

**Fragmenten over vreemdelingendetentie
uit het rapport van de mensenrechten-
commissaris van de Raad van Europa,
maart 2009**

**COUNCIL OF EUROPE CRITICIZES
MIGRANT DETENTION IN THE
NETHERLANDS
fragments from:**

REPORT BY THE COMMISSIONER FOR HUMAN RIGHTS, MR THOMAS HAMMARBERG, ON HIS VISIT TO THE NETHERLANDS; 21 - 25 September 2008; For the attention of the Committee of Ministers and the Parliamentary Assembly; Strasbourg, 11 March 2009; Restricted CommDH(2009)2

(page 3 - Executive Summary)

(..) Asylum seekers in the Netherlands, including people who have suffered traumatic experiences, can face long detention, lasting on average more than 90 days. The Commissioner notes the concerns expressed about the access to essential medical care, education, lack of employment and the few occupational activities in facilities and reiterates that administrative detention must be kept to a strict minimum. He welcomes the measures taken to reduce the number of children in administrative detention, but regrets that there are still many detained unaccompanied minors and urges the authorities to find alternative solutions.

(page 15 - III. Treatment of asylum seekers)

(..) 3.3 *Administrative detention of asylum seekers*

51. Every year several thousand irregular migrants and asylum-seekers are detained in the Netherlands.⁴² Asylum seekers arriving by plane are routinely subjected to border detention during and immediately following the accelerated asylum determination procedure at the Schiphol Application Centre. If further investigations are deemed necessary beyond the 48-hours accelerated procedure and in certain other circumstances, asylum seekers may face continuous border detention, lasting on average almost 100 days (including investigation, objection and appeal procedure), and in some cases as long as 381 days. This includes people who have suffered traumatic experiences, including victims of trafficking, unaccompanied minors and people who fall under the Dublin Regulation.⁴³ In the view of the Dutch government, the administrative detention of asylum seekers is designed to guarantee a fair and speedy determination of their asylum claims. However, there is no evidence supporting this belief.⁴⁴ The Netherlands and the UK are the only countries in Europe where there is no maximum term to hold an alien in detention.⁴⁵ The CPT criticised this policy in its last report, inviting the Netherlands to introduce a maximum period. The Dutch authorities informed the Commissioner that with the implementation of the EU-return directive, generally alien detention will be limited to six months with a maximum stay of up to 18 months under specific circumstances.

(page 16) 55. During his visit to the expulsion centre, the Commissioner noted that women are being detained together with men in the same detention facilities, their cells communicating to the same corridor where they spent their daytime together unless they decide to stay in their own cell. Staff members of the institution told the Commissioner that so far, they had not encountered problems with this policy of mixed detention but thought it beneficial for the general climate. However, three detained women, one of them a Muslim, expressed a strong feeling of discomfort for lack of privacy to female members of the Commissioner's delegation, in particular as they claimed to have found men in their showers. The government authorities have informed that women objecting to live with men can request to be moved to a different centre.

(page 16) 57. The Commissioner reiterates that administrative detention must be kept to a strict minimum and that detention conditions should not be worse than in criminal detention. He therefore urges the Dutch authorities to make a variety of meaningful activities available to all detainees in the asylum and expulsion process.

(page 16) 58. The Commissioner recalls that the general legal principle of proportionality requires an individual assessment of each case as well as consideration of alternatives to detention. This is particularly true for vulnerable groups of asylum seekers, e.g. unaccompanied minors and victims of trafficking. The Commissioner believes that the current scheme to detain all asylumseekers entering the Netherlands by air is not in line with these principles and urges the authorities to consider modifying this practice.

59. Individuals have the right to appeal their detention and its continuation before a district court. Pursuant to Article 59 Aliens Act 2000, the detention and its continuation is generally lawful, if expulsion is foreseeable, e.g., if the authorities are actively pursuing to expel the person concerned within a reasonable time, or when that person actively obstructs or frustrates this process. The interests of the asylum-seeker are only taken into account in so far as a possibly burdensome situation exists but no full proportionality assessment is made. This limited possibility of judicial review has faced criticism⁴⁹ and may be in contradiction with the case law of the European Court of Human Rights.⁵⁰

60. The Commissioner believes that a full judicial review is a core instrument to safeguard the due application of law by the authorities. In view of the severity of a detention decision, the question whether this balance has been struck, must be subject to an effective judicial review. The Commissioner therefore calls upon the Dutch authorities to use the reform discussion and change the current law allowing for a full judicial review of the detention decision as well as the continued detention by domestic courts.

(page 41 XII. Recommendations)

11. Enhance occupation and training for aliens in detention and reception facilities and promote the new scheme allowing non-detained asylum seekers to work.

12. Review the current scheme of detaining all asylum seekers arriving by air in the light of the Asylum Procedures Directive, leave families united and limit detention of children to exceptional circumstances precisely prescribed by law.

Notes

49 Report Amnesty International, The Netherlands: The Detention of irregular migrants and asylum seekers, June 2008, pp. 18-19, see also the Recommendations of the Council for the Administration of Criminal Justice and the Protection of Juveniles, *supra*, 16 June 2008.

50 See the case of *Saadi v. UK*, judgment of 29 January 2008 (Grand Chamber) in which the Court required that when detaining an alien for the purpose of expulsion, a balance must be struck between the interest of the society and the right to liberty of the individual.