

Council of Europe
Committee for the Prevention of Torture

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To the Council of Europe Committee for the Prevention of Torture

Rotterdam, April 17th 2020,

Honoured members of the Committee for the Prevention of Torture,

On the 20th of March 2020 the CPT issued a Statement of Principles relating to the treatment of persons deprived of their liberty of the coronavirus disease (COVID-19) pandemic.¹ Our organisation, Meldpunt Vreemdelingendetentie, is very concerned about the protective measures that have been adopted in immigration detention in the Netherlands to prevent the spreading of the virus. Though the CPT principles state clearly that such protective measures must never result in inhuman or degrading treatment of persons deprived of their liberty.

In the following paragraphs we will discuss the current situation and corona measures within immigration detention in the Netherlands and compare these to the CPT principles. Especially Principle 10, concerning the monitoring bodies, is the most concerning in our opinion. Thus, we seek your counsel and advice on how these independent bodies must operate during this time of crisis and guarantee the rights of irregular migrants' deprived of their liberty.

¹ Council of Europe CPT (2020). *Statement of Principles relating to the treatment of persons deprived of their liberty in the context of the coronavirus disease (COVID-19) pandemic* CPT/Inf(2020)13. Strasbourg: CPT.

Principle 1: protect the health and safety of persons deprived of their liberty

In the immigration detention centre for male adults in Rotterdam, two detainees are kept in one cell of around 10 squared meters for 20 to 21 hours a day. Under these circumstances it is almost impossible to keep a social distance from each other. It is claimed that a separate unit has been cleared for ill people. Thus, if people have symptoms of the coronavirus, they are detained alone in a separate cell. This is concerning as many people do not show symptoms even if they are infected with the virus; this solution therefore could arrive too late. Additionally, the isolation of persons with symptoms of the coronavirus is basically solitary confinement. To prevent this heavy measurement, we tend to hear that some migrants try to hide their symptoms.

Furthermore, the hand soap storage was empty for around a week, forcing detainees to wash their hands with shampoo. This product does not have the same disinfectant characteristics as soap. At the same time the guards went to the press to state that they themselves wash their hands a hundred times a day. Recently, most guards have started to wear (plastic) gloves, however they do not wear face masks. Most importantly, many people of the medical staff are currently working from home. We believe that it is difficult to effectively monitor the health of the detainees from a video screen.

Principle 2: guidelines must be respected

In accordance with the previous principle, one of the most important guidelines in the Netherlands is to keep a social distance of 1,5 meters from each other. This is impossible under the circumstances in immigration detention. We believe that so-called 'double cells' should be abolished, especially during this pandemic.

Principle 3: staff availability should be reinforced

Around the 9th of March, it was advised by the Dutch government for people living in certain areas where most cases of the virus were registered to work from home. This affected a great number of the staff of the immigration detention centre of Rotterdam. As a result, fewer people had to guard the same amount of detainees. Therefore, it was decided that the detainees had to be detained in their cells for almost 21 hours a day. When opening the cells, this happens in small groups. All of the activities have been closed as well, such as the fitness areas, therefore it is difficult to get daily exercise or to clear one's mind.

Principle 4: restrictive measures should have a legal basis

The staff of the immigration detention centre has informed its detainees regularly by letters provided in multiple languages. The minimum rights, such as the right to go outside for one hour a day, are respected. However, in the Dutch legal system, the rights which are applied to immigration detention are the same as for regular prisoners. Considering that immigration detention is an administrative measure, the regime should provide more liberties in comparison. This is not the case; it could even be considered that it is worse in immigration detention as regular prisoners are still entitled to work and follow an education. For instance, several prisons in the Netherlands are currently working to make facemasks. This is a way to pass the time usefully that detained irregular migrants cannot make claim to.

Principle 5: alternatives to detention

Over the past few weeks around a hundred irregular migrants have been released from immigration detention. Currently, still 300 people are detained. The Dutch Court has decided in a few cases that there is still a 'prospect on removal' within a reasonable time. According to the judge, the corona measures are only temporary so it cannot be precluded that these people will not be deported in the future. As of this moment it is, however, unclear when this will be; it is unknown when the corona measures will be lifted in the Netherlands, as well as in other countries. Furthermore, irregular migrants are not detained because they are a threat to society but only as an administrative measure.

It should be noted that it is unacceptable for people to live in the street as this would be a risk to get infected, and also to the public health of the Netherlands. Therefore, the government is obliged to provide shelter and other basic necessities.

Principle 6: treatment of vulnerable people

In immigration detention in the Netherlands, vulnerable detainees are kept in a separate 'extra care unit'. Besides that we do not have insights into how many vulnerable people remain within immigration detention.

Principle 7: fundamental rights must be respected

As of the 9th of March, visits to immigration detention have been suspended until at least the 28th of April. Most detainees in immigration detention have access to a phone in their cell. Furthermore, almost two weeks ago every detainee was granted 25 euros to make extra phone calls. As of last week, Monday April 6th, it is possible for detainees to make use of Skype.

However, there has been insufficient hot water in the immigration detention centre for almost a month as the hot water tanks were scheduled for repair. It is our understanding that there is only access to hot water in the night hours.

Furthermore, in addition to the previous principles, most of the available activities have been suspended. This includes the fitness area. A few fitness instruments have been placed in the outdoor area, however these are not enough to accompany all detainees. The crafts area should still be available, though only for small groups. The same counts for the kitchens in the units. As detainees are only allowed to leave their cells for three to four hours a day, there are long waiting lines for these activities making it difficult for every person to get their turn on a daily basis.

Principle 8: meaningful contact in isolation

It is our understanding that no detainee within immigration detention is currently in quarantine. Some of them are in 'regular' isolation, meaning that they are detained for 23 hours a day. They are entitled to go outside to a 'bullpen area' for one hour a day. Usually, they go outside individually. It is difficult to establish to what extent they have 'meaningful' human contact.

However, it is possible that some detainees are in quarantine without our knowledge. Since these persons are isolated from the rest of the detainees it is difficult to find the correct information on this matter.

Principle 9: fundamental safeguards in custody of law enforcement officials.

To our knowledge, detainees in immigration detention still have access to a lawyer. The court is operating on a minimum efficiency level, meaning that they only tend to detention cases that determine whether an irregular migrants must remain within immigration detention. As mentioned before, most of the medical staff is working from home. In normal circumstances, there is already a waiting list to get an appointment with the medical service in immigration detention so it is our concern that this has gotten worse.

Principle 10: guarantee access for monitoring bodies

As discussed in considering the previous principles, we are very concerned about the restrictive regime that is currently in operation in immigration detention in the Netherlands. The Dutch court has decided in a few cases that they are not competent to say anything about these circumstances as this falls under a different legal procedure.²

This other procedure refers to the ‘supervisory committee’ which is a body that serves the complaints concerning decisions made by the director of the detention centre. However, due to the pandemic, this committee is currently almost unavailable and complaints take a much longer to process. Furthermore, they will only supervise so-called “urgent” complaints. To what extent they call complaints urgent is unknown. Additionally the groundworkers of this committee are not working any longer due to Covid-19. This means that detainees have no possibility to file an oral complaint or to ask for mediation. Their only possibility is to file a written complaint, which might not be processed if it is not “urgent”, but if it is processed there is also no possibility to give an oral addition. In that sense, the detention centre has much more possibilities to argue their defense.

² E.g. the following court decision from April 3rd 2020:

<https://uitspraken.rechtspraak.nl/inziendocument?id=ECLI:NL:RBDHA:2020:3045>.

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Our organisation, Meldpunt Vreemdelingendetentie, has filed complaints on behalf of five detained irregular migrants concerning the restrictive measures that have been discussed above. Most of these complaints date back to the 26th of March and still have not been processed. Presumably, this will happen in the near future, though only in writing; so without a hearing. Concretely, this means that first the management of the detention centre can provide written counter arguments taking up several weeks. Afterwards, both parties can take another turn in providing written counterarguments taking up another four weeks. Finally, the supervisory committee gets another few weeks to make their decision. This means that it will take a few months before a decision is reached. This process is completely insufficient and unable to effectively monitor the treatment of detained irregular migrants.

We have also received one email exchange in which the supervisory committee has suggested that detention staff might be able to solve complaints from detainees. In our opinion this heavily undermines the independence of a complaint mechanism that should be available to all detainees.

Furthermore, considering the National Preventive Mechanism (NPM), the CPT has previously expressed concerns in 2016 about the independence of the Dutch NPM as this body only consists of parties that fall under the responsibility and supervision of the government.³ Currently, the Dutch NPM has the same structure. It is our concern that even after this pandemic has been resolved and the corona measures have been lifted, the NPM will fail to critically and objectively supervise the treatment of irregular migrants in immigration detention in the Netherlands during the corona pandemic.

In conclusion: seeking advice of the CPT to guarantee independent supervision

Considering the previous arguments, by means of this letter, we seek counsel and advice of the CPT on how it can be guaranteed that the current treatment of irregular migrants deprived of their liberty in the Netherlands is monitored or supervised effectively and independently. We also question the retrospective supervision of the Dutch NPM and would like to know how it can be guaranteed that this is done objectively.

³ Council of Europe CPT (2017). *Report to the Government of the Netherlands on the visit to the Netherlands carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment from 2 to 13 May 2016*, CPT/Inf(2017)1. Strasbourg: CPT.

Furthermore, we would like to know your perspective on the current complaint procedure. Could it be considered legitimate to not process complaints about the current restrictive corona measures without a hearing? Even so, can this process be considered fair and effective if it will take weeks or months before a decision is reached by the supervisory committee? More importantly, can it still be said that the right to complain of persons deprived of their liberty is guaranteed? In other words, considering the fact that immigration detention should not be punitive as it is only an administrative measure, can the current restrictive regime that detained migrants are subjected to without having a proper possibility to complain, be said to be an infringement of fundamental human rights? How can this be solved?

We kindly ask the CPT for advice and hope our questions are answered shortly.

Sincerely,

R. Oosterhuis en L.E. Hesselink, on behalf of Meldpunt Vreemdelingendetentie