (the

⁵ For background information on Helsinki Committees and further information on the IHF, see Appendix I.

UK). In 2007 a total of 8 cases were selected by the project. Five cases have been submitted to the European Court of Human Rights. One Armenian property rights case reached a friendly settlement in June 2007.

The project *Drug Prevention in Prisons and Rehabilitation of Inmates*, which was successfully completed in September 2007, aimed to address the high percentage of recidivism among former offenders in Estonia (around 75 percent). It also tried to reduce drug abuse by offenders through drug treatment and rehabilitation programmes in prisons and the probation service. As a result, the number of detainees has been successfully reduced from 4,565 to 3,560. Steps are being taken to integrate the probation service and prison system to enable better cooperation. During the running of the project an increasing internal differentiation within the prison system and the improved treatment of prisoners proved to be a success even in the short term.

In Turkey three expert teams of representatives of international human rights organisations, the Human Association of Turkey, Mazlumder and Amnesty International Turkish section produced manuals for training of local human rights defenders. Furthermore in total 48 members of the three Turkish human rights organisations were trained as trainer. In 2007 these trainers provided seminars in the framework of the project '*Strengthening the local branches of human rights organizations in Turkey*' to in total 69 members of the local branches of their organisations. For 2008 9 more seminars are scheduled.

One of the unforeseen successes of the long-term project *Establishment of Children's Rights Protection and Monitoring Mechanisms on Local Level in Lithuania* was the establishment by the Ministry of Social Security and Labour of nearly 600 new paid positions for social workers on *seniunija* level to work with families. This is the first professional group to assist families at risk at the local level in Lithuania. Furthermore, by a Decree of the Minister of Social Security and Labour the Lithuanian partner organization Community Change Centre was recognized as a national competence centre in the field of community social work. In this light, the training programme developed within the framework of this project and the teams of Lithuanian trainers (under the CCC organizational structure) were approved by the Ministry as part of Lithuania's national competence, thus ensuring the sustainability of the comprehensive and coherent training programme. The CCC's first assignment was to train new social workers.

As a result of the project *Reintegrating Juvenile Offenders in Romania* four probation tools (a diagnosis instrument for clients, two training programs on social skills and a business plan for community services) were implemented and evaluated by 12 probation teams. Furthermore 12 staff members of the Probation Department were trained as trainers. They will be involved in training their colleagues on these four new instruments.

The project *Strengthening the potential of the Ombudsman Institution and the Commission for Human Rights in Russia: Boosting the struggle against racism and discrimination* that ended in December 2007 targeted in its final phase three regions where a cooperation pilot programme was being implemented. In two regions this pilot programme was very successful, starting with a Round Table attended by a large

number of representatives of the state human rights defenders (Ombudsman office), civil society and authorities in charge of combating discrimination and racism; concrete results were obtained. In the Sverdlovsk region it was decided to edit and distribute a brochure for migrants in Russia, containing relevant information, amongst other things, on their status, rights and obligations and access to (legal) aid as a joint effort by an NGO and the Federal Migration Service. The Samara region opted for the proposal of the regional Ombudsman to create an Expert Council under the Ombudsman on discrimination issues and to publish a bulletin that highlights activities in the region to combat discrimination, xenophobia, and other cases of intolerance.

2. ACTIVITIES

2.1 Research, Monitoring and Lobbying

2.1.1 High-Level Conference on Combating Discrimination and Promoting Mutual Respect and Understanding (HLC), Bucharest, 6 - 8 June 2007



The Parliament Palace in Bucharest, Romania, which hosted the High-Level Conference on Combating Discrimination and Promoting Mutual Respect and Understanding, 6-8 June 2007 (Bucharest International Conference Centre, Parliament Palace)

The NHC organized the participation by Dutch NGOs within the framework of a conference which followed up the 2005 OSCE Conference on anti-Semitism and other forms of intolerance, e.g. Islamophobia, xenophobia. On the day before the Conference opened in Bucharest, the participating NGOs gathered for a Civil Society Preparatory Meeting where they came up with common recommendations to be presented during the following three-day Conference. The NHC and Article 1 organized a side-event and together with Amnesty International Nederland put together a statement later spread amongst other NGOs. Their goal was

to draw attention to the situation in the Netherlands with regard to discrimination and intolerance, as well as to present the Dutch approach by means of best practices.

2.1.2 Human Dimension Implementation Meeting (HDIM)

Warsaw, 24 September - 5 October 2007

The NHC participated in the HDIM conference. This event is the OSCE's largest European conference on human rights, taking place in Warsaw during the period September 24 – October 5.

Six Dutch representatives were present during the HDIM, *inter alia*, COC, Clingendael, LOS and two side-events were planned by LOS, NHC and COC, *i.e.* “*The Integration of Lesbian, Gay, Bisexual and Transsexual (LGBT) – emancipation in education*” and “*Irregular migrants do have human rights*”. The first event was attended by approximately 25 participants who engaged in a productive discussion and an exchange of experiences. This brought to light, for instance, a striking difference in the degree of integration of LGBT in the Netherlands and Eastern Europe, demonstrating the importance of the discussion. It was concluded that sharing best practices would lead to a more effective struggle against homophobia. The second event took place on 2 October and comprised three presentations followed by a fruitful discussion.

There was great interest in the above-mentioned topic and around 60 people from a variety of backgrounds attended, the number highlighting the importance of the subject. Ed van Thijn from the NHC gave an overview of his report “*Human Rights of Irregular Migrants*” which he wrote for the Parliamentary Assembly of the Council of Europe⁶. This report was later summarized and distributed as a statement. Emphasis was placed on the fact that the Dutch government and the governments in the OSCE region in general can no longer deny the presence of this group of people. The event, which was the only one during the HDIM which dealt with irregular migrants, was thus greatly appreciated and a follow-up was strongly advocated.



Neline Koornneef of the Netherlands, rapporteur at the session on national minorities, reports back to the closing session of the Human Dimension Implementation Meeting in Warsaw, 5 October 2007. (Photo: OSCE/Sarah Crozier)

2.1.3 Round-table conference

On the occasion of its twentieth anniversary (1987–2007), the NHC organized a round-table conference on the topic “*The Netherlands and the European Values: the role of the Council of Europe and the European Court of Human Rights*”. The event took place on 22 November 2007 at the plenary hall of the Dutch Senate in The Hague. The round-table meeting was attended by 65 participants and 22 speakers took the floor. The conference was organized with financial assistance from the Haëlla Foundation and it had three panels, *i.e.* *Implementation and carry-over of ECHR judgements in the Netherlands; Implications of human rights instruments of the Council of Europe for the Netherlands* and *The future of the Council of Europe and the role of the Netherlands*. The outcome of the event was sent to Parliament.

Ms Y. Timmermans-Buck, the Senate chairperson, welcomed the participants and speakers, the opening speech being delivered by Ms W. Thomassen, a former judge at the European Court of Human Rights (ECtHR) and currently judge of the Supreme Court and deputy chairperson of the NHC. The conference was chaired by Ms M. L. Bemelmans-Videc, member of the Christian Democratic Appèl and the Parliamentary Assembly of the Council of Europe.

Conference Background

The Netherlands is a member of the Council of Europe (CoE) and is thus bound by the various provisions of the European Convention on Human Rights and Fundamental Freedoms (ECHR). During the past few years the Netherlands has been admonished by the ECtHR for certain methods it has applied in various fields, *inter alia*, prison conditions, police violence, refugee policy, immigration and asylum policy.

Furthermore, the Parliamentary Assembly of the Council of Europe issued a report on irregular migrants which concluded that although the Netherlands safeguards the “minimum” rights of irregular migrants, it however fails to guarantee the right to an adequate living and working environment, or alternatively social security.

⁶ <http://assembly.coe.int/Main.asp?link=/Documents/WorkingDocs/Doc06/EDOC10924.htm>

The Netherlands ratified the Framework Convention on National Minorities, also an initiative by the Council of Europe, but only with regard to Frisians. The Framework Convention is not applied to the Roma and Sinti and neither is it applied to other minorities, e.g. persons of Turkish, Moroccan or Surinamese origin.

In April 2007 the Parliamentary Assembly of the Council of Europe issued a report entitled “*State of human rights and democracy in Europe*” which also assessed the situation in the Netherlands. The Commission intended to arrange a public meeting to discuss human rights safeguards and the promotion of democracy in our country. The Netherlands should commit itself to ensuring that the Agency functions independently in order to enable it to promote fundamental rights within the framework of EU policies.

Objectives of the conference

One of the most important objectives of the conference was to investigate the implementation of various human rights instruments of the CoE in the Netherlands and the possible improvements which could be attained in this field. Other points on the agenda were, *inter alia*, reflecting upon the relationship between the European Convention on Human Rights, the European Court of Human Rights, the European Commissioner for Human Rights and the Parliamentary Assembly. In this respect the participants were invited to discuss and to determine the role of the Netherlands Institute for Human Rights, in particular with regard to the implementation of human rights standards stipulated in the ECHR.

The organizers were looking for suggestions regarding the contribution of the Netherlands, as a member of the CoE, to a better functioning of the CoE and the ECtHR in the field of human rights protection. Several suggestions were also expected concerning the working methods and procedures of the ECtHR and the implementation of the recommendations of the recent Report “*The Group of Wise Persons to the Committee of Ministers*” on Protocol 14. The discussion on recommendations proved to be necessary given the fact that the Russian Duma did not ratify Protocol 14, thus it did not contribute to the efficient handling of several cases brought before the Court.

The conference also proposed to examine, in view of the recent “*Memorandum of Understanding*” between the EU and the Council of Europe, the recently established EU Human Rights Agency in Vienna and the possibilities for attaining better synergy between the CoE, the EU and the OSCE.

Results of the conference

The Netherlands can contribute to the more efficient implementation of the provisions of the ECHR by broadly applying them and not aiming at the minimum application thereof. Based on the number of complaints against the Netherlands brought before the ECtHR, it can be concluded that a significant number of these complaints concerned the rights of aliens and refugees. It may be doubted whether the Dutch courts, the legislator and policy-makers actually monitor the decisions of the ECtHR on this topic.

A number of participants advocated the establishment of an inter-departmental working group having the role of monitoring the decisions of the ECtHR involving other states, but being directly relevant to the Netherlands as well.



Panel II (left to right) Mr Ed van Thijn, Ms Winnie Sorgdrager, Ms Barbara Oomen, Mr Antoon van Kalmthout and Ms Kristin Henrard.

The objective would be to implement these decisions in the Netherlands and to elaborate proposals for necessary changes to be implemented at various levels, if required, also at the level of legislation.

Competition between the Council of Europe and the European Union should be avoided. This is why cooperation by the EU concerning the implementation of the ECHR is desirable. Since the establishment of the European Agency of Human Rights is a fact, it should be avoided that unnecessary double work is carried out or, even worse, that the EU erodes the CoE. In this respect the existence of double standards should be prevented. The Netherlands should commit itself to ensuring that the Agency functions independently, thereby contributing to the promotion and implementation of fundamental human rights within EU policies.

On 14 January 2008 the outcome of the round-table conference was forwarded to the Committee on European Cooperative Bodies, the Committee on Justice and the Committee on Foreign Affairs, Defence and Development Cooperation of the Senate of the Dutch Parliament, and also to the Committee on Internal Affairs and Kingdom Relations, the Committee on Justice and the Committee on External Affairs of the Dutch House of Representatives.

2.1.4 Human Rights in the Netherlands

The NHC drew up an overview of the events in the Netherlands which are of relevance to human rights (abuse). The report is enclosed in the present Annual Report.⁷ The NHC also distributed this report among, *inter alia*, members of the Dutch Parliament and NGOs. In addition it was published on the NHC website.

2.1.5 National Institute of Human Rights (NIRM)

At the beginning of the year the provisional governing board of the NIRM was formed, including as its members:

- Mr M. Oosting, Study Centre on Human Rights (SIM), as its chairman
- Mr A. Brenninkmeijer, the National Ombudsman (NO), member
- Ms J.E. Goldschmidt, Netherlands' Institute of Human Rights (SIM), member
- Mr A.C. Hendriks, Equal Treatment Commission (CGB), member
- Mr J. Kohnstamm, Personal Data Protection Commission (CPB), member
- Mr J.P. Loof, secretary

The board submitted a report to the Minister of Internal Affairs on 18 April 2007. On the same day the functioning of the National Institute of Human Rights was described in a lecture delivered by Heiner Bielefeldt, Director of the German Institute for Human Rights (Deutsches Institut für Menschenrechte).

It is expected that during 2008 the Ministry of the Interior and Kingdom Relations will take a decision regarding the further functioning of the NIRM.

2.1.6 Working Group on Human Trafficking

Following an inventory of existing expertise in the Netherlands and of potential new funding, the NHC established contacts with several anti-trafficking organizations in Eastern Europe. Contact was established with organizations in Montenegro, Bosnia and Macedonia. There were visits to *ACTA (Zagreb)*, *ATC (Belgrade)*, *ASTRA (Belgrade)* and the *International Centre for Migration Policy and Development (ICMPD) in Vienna*. During the discussions with the above-mentioned organizations several ideas for projects emerged, *inter alia*, concerning prisons, anti-corruption, strengthening national capacities and the provision of legal aid.

ACTA, a network of East European anti-trafficking and anti-corruption NGOs, provided the Working Group with an assessment of the problems within the anti-trafficking field in Eastern Europe.

ATC in Belgrade was keen on cooperation with the NHC concerning a project on sex workers. However, no feasible idea for a project has yet emerged. The International Organization for Migration in Belgrade (IOM) expressed an interest in working on the project alongside ATC.

⁷ For a detailed report see Appendix IV

Similar to the NHC, the ICMPD is a project-managing entity with substantial regional projects in its portfolio. Collaboration on selected projects was proposed and this is envisaged for the future.

The Anti-Trafficking Action (ASTRA) forwarded a project proposal to the NHC. The core activity in this draft is the training of advocates for dealing with cases and clients involving human trafficking. This proposal has been further developed and the NHC has contacted relevant experts in the Netherlands.

In 2008 the NHC will further develop the project proposal with ASTRA and submit it to a funding programme.

2.1.7 Developments in relation to the Netherlands Antilles and Aruba

In 2005 Prof. Dr. E.A. Alkema, member of the NHC took the initiative to investigate the possibilities for the NHC to develop a program in the Netherlands Antilles and in Aruba. As a result of this initiative the Dutch Section of the International Commission of Jurists (NJCM) and the NHC discussed the potential of the establishment of a human rights organization in this region. At the same time but independent from this initiative Prof. Rijders from the University of the Netherlands Antilles (UNA) took up the task of establishing the Dutch Caribbean Human Rights Committee (DCHRC). This NGO was expected to affiliate with the International Commission of Jurists (ICJ) of which the NJCM is also a member. The establishment of the Dutch Caribbean Human Rights Committee was celebrated on 18 October 2007 at the University of the Netherlands Antilles. The role of the organization is to develop, strengthen and protect the fundamental rights and freedoms in the Netherlands Antilles and Aruba. The NHC and NJCM promised to support this organisation when requested.

2.1.8 Developments in relation to the Gulf region

In 2007 the Bridging the Gulf (BtG) programme of the NHC comprised four components, *i.e.* a visit to the Netherlands by a delegation from Saudi Arabia, the Gulf Network Conference, a visit to Dubai and Bahrain, and a visit to Saudi Arabia by a delegation from the NHC.

Within the framework of the first component a delegation of 8 representatives from the National Society for Human Rights (NSHR) from Saudi Arabia paid a visit to the Netherlands during the period 6-12 May 2007. The programme for the delegation included a study day held by the Netherlands Institute of Human Rights (SIM) in Utrecht. The experts at the Institute introduced various aspects related to the field of human rights, with special emphasis on women's rights. The delegation visited the Scientific Council for Government Policy, Press Now, Radio Zamaneh, the Ambassador for Human Rights and the Ombudsman. As a final activity, in cooperation with the Clingendael Institute, the NHC organized a seminar entitled "*Human rights and Terrorism*". One of the speakers at the seminar was Gijs de Vries, the former European Union Counter-Terrorism Coordinator.



Clingendael Institute, The Hague. Seminar on *Human Rights and Terrorism*. From left to right: Mr Nasser al-Sharif, Ms Farah Karimi, Mr Gijs de Vries and Mr Al-Rawaf

The delegation from Saudi Arabia was led by Ms Aljoharah M. Alangari, a founding member and Vice-President of the National Society for Human Rights. The NSHR was founded in 2004 and considers itself to be the first NGO in Saudi Arabia working in the field of human rights. This visit came as a response to the visit by a delegation of the NHC to Saudi Arabia in 2006 at the invitation of the NSHR. The Dutch Embassy in Riyadh and the Embassy of Saudi Arabia in The Hague played an important role in the success of both visits.

The second component of the project consisted of the Gulf Network Conference, which took place in The Hague on 12-13 May 2007 with the participation of several representatives of human rights organizations from Gulf Cooperation Council (GCC) countries, including also two members of the NSHR. The participants represented Bahrain, Saudi Arabia, the United Arab Emirates and Kuwait. The most important conclusion of the conference was that the already existing network should be broadened and during the coming years further meetings of this network should take place. The participants also made plans for the organization of a yearly conference of Civil Society Organizations (CSOs) in Brussels and, furthermore, the implementation of training sessions for human rights defenders from the Gulf region and the establishment of a Human Rights Education Centre in this region. The above-mentioned plans are to be further developed in cooperation with the SIM within the Bridging the Gulf Programme.

Within the framework of the third component of the programme Ms Farah Karimi and Mr Jan ter Laak visited Bahrain and the United Arab Emirates (Dubai) during the period 21-28 October 2007. The objective of the visit was to strengthen contact relations with the various human rights organizations working in both countries. Further contacts were established with persons who are striving to improve the living and working conditions of migrant workers. On 28 October Ms Farah Karimi and Mr Jan ter Laak were invited to participate in the first general assembly meeting of the Sheikh Mohammed Bin Rashid Al Maktoum Foundation. The task of the Foundation is to strengthen human development in the region. The basis of the envisaged activities is the reports of the United Nations Development Programmes (UNDP), thereby raising awareness concerning the lack of knowledge in the Arab region.

The fourth and thus the last component of the Bridging the Gulf Programme was a visit paid by a delegation of the NHC to Saudi Arabia in the period 24-28 November 2007.

Besides Ms Farah Karimi and Mr Jan ter Laak, Mr Jochem Beunderman of the NHC and Prof. Dr. Cees Flinterman, Director of SIM and a member of the CEDAW (Convention on the Elimination of all forms of Discrimination Against Women) formed part of the delegation. Mr Flinterman could personally see the efforts that Saudi Arabia is making to fulfil its obligations under CEDAW, the report on Saudi Arabia due to be submitted to the Commission on 17 January 2008. Besides the concrete training plans developed and expected to be implemented in co-operation with the National Society for Human Rights (NSHR), intensive discussions also took place also with members of the National Commission for Human Rights (NCHR), a human rights organization directly subordinated to the King. There was also a visit to the Prince Naif Arab Academy for Security Sciences (NAASS). One of the most important topics of discussion during the visit was the possibility of organizing a yearly conference of Civil Society Organizations (CSOs) from the Gulf region. Such a conference would function as a sort of shadow conference for the yearly meeting of the Ministers for Foreign Affairs from GCC states and the EU. Various members of the NSHR were willing to participate in such a CSO conference in Brussels.

Beginning with 1 January 2008 the Bridging the Gulf Programme became an independent NGO under the name "*Bridging the Gulf*", Foundation for Human Security in the Middle East. For more information see <http://www.bridgingthegulf.org/>.

2.2 Helsinki Monitor: Security and Human Rights

Security and Human Rights, formerly the *Helsinki Monitor* is a quarterly journal devoted to issues inspired by the work and principles of the Organization for Security and Co-operation in Europe (OSCE) and brings to light current developments which have an effect on human rights, peace and security across North America and wider Europe, including also Central Asia.

As of 1 January 2008 the full name of the journal became *Helsinki Monitor Security and Human Rights*, since this title more effectively covers the content of the quarterly and its target group. It looks at the challenge of building security through cooperation across the northern hemisphere, from Vancouver to Vladivostok, as well as how this experience can be applied in other parts of the world.

The major themes of *Security and Human Rights* include:

- conflict prevention;
- human rights;
- minorities;
- democracy building; and
- cooperative security.

The journal aims to stimulate thinking about the protection and promotion of human rights in a world facing serious threats to security. The journal, founded in 1990, is a legacy of the Helsinki Process that was designed during the Cold War to bridge Eastern and Western Europe on the basis of common principles and cooperative security. It brings to light current developments affecting human rights, peace and security across North America, and wider Europe including Central Asia.

In the four issues of 2007 Helsinki Monitor published articles on, *inter alia*:

- the legal status of the OSCE, its new priorities, hardships and future perspectives;
- minorities, tolerance and non-discrimination;
- free broadcasting/media in developing states;
- President Putin's Russia;
- the cartoon controversy;
- armed groups and militarized political parties;
- the Human Dimension Implementation Meeting in Warsaw; and
- self-determination and territorial integrity.

Members of the editorial board in 2007

Arie Bloed – Chief Editor, Former Executive Director of the Constitutional and Legislative Policy Institute, OSJI, Budapest, now a freelancer; *Wolfgang Zellner*, Deputy Director Institut für Friedensforschung und Sicherheitspolitik, Hamburg; *Edwin Bakker*, Senior Researcher at the Netherlands Institute of International Relations 'Clingendael', The Hague; *Harm Hazewinkel*, former employee of the Ministry of Foreign Affairs; *Kees Homan*, Major General (ret.) RNLMC, senior research fellow at the Netherlands Institute of International Relations "Clingendael", The Hague, former Director of the Netherlands Defence College; *Wilco de Jonge*, Executive Director Press Now; *Walter Kemp*, Senior Advisor at the UN Office on Drugs and Crime; *Tanja Loksina*, Centre Demos, founded by the Moscow Helsinki Group; *Dov Lynch*, European Union Institute for Security Studies; *Aaron Rhodes*, Executive Director of the International Helsinki Federation for Human Rights; *Erika Schlager*, Senior Staff Member of the United States Commission on Security and Cooperation; *Rob Zaagman*, Deputy Director Cabinet of the Queen, The Hague; *Andrei Zagorski*, Professor at the Geneva Centre for Security Policy (GCSP); *Krzysztof Drzewicki*, Senior Legal Adviser to the OSCE High Commissioner on National Minorities; *Branislav Milinkovic*, Special Envoy of Serbia and Montenegro to NATO; and *Julia Koster* – Executive Editor, staff member of the Netherlands Helsinki Committee. During 2007 Ms Julia Koster replaced Ms Monica van de Ven.

2.3 Technical Assistance

A transition to democracy and the rule of law is a complex and lengthy process which requires active support. Relevant expertise is available in Western Europe, as well as in Central and Eastern Europe. Experts in the fields of human rights and the rule of law can facilitate the transition process by sharing their knowledge, skills, and experiences with their colleagues and experts in other countries. Currently, most of the countries of Central and Eastern Europe have ratified international human rights conventions and have adopted democratic constitutions. The practical implementation of the standards and norms of these conventions and of democratic values is now the main priority. Respect for human rights, the rule of law and democracy is also a key element in the process of enlarging the European Union. At the Copenhagen summit in 1993 the European Union member states elaborated the European Union membership criteria, which the Candidate Countries need to meet before their EU accession. One of the criteria is the achievement of the stability of the institutions guaranteeing democracy, respect for the rule of law and human rights and the protection of minorities.

In this context the NHC considers it relevant and important to support human rights education for all kinds of professional groups to strengthen principles of human rights, the rule of law and democracy. The main target groups of the NHC projects are professional groups which have to apply international legal standards regarding human rights, democracy and the rule of law. These professional groups include human rights activists and lawyers, judges and prosecutors, the legal staff of various Ministries, police officers, prison staff and probation staff. For these target groups the NHC organizes a wide range of cooperative technical assistance programmes concerning:

1. improving the capacity of judicial professionals;
2. professionalization of prison systems, the probation service and the police;
3. strengthening human rights organizations and institutions;
4. contributing to post-conflict rehabilitation; and
5. reinforcing the establishment of effective legal aid systems.

2.3.1 Improving the capacity of judicial professionals

A fundamental feature of the rule of law is an impartial and independent judiciary. The NHC aims to strengthen the position of the judiciary in Central and Eastern European countries by promoting international cooperation among judges and prosecutors, and among international organizations representing these professional groups. The NHC also supports train-the-trainer activities to improve the educational potential of the judiciary and to enhance their level of professionalism.

Furthermore, the NHC stimulates debate between judges and prosecutors and assists organizations representing judges and/or prosecutors.

Strengthening of the Bulgarian Judiciary: Implementation of the new penal procedures code strengthening the interagency cooperation between the public prosecutor's office (PPO) and other bodies concerned with fighting organized crime and corruption (2005 – 2008)

This PHARE Twinning Project is financed by the European Commission. The project is implemented by an Austrian-Dutch consortium. The Austrian Ministry of Justice and the Austrian Centre for Legal Competence (CLC) is the senior consortium member. The Dutch Ministry of Justice (the Public Prosecution Service) is the junior consortium member and it has appointed the NHC as project manager. The Public Prosecutor's Office (PPO) in Bulgaria is the main beneficiary.

The key problem

As a prerequisite for EU accession, Bulgaria was required to reform its judiciary. Therefore, in order to be able to handle court-to-court dealings at a European level, including the mutual recognition of court decisions, the judiciary had to increase its capacity, while strengthening interagency cooperation. In 2006 the European Commission still identified difficulties in the implementation of penal procedures and a lack of training for prosecutors who would enforce the country's new Penal Procedures Code (PPC). There was a need for better cooperation between prosecution offices and investigative authorities in order to ensure a more coordinated and rigid fight against organized crime, high-level corruption and money laundering.

Objective

The overall objective of the project is to support the bodies of the judiciary and the executive in the implementation of a strategy for the reform of the judiciary; to contribute to the introduction of European standards for a higher quality of justice and judicial training; to facilitate effective and smooth management of the judiciary; and to improve institutional cooperation.

The purpose of the project is to identify and implement the measures that strengthen interagency cooperation between the PPO and other relevant bodies in combating organized crime and corruption, and also to develop practical methods and training modules for the implementation of the newly adopted *acquis* in the field of organized crime and corruption.

Activities

The project consists of three components.

The first component, “*Improvement of the legal environment*”, aims to ensure coherence between the new PPC and the relevant legislation, in particular with regard to the pre-trial phase (Judicial Systems Act, Ministry of Interior Act, Penal Code, Law on Special Intelligence) and to present proposals for amendments. Workshops for prosecutors and experts are intended to achieve the desired result. Primarily, an analysis of the legal environment of the PPC – legislative coherence, efficient interagency cooperation – and a corresponding assessment report is elaborated. This is followed by the recommendations to be adopted by the PPO for the improvement of the legal environment. Based on the catalogue of recommendations, an Implementation Action Plan, including benchmarking and monitoring mechanisms for legislative environment improvement was created, adopted and presented to the public. Implementing the Plan comprises, *inter alia*, providing legal advice and offering assistance in legal drafting and/or assisting in the implementation and enforcement of the improved legal framework, once approved by Parliament.

The analysis of the compatibility of the PPC and relevant legislation was completed, recommendations were made and a draft for an improved Code was submitted to the Bulgarian Parliament. The Ministry of the Interior issued the draft for an amendment with changes to regulations of the PPC that correspond to several recommendations of the Implementation Action Plan. The most important of the proposed new regulations is the availability of evidence gathered after the end of the legally prescribed time-limit, the possibility to hear an investigator as a witness, and the possibility to use evidence gathered through special investigation means. The Supreme Cassation Prosecution Office agreed with most of the proposed regulations. Unfortunately, two recommendations were not approved, *i.e.* the possibility to interrogate an investigator as a witness and to use evidence adduced by special investigation methods ordered by the police during investigation before the pre-trial phase. The elaborated amendment will remove most of the formal obstacles that prevent efficiency in criminal proceedings and will provide the judiciary with better means to pursue and sentence perpetrators.

The second component, “*Improvement of the institutional environment*”, focused on the development of practical rules for cooperation between the prosecution and law enforcement bodies with investigative powers, *inter alia*, agencies of the Ministry of the

Interior and the customs authorities, while following the new PPC guiding principle that such authorities should be under the guidance of the prosecutor. Furthermore, it aimed to develop measures and training sessions for all agencies concerned with special investigation methods, including “undercover agents”. Furthermore, the establishment of an effective national network for legal cooperation in the investigation of organized crime, money laundering and corruption will provide for Bulgaria’s active participation in international networks, e.g. EUROJUST, EJM, EUROPOL. Finally, practical measures for the enforcement of the European Arrest Warrant were elaborated. Seminars, workshops for prosecutors and study visits for experts are the activities which are planned so as to meet the objective of this component. The issues discussed during the initial workshops related to the current state of the national network for cooperation between the prosecution and law enforcement bodies; international cooperation in fighting organized crime, money laundering and corruption; and the identification of problematic areas and bottlenecks. These were followed by presentations and discussions on “efficient” and “non-efficient” EU practices in special investigation methods and the enforcement of the European Arrest Warrant.

A total of four study visits abroad completed the activities implemented within the second component of the project. The first visit was to Bratislava for a “*Strategic Meeting on the Implementation of the European Arrest Warrant*”. The event, which took place in October 2006, was attended by three Bulgarian prosecutors who, as a follow-up to the visit, summarized the acquired knowledge and experience in a comprehensive report. Two visits to the Netherlands took place in January and March 2007.

During the first visit to The Hague 10 prosecutors presented good and bad practices in national networks and networking practices for cooperation on an international level in the investigation of organized crime and money laundering. The participants visited EUROPOL, EUROJUST, the Board of Procurators General, the headquarters of the regional police in Zwolle, the International Criminal Court (ICC) and the European Anti-Fraud Office (OLAF). During the second visit another group of 10 Bulgarian prosecutors visited Amsterdam to gain knowledge of good and bad practices regarding cooperation on a national level between prosecution services and law enforcement bodies with investigative powers, as well as in applying special investigation methods and the European Arrest Warrant. The participants also visited the District Court of Amsterdam, the Prosecution Office in Amsterdam and the headquarters of the regional police in Zwolle. The group also visited Schiphol Airport to witness all aspects of the so-called 100% control, demonstrating a new system of drug investigation. Finally, 10 prosecutors from Bulgaria visited Austria, where they became acquainted with good and bad EU practices in national networks and networking for cooperation on a national level between prosecution services and law enforcement bodies with investigative powers, special investigation methods (undercover practices), and the enforcement of the European Arrest Warrant. The experiences of the Bulgarian delegations during the visits were later shared in a lessons-learned workshop in Sofia.

It contributed to the elaboration of a catalogue of recommendations for, *inter alia*, the establishment of a national network for cooperation on a national level between prosecution services and law enforcement bodies with investigative powers; the improvement of the national network for cooperation on an international level in the investigation of organized crime and money laundering; the implementation of special

investigation means, including undercover practices, and the introduction of practical measures for enforcing the European Arrest Warrant.

Joint Bulgarian, Austrian and Dutch experts elaborated three Implementation Action Plans that include benchmarks and monitoring mechanisms for network improvement, special investigation implementation and European Arrest Warrant enforcement. These have to be adopted by the PPO, other institutions fighting organized crime and corruption, and made public with the aim of raising awareness and fostering trust in the applied changes.

Guidelines for international and national cooperation and practical measures for the implementation of special investigation means, as well as for the enforcement of the European Arrest Warrant, have been elaborated. The recommendations in the Guidelines and in the Action Plan refer to institutional measures, including several that would not require legislative changes. The recommendations are summarized below.

Ensuring better and clear-cut communication between the Public Prosecution Offices and the investigation authorities; training prosecutors and officials with investigative powers while improving material and personal resources at their disposal; the use of modern means of communication; a regular exchange of experience between the PPO and the investigative authorities to stimulate cooperation and to strengthen the fight against organized crime and high-level corruption.

Furthermore, the establishment of joint investigation groups is recommended, including tax and customs experts from the Ministry of Finance to promote the tackling of tax evasion, the abuse of European Union funding and money laundering; the development of prototype forms and increasing the use of the internet to further facilitate international cooperation and to contribute to the fight against smuggling, human and drug trafficking and money laundering. This will also contribute to the seizure of illegally acquired capital, especially with regard to international financial transactions.

The recommendations also relate to the improvement of technical equipment and the intensification of the preparations for the use of special investigation methods before the start of the legal term; improving protection for undercover agents and a clear description of their tasks and obligations; and the use of rapid and modern means of communication and swiftly executed preparatory work on incoming European Arrest Warrants to ensure successful criminal proceedings for international crimes.

The third component, “*Improvement of the training environment*”, planned four training sessions for prosecutors, including the following topics: protecting the financial interests of the European Union; combating high-level corruption; the implementation of special investigation methods (undercover agent practices, controlled delivery and pro-forma transactions); the enforcement of the European Arrest Warrant and the fight against money laundering; improving cooperation – the prosecutor as the *dominus litis* in the pre-trial phase.

The component started with a couple of workshops which aimed to identify the topics to be discussed during the above-mentioned training sessions. Based on the analyses, specific training programmes and manuals were elaborated and adopted. Applying the

knowledge gained during the training sessions will lead to an efficient and effective implementation of the new PPC and strengthened interagency cooperation between the PPO, public prosecutors and other bodies involved in fighting organized crime and corruption.

Each three-day training course was attended by 20 participants, representing public prosecution offices and law enforcement agencies with investigative capabilities. Together, three training sessions were held, summing up the participation of 240 prosecutors and investigators that have been trained under this project.

Other NHC projects in the field of the judiciary and support in adapting legislation to European standards:

- Establishing European Law Documentation Centre in Bulgaria
- Strengthening the legal culture in Croatia: improvement of the relations between the judiciary and the media

2.3.2 Professionalization of prison systems, the probation service, the police and other legal professionals

The NHC has extensive experience in implementing projects providing guidance and advice to prison staff concerning the practical implementation of international and European norms and standards. The NHC facilitates cooperation and twinning relationships between prison institutions in the Netherlands and those in countries in Central and Eastern Europe. In order to provide knowledge and practical skills concerning the treatment of inmates and the management of prisons, training courses, seminars and working visits are organized. Additionally, the NHC also assists in the establishment of probation services and the further improvement of the quality of their work by providing training and consultancy in organizational development. The NHC also organizes human rights training for police officers.

Drug Prevention in Prisons and the Rehabilitation of Inmates (2005 -2007)

This PHARE Twinning Project was financed by the European Commission. The project was implemented in cooperation with the Ministry of Justice in Estonia, the National Agency of Correctional Institutions (DJI) of the Ministry of Justice in the Netherlands and the Dutch Probation Service. It started in July 2005 and was successfully completed in September 2007.

The key problem

In comparison with other European countries, recidivism is higher in Estonia and a considerably large number of prisoners are drug users. The rising crime rate is largely due to the ineffectiveness of the police, the prosecutor's office and the court system. This situation led to a continual increase in the number of prisoners and triggered related problems, such as drug abuse (and consequently infectious diseases) and problematic rehabilitation. The Estonian authorities have successfully implemented programmes for fighting drug abuse, there have also been several activities implemented with regard to the rehabilitation of offenders in Estonian prisons; however, they lacked consistency and regularity.

Objective

The purpose of the project was to reduce drug abuse among offenders through the development of drug treatment and the implementation of rehabilitation programmes in prisons and the probation service, and also to improve the social reintegration of ex-offenders through the development of coping skills for this target group.

In addition to rehabilitation programmes targeting alcoholics and drug addicts, as well as training for prison staff, with special emphasis on two target groups, *i.e.* young offenders, since they are considered to be the most vulnerable group, and sex offenders, who are often neglected and therefore receive minimum or, in several cases, no rehabilitation possibilities.

Activities

During the first months of the implementation of this project an action plan for addressing drug abuse in prisons in the long-term was developed. From 2006 until the end of the project, this focused principally on the training of prison staff in order to be able to improve the rehabilitation and coping skills of prisoners, especially those of young offenders, drug addicts and sex offenders. Training the trainers activities were also envisaged for professionals in prevention and rehabilitation programmes.

Results

The research paper “*Drugs in Prison*” was developed by experts of the Dutch Trimbos Institute, in cooperation with the Social Care Department of the Estonian Ministry of Justice. During their visits to Estonia, the experts from the Trimbos Institute gathered information about drug use in prisons. The research, which was published by the Estonian Ministry of Justice as an individual document and distributed amongst several ministries and institutions, aimed to outline a long-term action plan in the field of drug addiction in Estonian prisons. All stakeholders proved to be very cooperative, since they were all eager to tackle the drug problem. The Estonian NGO “*Convictus*” was involved as a partner and worked with the prisoners.

One of the most important conclusions of the Drug Research has been the need for drug-free zones (DFZ) in Estonian prisons. In the Netherlands some prisons have created DFZs and the Dutch experience is that they help to motivate prisoners. In the first place, DFZs support drug-using inmates who have taken the decision to stop using drugs by not exposing them to drugs or drug users. Besides creating a drug-free environment, these prisoners receive an individual programme in order to find the most suitable method for them (intensive psychological counselling, substitution treatment, etc.). The report made several recommendations, *inter alia*, reducing drug demand in prisons by preventative measures on the outside, *e.g.* at home or in schools; coercive treatment; intense information exchange between prisons and local government and extended care for released ex-inmates. Furthermore, cooperation between prisons (newsletters, websites, etc.), in particular on newly developed approaches, on problems that the staff are encountering during their work and how to tackle these problems, and internal cooperation between different departments (medical, social, prison and security staff), was proposed. Carefully organizing interesting and effective support activities in prisons (*i.e.* taking into account social norms in prison, devising proper incentives, seeking cooperation with the right groups, encouraging family support) and boosting the motivation of prisoners to participate by making them aware that these activities are

helpful after their release were also important recommendations for the improvement of the present conditions.

Consequently, the long-term action plan focused on recommendations relating to the policy framework in the field of drugs in prisons and programmes focusing on the reduction of demand (*e.g.* treatment and reintegration), and measures focusing on the reduction of supplies (such as educating staff, supervision, drug free zones).

The conclusions of the research conducted under the project were incorporated in the Estonian Government's 2008 National Strategy for the Prevention of Drug Abuse. It is expected that the number of drug-related offences inside prisons will decline by 5% in 2008.

24 Staff members from the Estonian prison system (*e.g.* guards, contact persons, social workers, probation officers, pedagogic employees, psychologists) participated in training in the rehabilitation of juveniles. The trainees worked on thinking errors that are often used as an excuse by prisoners for their behaviour, *inter alia*, being self-centred, minimizing or mislabelling, blaming others and anticipating the most terrible situations. They were also trained in meetings where prisoners can be taught how to help fellow prisoners and how to receive help. Discussing social skills with juveniles, the manipulation of group dynamics and making good moral judgements were also part of the training. The applied materials were translated and are being used as manuals in the Estonian prison system.

The training in rehabilitation and treatment was completed by 18 participants. The training concerned the "addiction syndrome" and its recognition. Role-playing was used as an interactive training tool. Pairs of trainees played the role of addicts, while others observed. Special attention was given to the emotions of a drug addict who tries to end his drug addiction. The last day of the training was spent on compiling a coaching plan for prisoners who want to end their addiction. Four groups prepared a plan and the best example was used in a final role-playing session.

A training seminar on coping skills was attended by 40 participants. Essentially, a manual on coping skills that is used in the Netherlands by the Probation Service was assessed in order to determine whether it can also be used in Estonia. The manual needed to be adjusted to the Estonian situation, this process being done in close cooperation with the four experts of the Dutch Probation Service and the Ministry of Justice in Estonia. The famous "Goldstein method"⁸ was presented as the main tool to develop coping skills.

The most successful training method proved to be role-playing, participants being able to better understand "the other party". Additionally, the participants asked for further exercises that could be used in the future; therefore, an evaluation form was distributed that they could give to their clients at the end of a theme. The training also involved a discussion on the most frequently occurring difficulties that the participants had to deal

⁸ Also called "structured learning therapy". The emphasis of this method is on acquiring good practical social skills. There is a focus on conditions under which targets become socially more skilled, acquire useful behaviour patterns, decrease their social fear, and acquire realistic expectations regarding their own competence.

with during their work and the solutions that they applied. The dialogue helped participants to develop a more positive and constructive way of thinking when approaching their clients.

The most sensitive activity was probably the training concerning sex offenders, which aimed to teach 22 participants how to deal with this “taboo group” of prisoners. Estonian society is in denial regarding sex offenders and little attention is given to their rehabilitation possibilities in prisons. Two experienced Dutch trainers started this training by explaining how sex offenders are treated in one of the prisons in the Netherlands. As a starting point, in order to become acquainted with this specific group of offenders, typologies of rapists and paedophiles were introduced, and the trainees practised connecting them to different causes of crime. After that, a discussion took place as to what kind of therapeutic climate is needed in prisons. On the last day, the effects of sex crimes on victims were explained. At the end of the training, participants discussed ideas and made suggestions regarding the contribution to a treatment programme with the support of several specialists working in prisons. This was done in view of a previous task during the training, which had been to develop and present a vision of implementing the programme in various prisons, while describing the experiences of working individually with an inmate.

Since there is no special treatment regarding sex offenders in Estonia, it is a completely new area that needs “best practices” to be further developed. The benefit of the training was the identification of this target group as a regular one and providing guidance to the newly obtained knowledge. From this point onwards the aim was to actually start working with sex offenders. Almost all the trainees were of the opinion that they need to begin to work individually, since the conditions for group work are not safe and neither is there any willingness on the side of the prisoners. During the project the two Dutch experts compiled a training manual, which is being used by prison directors and management staff for a new approach towards sex offenders. Furthermore, the manual is a practical tool for probation officers and social workers who are involved in the improvement of the present situation of this target group.

Other NHC projects in the field of professionalization of prison systems, the probation service, the police and other legal professionals:

- Integrating human rights, respect for and the protection of minorities in the training programme of the Czech police and in the Czech police organization
- Establishment of children’s rights protection monitoring mechanisms on the local level in Lithuania
- Reintegrating juvenile offenders. Introducing community-based interventions in Romania
- Strengthening the potential of the Ombudsman Institution and the Commission for Human Rights: boosting the struggle against racism and discrimination in the Russian Federation



Evaluation of the diagnosis instrument developed for the Romanian Probation Service, Sinaia, Romania, 21-22 May 2007

2.3.3 Strengthening human rights organizations and institutions

Most of the Central and Eastern European countries have ratified the international human rights conventions and adopted democratic constitutions, thereby committing themselves to abide by the rule of law. However, violations of human rights and a lack of respect for the international norms still occur. Therefore, raising awareness concerning human rights through education and training remains of great importance bearing in mind that the NHC is conducting a wide range of programmes and activities to strengthen local human rights organizations.

ECHR training programme for human rights lawyers and NGOs from Serbia and Montenegro (2005 – 2007)

This project was financed by the Ministry of Foreign Affairs in the Netherlands under the MATRA Programme and the Open Society Institute from Budapest. The local partner is the Helsinki Committee for Human Rights in Serbia (HCHRS), while the expertise partner is INTERIGHTS from London. The NHC manages the project.

The key problem

Serbia became a member of the Council of Europe in 2003 and in accordance with membership conditions it had to ensure the compliance of national legislation with the European Convention on Human Rights (ECHR). However, the national legal order has

not been fully brought into conformity with the ECHR and the judiciary rarely implement the provisions of the ECHR. Serbia also had difficulties in establishing a fully independent judiciary and efficient prosecutions. The government did indeed introduce legislative reforms in an attempt to comply with international standards and to prepare better human resources in order to deal with ECHR-related matters. Still, Serbian lawyers have insufficient knowledge and practical skills in this field.

Objective

The overall objective of the project is to embed the standards of the ECHR in the jurisprudence of Serbian and Montenegrin Courts and thereby to increase protection for victims of human rights violations in Serbia and Montenegro.

The aim of the project is to increase the capacity of human rights lawyers to effectively apply ECHR standards in litigation before domestic and international courts by: (a) enhancing their practical knowledge and skills in applying the ECHR in domestic and international public interest litigation and (b) enabling and encouraging them to bring cases more frequently before the European Court of Human Rights (ECtHR).

Activities

The core activity of the project consisted of five training sessions for 20 human rights lawyers. The training courses took place at different places, four of them in Serbia and one in Montenegro. The participants were active human rights lawyers affiliated with NGOs representing, for instance, the disabled and cultural minorities.



An informal moment during a training recess in Palić.

The format was the same for all the first four sessions, *i.e.* 2 days of lectures, followed by 3 days of preparation for a final Mock Trial, thus a total of 5 days. Each part of the training focused on a specific set of articles of the ECHR and their application. In addition, the fifth training tested the combined knowledge of the participants acquired during the previous four training sessions. The lawyers were split into 3 groups to represent lawyers, the government and judges and worked on 2 larger cases during 4 days. The fifth and final day was reserved for an actual hearing. The training was carried out by INTERRIGHTS experts and international experts, *e.g.* lawyers from the ECtHR and practising human rights lawyers with experience in Court applications.

Approximately six months after the final session, the participants also attended a Surgery Training Programme on their own real cases as opposed to the hypothetical ones that they had previously used as an exercise during the training sessions.

As part of the project, a human rights lawyers' network was established through the website www.helsinki.org.yu on which communication, news and assistance could be exchanged in the most efficient way. Moreover, an informal network was established between the lawyers, thus ensuring cooperation in the future.

The National Conference was also designed to present the goals and achievements of the project to a broader public, namely the Serbian legal community. Representatives of the judiciary, the prosecutor's office, Bar associations, national human rights NGOs, the Council of Europe Office in Belgrade and the legal aid network were invited. Altogether there were around 70 participants. Subsequent to the presentation of the main results of the project, the participants discussed and analyzed the compatibility of domestic legislation and practice with the ECHR standards, acknowledging that their application within domestic legislation is a priority and lawyers, as well as judges, must rely thereon in their submissions and judgments.

In addition, a couple of extracurricular activities took place. The Council of Europe provided financing for a publication consisting of INTERRIGHTS manuals and lectures by the local experts. The content, which was presented at the National Conference on 30 March 2007, consisted of approximately 1,000 pages and was widely distributed. At a later stage, the Council also agreed to finance a study visit by the participants to Strasbourg. This took place in November 2006 and proved to be a great success.



Ms Zorana Marković of the Helsinki Committee of Human Rights in Serbia, presenting the INTERRIGHTS manual at the National Conference

These activities, which were initially not part of the project, were supervised by the HCHRS and INTERIGHTS.

Assessment of the training sessions

Based on the feedback from participants and experts, the sessions were successful, especially the final one, during which the group of judges impressed everyone with their professionalism. The lawyers were active throughout all the sessions and produced legal work of a high standard that was highly appreciated by international and local experts. The most useful activity, as stated by the participants, was the drafting of the application to the ECHR. Participants expressed their commitment to contribute to the established network. This, along with the existence of an informal network, promises to provide a networking success. By its closure, the participants unanimously agreed that this training session had been very successful and completely met their expectations. Although they found it very tiring, they were very satisfied with the content and structure of the training course and particularly with the more interactive sessions. The enthusiasm with which the network establishment was created assured the organizers that the participants will really exert an effort to make it work.

Assessment of the National Conference

Judging by the large number of guests at the National Conference and the reactions of the participants and experts, the activities were interesting and very well received.

The National Conference was an exciting experience, since it was the first of its kind in Serbia. Although the highest-level officials did not participate, it was still very valuable to have lawyers and judges discussing amongst each other the provisions of the ECHR.

Results

1. A sustainable model for training lawyers in international human rights standards including a tailor-made curriculum and (translated) manuals (litigation support materials), designed by INTERIGHTS.
2. 19 qualified human rights lawyers obtained knowledge and skills in applying ECHR standards in domestic and international litigation. The participants focused in particular on Articles 2, 3, 5, 6, 8, 9, 10, 11 and 14 of the ECHR, and during the training they had the opportunity to apply them to hypothetical as well as to their own actual cases. The participating lawyers demonstrated that they can apply relevant ECHR standards in the moot court exercise and in their own domestic and international litigation.
3. A functioning network which enables human rights lawyers to share experiences, knowledge and skills concerning human rights cases was created through a website with an e-mail tool and training materials.
4. Awareness was raised on applying ECHR standards among the legal community, *i.e.* the judiciary, lawyers, academics, relevant Ministries and NGOs during a National Conference involving 70 representatives of the legal community.

Other NHC projects in the field of training sessions on human rights:

- Strategic Human Rights Litigation in the South Caucasus and the Mediterranean
- Human Rights Defenders in Turkey: strengthening the local branches of human rights organizations
- Training for Human Rights lawyers in Armenia, Azerbaijan and Georgia

2.3.4 Contributing to post-conflict rehabilitation

NHC projects in the field of contributing to post-conflict rehabilitation:

- Documenting the past of Croatia: establishment of a digital database on war crimes

2.3.5 Reinforcing the establishment of effective legal aid systems.

NHC projects in the field of reinforcing the establishment of effective legal aid systems

- Model Legal Aid Board Programme in Hungary

3. DONORS, EXPERTS, AND LOCAL PARTNERS OF THE NHC

3.1 Donor: Ministry of Foreign Affairs, the Netherlands

The Human Rights and Peacebuilding Department (DMV) of the Ministry of Foreign Affairs in the Netherlands coordinates and develops policies on human rights, good governance, conflict prevention, crisis management, conflict resolution, post-conflict reconstruction, and humanitarian assistance. It also presents the Dutch position on these issues at international forums and organizations. In addition, the DMV aims to ensure the coherence of policy and assistance in the areas in which political and development considerations are inextricably linked. The DMV is comprised of the Humanitarian Aid Division, the Human Rights Division, and the Peacebuilding and Good Governance Division.

Within the framework of the Theme-based Co-financing (TMF) programme, in 2006 the Ministry of Foreign Affairs in the Netherlands decided to finance the NHC project entitled “*Strategic litigation in the Caucasus*”. The NHC started the project that is envisaged for five years and aims to support local human rights organizations and human rights lawyers in gaining knowledge, skills and resources concerning strategic litigation.

The principal objective of strategic litigation is to change laws or policies that violate constitutional protection or human rights; to ensure that laws are interpreted and enforced properly and to identify gaps in the law. Further objectives concerning strategic litigation applied on a larger scale aim to raise awareness, to foster public discussion, to educate the public, to build coalitions, and to strive for social and legislative change.⁹

The main objective of the project is to sustainably improve the implementation of national and international standards regarding the protection of human rights and fundamental freedoms in national legal practice and national law in Armenia, Azerbaijan and Georgia. The aim of the project would be achieved if a sustainable system of strategic human rights litigation was indeed functioning in the above-mentioned countries.

The project consists of diverse activities, *inter alia*, advising lawyers on acquiring the skills needed for strategic litigation; building a network of human rights lawyers; organizing training sessions on legal and capacity building topics; offering international internships; and involving stakeholders through publicity and conferences.

The programme is a follow-up to a previous NHC project that consisted of training sessions held for human rights lawyers in Armenia, Georgia and Azerbaijan on the provisions of the European Convention on Human Rights.

⁹ Source: Public Policy Advocacy: Strategic Litigation and International Advocacy, Presentation by Ed Rekosh <http://action.web.ca/home/narcc/attach/Strategic%20litigation%20&%20international%20advocacy%20-%20powerpoint%5B1%5D.ppt>

The strength of a programme lies in its timeframe

The Human Rights and Peacebuilding Department (DMV) of the Ministry of Foreign Affairs¹⁰ briefly presents its role within the civil society, the new programmes of the Department and its experiences on working with the NHC on the project “*Strategic litigation in the Caucasus*”.

The importance of the Theme-based Co-financing (TMF) programme

The principal objective of the TMF was support for and strengthening the civil society. National and International NGOs could apply for a co-financing, while being able to flexibly formulate their own programme. This is different from, for example, the new Human Rights Fund where strict criteria are applied to gain financial support. In addition, the TMF focused on long-term funding for a maximum period of four years.

New programmes of the Department

The TMF programme was replaced by two new programmes, *i.e.* the Co-financing System (“Medefinancieringsstelsel” – MFS) for Dutch organizations and the Policy Framework for Strategic Alliances with International NGOs (“Strategische Allianties met Internationale NGOs” – SALIN) for foreign NGOs.

Strategic litigation in the Caucasus

The reason why the Netherlands concentrates on and invests in a strategic human rights litigation project is the improvement of national human rights frameworks within the countries of the Caucasus. If a durable system of litigation is created, the general human rights situation in Armenia, Azerbaijan and Georgia will further improve.

Strength of the project

The strength of the programme lies in its durability. With the help of the project national and international human rights standards are better implemented in the national legal systems of Armenia, Azerbaijan and Georgia.

Added value of the NHC partnership

The contribution of the NHC was positive. The project was well organized and knowledge was transferred to local organizations. Due to training management, litigation could be implemented on a high level. In 2006 the first results were seen when some of the selected cases had already been brought before the European Court of Human Rights.

Cooperation with the NHC

The cooperation with the NHC on this project was good. The yearly reports met the criteria and can serve as an example for other organizations. The activities, results, time frame and bottlenecks were well described.

Whenever a problem occurred, the NHC tried to solve it as quickly as possible. That is why the execution of the project and the results which were aimed at were never at risk.

¹⁰ Eran Nagan, a member of staff of the Human Rights and Peacebuilding Department, Human Rights Section

3.2 Expert: Interview with Mr Jan de Jongh

Direct and indirect contribution to the quality and standing of the judicial system in Bulgaria

Jan de Jongh is Head of Information Services and Information Technology at the T.M.C. Asser Institute (The Hague), a leading research institute in the fields of Private and Public International Law, European Law and International Commercial Arbitration. Mr de Jongh serves as an expert in the joint NHC – T.M.C. Asser Institute project “*Establishing an European Union Law Documentation Centre for the Judiciary*” in Bulgaria.



Mr Jan de Jongh

The National Institute of Justice (NIJ) in Bulgaria, to which Mr de Jongh provides assistance and guidance as a key expert in setting up an EU Documentation Centre, is an old partner organization of the Netherlands Helsinki Committee, since 2000 cooperating in the implementation of several projects.

Could you tell us something about your career?

I started my professional career in 1978 as a legal documentalist at the Department of European Law at T.M.C. Asser Institute. My main task was to set up a system for keeping track with the legislative process of the (then three) European Communities and to publish the data in the Guide to the European Economic Community (EEC) legislation. This Guide was updated biannually and became one of the most authoritative indexes in the field. Later, a Guide to European Communities’ Court Decisions was added to the series. As a library and information specialist, the focus was very much on providing information on the European Communities and on developing all kinds of specialized information systems, such as a system for monitoring the implementation of European Communities Directives by the Dutch Government.

In particular after 1989, I was able to use my expertise in different capacities and projects. A few examples: the Asser College Europe Training course for legal information specialists; a training course for librarians from Central and Eastern European countries which started in 1990 and since then has trained more than 150 colleagues. Furthermore, I assisted in the establishment of more than 25 European documentation and information centres in almost all new member states and acceding countries. I am regularly invited to join justice projects both as a short-term expert and as a project-leader. Recent projects include the setting up of a Pan-European Network on the European Arrest Warrant and a feasibility study for a research network on private international law. I am currently involved as a project leader in the Hague Justice Portal (www.haguejusticeportal.net) and in a project at the Ministry of European Integration, Albania.

What is the aim of the work of the Asser Institute and what does your function encompass?

The Asser Institute is an academic research institute in public and private international law, European law and international commercial arbitration. International criminal law and international humanitarian law, as well as international sports law and environmental law belong to the main research areas. The Institute’s research activities

are very much executed, supported, promoted and facilitated by the forming of (inter)national research networks and by the organization of international conferences, seminars, training sessions, documentation, and information and publication activities. The Institute has its own publishing house, the T.M.C. Asser Press.

I am the Head of the Information Services and Information Technology Department. The function encompasses support for researchers and research groups with library and information facilities to provide them with excellent ICT facilities, the development and maintenance of special information systems, and the setting up of Internet, Intranet and Extranet systems. Furthermore, my work entails the acquisition of information projects and their funding. In practice, I am involved as a project manager in several (inter)national projects.

Setting up an European Union Law Documentation Centre for the Judiciary in Bulgaria involves methodology, staff training, know-how and equipment allowing the Bulgarian judiciary to have access to EU documentation and literature. What is your role?

I am the key expert in this MATRA-funded project. As such, I provide assistance and guidance to the National Institute of Justice (NIJ) in setting up an EU Documentation Centre within the Learning and Information Centre of the NIJ. The three main deliverables of the project are a library management system, a web-enabled infrastructure and training the staff of the NIJ in retrieving EU documentation.

As for the web-enabled infrastructure, this is still under development. Currently, a content management system is being developed by a Bulgarian ICT company to enable the NIJ to maintain and update the different sites of the NIJ, *i.e.* the public Internet site providing general information on the NIJ and its activities; an Extranet for registered users, such as trainees and magistrates; and an Intranet (trainees, employees) where users can find and publish information on the training courses and other activities of the NIJ and exchange information in a forum, subscribe (free of charge) to information services, etc. The library catalogue will also be published online on the Internet site. The work not only entails the technical development, but also the organization and staffing of the so-called back-office.

Training was provided in different formats. Four members of staff from the Learning and Information Centre participated in the Asser College Europe Training course for legal information specialists in The Hague. Formal training had been provided to trainers of the NIJ and judges in EU documentation and information systems. Training materials, including the so-called Quick Guides, had been provided in the Bulgarian language on a wider scale. On the spot training is provided in the Library Management Systems and will be provided in the Content Management System.

What are the strengths and weaknesses of this project?

The main strength of the project is that it is a relatively small project and that it has a clear focus and impact. Moreover, there is strong mutual trust and an excellent relationship between the partners, the project team and the beneficiary. Although the MATRA project is closely related to a PHARE-funded twinning project which includes, *inter alia*, an investment component for ICT equipment and software, as well as books, furniture etc., it is not completely dependent on the results of this PHARE project for its implementation.

The main difficulty was caused by the employment situation in Bulgaria. Western Europe and the EU Institutions are highly attractive to the staff of the NIJ, including its Learning and Information Centre. Moreover, the NIJ has limited resources to compete on the market for ICT specialist in Bulgaria.

What was your opinion about the Documentation Centre after evaluating it?

The NIJ already had well qualified staff, many of them alumni of Asser College Europe and/or other international training programmes. Thanks to support from international donors, such as USAID, the EU and the Netherlands, the NIJ has a good working environment and it is reasonably well endowed with office equipment. However, broadband network connections were non-existent.

How do you assess the relevance of the project in Bulgaria?

The relevance of the project is that it contributes directly and indirectly to the quality and standing of the judicial system in Bulgaria, *inter alia*, by providing access to European and Bulgarian information on the European Union and by supporting and stimulating the transfer and exchange of knowledge and experience concerning EU law and the legal practice in Europe. As such, it is not only relevant for Bulgaria, but basically for all member states and the EU.

What kind of other improvements could be made in Bulgaria and other new EU member states with regard to a better functioning judiciary?

An important improvement would be the introduction of an Extranet environment for the Ministry of Justice and the judiciary in Bulgaria. This Extranet should function as a single access point for magistrates to both national as well as international and European sources of legal information, such as treaties, legislation, case law and literature. The Extranet of the NIJ should become part of this national network. The experience with the NIJ Extranet can be used. Furthermore, as jurisdiction is increasingly transferred to national courts, an improved access to the national case law of all Member States, translations of selected cases into Bulgarian and vice versa would be a significant step forward.

What kind of good practices can Bulgaria and other Central and Eastern European countries learn from the Netherlands in information exchange?

Examples of good Dutch practices are www.rechtspraak.nl and the organization behind it (BISTRO) and the Eurinfra project of the Council for the Judiciary. Information exchange should not be seen as a purely technical affair, bringing together experts is much more important.

Personally, what did you find interesting in this project?

Working together with the staff of the NIJ.

Tell us about cooperation with the NHC...

Excellent! We now have a taste for more....

3.3 Partner Portrait: Ms Jolanta Blažaitė

No real change is possible without community involvement

Ms Jolanta Blažaitė is the Founder of the Community Change Centre (CCC) in Lithuania. The main task of the organization is the sustainment of community action in enhancing social welfare and promoting civic engagement at the local level. By promoting human rights, the CCC is a partner of the NHC in the successful project “*Establishment of Children’s Rights Protection and Monitoring Mechanisms at Local Level in Lithuania*” initiated in December 2004 and which is still running.



Ms Jolanta Blažaitė

A valued partner of the NHC due to her genuine commitment to and an understanding of grassroots activism as a force for change, Ms Blažaitė shares her views regarding her organization and its experience in working with the NHC.

Professional motivation and development of the CCC

My first work experience related to NGOs and human rights goes back to the United Nations Development Programme (UNDP) in Vilnius, where I worked throughout 1996-1999 as programme officer, being responsible for the field of crime prevention and criminal justice, as well as human rights. The aim of the UNDP was to assist the national government in the implementation of democratic reforms. While developing ambitious projects, such as the establishment of the National Crime Prevention Centre and Juvenile Justice reform, I came to realize that no real change is possible without community involvement and that the non-governmental sector provides more freedom to develop creative ideas and bring them to life in the quickest and most efficient way.

At the end of 1999, I joined the United States–Baltic Foundation (USBF), which administered a several million US dollar Democracy Network programme for supporting NGOs. As the US funding for supporting the democratization of Lithuania was coming to an end, it became necessary to restructure the foundation, giving it a new identity, developing new country programmes and fundraising so as to be able to implement them. Under my leadership, the USBF Lithuanian Office developed into two organizations – Lithuanian and US Initiatives (LUSI), which promoted business philanthropy and business social responsibility in the country, and the Community Change Centre, which focused on community development, local governance and social work. My personal involvement gradually became stronger within the CCC, since my professional knowledge made me focus more on project development and training programmes.

Recipe for success

The two organizations, LUSI and CCC, cooperated in several initiatives, LUSI asking for philanthropic assistance to community initiatives in which the CCC was involved. CCC taught communities how to organize cooperation between various sectors and to mobilize volunteers to address the most urgent social issues. Participation in the Food Bank project allowed activists to apply the knowledge in practice by assisting the most impoverished community members. Therefore the recognition of the LUSI’s Food Bank project was also the success of the CCC and of the participating local communities.

Charitable initiatives like the Food Bank are very visible, for example, the yearly national Food Bank Collection in November always attracts thousands of volunteers and is given wide media coverage. It also develops support networks of NGOs and local authorities and builds mutual trust. Many of these organizations and volunteers have remained partners of the CCC in other initiatives. This is a good example of how cooperation can lead to synergies!

Role of the CCC in addressing social problems

While working in and with local communities, the CCC addressed many urgent social problems, such as poverty, human trafficking and violations of children's rights. The idea of strengthening the protection of children's rights at the local level goes back to early 2000. During this period, the CCC worked all over Lithuania, facilitating dialogue between local authorities and community activists. The two sides were often in conflict and the CCC helped them to identify opportunities to turn disputes into cooperation. The situation of children in communities was often a common concern of both municipal administrations and active community groups. Guided by the CCC, an extensive advocacy initiative was developed to address the attention of Lithuania's authorities to social issues related to children and families. As one of the results of this initiative, the Association of Municipal Administrators (Association of Seniunai) was established, which later became an important partner of Lithuania's central government and Parliament, as well as a major partner in projects run by the CCC.

In 2001 the idea of monitoring and protecting children's rights at the local level received substantial support from the President's Office of the Republic of Lithuania. The President himself spoke out forcefully about the problems of children in Lithuania, and the Ministry of Social Security and Labour joined in, thereby introducing legal provisions regarding Community Child Protection Councils at the municipal level in 2002. It became evident that legal regulations alone were not enough to ensure efficient work with children and their families. Therefore the CCC took over the initiative, helping communities to implement the relating legal provisions and to develop a practical model that could be widely replicated by Lithuania's communities.

It took until 2004 to develop the idea into a comprehensive project for establishing children's rights protection councils at the municipal (*seniunijas*) level in Lithuania and until 2008 to start implementing the project, the financial support being ensured through MATRA funds.

Personal assessment of project activities

Establishing children's rights protection committees was and still is a complex task, consisting of several elements, *inter alia*, identifying and mobilizing volunteers, specialists working with children at the community level, such as social workers, social education specialists, child protection inspectors, school administrations, day-care centres, the police, and NGO representatives. It was necessary to ensure that the teams are sufficiently representative and multidisciplinary to address the various issues that children face within families, institutions and the community. Another project activity concerned the building of networks supporting the work of the committees within communities; *i.e.* supporting local government and other relevant institutions. It also involved recruiting community volunteers and building public relations so as to be visible to and trusted by children, families, neighbours and other community members.

Providing the committees with the necessary knowledge and instruments to address the problems of children within communities was also one of the priorities in the form of a training programme for committee members on the methods and techniques of prevention and intervention.

Apart from these tasks which are directly related to committees, the project also focused on national competence-based development (preparing and conducting a training programme to improve the knowledge and skills of people working with children), training the trainers, and shaping policy. The last mentioned mainly relates to municipal policies regarding families and children and the policy of the national government related to social work on the local level (for example, the project had an impact on the introduction of social workers to work with families in *seniunijas*).

A failure concerning any of these aims could have undermined the whole project. I greatly appreciate that the project succeeded in each of its ambitious aims, resulting in the development of a holistic, practice-based model which has already brought about positive developments in communities participating in the project. It is very inspiring to see the concrete results of the committees' work, not only because each success means a better future for children, but also because it demonstrates the potential of the committee model, and becomes an incentive for communities to take better care of their children. For example, as a result of the committees' work, several day-care centres for children have been established.

The role of the Ministry of Social Security and Labour (MSSL)

Although the protection of children's rights in Lithuania is delegated to municipal authorities, the MSSL is the central agency of the government overseeing, coordinating and developing national policies in the field. Our project sought to develop a model that would later on be replicated at the national level. Therefore the MSSL was a partner which could ensure the sustainability of the project results, as well as linking the project to legislative and policy initiatives. I am especially grateful to the Deputy Director of the Family, Children and Youth Department of the Ministry of Social Security and Labour who updated, on a regular basis, the newest developments in the field and provided valuable consultation and advice to experts and committees. The involvement of the MSSL was an important motivation for professionals working in the field and allowed for the establishment of a better dialogue with municipal administrations. It was encouraging to see that the MSSL became increasingly involved and confident in the results of the project, provided financial support for the organization for the closing conference and forwarded the results to professionals in the field. The emergence of new partners and specialized social workers was a great impulse which significantly contributed to the success of the project.

Contribution of Dutch experts and trainers

The project could have not been implemented without the expert Henk Krooi. He was the advocate of the project who convinced MATRA to support the initiative. Later on, other Dutch experts representing different governmental institutions, consultancy agencies and NGOs joined and the Dutch-Lithuanian cooperation became extensive. There were 14 Dutch experts involved throughout the project, and each of them had a valuable contribution.

Training committee members was one of the key tasks of the project, and having committed and qualified external assistance made valuable foreign expertise available to Lithuanian experts and trainers. Special thanks have to be extended to Han Spanjaard, who was the key person in putting together the overall training programme, delivering training sessions and supporting the Lithuanian project team. He significantly contributed to the success of the project.

I would also like to note the special role of Renate Hartman as the implementation of such a complex project could not be possible without well organized and efficient managerial back-up. Thanks to Renate, who was always flexible and provided the best possible administrative support in attaining the project's aims.

Internal and external factors contributing to the success of the project

First of all, the project was a success because of the core team who were professionals in their field and open to team work. Sincere, inspired and professional work always motivates others, this is why the project managed to mobilize people on a community level and received support from so many institutions on different levels. Each project should emphasize the role of networking. This was also one of the strong points of the project.

Potential threats

Since children's rights protection directly falls under municipal governance, it is very much influenced by the political decisions of municipalities. Not all municipal administrations are equally concerned with children's welfare. While the committees could benefit from financial and material support, they will not be able to function properly without, at least, the moral support of municipal administrations. The project put a lot of effort in training municipal administrators; let us hope that the municipal authorities will favourably address the committees all over the country.

Another threat is related to the work of committees in larger cities. In these cities people do not have such a strong local identity which could sustain the work of committees. There are many children who go to school in one borough and live in another, so they often become lost among institutions which supposedly have to take care of them. The work of such committees is more complex also because of the large number of actors in the field of child protection. It is important to preserve the motivation of such committees also after the end of the project.

Plans of the CCC

As a result of the project, by a decree by the Minister of Social Security and Labour, the CCC was recognized as a competence centre in the field of community social work. This means that the CCC will continue to have an important role in the training process for social workers. The CCC plans to involve children's rights protection committees in its future projects, developing social services for children and families at the local level. There is a great need for such services in Lithuania, especially in rural areas; therefore, there is still a lot of work which has to be done by the committees and the CCC!

As a founder of the CCC, I will always have an interest in and contribute to the work of the organization. Although due to personal circumstances I will not be able to do so much field work in the future, I have ideas for new initiatives from which the NGOs in Lithuania and the children's rights committees could benefit.

Further cooperation with the NHC

It has been a great pleasure to cooperate with the NHC. I am sure that there will be further international initiatives in the framework of which we will be able to cooperate in the future!

3.4 Column

No exceptions to the prohibition of torture or inhuman and degrading treatment

On 28 February 2008 the European Court of Human Rights (ECtHR) delivered an important judgment in the case of *Saadi v. Italy* (Appl.no. 37201/06) concerning the scope of Article 3 of the European Convention of Human Rights (ECHR) reading: "No one shall be subjected to torture or to inhuman or degrading treatment or punishment". In consistent case law the Court has emphasized that, whenever substantial grounds have been shown for believing that an individual would face a real risk of being subjected to treatment contrary to Article 3 if removed to another State, the responsibility of the Contracting State to safeguard him or her against such treatment is engaged in the event of expulsion. In the judgment in *Chahal v. the United Kingdom* (25 October 1996, Reports of Judgments and Decisions 1996-V) the ECtHR added that it is not possible to weigh the risk of ill-treatment for the person concerned against the reasons put forward by the State for the expulsion. The conduct of the person concerned; however, undesirable or dangerous, cannot be taken into account. In its judgment of 28 February 2008 (*Saadi v. Italy*, Appl.no. 37201/06), the Court reaffirmed the latter principle. The concerns of the Italian Government that Mr Saadi could be a threat to the Italian State by remaining in Italy were not accepted by the ECtHR as a justification for his expulsion to Tunisia, a country where he would run the risk of torture or inhuman treatment. In its judgment in the Saadi case the Court rejected the argument put forward by the governments of Italy and the United Kingdom that the rigidity of the rule had caused many difficulties for the Contracting States by preventing them, in practice, from enforcing expulsion measures against persons suspected of terrorist activities and that the protection of Article 3 should be weighed against other interests. The ECtHR's answer was: "Either the evidence adduced before the Court reveals that there is a substantial risk if the person is sent back or it does not".

Accepting the immense difficulties for States in modern times to protect their communities from terrorist violence, the ECtHR underlined that this must not call into question the absolute nature of Article 3. It repeated that Article 3 of the ECHR, which prohibits in absolute terms torture and inhuman or degrading treatment or punishment, enshrines one of the fundamental values of democratic societies. Unlike most of the substantive clauses of the ECHR, Article 3 makes no provision for exceptions and no derogation from it is permissible under Article 15 of the ECHR, even in the event of a public emergency threatening the life of the nation. As the prohibition of torture and of inhuman or degrading treatment or punishment is absolute, irrespective of the victim's

conduct, the nature of the offence allegedly committed by the applicant is irrelevant for the purposes of Article 3.

The principle that no exceptions to the absolute character of Article 3 of the ECHR can be accepted is also applicable to interrogation methods and detention conditions imposed by States against persons suspected of terrorism. This follows from the case law of the EctHR and it is laid down in the Guidelines on human rights and the fight against terrorism of the Committee of Ministers of the Council of Europe adopted on 11 July 2002. Point IV of these guidelines reads: “The use of torture or of inhuman or degrading treatment or punishment is absolutely prohibited, in all circumstances, and in particular during the arrest, questioning and detention of a person suspected of or convicted of terrorist activities, irrespective of the nature of the acts that the person is suspected of or for which he/she was convicted.”

Sometimes it is argued that the prohibition of inhuman treatment or punishment should be balanced against other interests such as the need to have suspects disclose information, which is crucial for the investigation of a terrorist threat. According to the Court’s settled case law, ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3. The assessment of this minimum level of severity is relative; it depends on all the circumstances of the case, such as the duration of the treatment, its physical and mental effects and, in some cases, the gender, age and state of health of the victim. However, as soon as the level of severity is considered to have been reached, its prohibition is absolute. In this respect there is no difference between torture and inhuman or degrading treatment.

Does the case law of the EctHR, recently confirmed in the judgment in the Saadi case, imply that democratic society acting in full conformity with the individual rights and freedoms of the Convention is defenceless in the face of terrorism? The EctHR’s case law makes it clear that some compromise may be necessary between the requirements for defending democratic society and individual rights. It recognizes that it would run counter to the fundamental object and purpose of the ECHR for national authorities to be prevented from making a proportionate response to such threats in the interests of the safety of the community as a whole. However, in the Saadi case the ECtHR repeated that also in the fight against terrorism the European Convention on Human Rights prohibits torture or inhuman or degrading treatment or punishment, irrespective of the victim’s conduct. The judgment is an important one in that it confirms the principle that in all situations respect for human dignity is the pre-eminent value of human rights protection, both yesterday and today.

Wilhelmina Thomassen

Vice-chairperson of the Netherlands Helsinki Committee, Professor of Human Rights Law at Erasmus University Rotterdam

4. INTERNAL ORGANIZATION

4.1 Board

Prof. M. van der Stoel is the Honorary Chairman of the NHC. In 2007 the NHC's executive committee consisted of the following persons: Mr T.P. Hofstee (Chairman), Ms W. Thomassen (Vice-Chairman), Mr E. Bakker. (General Secretary), Mr A.M. Daane (Treasurer), Mr A. Bloed and Ms A. Offermans. Mr J. ter Laak is the senior advisor to the executive committee. The executive committee held 5 meetings in 2007. On 1 January 2008 Mr Bakker and Mr Bloed resigned. Both will be members of the committee as of 2008. Mr Bloed was member of the executive committee since 1987. Ms B.T. van Ginkel, senior research fellow at the Clingendael Institute, replaced Mr Bakker as general secretary.

In 2007 the committee consisted of the following persons: Prof. E.A. Alkema, Mr J.G.A. van den Brand, Mr L.J. Hogebrink, Mr W.J. Deetman, Mr A.H. Dijkmeester, Mr T. ETTY, Prof. C. Flinterman, Ms H.M. Gelderblom-Lankhout, Prof. J.E. Goldschmidt, Ms S. van Heemskerck Pillis-Duvekot, Mr C. Homan, Mr G. Huyser, Mr J.H.R.D. van Roijen, Mr C.F. Stork, Mr E. van Thijn and Mr B.N.J. Pompen. On 1 January 2007 the committee was expanded with the inclusion of Mr A.H. van Delden. The committee had two meetings during 2007. The subjects discussed at these meetings included, amongst others, the situation in the Russian Federation, being presented by Mr Hofstee. Furthermore, on the occasion of its twentieth anniversary, the Netherlands Helsinki Committee organized a round-table conference entitled "*The Netherlands and the European Values: the role of the Council of Europe and the European Court of Human Rights*".

4.2 Staff

In 2007 Mr Jos Kösters was the executive director. Ms Renate Hartman remained deputy director. In August 2007 Mr Koen Wagenbuur, financial officer, left the NHC. Also two project managers left: Ms Ineke van de Meene in August, and Ms Monica van de Ven in September. To keep the financial administration running the NHC employed Mr Nader Rashan to assist the financial administration and contracted a financial service provider Mr Albert Hebels. Ms Marjolein Boele (office manager) and Ms Meriam Haagstam (secretary) remained in their positions. The team of project managers consisted of Mr Jochem Beudenderman, Ms Kirsten Hawlitschek, Ms Julia Koster and Ms Kamala Laghate.

Ms Nelleke Koster (Annual Report 2006), Ms Nienke van Poelje (High Level Conference) and Ms Angela Evenhuis (HDIM and Round-table Conference) worked as interns.

4.3 Annual Social Report

Every year the NHC prepares a Social Report in which the terms of employment, the Dutch Occupational Health and Safety Act, Human Resource Management and the risk inventory and evaluation (RIE) concerning the NHC are presented.

The terms of employment of the NHC are established in the legal status regulations (Rechtspositiereglement), which are based upon the terms of employment of Oxfam Novib. In addition to some textual changes and salary increases, Oxfam Novib implemented a new job description and rating system. The NHC implemented the

changes, except for the new system of job description and rating. In January 2007 the Dutch Occupational Health and Safety Act was amended. Subsequently, the employees were informed and the policy on working conditions (*Arbobeleid*) and the safety regulations (*Calamiteitenplan*) were adapted. Two employees were responsible for providing first aid and for emergency evacuations. The employees had an emergency evacuation exercise on 28 June 2007. Alongside the "*Arbobeleid*", a guideline to prevent RSI has been compiled. Furthermore, the owner of the premises made adaptations to the building of the office to create a better climate in order to improve the working conditions.

Mr I.F. Dekker remained the confidential representative of the staff members of the NHC. In 2007 the complete staff of the NHC followed an in-company training programme in time management to increase the effectiveness and efficiency of their work. The NHC had its annual retreat in March 2007. During this event the staff members discussed the issues relating to the organization itself in order to be able to improve and simplify their work with regard to several aspects thereof. The subjects were quality management, the long-term policy plan of the NHC and reflection (*'intervisie'*) as a tool that staff members can use to help colleagues in job-related issues.

4.4 Finances

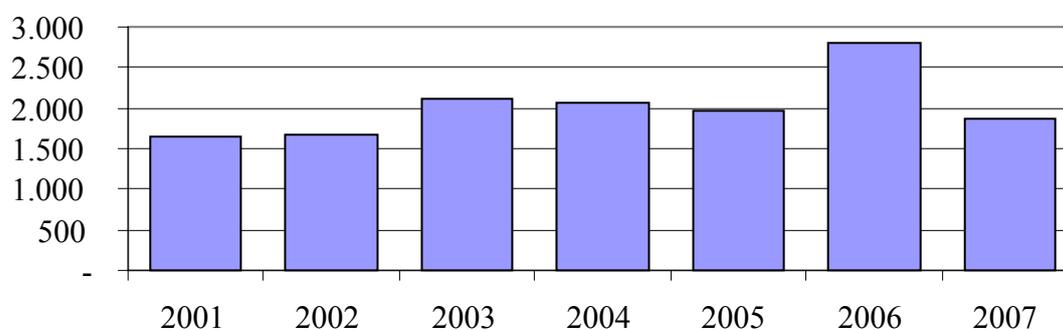
The 2007 Annual Financial Report is edited as a separate publication and is distributed to all NHC donors. The report includes the audit certificate by the auditing firm HLB Schippers in Amsterdam. A Summary Balance Sheet and an overview of the Income and Expenditures are presented herein (tables 1 and 2).

Table 1: Summary balance sheet	31-Dec-07 in euros	31-Dec-06 in euros
Assets		
Fixed Assets		
Tangible Fixed Assets	10,964	16,724
Current Assets		
Debtors	141,938	47,036
Advances Local Partners	743,039	587,557
Liquid Resources	370,805	528,181
	<u>1,266,746</u>	<u>1,179,498</u>
Liabilities		
Unrestricted reserve	182,377	185,249
Restricted reserve	60,556	63,428
Current liabilities		
Project subsidies	907,371	848,861
Creditors	116,442	81,960
	<u>1,266,746</u>	<u>1,179,498</u>

Table 2: Income and expenditure

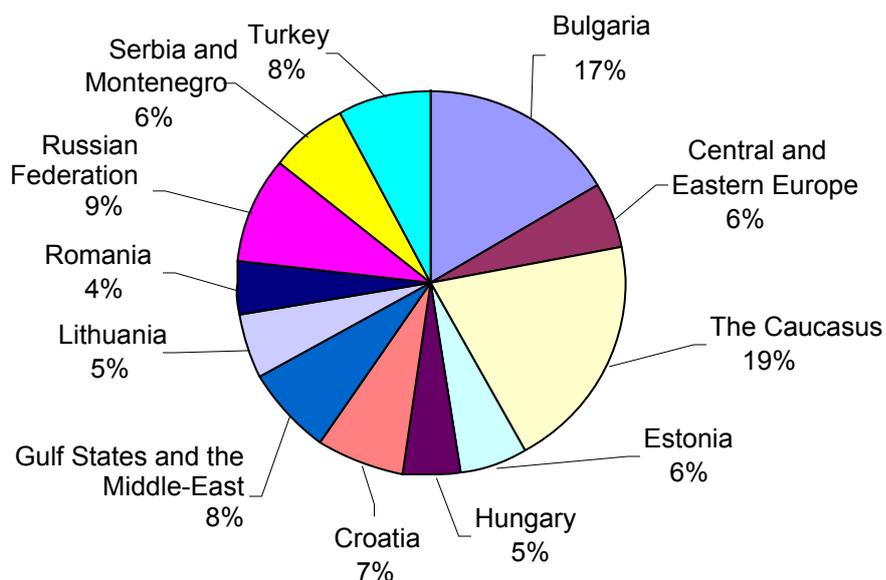
	2007 in euros	2007 budget	2006 in euros
Income			
Project subsidies	1,873,638	2,619,435	2,812,934
Other income	7,506	6,950	13,606
	<u>1,881,144</u>	<u>2,626,385</u>	<u>2,826,540</u>
Expenditure			
Projects and Programmes			
NHC execution	759,002		1,330,159
Execution by local partner organizations	710,085		1,147,528
Organizational costs of implementation	181,795		184,992
	<u>1,650,883</u>		<u>2,662,679</u>
Public Debate and Lobbying			
NHC execution	191,738		99,565
Execution by local partner organizations	-		13,928
Organizational costs of implementation	44,267		19,306
	<u>236,005</u>		<u>132,799</u>
	<u>1,886,888</u>	<u>2,648,649</u>	<u>2,795,479</u>
Result of operations	<u>-5,744</u>	<u>-22,264</u>	<u>31,061</u>

In 2007 the total expenditure on NHC projects was € 1,886,888. This is a decrease of 32% in comparison to 2006 (figure 1). This was caused by a reduction in the projects, *i.e.* 21 in 2007 in contrast to 30 in 2006. The NHC closed its financial year with a negative Result of Operations of € 5,744, which is € 16,500 less negative than was forecast in the (revised) budget. This comes as a result of a one-off advantage in employee-related costs.

Figure 1: Project expenditures (x € 1.000)

In 2007 the Netherlands Helsinki Committee managed 21 projects in 12 countries or regions. In terms of project expenditures the Caucasus received the largest contribution, followed by Bulgaria (figure 2).

Figure 2: Project expenditures per country or region



The MATRA Programme remained the largest source of funding, both in terms of the number of projects that were financed in 2007 and in terms of the funds disbursed (figure 3 and table 3).

Figure 3: Project income per donor

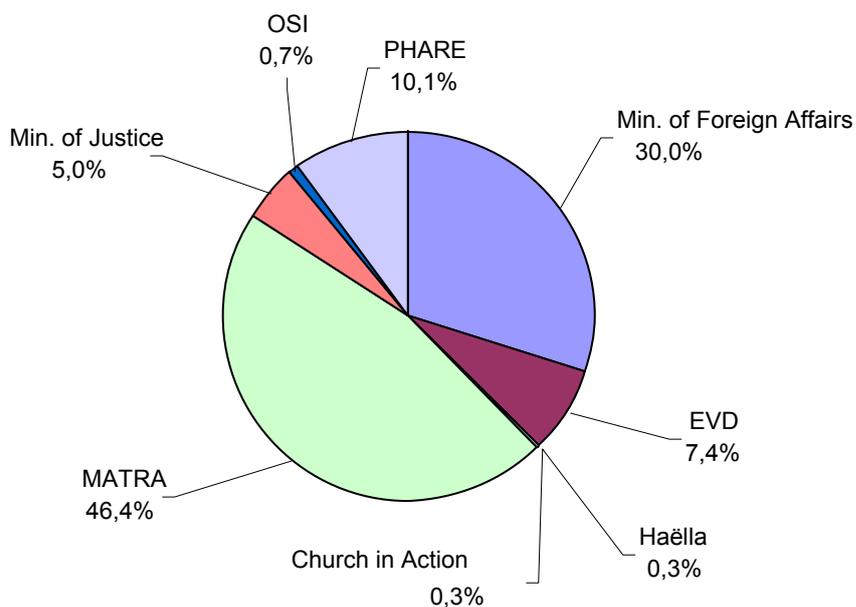


Table 3: Number of projects per donor

Ministry of Foreign Affairs (MATRA Project Programme)	8
Ministry of Foreign Affairs (DGIS, DVB)	6
PHARE (European Commission)	2
Ministry of Justice	2
MATRA Pre-Accession Programme (EVD)	1
Stichting Haëlla	1
Open Society Institute (OSI)	2
Kerk in Actie	1

5. APPENDICES

Appendix I Netherlands Helsinki Committees: Background

Helsinki Final Act and the OSCE

In 1975, thirty-five states from East and West gathered in Helsinki for the Conference on Security and Co-operation in Europe. These states included the Soviet Union and all the European countries (except Albania), as well as Canada and the United States. The Conference concluded with the adoption of the politically and morally binding Helsinki Final Act, which, at that time, was the only international agreement that attempted to link peace and security with respect for human rights. Since the original conference, a series of expert meetings and follow-up conferences have further defined the human rights provisions, and the OSCE has developed its own institutional frameworks and human rights mechanisms.

In the 1991 Charter of Paris for a New Europe, the Heads of State and Government participating in the Conference on Security and Co-operation in Europe declared that “Ours is a time for fulfilling the hopes and expectations our peoples have cherished for decades: steadfast commitment to democracy based on human rights and fundamental freedoms; prosperity through economic liberty and social justice; and equal security for all our countries”. Since then, the participating states in the OSCE have striven to fulfil these hopes and expectations. With its comprehensive approach to security the OSCE has become an important international organization to ensure the basic values of democracy, human rights, the rule of law and security in Europe. The organization has been increasingly active in order to achieve its goals. It has, amongst other things, played an important role in post-conflict peace-building in Bosnia-Herzegovina and Kosovo. Furthermore, its High Commissioner on National Minorities has played and still plays an important role in conflict prevention. The OSCE has also contributed to arms reduction in Europe.

Since 1993 the signatories have formed themselves into an organization, now known as the Organization for Security and Co-operation in Europe (OSCE). The OSCE today has 55 participating states.

Helsinki Committees

On May 12th, 1976, Dr Yuri F. Orlov announced the formation of the Moscow Helsinki Group. The eleven founders of the group sought to uphold the responsibility of the USSR to implement the Helsinki commitments. They set up their watchdog organization based on the provision in the Helsinki Final Act, Principle VII, which establishes the rights of individuals to know and act upon their rights and duties. In the wake of their appeal to concerned citizens in other countries, new citizens' groups were established elsewhere both inside and outside the Soviet Union and the Warsaw Pact nations. In January 1977, Charta 77 was founded in Czechoslovakia, and in September 1979, the Helsinki Watch Group was founded in Poland. Although their governments persecuted all these groups, they continued their activities. In 1982 the Moscow Helsinki Group was forced to disband; however, its pioneering efforts had inspired others to draw attention to violations of human rights. Groups were formed in Western European countries, in Canada, and in the United States.

The Netherlands Helsinki Committee was founded in 1987. In the early years of the NHC, Professor Max van der Stoep was involved with the organization as a member of the Committee and as the Chairman of the Executive Board. Due to his appointment as the High Commissioner on National Minorities of the OSCE, Mr Van der Stoep resigned at the end of 1992. He continued his involvement as Honorary Chairman.

In the early years the NHC's activities were focused on monitoring the Helsinki process in the Netherlands and in other European countries. The activities were mainly of an academic nature, such as reports and conferences in the field of the OSCE process in order to determine and communicate the point of view of the NHC. After the fundamental changes in Eastern Europe, the variety of NHC activities increased. In addition to providing assistance to the Helsinki Committees, the NHC assists other human rights organizations and professional groups, such as organizations representing judges and prison staff, for instance by providing training programmes. This kind of assistance and cooperation has become the most important part of the NHC's work. Nowadays, the academic part of the NHC's work is reflected in its quarterly bulletin, the Helsinki Monitor (from 1 January 2008 entitled Security and Human Rights). The NHC also organizes, on a regular basis, round-table conferences and seminars on the Helsinki process.

The International Helsinki Federation for Human Rights

The mandate of the IHF was to protect and strengthen civil society groups that monitor and report on human rights issues from a non-partisan perspective, and to bring them together on a common international platform. The IHF represented its affiliates on an international political level and in the media, supported and assisted their human rights monitoring and advocacy activities, and disseminated documentation based on their research.



Participants of the final IHF General Assembly 2007 which took place in Helsinki on 15 – 18 November 2007

After 25 years of work in the human rights arena, in December 2007 the IHF was forced to cease its functioning when it became a victim of embezzlement committed by the former financial manager of the organization, resulting in the organization having to file for bankruptcy. The records and documents of the IHF will be transferred to the Open Society Archives (OSA) at the Central European University in Budapest where they will eventually be made available for research purposes. In the meantime, the OSA is continuing to operate the IHF website.

Earlier incarnations of the site are also available via an Internet archive.

IHF Forced to Close Down

Vienna, 7 December 2007

Dear colleagues, friends and supporters,

With deep regret I must inform you that on 27 November 2007, in my capacity as the

President of the “International Helsinki Federation for Human Rights (IHF)”, I was forced to submit a request of bankruptcy to the Commercial Court in Vienna to start an insolvency procedure (the IHF is registered in Austria and is therefore bound by Austrian law). This had to be done due to the Federation’s grave financial crisis caused by an economic crime. The former IHF financial manager has been taken in pre-trial detention after he confessed to having embezzled a large amount of money over several years. Two other external persons are under investigation as well. Their criminal trial will start in early January next year.

As a result, as of 27 November 2007, the IHF is a NGO in dissolution. Its office will be closed within a few days and the organization can no longer implement projects, organize human rights advocacy, issue statements or reports. On January 30th, 2008, the liquidator who primarily has to bear in mind the interests of the creditors of the IHF will present the final results of his efforts to the Commercial Court which then will decide upon the final liquidation of the organization.

I would like to take this occasion to thank you all for your cooperation, your interest and support in the past years and wish you all the best for the future.

Sincerely,

Ulrich Fischer, Former IHF-President

11

¹¹ <http://www.osa.ceu.hu/inc/Statement.07December2007.pdf>.

Appendix II Projects of the Netherlands Helsinki Committee

Current Projects		
Country	Project name	Partners
Bulgaria	Establishing European law Documentation Centre for the Judiciary	T.M.C. Asser Institute
	Strengthening of the Bulgarian Judiciary: Implementation of the New Penal Procedures Code Strengthening the interagency cooperation between the public prosecutor's office (PPO) and other bodies concerned in fighting organized crime and corruption	Netherlands: Ministry of Justice, Public Prosecution Service Austria: Austrian Federal Ministry of Justice / Austrian Centre for the Promotion of Legal Competence in Eastern Europe and Central Asia (CLC) Bulgaria: Public Prosecutor's Office
Caucasus	Training for Human Rights lawyers in Armenia, Azerbaijan and Georgia	Article 42 – Georgia; Interights
Croatia	Strengthening the legal culture in Croatia: improvement of the relations between the judiciary and the media	Croatian Helsinki Committee
	Documenting the past of Croatia: establishment of a digital database on war crimes	Faculty of Law – Zagreb University; NIOD
Czech Republic	Integrating human rights, respect for and the protection of minorities in the training programme of the Czech police and in the Czech police organization	Police Training College of the Ministry of Interior in Prague (PTC); Landelijk Selectie – en Opleidingsinstituut Politie (LSOP); Netherlands Centre for Police and Integrity Issues (NCPII); Czech Helsinki Committee (CHC)
Estonia	Drug prevention in prisons and the rehabilitation of inmates	Netherlands Ministry of Justice; Netherlands Prison Service (DJI); Department of Prisons of the Estonian Ministry of Justice; Trimbos Institute – Netherlands Institute of Mental Health and Addiction
The Gulf	Bridging the Gulf	
Hungary	Model Legal Aid Board Programme in Hungary	Hungarian Helsinki Committee
Lithuania	Establishment of children's rights protection monitoring mechanisms on the local level in Lithuania	Community Change Centre – Lithuania; Netherlands Child Protection Board
Romania	Reintegrating juvenile offenders: Introducing community-based interventions in Romania	Netherlands Probation Service; Ministry of Justice – Romania
Russia	Strengthening the potential of the Ombudsman Institution and the Commission for Human Rights: boosting the struggle against racism and discrimination in the Russian Federation	Moscow Helsinki Group
Serbia and Montenegro	ECHR training programme for human rights lawyers and NGOs from Serbia and Montenegro	Helsinki Committee for Human Rights in Serbia; INTERIGHTS
South Caucasus	Strategic human rights litigation in the South Caucasus and the Mediterranean	Article 42 (Georgia), Armenian Institute of Development, Legal Education Society (Azerbaijan)
Turkey	Human Rights Defenders in Turkey: Strengthening the local branches of human rights organizations	Human Rights Association (IHD); Mazlumder; Amnesty International Turkey
Conferences	Morocco and the Netherlands: close partners. Round-table Conference on Migration and Human Rights and the fight against Terrorism	IKV
	High-Level Conference on Combating Discrimination and Promoting Mutual Respect and Understanding; The Human Dimension Implementation Meeting 2007	International Helsinki Federation; Norwegian Helsinki Committee; COC Nederland
	Round-table Conference “The Netherlands and European Values: the role of the Council of Europe and the European Court of Human Rights”	

Current Projects		
Country	Project name	Partners
Helsinki Monitor 2007	Helsinki Monitor: Security and Human Rights 2007	International Helsinki Federation for Human Rights

Projects in development		
Other	Project name	Partners
The Balkans	Accountability through access to justice in the Western Balkans	PLI, Tirana Legal Aid Society (Albania) Citizens Advocacy Office (Albania), Vasa Prava (BiH), Serbian Democratic Forum (SDF)
Bulgaria	Strengthening the Bulgarian Justice Association (BJA)	BJA, NVvR
Croatia	Treatment of violent offenders in Croatian prisons and penitentiaries	Ministry of Justice, Probation Service
Moldova	Strengthening the implementation of the Enforcement Code within the Moldovan prison system	Institute for Penal Reform (IRP), DJI
Turkey	Fostering a Culture of Human Rights	Human Rights Foundation of Turkey
Russia	Consultancy Chechnya	Serlo
Serbia	Development of HR curricula for judges training	NJCM, Lawyers for Democracy, Judicial Training Centre
Ukraine	Creation of a national system for preventing torture and ill-treatment in Ukraine	Kharkiv Human Rights Protection Group
	Funding for the legal protection of victims of human rights abuses	Various human rights organizations

Appendix III Donors

Council of Europe	www.coe.int
European Commission	www.europa.eu.int/comm
European Union, Phare	www.europa.eu.int/comm
EVD International Programmes	www.evd.nl
Haëlla Foundation	www.haella.nl
Hivos	www.hivos.nl
Municipality of The Hague	www.denhaag.nl
Netherlands Ministry of Foreign Affairs	www.minbuza.nl
Netherlands Ministry of Justice	www.justitie.nl
Open Society Institute – Budapest	www.osi.hu
Open Society Justice Initiative (former COLPI) – Hungary	www.justiceinitiative.org
Kerk in Actie	www.kerkinactie.nl

Appendix IV Human Rights in the Netherlands

Background

The main objective of the Netherlands Helsinki Committee (NHC) is the promotion of the international and social legal order with the purpose of facilitating the complete realization of human rights by supporting activities of international and national governmental and non-governmental organizations which promote this objective.

Additionally, there is a historically determined activity of the NHC and other Helsinki Committees operating in several countries, *i.e.* monitoring the application of various human rights instruments in their own country. The purpose of the research and monitoring is to raise awareness and, as a result, to improve the actual human rights situation.

The current report on 2007 focuses on various human rights, *inter alia*, the right to asylum, integration, freedom of speech v. freedom of religion, a number of these topics being placed on and debated within the framework of the political agenda in the Netherlands.

I Right to asylum

As a member of the European Union, the Council of Europe and several international organizations, the Netherlands acknowledges its obligation regarding the protection of asylum seekers. However, on a practical level the application of the right to asylum gives rise to several difficulties. One of the challenges occurring in this field is the harmonization of the regulations and provisions of various institutions responsible for and dealing with this issue, *inter alia*, the Ministry of Foreign Affairs and the Immigration and Naturalization Service, the Ministry of Justice, and the Dutch Refugee Council. Additionally, government policies, local authorities, the debates taking place in the House of Representatives, and the position of political parties play an important role in the complex process and difficult application of the right to asylum.

ECtHR rulings in connection with the Netherlands

The European Court of Human Rights (ECtHR) held that the expulsion from the Netherlands of a Somali refugee would be in violation of Article 3 of the European Convention on Human Rights (ECHR). It also dismissed the argument that Mr Sheekh had failed to exhaust domestic remedies.¹² In another judgment the Court claimed that detaining a Dutch journalist for not disclosing his sources of information was a violation of his rights.

Abdirizaq Salah Sheekh is a Somali national living in Amsterdam. He requested asylum upon entry to the Netherlands at Schiphol Airport in 2003. He had fled from Somalia where, as a member of the Ashraf minority, his family was subjected to persecution by the Abgal majority in his village. He was first refused asylum in 2003, since the Minister for Immigration and Integration considered that there was no risk of the applicant being subjected to treatment in violation of Article 3 of the Convention (“No one shall be subjected to torture or to inhuman or degrading treatment or punishment”¹³)

¹² European Court of Human Rights (ECHR): *Salah Sheekh v. the Netherlands*, 11 January 2007 <http://cmr.jur.ru.nl/cmr/docs/SALAH.SHEEKH.THE.NETHERLANDS.pdf>.

¹³ The European Convention on Human Rights, Article 3 <http://www.hri.org/docs/ECHR50.html>.

upon his return to Somalia. In that same year Mr Sheekh appealed against the denial of asylum before a court in The Hague; however, the court concurred with the Minister saying that the experiences of Abdirizaq Salah Sheekh were caused by the general instability in Somalia and that he could return and live in a safer area. As a result of this judgment, Mr Sheekh filed an application with the ECtHR in Strasbourg claiming that Article 3 would be violated if he would be returned to his country of origin. In the meantime the Netherlands granted him a residence permit and he reapplied for asylum, which was granted in 2006. While the Netherlands believed that the matter had been resolved by granting a residence permit to Mr Sheekh, the ECtHR did not concur.

“Given the fact that there had been no significant improvement in the situation in Somalia, there was no indication that the applicant would find himself in a significantly different situation from the one he fled,” claimed the Court.¹⁴ While the ECtHR recognized the right of Contracting States to control the entry, residence, and expulsion of aliens, it noted that the Contracting States must nevertheless respect Article 3 in their decision whether to expel someone. When someone faces a real risk of being subjected to treatment contrary to Article 3, there is an obligation not to expel that person to that country. In order to take this decision, a court must assess all the available information, or obtain further materials, as and when required. In this case the Court examined country reports from a variety of sources, including the UNHCR. The Court finally held that Abdirizaq Salah Sheekh, as a member of the Ashraf minority, would be unlikely to obtain protection from the other clan, even in one of the “relatively safe” areas of Somalia.¹⁵ In November 2007 the ECtHR delivered its judgment in another case related to the Netherlands, in which it was confirmed that imprisoning the journalist Koen Voskuil from the daily newspaper “Telegraaf” on the basis of his refusal to disclose his sources of information was indeed a violation of the right to freedom of expression under Article 10 of the ECHR.¹⁶

Mr Voskuil wrote an article concerning an incident in which the police found an arsenal of weapons on private property and charged three people with arms trafficking. The article quoted an anonymous police officer who suggested that the police had actually staged a flooding to provide them with a reason to obtain a search warrant. This raised serious questions about police (mis)conduct. The journalist was called to testify at the trial and was asked to identify the police officer to whom he referred in his article. Mr Voskuil, however, refused to answer any questions that would identify the source of information. And although he had the right to refuse to disclose the source under domestic law, the Court had the power to compel disclosure, provided that this is necessary for the protection of a democratic society. Despite this, Mr Voskuil still refused to answer the questions and he was imprisoned for 18 days for contempt of court. He appealed to the ECtHR, claiming that his right to freedom of expression (as provided in Article 10 of the ECHR) included the right to protect a confidential source, and that his imprisonment constituted a violation of this right and Article 10.

¹⁴ “Somalische mensensmokkelaars opgepakt, Somaliër mag niet uitgezet oordeelt EHRM,” 12 January 2007 <http://www.vwoverijssel.nl/nl/nieuws/bericht/3781>.

¹⁵ *European Court of Human Rights (EHCtR): Salah Sheekh v. the Netherlands*, 11 January 2007 Opcit.

¹⁶ *European Court of Human Rights (EHCtR): Voskuil v. the Netherlands*, 22 November 2007 http://www.ius-software.si/EUII/EUCHR/dokumenti/2007/11/CASE_OF_VOSKUIL_v._THE_NETHERLANDS_22_11_2007.html.



Koen Voskuil (photo: Spits)

The ECtHR confirmed a journalist's right to protect confidential sources, which is laid down in Recommendation R(2000) 7 on the right of journalists not to disclose their sources of information (adopted by the Committee of Ministers of the Council of Europe on 8 March 2000). It acknowledged that this right may be curtailed by laws which are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the freedoms and rights

of others. The circumstances justifying any curtailment of the rights of the journalist must be of a sufficiently vital and serious nature. Mr Voskuil, however, argued that the reasons of the domestic Court for compelling him to disclose a source of information were not sufficient under the ECHR to warrant the curtailment of his rights. The ECtHR found that vital and serious circumstances did not exist in this case. On the contrary, compelling disclosure could only inhibit future sources from coming forward. Thus the Court concluded that in this case the interests of a democratic society did not override the interests of the journalist in maintaining the confidentiality of the source of information.

The detention of under-age unaccompanied asylum seekers whose exact age cannot be determined

The children's rights of young asylum seekers or refugees in detention in the Netherlands have been neglected. As their age cannot be determined, the youngsters spend extended periods in detention centres, where they remain completely isolated. The children, who cannot return to their country of origin, fall under the protection of the Dutch government, but the criteria for receiving a residence permit when under 21 years of age are strict.

Unaccompanied under-aged aliens (AMVs in Dutch and also colloquially called "AMAs") is a term which applies to all under-aged refugees who have fled to the Netherlands without their parents or guardians. Once in the country, they are under the protection of several organizations, for instance Nidos and VluchtelingenWerk.

Nidos guardians represent the AMVs, help them and take care of their needs, making sure that they have proper living conditions. Nidos staff also try to provide good education and equal opportunities for the young refugees. Apart from monitoring their development and progress with the possibility to intervene at any point, Nidos supports AMVs in dealing with administrative and medical issues, as well as guaranteeing legal protection. VluchtelingenWerk¹⁷ (the Dutch Council for Refugees) is another NGO which takes care of AMAs during the asylum procedure, also helping them to come out of their isolation. It tries to compel the government to adhere to the standards of Children's Rights Treaties, criticizing the tough policy for obtaining residence documents for persons younger than 21 years of age.

¹⁷ <http://www.vluchtelingenwerk.nl/75-AMVs.html>

At the same time, a lengthy procedure and a fairly large number of restrictions cause alarm among children's rights activists. When youngsters request asylum, the IND first has to determine whether they qualify for a residence permit under asylum legislation. If not, it is checked whether the AMVs will be able to support themselves in their country of origin. Thus a Dutch residence document for a restricted period will be issued, unless there is a way for the youths to be self-supporting in their home country. However, the permit can be withdrawn at any time, provided that means of support are found in the country of origin. The procedures vary according to the specific age of the AMVs and are further different for applicants of undetermined age. Those who within three years of their arrival in the Netherlands become of age (18), and have not been recognized as aliens, must be returned to their home country at the latest by their eighteenth birthday. Children younger than fifteen are allowed to stay after having resided in the state for three years with a valid permit. And none of these rules apply to AMAs whose age is uncertain; they undergo examinations and can expect a long stay in detention.

Recognizing another danger to AMVs, namely the international trade in under-aged refugees, the IND and the KMAR (Royal Military Police) initiated *Rapid Reaction Teams* in 2007 to be dispatched to the countries of origin. By intervening, where possible, they ought to prevent the youngsters already on a plane to Europe and the Netherlands from becoming pray to human traffickers. The "*Rapid Reaction Teams*" will have expertise in document fraud and risk profiles. They will remain alert and flexible, anticipating major migration flows and the activities of traffickers, which the Dutch Immigration Liaison Officer network cannot sufficiently address. The State Secretary for Justice has expressed her commitment to returning AMVs to their home country as fast as possible if they can join their families or any kind of support there.¹⁸ Earlier in 2007 she also advocated certain safeguards against an AMA going missing.¹⁹

In July 2007 the House of Representatives requested data on the number of AMVs who leave the Netherlands voluntarily or forcefully.²⁰ It also discussed a report by students in Eindhoven who criticized the method applied by the IND to determine the age of AMVs, deeming the radiographic method by which the thickness of a certain body bone is established to be unreliable.²¹

¹⁸ Ministerie van Justitie. "Aanpak handel (minderjarige) vreemdelingen in landen van herkomst," The Hague, 26 October 2007. <http://www.ministerievanjustitie.nl/actueel/persberichten/archief-2007/71026aanpak-handel-minderjarige-vreemdelingen-in-landen-van-herkomst.aspx>.

¹⁹ For more details see: "Motie over adequate equipering Vreemdelingenpolitie," The Hague, 14 August 2007. http://www.ministerievanjustitie.nl/images/motie%20adequate%20equipering%20Vreemdelingenpolitie_8430_tcm34-81803.pdf.

²⁰ "Terugkeer alleenstaande minderjarige vreemdelingen," 13 July 2007. http://www.ministerievanjustitie.nl/images/terugkeer%20alleenstaande%20minderjarige%20vreemdelingen_8277_tcm34-79431.pdf.

²¹ Ministerie van Justitie. "Antwoorden kamervragen inzake de opstelling van de Fontys Hogeschool te Eindhoven en de Immigratie- en Naturalisatiedienst mbt een afstudeerscriptie over het leeftijdsonderzoek bij alleenstaande minderjarige vreemdelingen," 21 February 2007 http://www.justitie.nl/images/de%20opstelling%20van%20de%20Fontys%20Hogeschool_7192_tcm34-73608.pdf.

The Ombudsman: asylum procedures not always fair

In a report in September 2007 the National Ombudsman criticized the Ministry of Foreign Affairs and the Immigration and Naturalization Service (IND) for not applying a fair procedure when granting asylum. The investigation by the Ombudsman indicated that assessment reports (“ambtsberichten”) are not carefully drawn up and they are thus later interpreted in different ways and allow for prejudice and partiality.²²

To determine whether someone can claim asylum, the IND sometimes needs to verify parts of his/her statement with the country of origin, for instance to authenticate given facts or to establish whether the person in question is indeed a war criminal. The IND thus appeals to the Ministry of Foreign Affairs, which in turn contacts the Dutch Embassy or Consulate in the respective state, charging them with the task. The final document of the investigation – the letter of the Ministry sent to the IND that answers the initial questions – is called an *individual assessment report* (“ambtsbericht”). The content thereof may be decisive in whether or not to grant asylum. Moreover, in the jurisprudence of the Council of State “ambtsberichten” are established as expert reports, making it even more important that they contain accurate facts.



Alex Brenninkmeijer, the National Ombudsman. (Photo: WFA)

The testimony presented by the Ombudsman illustrates how important the influence of the reports is regarding the decision as to whether or not to grant asylum in the Netherlands. According to the Dutch Council for Refugees (DCR), the investigation questions the quality of the asylum procedure. The DCR itself works to make “ambtsberichten” more transparent, and to improve the procedures under the Aliens Act 2000. Mr Edwin Huizing, the Director of the Dutch Refugee Council (Landelijke Vereniging VluchtelingWerk Nederland)²³, is aware that the assessment reports are not prudently prepared, while they are the key source for deeming asylum seekers to be admissible.²⁴

Earlier during the year the European Court of Justice was also critical of the weight of “ambtsberichten” in the outcome of asylum procedures. The Ombudsman went further in his own report by claiming that the assessment reports were practically inviolable. In practice they are used to question the story of an asylum seeker; however, the Ministry of Foreign Affairs keeps confidential both the source from which the report is created and the investigative methods applied. It does not therefore contain the right information for asylum seekers to explain any obscurities in their stories.

The IND reacted to the Ombudsman’s report by pointing to the repeated judicial backing which the assessment reports have had. With the status of expert reports, they have legal substance, and should greatly influence decision-making. The organization finally reasserted its entitlement to use “ambtsberichten” when in doubt about the

²² Nationale Ombudsman. “De Geloofwaardigheid van ambtsberichten,” 27 September 2007 http://www.ombudsman.nl/rapporten/grote_onderzoeken/2007ambtsberichten/documents/rapport2007-200.pdf.

²³ Landelijke Vereniging VluchtelingWerk Nederland <http://www.vluchtelingenwerk.nl/>

²⁴ “Kwaliteit asielpcedure opnieuw ter discussie.” 27 September 2007 <http://www.vmn.nl/nl/nieuws/bericht/143>

truthfulness of an asylum seeker's story by reiterating that generally in cases in which an assessment report is requested, a rejection invariably follows.²⁵

Announcement of general pardon for asylum seekers

In May 2007 the Dutch government announced a general pardon (under certain regulations) for all 27,000 persons who sought asylum before April 2001 and still reside in the country. The decision was part of the coalition agreement of the new cabinet installed on 22 February 2007 under the Prime Minister Jan Peter Balkenende and had thus been anticipated since February.

The previous government refrained from passing a general motion of pardon as it feared that this might lead to an increased influx of asylum seekers. The new coalition, however, decided to put an end to uncertainty for all those who had waited far too long to be processed under the old Aliens Act (*i.e.* before 1 April 2001).

The new Aliens Act or Aliens Act 2000, which entered into force on 1 April 2001

This new law provides for shorter and quicker procedures. Aliens can submit an asylum application at one of the IND's 4 application centres. After an interview with an IND official, the asylum seeker is told within 5 working days if a further investigation is required or if the application stands no chance of success. Around 80% of asylum seekers receive a negative decision. Having received a negative answer, asylum seekers can either return to their country of origin or try to resettle in a third country. Until departure, the person can stay in an asylum centre for up to 28 days. In the case of a pending deportation the IND can take the person into custody.

In contrast, rejected asylum seekers under the old Aliens Act (*i.e.* all those who applied for asylum before 1 April 2001) had several possibilities to appeal against a negative decision by the IND. Due to the long legal procedures many of these people had remained in the Netherlands for years.²⁶

In April 2007 the Association of Dutch Municipalities (VNG) and the State Secretary of Justice agreed to implement the general pardon in a "decent and humane way."²⁷ The cabinet endorsed their draft for a "*Settlement of the legacy of the old Aliens Act*". Under the agreement, the family members of those asylum seekers who would be granted a pardon would also receive residence permits (subject to some restrictions). However, individuals who are thought to be a danger to the public order or threaten national security will not be considered for a pardon. Neither will residence permits be provided or extended for asylum seekers with multiple nationalities/identities, or those who are already in possession of some kind of permit. Moreover, all foreign nationals falling under the scheme will be allowed to enter the labour market without any restrictions, but will also be obliged to integrate.²⁸ The settlement also includes an important

²⁵ "Reactie op Rapport Nationale Ombudsman 'Individuele ambtsberichten,'" 27 September 2007 <http://www.justitie.nl/actueel/nieuwsberichten/archief-2007/70927reactie-rapport-nationale-ombudsman-individuele-ambtsberichten.aspx>.

²⁶ Data based on the documentation of the European Reintegration Support Organizations "National Asylum & Return Policy of the Netherlands" <http://www.erso-project.eu/partners/national-asylum-return-policy/netherlands>.

²⁷ Letter by the State Secretary Nehat Albayrak to the House of Representatives, The Hague, 25 May 2007 http://english.justitie.nl/images/Brief%20pardon%20engels_tcm35-68973.pdf.

²⁸ "Settlement of the 'old' Aliens Act's estate scheme" The Hague, 25 May 2007 http://english.justitie.nl/images/regeling%20Engels_tcm35-69193.pdf.

prerequisite for persons from the target group who want to be granted a pardon, *i.e.* beforehand they would have to unconditionally withdraw all appeal proceedings in writing.

The State Secretary for Justice and the VNG further elaborated the general pardon procedure in Implementation Guidelines drawn up in July 2007, the settlement coming into force on 15 June 2007. The guidelines emphasized that success is contingent upon swift and effective cooperation between the State and local authorities. The Guidelines oblige mayors to answer questions related to the residence status of asylum seekers if the IND has failed to locate them. Local authorities must also fully cooperate during the return migration policy for foreign nationals not eligible for residence who reside illegally or have ceased to reside legally in the Netherlands.²⁹ A municipal board is to be set up to prevent these foreign nationals from becoming illegal aliens.

Critics regarding the decision of the Christian Democratic Party (CDA) warned that the measure was premature, *i.e.* it was too complex a task for a new cabinet just taking up office. According to the political party, a general pardon raised too high expectations, while its concrete provisions and envisaged results were fairly unclear. Moreover, the Christian Democrats pointed out that it would be difficult to determine whether members of the target group of asylum seekers have resided legally in the Netherlands since their first application. Another point made was that some of the applications by the asylum seekers had been rejected by a judge, thus a general pardon could create a legal conflict.

Other initial problems regarding the implementation scheme included: the lack of municipal lists of illegal immigrants;³⁰ no competences on behalf of mayors to control illegal residence; and housing and insurance for the 27,000 foreign nationals falling under the provision. Consequently, the State Secretary for Justice distributed a letter among municipalities, establishing the number of those granted a pardon, *i.e.* 5,000, who have to be settled in the period 1 July – 31 December 2007.³¹ A related taskforce for assisting in the housing of asylum seekers also became operational in September 2007. At that time, following a series of parliamentary questions, the State Secretary for Justice declared that these asylum seekers should sign an insurance policy within four months from the starting date of their residence permit.³²

²⁹ Implementation of the general amnesty, The Hague, 7 July 2007

http://english.justitie.nl/images/Letter%20Albayrak_tcm35-76972.pdf.

³⁰ Association of Dutch Municipalities “Gemeenten houden geen lijsten van illegale vreemdelingen”, The Hague, 29 June 2007 <http://www.vng.nl/eCache/DEF/66/715.html>.

³¹ Ministerie van Justitie Circulaire, The Hague, 5 July 2007

http://www.justitie.nl/images/circulaire%205479816%20van%205%20juli%202007%20integraal_tcm34-79871.pdf.

³² Answers to questions by MPs De Wit and Van Gerven, The Hague, 8 October 2007

<http://www.pardonnu.nl/zorgverzekering.pdf>.

Statement by the People's Party for Freedom and Democracy (VVD) on immigration

In November 2007 the People's Party for Freedom and Democracy (VVD) came out with a statement on immigration and integration. The political party claimed that immigration is related to many problems and crime, accusing Dutch politicians of employing the wrong discourse in debates about immigration, and not being resolute about dealing firmly with the issue. The VVD expressed its own position, i.e. restrict immigration, promote integration and fight discrimination.³³

A matter of particular concern was the demand for the deportation of aliens (asylum seekers and all other “illegal persons” who seek refuge and are waiting for permits to stay) in the Netherlands. According to the VVD, the support that some municipalities give to “illegal persons” is unacceptable; helping them should be considered a breach of the law. The statement by this political party even suggests that also a stay by “illegal persons”, both before and after permit deliberations, should be considered as an illegal act and therefore indictable.

II Integration

Integration is one of the highly debated topics on the political agenda in the Netherlands. The dispute entails several and different positions, *i.e.* government policies, the points of view of political parties, members of the House of Representatives, NGOs, alternating between moderate and extreme standpoints. As presented in the following paragraphs, growing of Islamic extremism in the Netherlands has been recognized; however, at the same time, Islamic activism as a political factor and as a useful force for human rights and democratization has also been acknowledged. Public institutions, the government and local authorities are making efforts to promote the need to integrate and the peaceful cohabitation of Dutch people and immigrant groups, while preserving the democratic values of this society. However, this aim cannot be achieved without the willingness and active participation of these immigrant groups.

Muslims in the Netherlands

2007 was marked by three separate developments in relation to Muslims in the Netherlands. First, it was acknowledged that Islamic extremism³⁴ has been growing, but the terrorist threat it creates is limited. At the same time, Islamic activism³⁵ as a political factor was recognized as a useful force for human rights and democratization – a fact established by a heavily criticized report by the Dutch Scientific Council for Government Policy (WRR). Finally, Dutch Muslims were experiencing augmented discrimination.

³³ Volkspartij voor Vrijheid en Democratie “Immigratie en Integratie”, 12 November 2007 http://www.vvd.nl/ReadFile.aspx?ContentID=6361&ObjectID=108353&Type=1&File=0000004471_071112%20eindversie%20imm%20en%20integr.pdf.

³⁴ Extremism is a term used to describe the actions or ideologies of individuals or groups outside the perceived political centre of a society; or otherwise claimed to violate common moral standards.

³⁵ Activism, in a general sense, can be described as intentional action to bring about social or political change.

In testimony before the US Senate in June 2007, the Dutch Deputy National Coordinator for Counterterrorism recognized Islamic radicalism and jihadism as currently the greatest threat to the Netherlands. By “radicalization” he meant a process of personal development during which an individual adopts increasingly extreme political/politico-religious ideas and goals, becoming convinced that extreme methods are justified for achieving these goals. If these extreme methods also involve violent measures, we can speak of terrorism. Among the major factors to which such measures can be attributed are:

- *the Saudi Arabian influence and in particular Salafism: preaching a return to the earliest forms of Islam, fiercely opposing all forms of non-belief;*
- *Afghani veterans who spread a radical influence;*
- *the global propaganda of violent jihadist ideology;*
- *certain trigger events in the Muslim world;*
- *a lack of education, huge cultural differences and difficulties in integration, and as a result polarization between Muslims and non-Muslims.*

Salafism is the dominant religious doctrine in Saudi Arabia and although it takes two distinct forms, one recognizing the power of the clergy and the Saudi royal family, the other not recognizing this power and propagating worldwide jihad, according to the National Coordinator for Counterterrorism (NCTb) they both equally support the idea that Western society is un-Islamic. The Salafist interpretation of Islam is being spread through the operations of numerous Saudi-funded NGOs and imams worldwide, some of which are known to have used their funding to support armed conflict, while others have their own radical Islamic agenda.

The Netherlands has several Salafist mosque foundations backed by Saudi missionary organizations, as well as a number of other mosques which receive Saudi financial support. Usually, the funding takes the form of sponsoring a particular imam. Generally, there is little transparency concerning the origin and allocation of financial means. Virtual (online) Salafist missions and study trips to Saudi Arabia for youngsters further contribute to the dissemination of Salafist ideas. The danger for the Netherlands in the face of Saudi Salafism stems from the fact that moderate Salafist mosques (which follow the Saudi clergy and recognize the royal family) remain ambiguous as regards their jihadist “brothers”, neither giving up on them, nor banning them from their circles. Thus it appears that both fractions share a goal to prevent anything from depraving Islam and obstruct the return to “pure Islam.” The idea of pure Islam is particularly appealing to young Muslims in the West who experience an identity crisis. Therefore, a direct link can be established between the radicalization of some Muslim communities in the Netherlands and present-day Salafism.

Until now, no related acts of violence have been committed in the Netherlands, and Dutch authorities have not traced a link between Saudi finance, Salafist missions and terrorism-related activities in the country. Recently, along the lines of declarations to fight terrorism in Saudi Arabia, Salafist Islam in the Netherlands has actually become more moderate, with attempts to display financial transparency, to be open to media coverage, and mosques trying to save their image by banishing recruiters and extremist literature.

Despite all these causes of radicalization, the general threat level for the Netherlands was lowered from “substantial” to “limited.”³⁶ According to the National Terrorist Assessment³⁷ of September 2007, the networks known to the Dutch security services do not currently give rise to direct concern and Islamic radicalization has lessened. Right-wing extremism, however, has increased, manifested and further fuelled by issues such as the attack on Ehsan Jami and Geert Wilders’ call to ban the Koran.³⁸

Growing dynamism in Islamic activism was also investigated by the Scientific Council for Government Policy (WRR) in a report in late 2006, the conclusions of which continued to be debated throughout 2007.³⁹ The outcome of the report coincided with statements by the National Coordinator for Counterterrorism (NCTb), who acknowledged that radicalization is rapidly increasing.⁴⁰ According to the policy report by the Dutch Scientific Council for Government Policy (WRR), the Council sought to formulate a policy directed towards Muslim countries, where modernized styles of Muslim thinking are in accordance with their dogma, and where Islamic political movements do not always represent a violent threat, but embrace a pragmatic political standpoint, and aspire to change the existing political systems. Likewise, ideas about Islamic human rights have been under development in the Islamic world, demonstrating rapprochement with universal human rights. The main conclusion and recommendation of the WRR is that the Netherlands, as well as the European Union, must invest in building a policy concerning Muslim countries, this being based on the idea that religious movements and political Islam can be potential interlocutors and allies. “[R]eforms in the direction of international standards deserve support, including those which proceed from an Islamic discourse”⁴¹, exactly because change is more easily accepted when not imposed from the outside, but imbedded in local culture and traditions.

Advice is given to engage reference points for democracy and human rights in Islamic activism itself, as the existence thereof has been demonstrated. Domestically, the WRR suggests the formation of parties (partially) based on Islam, which could offer a constructive contribution to political debates.

Against a background of a “limited” terrorist threat as a result of radicalization, and a reasonable, integrative approach to Islamic activism suggested in the WRR report,

³⁶ Testimony by Lidewijde Ongering, Deputy National Coordinator for Counterterrorism, 27 June 2007 http://english.nctb.nl/Images/27-06-2007%20Public%20hearing%20home-grown%20terrorism_tcm51-84567.pdf.

³⁷ National Coordinator for Counterterrorism “National Terrorist Threat Assessment 10”, 9 October 2007 http://english.nctb.nl/Images/09-10-2007%20Summary%20DTN_tcm51-85782.pdf.

³⁸ “Saudi influences in the Netherlands. Links between the Salafist mission, radicalisation processes and Islamic terrorism”, 24 April 2007 http://english.nctb.nl/Images/Saudi%20influences%20in%20The%20Netherlands_tcm51-52890.pdf.

³⁹ Scientific Council for Government Policy “Dynamism in Islamic Activism. Reference Points for Democratization and Human Rights” 2006 <http://www.wrr.nl/english/dsc?c=getobject&s=obj&!sessionid=1kM75UuUCWRZ1zyOvofxaqys3h50uZxzY@p1K38LdWzmQW2wD1FEo9vhsUlyp3M0&objectid=3665&!dsname=default&isapidir=/gvisapi/>.

⁴⁰ “Nederlandse jongeren bekeren zich steeds sneller tot de radicale islam”, 14 December 2006 http://www.hetvrijevolk.com/?pagina=2172&titel=Nederlandse_jongeren_bekeren_zich_steeds_sneller_tot_de_radical_islam.

⁴¹ Scientific Council for Government Policy, *Opcit*.

discrimination against Dutch Muslims was being expressed in many forms. At the beginning of 2008 the Council of Europe (CoE) pointed out that the tone of the Dutch political and public debate on integration and other issues relevant to ethnic minorities has dramatically deteriorated, resulting in a worrying polarization between majority and minority communities.⁴² The CoE's European Commission against Racism and Intolerance (ECRI) identified controversial policies, sometimes in breach of national and international equality standards, which have led to the stigmatization of and discrimination against members of minority groups. "The Muslim, and notably the Moroccan and Turkish, communities have been particularly affected by these developments, which have resulted in a substantial increase of Islamophobia in both the political arena and other contexts."⁴³ The Commission recommends an urgent review of a number of policies in the light of the prohibition of direct and indirect racial discrimination. It further advocates that the Dutch authorities make wider use of positive measures to redress disadvantage and discrimination experienced by ethnic minority groups in a number of fields, notably employment.

The case presented below, *i.e.* the double nationality of two members of the new government, reflects one of the practical aspects of integration.

In February 2007 the leader of the PVV (Party for Freedom), Mr Geert Wilders, tried to prevent the appointment of two new cabinet members on the ground that Ms Nebahat Albayrak (State Secretary for Justice) and Mr Ahmed Aboutaleb (State Secretary for Social Affairs and Employment) hold two nationalities. According to the PVV, members of the government should only have one nationality.

The main concern of the political party was the conflict of interest to which this duality may lead. Party members repeatedly called the government holders of two passports "untrustworthy."⁴⁴ According to Mr Wilders, dual nationality brings about dual loyalty⁴⁵, and persons to be appointed as members of the cabinet, such as Ms Albayrak (of Turkish origin) and Mr Aboutaleb (of Moroccan origin), could work for the interests of Turkey and Morocco, instead of those of the Netherlands. The VVD (People's Party for Freedom and Democracy) added that dual nationality stands in the way of better integration, concurring with Mr Wilders that when receiving Dutch citizenship, one should forfeit his/her own nationality.⁴⁶

The PVV introduced a motion (of mistrust) against Ms Albayrak and Mr Aboutaleb during the parliamentary debate on appointing members of the new cabinet, causing substantial turmoil in the House of Representatives. The departing Minister for Integration and Immigration held that it is quite important for deputies and ministers to

⁴² Council of Europe. "Third report on the Netherlands adopted on 29 June 2007 and made public on 12 February 2008." http://www.coe.int/t/e/human_rights/ecri/1-ecri/2-country-by-country_approach/netherlands/netherlands_cbc_3.asp#P77_3849.

⁴³ Ibid.

⁴⁴ De Volkskrant "PVV veroorzaakt tumult bij benoeming Aboutaleb", 15 February 2007 http://www.volkskrant.nl/binnenland/article397708.ece/PVV_veroorzaakt_tumult_over_benoeming_Aboutaleb.

⁴⁵ G. Wilders, "Eén jaar Partij voor de Vrijheid", 27 November 2007 http://www.pvv.nl/index.php?option=com_content&task=view&id=326&Itemid=6..

⁴⁶ Dutch House of Representatives "VVD en PVV willen einde aan dubbele nationaliteit," 6 February 2007 http://www.tweedekamer.nl/kamerstukken/verslagen/kamer_in_het_kort/nationaliteit.jsp#0.

be proud of being Dutch, a fact that could be proven by giving up one's original nationality. Other parties voiced their immediate indignation at the motion and the Speaker called for a recess during which she personally addressed a particularly aggressive member of the PVV, saying that he had gone too far. The motion – unique in Dutch politics by being aimed at potential members of the cabinet who have not appeared before Parliament even once – was finally dropped.

However, the debate on dual nationality continued and subsequently grew in the media and among the public into a whole new argument about forfeiting nationality. Some countries, such as Morocco, do not allow its citizens to renounce their nationality. The same is true for Argentina – the home state of the wife of the heir to the Dutch throne.

Currently, the law on dual and multi-nationality is being reviewed so as to somewhat curtail the number of people holding two or more nationalities. The legal proposal contains a provision by which whoever desires and obtains Dutch nationality must distance themselves from their old one via a declaration, with certain exceptions. This option is also provided for second-generation immigrants, should they choose Dutch nationality. The cabinet has retained the measure of removing Dutch nationality from individuals with a dual nationality who have been involved in terrorist activities, or when this is deemed necessary after an individual assessment.⁴⁷

Ahmed Aboutaleb was born in Beni Sidel (Morocco) in 1961. Before being appointed to the function of State Secretary for Social Affairs and Employment, he was Director of the *Forum* organization, an institution dealing with multiculturalism in the Netherlands. Mr Aboutaleb also held a function as a civil servant within the municipality of Amsterdam. His alleged loyalty to Morocco is groundless; he once worked there on a government project. Reacting to attacks by Mr Wilders regarding his dual nationality, Mr Aboutaleb happily showed his passport to the media, saying that he is very attached and loyal to the Netherlands, and would even like to be buried on Dutch soil.

Immigrants from new EU member states

According to figures published by Statistics Netherlands at the end of 2007, immigration rose further in the third quarter of the year.⁴⁸ This was mainly attributed to an increasing number of immigrants from new EU member states. The lifting of a work permit requirement for Polish nationals as of 1 May 2007 contributed to an increase of Polish workers. At the same time, despite the fact that they still cannot enjoy freedom on the EU labour market, more immigrants from the newest EU member states, Bulgaria and Romania, came to the Netherlands during 2007, as compared to previous years.

The Dutch state has been trying to come to terms with the needs of its economy, which requires workers in areas such as agriculture, transport and construction. As a result, in 2006 the previous government eased work permit regulations for foreign employees.⁴⁹

⁴⁷ Ministry of Justice “Nieuw wetsvoorstel tot beperking van meervoudige nationaliteit”, The Hague, 12 October 2007 http://www.regering.nl/Actueel/Persberichten_ministerraad/2007/oktober/12/Nieuw_wetsvoorstel_tot_beperking_van_meervoudige_nationaliteit.

⁴⁸ “Growing immigration from new EU member states”, 9 November 2007 <http://www.cbs.nl/NR/rdonlyres/5C8642E8-AFC8-445B-B496-E78F23C1EFE7/0/pb07n074.pdf>.

⁴⁹ “The amended Dutch immigration regulations explained”, 19 April 2006 <http://www.expatica.com/hr/story/the-amended-dutch-immigration-regulations-explained-29407.html>.

At the same time, the electorate's fear of and hostility towards immigrants from Central and Eastern European countries led to cautiousness about further encouraging Polish, Romanian or Bulgarian citizens to come to the Netherlands.

The Dutch Parliament thus opposes the opening of the Dutch labour market to Bulgarian and Romanian citizens after 2009, the date set by the previous government for lifting labour restrictions. The Minister of Social Affairs and Employment, Mr Piet Hein Donner, planned to start discussions on opening the labour market as early as May 2008, as part of his scheduled report on the needs of the Dutch labour market. However, all the political parties refused to put the subject on the agenda. Mr Donner estimated that lifting the restrictions in May 2007 for the A8 countries, *i.e.* Hungary, Poland, the Czech Republic, Slovakia, Slovenia, Lithuania, Latvia, and Estonia would not overcrowd the Dutch labour market. According to the research presented by Mr Donner to the government, Central and Eastern European migrants are primarily working in sectors that are difficult for employers to find the required workers.⁵⁰ Some Dutch cities have reported problems with migrant workers from Central and Eastern Europe living in overcrowded conditions near their workplace. Mr Donner acknowledged that some migrant workers lack adequate accommodation, but stated that this problem was the responsibility of employers.⁵¹

The profile of the Polish migrant worker

The profile of an average Polish immigrant is as follows: young, with secondary or higher education, often with a basic knowledge of German or English and motivated to work hard, even for a minimum wage. Polish migrant workers coming to the Netherlands are usually not unemployed in their own country, at least not for a prolonged period of time. Willing to work in occupations other than those for which they have been trained, Polish migrant workers are often over-qualified for the work that they carry out in the "old" member states. Nevertheless, they can still earn more than what they could earn in their own occupation in Poland.

III Freedom of speech v. freedom of religion

There is a very narrow bridge between freedom of speech and freedom of religion. One can go as far as not to offend the other. Can such accurate legal regulations be established so as to ensure the exact and precise decision in every case where a contradiction between the two rights occurs? At which point would an offence to one of these rights become punishable? These questions are not likely to be answered. They only raise a dilemma that Dutch society is facing with regard to Islam as a religion and the expression of an opinion relating to this religious belief. The following cases are only an example of how the two rights clash; however, they make it obvious that further government policies must be developed, more precise legal regulations must be adopted, and concrete actions have to be taken in this field.

⁵⁰ Ministerie van Sociale Zaken en Werkgelegenheid "Evaluatie werknemersverkeer MOE-landen," 13 February 2006 http://docs.szw.nl/pdf/129/2006/129_2006_3_8693.pdf.

⁵¹ "Dutch labour market could stay closed to Bulgarians and Romanians", 15 December 2007 <http://world-immigration-news.blogspot.com/2007/12/dutch-labor-market-could-stay-closed-to.html>.

“Ban the Koran” by Wilders (Volkskrant, 8 August 2007)

Mr Wilders triggered another contentious event in 2007. The President of the PVV sent an open letter to the daily newspaper Volkskrant entitled “*Enough is enough: ban the Koran*”. He was heavily criticized, threatened and found little, if any, support. His actions have spurred discussions among both Muslims and non-Muslims about *freedom of speech v. freedom of religion* in the country.



Mr Geert Wilders (PVV)
(Photo: www.geertwilders.nl)

The controversial article was first sent to another Dutch newspaper, which refused to include the text in its next issue and ignored it. Mr Wilders then turned to the Volkskrant and on 8 August 2007 the publication featured his article.⁵² The MP basically claims that the Koran is a fascist book which propagates violence and must therefore be banned like Hitler’s “Mein Kampf.”⁵³ It could be used for study, he says, but neither sold, nor be present in mosques or kept at home, as the text incites murder, and thus has no place within the Dutch legal order.⁵⁴

The Dutch cabinet immediately distanced itself from the stance of Mr Wilders. The Minister for Foreign Affairs found his statements to be reprehensible, denying any possibility of a banning the Koran in the Netherlands.⁵⁵ As intercommunity and even foreign relations with some countries were under threat, the Minister for Foreign Affairs forwarded a letter to Dutch ambassadors abroad in an act to deplore what had occurred. His predecessor had already voiced the Ministry’s condemnation of similar discriminatory remarks made by Mr Wilders earlier the same year.⁵⁶ Some politicians merely dismissed the article, identifying in it nothing but populist discourse in a move to gain political weight and attract attention. The extreme right Vlaams Belang party in Belgium also denounced the actions of Wilders. The Contact Body of Muslims and the Government (CMO) – an umbrella group of Dutch Muslim organizations – said that Wilders’ comments were best ignored.⁵⁷

Assault on Ehsan Jami, blasphemy and apostasy in Islam

The case of Ehsan Jami prompted a difficult, yet key question relating to blasphemy and apostasy from Islam, *i.e.* how can a Western society that treasures individual *freedom of religion* and *freedom of expression* assist and protect immigrants who cannot enjoy

⁵² De Volkskrant “Genoeg is genoeg: verbied de Koran”, 8 August 2007

http://www.volkskrant.nl/binnenland/article451338.ece/Genoeg_is_genoeg_verbied_de_Koran.

⁵³ “Mein Kampf” in which the Nazi leader outlines his racist ideology is the only book which is banned from sale in the Netherlands. The ban has existed in the country ever since the end of World War Two.

⁵⁴ http://www.volkskrant.nl/binnenland/article451302.ece/Wilders_verbied_de_Koran_ook_in_moskee.

⁵⁵ Ministry of Foreign Affairs “Verbieden van Koran in Nederland niet aan de orde”, The Hague, 8 August 2008 <http://www.minbuza.nl/nl/actueel/nieuwsberichten,2007/08/Verbieden-van-Koran-in-Nederland-niet-aan-de-orde.html>.

⁵⁶ Ministry of Foreign Affairs, “Bot betreurt uitlatingen Wilders over de Koran”, The Hague, 19 February 2007 <http://www.minbuza.nl/nl/actueel/nieuwsberichten,2007/02/Minister-Bot-betreurt-uitlatingen-Wilders-over-de-.html>.

⁵⁷ “Dutch populist Wilders calls for ban on Koran”, Amsterdam, 8 August 2007 <http://uk.reuters.com/article/worldNews/idUKL0819099220070808?pageNumber=1>.

these freedoms, but aspire to reject their beliefs or simply question them. Born and raised in Iran, Mr Jami established a Central Committee for Ex-Muslims in 2007. The aim of the organization is to support apostates of Islam, as according to the Koran apostasy is punishable. Mr Jami has also been a severe critic of Islam itself, even claiming that the Prophet Muhammad was a criminal.⁵⁸ At the same time the Koran implies that all sins are forgivable, except for disbelieving in God (blasphemy).

On 4 August 2007 Mr Jami was attacked by three men at his home. The assault is believed to be linked to his blasphemous statements and activities for the Committee for ex-Muslims. Subsequently, in October 2007, Mr Jami announced that he is working on a film that will be even more controversial than the Jyllands-Posten Muhammad cartoon, the impact of which was felt worldwide and even led to the introduction of trade restrictions for Danish goods in certain states from the Muslim world. As a result, the personal security of Mr Jami was discussed by the National Coordinator for Counterterrorism (NCTb), the public prosecutor and the Dutch police, and steps have been taken to protect him from attacks in the future.

The conflict between *freedom of religion* and *freedom of speech* and the Muslim views on blasphemy and apostasy have been present in the Netherlands for quite some time. Article 6 of the Constitution guarantees each Dutch person the freedom to pursue any religion, and thus also the freedom to become an apostate. Freedom of expression (religious or otherwise) is guaranteed by Article 6 of the Constitution.⁵⁹

Parallel to this, there exists legislation in the country that classifies blasphemy as a penal offence. In October 2007 the House of Representatives came up with a proposal to scrap blasphemy laws from the penal code. Such an abolition of blasphemy laws would provide much needed confidence to immigrants who want to renounce Islam.

Blasphemy is the disrespectful use of the name of one or more gods. It may include using sacred names without intention to pray or speak of sacred matters; it is also sometimes defined as language expressing disbelief; also used loosely to mean any irreverence towards deities or profane language. Many cultures disapprove of speech or writing which defames the deity or deities of their established religions and these restrictions have the force of law in some countries.



Mr Ehsan Jami.
(Photo:
Flickr/Bogers)

⁵⁸ Elsevier. "Ex-moslim PvdA: Mohammed was een crimineel," 23 June 2007 <http://www.elsevier.nl/nieuws/politiek/artikel.asp?artnr=158085>

⁵⁹ Grondwet voor het Koninkrijk der Nederlanden van 24 augustus 1815 <http://wetten.overheid.nl/cgi-bin/sessioned/browsercheck/continuation=22260-002/session=055961445303452/action=javascript-result/javascript=yes>.

IV Right to security

The state has no constitutional obligation to provide for security. Is there a moral one? Even if there is not a specific legal basis to protect a free citizen, there is a moral obligation to protect the person who is precisely threatened for being the advocate of rights for which the constitution does provide.

The security of Ms Ayaan Hirsi Ali

After a 2006 confession to defrauding the authorities in order to obtain Dutch nationality, Ms Ayaan Hirsi Ali stepped down as a Member of Parliament and relocated to the USA. To guarantee her *personal security*, as she is a vocal opponent of Islam and a women's rights activist, and as a consequence she received several threats to her life, the Dutch government pledged to continue financing her protection abroad. This support, however, stopped in October 2007.

As a result, the former MP returned to the Netherlands and moved to an undisclosed location. The issue of paying for her security kindled an extensive debate on the *government's responsibilities for protecting citizens* (from threats by extremists). In response to a number of MPs from the House of Representatives, who wanted clarification on the matter, the Minister of Justice took the following position in October 2007, explaining why financing for Ms Hirsi Ali's security must cease.



Ms Hirsi Ali.
(Photo: AP)

According to the Minister, the Netherlands should take measures to protect its citizens on its own territory only or during short official visits to other countries, with the cooperation of local authorities in the country of destination. Therefore, if a person goes abroad for an extended period of time and does not serve the Dutch government in an official capacity, his/her protection is no longer the responsibility of the Dutch state.⁶⁰

At the same time an exception exists for protecting persons when they are abroad on account of national interests. This, however, requires that the individual is included in a restricted list of a temporary nature. The former Minister of Justice indeed added Ms Hirsi Ali to such a list, and its validity was repeatedly extended so that she could adjust to the transition from the protection that applied in the Netherlands, when she was still a member of the House of Representatives, and also to give her the opportunity to take steps to provide for her own protection.⁶¹ That is the reason why Ms Hirsi Ali enjoyed round-the-clock security provided by six personal bodyguards while staying in the United States.

Despite an earlier attempt by her lawyer to invoke a special legal obligation to provide for her protection, she was nevertheless stripped of security funding, which was estimated to be above € 2 million per year.⁶²

⁶⁰ Ministry of Justice, "Beveiliging van mevrouw Hirsi Ali", The Hague, 4 October 2007
<http://www.minjus.nl/actueel/nieuwsberichten/archief-2007/beveiliging-van-mevrouw-hirsi-ali.aspx?cp=34&cs=578>

⁶¹ Dutch House of Representatives, Proceedings 2006-2007, 446, p. 963.
<http://www.geencommentaar.nl/parlando/index.php?action=doc&filename=KVR26897.pdf>

⁶² Ministry of Justice, "Beveiliging van mevrouw Hirsi Ali." Opcit.

With the question as to who should provide for her protection unanswered, Ms Hirsi Ali's future security remains the subject of a number of speculations. The National Coordinator for Counterterrorism (NCTb) has already held talks with the former MP about her safety while in the Netherlands.⁶³ Still, Ms Hirsi Ali expressed her desire to return to the USA, although the American Embassy in The Hague has explicitly stated that the United States would never pay for the security of private citizens. Recently, the French social democrat and member of the European Parliament (EP) Benoît Hamon started an initiative to provide financial support from the EU budget for Ms Hirsi Ali's security. During a sitting of the EP in December 2007 he lodged a written declaration requesting financial support for Ms Hirsi Ali's security anywhere in the world.⁶⁴ The proposal has found some support, but needs substantially more backing to be pursued. Moreover, if it came to fruition, it would be after a long search for a legal basis and would set a remarkable precedent. In February 2008 the French government itself put on its agenda the question of financing Ms Hirsi Ali's security.

For the time being, Ms. Hirsi Ali relies on her own savings and charity contributions in order to pay for security. An Ayaan Hirsi Ali Security Trust⁶⁵ has been established to attract donors. An online petition⁶⁶ also calls on to "all progressive organizations, all defenders of women's rights, all protectors of human rights, all freedom seekers and all progressive individuals" to sign an expression of support for Ms Hirsi Ali.

V Right to privacy

The right to privacy covers several aspects of the life of a citizen. One of these aspects can lead to a contradiction between the right to privacy of some and the right to security of others. During the last decade the fight against terrorism has escalated to an international level, and the protection of national security and the citizens of the state modulated the balance between the measures that could be taken with respect to the right to privacy of a person, and measures that can be adopted in order to ensure the security of other persons. The issue is on the agendas of international organizations and on the political agenda of the Netherlands as well, leading to controversial debates, since by looking at various cases as individual ones, the balance can lean in favour of the right to privacy or that of the right to security. However, these individual cases can contribute to the development of more precise legal regulations in the field and thus ensure that both rights are equally protected.

The privacy of persons suspected of being involved in terrorist activities

"Persoonsgericht verstoren" ("person-orientated interference") is a measure at the disposal of Dutch mayors, by virtue of which individuals who are believed to be involved in terrorist activities can be subjected to intense police scrutiny. As an intrusion into privacy, it raised concern among human rights defenders in 2007. Moreover, the measure is not provided for in a legal measure officially adopted by Parliament and all sorts of (procedural) safeguards are lacking.

⁶³ NRC Handelsblad "Ayaan Hirsi Ali terug in Nederland", 1 October 2007
http://www.nrc.nl/binnenland/article778723.ece/Ayaan_Hirsi_Ali_terug_in_Nederland

⁶⁴ Benoît Hamon, député européen, "Déclaration écrite sur la prise en charge par l'UE de la protection d'Ayaan Hirsi Ali" <http://lefil.blogs.com/benoithamon/2007/12/protger-ayaan-h.html>

⁶⁵ http://www.samharris.org/site/security_trust/

⁶⁶ <http://www.petitiononline.com/AyaanHir/>

In enforcing this measure, the police may carry out a series of activities, *inter alia*, visit the house of persons who are believed to be involved in terrorist activities, their neighbours, their family; visit their workplace or school; call the said person to the police station; make phone calls; call at house doors; approach acquaintances of the person who is believed to be involved in terrorist activities; engage in police surveillance of the surroundings; follow the said person; and investigate whether residents in the area can report any crimes. Taken to an extreme, “person-orientated interference” may lead to the police “stalking” the said persons in order to let them know that they will be apprehended in an attempt to interfere with their privacy, thereby preventing their involvement in terrorism. Strictly speaking, and according to Dutch Criminal Law, the persons subjected to the above-mentioned measures have not done anything illegal. Therefore, the applied measures actually constitute an intrusion into the private life of a person, who at this stage has neither committed, nor is preparing to commit an illegal act.

In a press release of August 2007, the Dutch Section of the International Commission of Jurists (NJCM) revealed with alarm that “person-orientated interference” was used in the case of 15 persons in the period 2005 – 2007.⁶⁷ During the same month the Minister of the Interior and Kingdom Relations and the Minister of Justice submitted a letter to the House of Representatives in which they drew attention to the threat to privacy of some of the imposed measures. The letter asserted that “person-orientated interference” is not by definition a violation of the right to privacy as laid down in Article 10 of the Dutch Constitution and Article 8 of the European Convention on Human Rights (ECHR). It acknowledged the existence of two legal cases in which persons subjected to police scrutiny under the measure “person-orientated interference” proved to be a violation of the right to privacy. However, the stance taken by the government, as further elaborated by the two above-mentioned ministers, is that such “preventive” measures are needed to preserve public order and safety provided that they are executed “in proportion to their aim and there is no lighter measure which could achieve the said aim.”⁶⁸ In the view of the ministers, “minor” violations of personal freedom by the police, such as street surveillance or a brief presence in front of the home of a person who is believed to be involved in terrorist activities, are admissible. Still, their letter points out that there should be a sufficiently specific legal basis for the more intrusive measures used under the principle of “person-orientated interference”.

⁶⁷ “NJCM uit zorgen in Brussel over persoonsgericht verstoren” persbericht, 9 August 2007
http://www.njcm.nl/site/press_releases/show/13

⁶⁸ Letter to the House of Representatives by the Ministers of the Interior and Justice, 22 August 2007
http://www.justitie.nl/images/Persoonsgerichte%20aanpak_8466_tcm34-82084.pdf.

In the Netherlands one of the most severe critics of the principle of “person-orientated interference” (“persoonsgericht verstoren”) is Jan Brouwer⁶⁹, a law lecturer at the University of Groningen, who maintains that the measure is dubious at best, whereas it definitely contradicts the present legal regulations.

His arguments are based on legal grounds. Maintaining public order, he claims, can solely be carried out in two ways: the general (administrative) one and another (under special circumstances), when there is evidence of a concrete and actual threat. Only with evidence under the latter case can mayors use the measures at their disposal to ensure the desired solution. Thus, interference is out of the question when someone is considered to be a suspect merely because he/she has converted to Islam and found themselves in that environment. Similarly, when resorting to administrative means to maintain public order, mayors are not allowed to do more than issue the proper permits to eating and drinking establishments, allowing demonstrations, and providing a police presence. Occasionally, a mayor can assign a task for extra surveillance, but not much more is possible.

As far as the right to privacy is concerned, this critic believes that the principle of “person-orientated interference” is a real and substantive violation thereof. He sees a problem in the fact that severe incursions into privacy are subject to sanctions; however, “person-orientated interference” is not. Moreover, by the lengths to which the police can go in carrying out this measure, it is comparable to actions taken to pursue criminals under the Criminal Law, and that is unacceptable, especially when the justification to do so is just a “potential intention” by the suspect. “What we do with “person-orientated interference” is to [mistakenly] identify public order with national security.”

The critics of the measure, the Commission for Supervision of Information and Security Services (CTIVD),⁷⁰ also insist on explicit legislation for this purpose⁷¹, as currently “persoonsgericht verstoren” derives from Articles 2 and 12 of the Police Act (obliging the police force to preserve public order and safety, while subjecting it to the mayors at the local level) and Article 172 of the Municipality Act (charging the mayor with observing safety and guaranteeing security by all necessary means). With the advent of the 2006/07 Administrative Measures for National Security, it is hoped that less use will be made of “person-orientated interference” and, where required, only its weaker variants will be used.

In December 2007 the House of Representatives posed questions to the Minister of the Interior and Kingdom Relations as regards the legal basis, monitoring and future of the measures under “person-orientated interference”. Members of Parliament (MPs) have expressed their desire for a reduction in cases of tight policy scrutiny, but they were most concerned with accountability issues, *e.g.* whether the police ought to answer to the Public Prosecution Service (OM) or the office of the mayor in question when it

⁶⁹ Jan Brouwer: “Persoonsgericht verstoren potentiële terrorisme-verdachten op last van burgemeester ongrondwettig.” http://www.rug.nl/corporate/nieuws/archief/archief2006/opinie/opinie_20

⁷⁰ This Committee is an independent body with extensive powers, charged with assessing the legitimacy of the actions of the Dutch intelligence and security services. Its introduction is based on the Dutch Intelligence and Security Services Act and the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR).

⁷¹ CTIVD Annual Report, 31 March 2007 http://www.nctb.nl/Images/Jaarverslag%20CTIVD%202006-2007_tcm50-64778.pdf

comes to “person-orientated interference.”⁷² Lawyers have opposed the contentious measure as being too extreme.⁷³

Dutch elections 2006, the case of voting machines

During the elections for the House of Representatives in 2006 the use of some 1,200 Nedap voting computers was abandoned by the Dutch government, as the machines threatened the privacy of the voter. Both the embedded software and hardware proved to be easily manipulated, resulting in a period of contemplation regarding the very use of voting machines in elections.

A mission from the OSCE’s Office for Democratic Institutions and Human Rights (ODIHR), which was present during the voting procedure in the Netherlands, advised more and varied testing of voting machines prior to elections. Among the recommendations in their report⁷⁴ was a recommendation to regulate the employment of electronic voting in primary legislation, thus allowing for greater public trust in the *anonymity of the vote*. Moreover, the OSCE representatives insisted that the secrecy of the voting machines’ technical specifications inhibited their reliability instead of ensuring it.

As a reaction to the heated debates that ensued in the media, academia, Parliament and the public, two independent Commissions investigated the issue of voting machines. The first one, *i.e.* the Commissie Besluitvorming Stemmachines (Decision-making Commission on Voting machines) sharply criticized the Dutch government for turning a blind eye to the problems posed by voting machines.⁷⁵ The second Commission was to report on the future of the Dutch electoral process later that year. The report “*Voting with Confidence*” was presented in October 2007, emphasizing the importance of “free, secret and equal suffrage”. It concluded that it is indeed feasible to have a method of electronic voting that provides enough safeguards, as long as it produces paper ballots that can solely be checked by the voters themselves.⁷⁶ Finally, the second Commission recommended the introduction of ballot printers and electronic vote counters which do not store voting records in an electronic memory in order to guarantee verifiability and transparency. The State Secretary for the Interior and Kingdom Relations immediately announced that the “*Regulation for the approval of voting machines*” from 1997 will be

⁷² Tweede kamer der Staten-Generaal, “Terrorismebestrijding” Verslag van een algemeen Overleg. The Hague, 20 December 2007 http://www.nctb.nl/Images/29754%20nr%20124_tcm50-98308.pdf.

⁷³ Binnenlands Bestuur, 21 July 2006 http://www.nctb.nl/Images/Artikel%20Binnenlands%20Bestuur%20persoonsgerichte%20aanpak_tcm50-75325.pdf.

⁷⁴ OSCE/ODIHR Election Assessment Mission Report, “The Netherlands, Parliamentary Elections 22 November 2006”, Warsaw, 12 March 2007. <http://www.osce.org> Nedap voting computer. http://documents/odihr/2007/03/23602_en.pdf.

⁷⁵ Commissie Besluitvorming Stemmachines, “Stemmachines een verweesd dossier,” The Hague, May 2007 http://www.wijvertrouwenstemcomputersniet.nl/images/3/36/Rapport_stemmachines_2e_druk.pdf.

⁷⁶ Ministry of the Interior and Kingdom Relations, “Voting with Confidence” Election Process Advisory Commission Report, The Hague, 27 September 2007 <http://www.wijvertrouwenstemcomputersniet.nl/images/0/0c/Votingwithconfidence.pdf>.

repealed, this being done on 21 October 2007.⁷⁷ Earlier during the month the District Court of Amsterdam decertified the Nedap voting computers.⁷⁸

"Wij vertrouwen stemcomputers niet" ("We do not trust voting computers")⁷⁹ was one of the main actors voicing its concern about the danger to fair elections and voter privacy posed by Nedap voting machines during the 2006 elections. This civic movement, which started as an initiative by a small group of individuals, grew and came to the forefront in the movement against voting computers. Its team tested the vulnerability of the software and hardware of voting machines, thereby exposing their flaws. Through a series of publications on their website, they informed the public about all developments concerning the issue, and through lobbying contributed to the decertification of Nedaps.

VI Gender-based discrimination

The right not to be discriminated against on any ground belongs to each individual. In contrast to the above-mentioned rights, *i.e.* freedom of speech v. freedom of religion, the right to security v. the right to privacy, the prohibition on gender-based discrimination does not contradict any other right. However, it still exists. In comparison with other countries, even member states the European Union, the Netherlands has a properly developed system of protection against gender-based discrimination; however, its application can be hindered by the personal convictions and beliefs of an individual. Therefore, the already started awareness-raising campaigns by the government and those of local authorities are welcomed; they have an important role in the [unfortunately] slow process of mentality change and a better acceptance of "the other".

The Dutch government is negligent concerning women's rights

The government does too little in the emancipation of and combating discrimination against women says a 2006 report drawn up by nearly 30 women's rights organizations in the Netherlands. The publication came as a counter-report to an obligatory official investigation prepared by the Dutch authorities as signatories to the UN Convention on the Elimination of all Forms of Discrimination against Women (UN CEDAW). In 2007 the Report was forwarded to the UN CEDAW Committee for their own evaluation.

Based on the input of the Dutch government, women's rights activists from the Netherlands united to produce the report "*Taking Women's Rights Seriously?*"⁸⁰ As part of this report the above-mentioned official report of the Dutch government was critically assessed. The CEDAW Committee later took the NGO report into consideration when issuing its "*Concluding Comments*" at the beginning of 2007. According to the Committee, the Dutch government is not taking sufficiently effective measures to improve the position of women in the Netherlands and to prohibit the

⁷⁷ Ministerie van Binnenlandse Zaken en Koninkrijksrelaties, "Toespraak staatssecretaris Bijleveld bij ontvangst advies inrichten verkiezingsproces," The Hague, 27 September 2007
<http://www.minbzk.nl/actueel?ActItdt=108604>.

⁷⁸ Uitspraak van de Voorzieningenrechter, Amsterdam, zaaknummer: AWB 07/2268 en 07/2340

⁷⁹ <http://www.wijvertrouwenstemcomputersniet.nl/>

⁸⁰ "Taking Women's Rights Seriously? An examination of the Fourth Report by the Government of the Netherlands on Implementation of the UN Convention on the Elimination of all Forms of Discrimination against Women (CEDAW), 2000-2004", 15 June 2006

discrimination of women.⁸¹ Moreover, it has not acquainted the public, its agencies, judges and lawyers with the provisions stipulated in the text of the Convention.

The Committee voices its concern about persistent inequalities between women and men on the labour market, in public life and politics. Domestic violence against women and an inadequate sharing of responsibility for parenthood are two other points of concern mentioned in the “*Concluding comments*”. They also note that the stereotypical representation of foreign women, refugees and ethnic minorities contribute to the stagnation of emancipation within this group, having an impact on society as a whole. During the next four years, after which the Committee will discuss the next report, the Dutch government will have to work on the above-mentioned recommendations. The CEDAW Committee expects from the Dutch authorities, *inter alia*, more statistical data, profound research, studies and a stricter evaluation of the impact of policy, legislation and stereotypes on the efficient implementation of the UN Convention and on the overall position of women in the Netherlands.⁸²

Other principal areas of concern for the UN CEDAW Committee:

- the lack of sufficient information on the status of the implementation of the Convention on the Netherlands Antilles and Aruba;
- the situation of women with disabilities and elderly women;
- the protection of women who are victims of trafficking;
- the inadequate examination of the abolition of the ban on brothels; and
- the incomplete applicability of the Convention within the domestic legal order of the Netherlands.

The NGO Vrouwenverdrag (Women’s Convention) followed the reaction of the Dutch authorities which only discussed the implications of the “*Concluding comments*” in October 2007. According to a press release issued by the organization in October, the Ministry of Education, Culture and Science expressed its commitment to further investigate the legal basis and obligations imposed by CEDAW before the issuing of a consultation on 7 November 2007 regarding the Emancipation Plan 2008-2011.⁸³

The Council of State ruling regarding state subsidy for the SGP (the Reformed Political Party)

In 2005 the District Court of The Hague decided that the political party could no longer receive a subsidy since women were not allowed to be elected as representatives, a provision violating the Dutch Constitution and international commitments on fighting gender-based discrimination. However, the Dutch Council of State overruled the decision. Female members of the SGP themselves claimed that they did not feel discriminated against.

⁸¹ “Concluding comments of the Committee on the Elimination of Discrimination against Women: Netherlands”, 2 February 2007
http://www.un.org/womenwatch/daw/cedaw/cedaw37/concludingcommentsAU/Netherlands_advance%20unedited.pdf.

⁸² Nederlands Juristen Comité voor de Mensenrechten. “VN Comité doet dringende aanbevelingen voor naleving Vrouwenverdrag in Nederland”, 13 February 2007
<http://www.njcm.nl/site/newsposts/show/162>.

⁸³ Vrouwenverdrag. “Tweede Kamer: Algemeen overleg over vierde CEDAW-rapportage en derde nationale rapportage,” 10 October 2008 http://www.vrouwenverdrag.nl/vv/nederland/rapportages_aan_cedaw/Vierde_rapportage_-_2005/

In its final judgment, the Council of State, the highest administrative court in the Netherlands, overturned the decision of the District Court in The Hague. The lower court had determined that the SGP was no longer entitled to a state subsidy. The SGP refused to elect women to executive functions within the party. The court decision came in response to a trial case brought against the state by the Clara Wichmann Institute. The Clara Wichmann Institute, an organization that promotes the rights of women, invoked the UN CEDAW.

On 5 December 2007 the Council of State ruled that the law concerning subsidies to political parties weighs the interests of equal treatment and the interest of a political party in upholding its philosophy. Thus party philosophy can be superior in allocating funding. Moreover, the Council felt that women in the Netherlands have the opportunity to join other political parties that do put them on an equal footing for representative functions, which balances the potential discrimination by the SGP.⁸⁴

The SGP is “grateful and pleased at the well grounded verdict”. According to the chairman “this creates the clarity so badly needed on the subsidy to which the SGP is entitled”. The political party further sees the ruling as confirmation that political parties have the freedom to uphold their philosophy. “It is nice that the highest administrative court has put it in writing that the SGP has stuck to the rules.”⁸⁵

Discrimination against homosexuals and same-sex marriages

A series of events took place in 2007 which displayed the extent, nuances and types of discrimination faced by homosexual couples. Among these were employment problems, violence against homosexuals and restrictions on same-sex marriages. The overview below is based on news archives from the COC, the Netherlands (the COC is the oldest organization representing gay, lesbian, transgender and bisexual persons in the world).⁸⁶

An evangelical school in Amsterdam announced that homosexuality contradicted the view of the school board and no homosexual teachers were present at the school. While it acknowledged that sexual matters are not taken into consideration in hiring staff, the policy for teachers in homosexual relationships was different. The school raised the argument of “related” provisions in the Bible. According to the Educational Inspectorate reactionary measures were unlikely to occur.⁸⁷

The Amsterdam police arrested a group of boys aged 14-19 for two assaults on homosexuals. Another action related to discrimination took place in Limburg, where 18 men suspected of repeatedly attacking homosexuals were put on trial and faced severe

⁸⁴ “Uitspraak op het hoger beroep van: de vereniging “Staatkundig Gereformeerde Partij”, gevestigd te Den Haag, tegen de uitspraak in zaak nr. AWB 06/2696 van de rechtbank ’s-Gravenhage van 30 november 2006.”

⁸⁵ Expatica. “SGP will get subsidy after all” 5 December 2007 <http://www.expatica.com/nl/articles/news/SGP-will-get-subsidy-after-all.html>

⁸⁶ Cultuur en Ontspanningscentrum http://www.coc.nl/dopage.pl?thema=any&pagina=algemeen&algemeen_id=305

⁸⁷ Centrum School en Veiligheid. “Ophef over antihomotekst Amsterdamse school. Evangelische scholengemeenschap weert homoleraren.” <http://www.pestweb.nl/aps/School+en+Veiligheid/news/nieuwsarchieef+discriminatie+extremisme/nieuwsarchieef+2007/ophef+antihomotekst.htm>

punishment. In Amsterdam a perpetrator who had attacked a homosexual was sentenced to 60 hours' community service. Six men who used systematic violence against homosexuals were sentenced to terms of imprisonment, the Public Prosecutor's Office (PPO) imposing the measure unconditionally.

Similar acts of aggression throughout the country were frequent all through the year, causing alarm amongst gay rights activists and drew attention to the municipal level where capacities to deal with such offences are minimal. Even at the national level there was no registration system for offences committed against homosexuals. In July the PPO deliberated how to punish violence against homosexuals more severely, whereas in November 2007 the Dutch government issued a "*Simply Being Homo*" consultation paper, advocating five pillars for action in this area⁸⁸, *i.e.* opening up homosexuality for discussion among different generations and societal groups; tackling violence against and the intimidation of homosexuals; stimulating social alliances among homosexuals; contributing to establishing homosexually-friendly environments in schools, at work, in sport, and respectively guaranteeing an active role on behalf of international and EU stakeholders.

During 2007 action was taken by the police in Amsterdam-Amstelland by opening and popularizing a special HomoNetwork phone line, where reports of homosexual violence against individuals and at the places where homosexuals meet could be reported.

Even the gay festival Gay Pride was marked by cases of abuse. As a result, the political party D66 (Social Liberal Party) called on the Dutch government to start recording violent offences, to introduce more severe sentences, and to pay more attention to the damage which homophobic attacks bring to the reputation of Amsterdam as "*The Gay Capital of Europe*". The parliamentary fractions CDA and PvdA joined in, demanding severe sanctions as, according to them, the abuse of homosexuals represents two crimes: violence and discrimination. The Ministry of Justice took up the task, while police commissioners expressed a willingness to apply all measures necessary to cut down on homophobic crimes.

According to a survey by the COC and Expreszo during 2007 close to 50% of homosexuals felt "unsafe" walking on the streets. To make things worse, abuse through the Internet was also displayed on several occasions. The ruling of the Court of Justice in Den Bosch in November 2007, according to which the term "homo" was an offensive and therefore illegal, can be considered as a positive development.

Some events in relation to same-sex marriages should also be mentioned. For instance, based on an initiative by the political party D66 in February 2007 cases of refusal by civil servants to register same-sex marriages were discussed within the House of Representatives. These cases were related to civil servants who were willing to register same-sex marriages, but would refuse to process them personally (on account of personal convictions, moral norms, etc.), instead charging a colleague with this task. The Green Left encouraged the discussion and pledged to prepare a motion at the local level obliging every civil servant to process a same-sex marriage, as requested. When talk spread that there will still be room left for civil servants to refuse to register gay and

⁸⁸ Ministerie van Onderwijs, Cultuur and Wetenschap "Nota Gewoon homo zijn", 26 November 2007 <http://www.minocw.nl/homo-emancipatie/894/Nota-Gewoon-homo-zijn.html>.

lesbian couples on similar personal grounds, this led to an intense public and parliamentary debate.

In an inventory of March 2007 it appeared that one in every six municipalities still had a registrar who would not register a same-sex marriage when requested. The public reacted sharply, and a petition, as well as a demonstration followed against potential obstacles to the processing of same-sex marriages.

A motion against the possibility of rejecting registration was already circulated in April 2007; however, the Dutch government remained neutral. During the same month the Supreme Court announced that same-sex marriages registered in the Netherlands are valid throughout the Kingdom, including Aruba, and must be recognized. Registering such a union in Aruba itself only became possible in July 2007.

VII Inhuman and degrading treatment or punishment

The most controversial situations regarding the application of torture and other cruel, inhuman or degrading treatment or punishment occur in war zones where military personnel apply force. As far as the Netherlands is concerned, there is not much information available about the facts at a war base and the treatment applied by Dutch soldiers. Therefore, the official reports and media information seem to contradict each other. Consequently, the role of NGOs in monitoring and ensuring that the right of each individual not to be subjected to inhuman or degrading treatment is respected, is of significant importance.

Criticism by UNCAT of inhuman and degrading practices in the Netherlands

The United Nations Committee against Torture (UNCAT) published its “Concluding Observations” on the Netherlands in May 2007. In the document, the UNCAT makes a number of recommendations in relation to compliance with and the implementation of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in the Netherlands itself, the Netherlands Antilles and Aruba.

In particular, under part two entitled “*Subjects of Concern and Recommendations*”⁸⁹ the UNCAT criticizes, *inter alia*, the lack of legal assistance to persons in police detention during initial interrogations; the accelerated procedure for asylum seekers under the 2000 Aliens Act; the fact that medical reports are not taken into account in the Dutch asylum procedure; the placing of young asylum-seekers of undetermined age in detention centres; the excessive length of pre-trial detention and the high number of non-convicted detainees in the Antilles and Aruba; the reported lack of educational programmes for juvenile prisoners; the absence of a separate unit for offenders aged 16-18 and the overall slowness of classification/allocation of cells; indications that sexual abuse complaints rarely reach the prison board in Aruba; the amount of reported assaults committed by Aruban law enforcement officials; the unavailability of feedback on the impact of training in the human rights of detainees; and the lack of information about and malpractice in existing mechanisms for human trafficking prevention and the prosecution of traffickers in Aruba.

⁸⁹ UNCAT “Conclusions and recommendations of the Committee against Torture: The Netherlands”, 30 April-18 May 2007 <http://daccessdds.un.org/doc/UNDOC/GEN/G07/433/58/PDF/G0743358.pdf?OpenElement>

The Concluding Observations are part of the reporting process related to the Convention against Torture. Based on the Treaty, all state parties must periodically submit a report on the compliance of their governments with the Convention. The Dutch report was sent to the UNCAT in June 2006. As a reaction, the Commission returned a *“List of Issues and Written Replies”* with questions for the Dutch authorities to reply to. At this stage the Johannes Wier Foundation and the Dutch Section of the International Commission of Jurists have sent their independent commentary on the periodic report. The UNCAT thus had all the materials during its gathering in May 2007 and issued the final “observations” on 16 May 2007.⁹⁰

Dutch soldiers in Iraq accused of inhuman and degrading treatment of prisoners

Dutch soldiers did not torture Iraqi prisoners in early 2003, according to two official reports published in June 2007 by the Van den Berg Committee (a joint effort by the Ministry of Defence and the Ministry of Justice) and the supervisory board of the Information and Security Service (CTIVD), a department of the Ministry of Defence.

However, according to the Van den Berg Committee, the use of “white noise” (loud noise), throwing water at prisoners and making them wear ski goggles which had been taped over, was outside the military intelligence service's authority. The claims that military intelligence officers tortured Iraqi prisoners were made in the media in 2006. The Van den Berg Report⁹¹ concluded that the music, water and ski goggles had not been used to put pressure on prisoners and did not fall within the definition of torture. The treatment could not therefore be described as torture or even humiliation. According to the Van den Berg Report in just one case, that of a Saudi prisoner, could the treatment be considered as humiliating and thus in breach of Article 3 of the ECHR. Concurring with the findings of the Van den Berg Committee, the CTIVD Report was further unable to confirm that an electric cattle prod had been used during interrogations in Iraq, as had also been claimed in the media.⁹² The Minister of Defence, Mr van Middelkoop, finally announced with relief that the conclusions presented by the two reports unequivocally restore the good reputation of Dutch ISAF soldiers nationally and internationally.⁹³

In his article entitled *“There should be no room left for torture!”* published in the bulletin of the Dutch Section of the International Commission of Jurists (NJCM)⁹⁴ Mr J.H. Burgers, a former official at the Ministry of Foreign Affairs, harshly criticized the two reports, *i.e.* the Report of the Van den Berg Committee and that of the Supervisory Board of the Information and Security Service (CTIVD). Mr Burgers primarily questioned the research methods of the committees, which led to a one-sided presentation regarding the treatment of Iraqi prisoners. He also reflected upon the way Dutch soldiers are treating prisoners, *e.g.* making them wear ski goggles during interrogation, advocating that it should be absolutely forbidden that the persons

⁹⁰ Dutch Section of the International Commission of Jurists. “VN-Comité publiceert Concluding Observations voor naleving Verdrag tegen Foltering”, 11 June 2007 <http://www.njcm.nl/site/newsposts/show/192>.

⁹¹ “Onderzoek Ondervragingen in Irak,” The Hague, 18 June 2007. http://www.mindef.nl/binaries/Rapport%20van%20de%20commissie_tcm15-74265.pdf.

⁹² CTIVD. “Inzake het onderzoek naar het optreden van MIVD-medewerkers in Irak bij het ondervragen van gedetineerden,” 5 June 2007. http://www.mindef.nl/binaries/CTIVD%20nr.%2015_tcm15-74263.pdf.

⁹³ http://www.mindef.nl/binaries/Reactie%20minister%20Van%20Middelkoop_tcm15-74323.pdf.

⁹⁴ Nederlands Juristen Comité voor de Mensenrechten, NJCM-Bulletin, 2007, p. 958-966

questioned by soldiers, the police or other institutions are hindered in seeing their interrogators. The two research committees concluded that the applied methods did not fall under the definition of torture; however, according to Mr Burgers, a combination of these treatments does fall within the category of inhuman treatment, which is also forbidden by the UNCAT.

POSTSCRIPT

During the forthcoming years the Netherlands Helsinki Committee (NHC) will continue its efforts to promote the international and social legal order and to facilitate the realization of human rights by supporting the activities of international and national governmental and non-governmental organizations. The policy document of the NHC drawn up for year 2008-2009 highlights the fields in which the organization wants to strengthen and broaden its activities.

The organization will undertake a more important role in public debates and lobbying activities concerning relevant issues related to the field of human rights within the Organization for Security and Cooperation (OSCE), with special emphasis on the Netherlands. At the same time the NHC will explore the possibilities for the implementation of its projects and programmes in new regions, both within and outside the OSCE. The focal point is the Western Balkans region and the Commonwealth of Independent States (CIS). The organization will also continue to sustain the non-governmental organization "Bridging the Gulf", Foundation for Human Security in the Middle East which, until the end of 2007, implemented its activities under the Bridging the Gulf Programme.

The NHC also wants to strengthen cooperation with various human rights organizations in the Netherlands, thus contributing to more efficient action and the achievement of better results in this field.

The Netherlands Helsinki Committee acknowledges the important role of donors, experts and local partners who contributed to the successful implementation of the undertaken projects in 2007. The organization expresses its hope that the cooperation with them will also effectively continue in the future.

Jos Kösters

Executive Director of the Netherlands Helsinki Committee