



THE LUTHERAN WORLD FEDERATION

A COMMUNION OF CHURCHES – EINE KIRCHENGEMEINSCHAFT – UNA COMUNIÓN DE IGLESIAS – UNE COMMUNION D'ÉGLISES

LUTHERISCHER WELTBUND – FEDERACIÓN LUTERANA MUNDIAL – FÉDÉRATION LUTHÉRIENNE MONDIALE

Human Rights Committee (CCPR)

96th session

The Netherlands reviewed on 14-15 July 2009

I. Documents

The following documents are available:

1. States reports and country situations:

<http://daccessdds.un.org/doc/UNDOC/GEN/G08/423/95/PDF/G0842395.pdf?OpenElement>

2. List of Issues & Written replies:

<http://www2.ohchr.org/english/bodies/hrc/docs/AdvanceDocs/CCPR.C.NLD.Q.4.Add.1.doc>

3. Concluding Observations:

<http://www2.ohchr.org/english/bodies/hrc/docs/co/CCPR-C-NLD-CO-4.doc>

NOTE: *These documents are also available from the LWF Office for International Affairs and Human Rights on request.*

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LWF Summary Report

Consideration by the UN Human Rights Committee of the fourth periodic report of the State Party (The Netherlands) at its 96th session (13 to 31 July 2009, Geneva)

On the 14 and 15 July 2009, the UN Human Rights Committee considered the fourth periodic report of the Netherlands on the implementation of the International Covenant on Civil and Political Rights.



Issues of Concern

Equal right of men and women in the labour market

The Committee noted with concern that the participation of women in the labour market remains considerably lower than that of men, that women remain over-represented in part-time employment and that a significant gender pay gap persists.

- *According to the Committee's Concluding Observations, the State party should strengthen the implementation of measures to ensure that women enjoy equal access to the labour market and equal pay for work of equal value. The State party should pay particular attention to encouraging mothers of young children to continue in employment by increasing the options available for full-time and part-time child care and appropriate after-school programs.*

Euthanasia: termination of life on request

The Committee remained concerned about the extent of euthanasia and assisted suicides in the State party. A Committee member had information, that in some years, there were over 1800 cases of euthanasia in the Netherlands. Moreover, experts noted with concern, that under Dutch law, a physician can terminate a patient's life without any independent review by a judge or magistrate to guarantee that this decision is not the subject of undue influence or misapprehension.

The delegation stated that requests for euthanasia are examined by an independent committee consisting of a doctor, a specialist in ethics and a jurist.

- *The Committee reiterates its previous recommendations in this regard and urges that this legislation be reviewed in light of the Covenant's recognition of the right to life.*

Medical experimentation involving minors

The Committee noted that medical experimentation involving minors is currently permissible in the State party in two cases: either where it would be of direct benefit to the child concerned or, instead, where the participation of children is a necessary component of the research and the experimentation is deemed to have a "negligible" effect. Nevertheless, the Committee remained concerned that the law does not contain adequate safeguards in relation to medical experimentation requiring the involvement of children.

- *The Committee reiterates its recommendation that the State party should ensure that minors are not subjected to any medical experiments which do not directly benefit the individual concerned (non-therapeutic research) and that safeguards in general are fully consistent with the rights of the child, including with regard to matters of consent.*

Asylum procedure

Experts noted that in the State party there was a sharp increase in asylum-seekers, coming from Iraq, Somalia and Afghanistan. The Committee noted that under the existing "accelerated procedure" for the review of asylum applications, claims are evaluated within 48 working hours. Under a new asylum legislation proposal, asylum procedure would last 8 days. The Committee raised concern about both the current and the proposed regular procedure, since they are far too short for the assessment of grounds of asylum, especially when the applicant's situation is complex. Furthermore, experts wondered whether domestic violence and female genital mutilation are also grounds for granting asylum.

The delegation asserted that the new legislation would be fully in line with the Covenant. Furthermore, the head of the delegation confirmed that female genital mutilation and domestic violence are considered to be a reason for granting asylum. According to the delegation, the Dutch government is often criticised by citizens for its too tolerant asylum policy and even accused of granting asylum also to pure economic refugees.

- *The State party should ensure that the procedure for processing asylum applications enables a thorough and adequate assessment by allowing a period of time adequate for the presentation of evidence. The State party must, in all cases, ensure respect for the principle of non-refoulement.*

Right to liberty and to freedom of movement

The Committee noted with concern that the 2008 Bill on Administrative Measures for National Security provides that a local mayor, lacking any judicial review, may direct the exclusion from certain areas or facilities of persons who may be “associated with terrorist activities” or “support of such activities”, and also may impose an obligation to report periodically to the police. Violation of the mayor’s exclusion order allows for a penalty of up to one year’s imprisonment.

- *The State party should reconsider the draft legislation in light of these concerns. Any amendments should ensure that all restrictions on the right to liberty and to freedom of movement are founded on a reasonable suspicion of participation in criminal activity and that all such measures are in conformity with the Covenant.*

Fair trial : right to counsel

The Committee noted that in the State party a person suspected of involvement in a criminal offence has no right to have legal counsel present during police questioning. It is only after a public prosecutor has ordered his detention following initial interrogation that a person may consult with counsel. Even then, the lawyer cannot be present during subsequent police questioning, and police may refuse counsel’s request that they cease questioning his client. The Committee noted that the right to counsel is an important safeguard against abuse.

- *The State party should give full effect to the right to contact counsel in the context of a police interrogation. The State party should ensure that a criminal suspect is informed, immediately upon his arrest, that he has a right to legal counsel, and a right not to testify against himself.*

Fair trial : pre-trial detention

The Committee raised concern about the very high maximum duration of pre-trial detention, which may last for up to 2 years, a situation aggravated by the restricted right of access to counsel. The Committee considered this to be an excessive delay in bringing suspects to trial. According to experts, prosecutors need a certain time pressure to bring a case to trial because detention on pure suspicion during investigation should not last longer than absolutely necessary.

The delegation assured that there were only a small number of cases in which pre-trial detention lasted longer than 90 days.

- *The State party should ensure that all persons are tried within a reasonable time and that pre-trial detention is not inconsistent with the right to be tried without undue delay.*

Right of a person to examine the witness against him

The Committee noted that, under the Witness Identity Protection Act, the identity of certain witnesses is kept from the defence for reasons of national security. While the defence may put questions to such witnesses through the examining judge, the defence cannot always attend the examination of the witness. Considering the importance of a witness’ identity and demeanour in assessing the credibility of his evidence, the ability of an accused person to challenge the case against him is significantly impaired by this law.

- *The State party should apply the law so as to give full effect to the right of a person to examine, or have examined, the witnesses against him in conformity with article 14 (e) of the Covenant.*

Right to privacy and telephone tapping

The Committee was aware that the State party considers wire and telephone tapping to be an important investigative tool. It was concerned that any use of wire and telephone taps should be minimised so that only pertinent evidence is gathered and that a judge should supervise its use. The Committee was further concerned at the finding of the Data Protection Authority that recordings of telephone conversations involving professionals who have a confidentiality duty, especially lawyers, are not safeguarded in a manner that preserves lawyer-client confidentiality.

- *The State party should apply the law on wire and telephone tapping in a manner which is compatible with the right to privacy and should ensure the exclusion of communications protected by the privilege of confidentiality from tapping.*

Right to privacy and counter-terrorism

The Committee was concerned that, as part of measures to combat terrorism, local mayors may issue administrative “disturbance orders” under which an individual may be subjected to interference in his daily life. Such interference can include house calls, approaching the individual’s acquaintances and repeatedly approaching the person in public. Since disturbance orders do not require judicial authorisation or oversight, the Committee was concerned at the risk that their application may be inconsistent with the right to privacy.

- *The State party should amend its legislation to ensure that its counter-terrorism measures do not conflict with and that effective safeguards, including judicial oversight, are in place to counter abuses.*

Child abuse

The Committee was concerned at the problem of child sexual abuse in the State party. Even with the “Children Safe at Home” Action Plan, the Committee was concerned that the efforts deployed to protect children are inadequate and that many cases of abuse are not reported.

- *The State party should strengthen its efforts to combat child abuse by improving mechanisms for its early detection, encouraging reporting of suspected and actual abuse, and by requiring authorities to take legal action against those involved in child abuse.*

Discrimination against low-income families

The Committee was concerned that making the allocation of housing in certain areas subject to additional income qualifications, together with the deliberate housing of low-income persons and families in peripheral and central municipalities, may result in violations of several provisions of the Covenant.

- *The State party should ensure that its regulation of access to housing does not discriminate against low-income families and respects the right to choose one’s residence.*

Non-discrimination of minorities

The Committee was concerned at reports that there is discrimination against ethnic minorities including in recruitment and selection in the workplace.

- *The State party should take active steps to ensure that ethnic minorities have equal opportunity with others in recruitment and selection in the workplace, including:*
 - (a) *conducting awareness-raising activities on this matter with the private sector;*
 - (b) *ensuring that public sector opportunities are adequately advertised within ethnic minority communities; and*
 - (c) *conducting suitably broad searches for candidates from ethnic minority communities.*

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