

**questionnaire related** **to**

**the right of anyone deprived of his or her liberty by arrest or detention to bring proceedings before court, in order that the court may decide without delay on the lawfulness of his or her detention and order his or her release if the detention is not lawful**

1. Please describe your national institution’s concern and practice with the right of anyone deprived of his or her liberty by arrest or detention to bring proceedings before court.

The Netherlands Institute for Human Rights is the recently (October 2012) established national human rights institution of the Netherlands. As such, its objective is to protect human rights, increase the awareness of these rights and to promote the observance of human rights. Therefore the right of anyone deprived of his or her liberty by arrest or detention to bring proceedings before court, as a human rights, is the Institute’s concern.

In practice the Institute has rarely dealt with this issue to date. Pre-trial detention was mentioned as a point of concern in the written submission of the Institute to the UN Committee against Torture in April 2013. See for our concern, our answer to question 3.

1. How far is the right of anyone deprived of his or her liberty to bring proceedings before court part of the laws of your country?

This right is part of the Dutch criminal law. Without being exhaustive, a brief overview:

Article 59a Code of Criminal Procedure, which says that if an arrested person is detained (by order of the public prosecutor), he has to be shown to an investigative judge (*rechter-commissaris*) within three days and 15 hours after the moment of his arrest. This judge can decide if the detention (*inverzekeringstelling*) was lawful or not.

Article 63 Code of Criminal Procedure, which allows for the investigative judge to decide on an order for pre-trial detention (*bevel tot bewaring*). This detention can last up to 14 days (Article 64).

A council chamber (*raadkamer*) can then decide on the continuation of the order (*bevel tot gevangenhouding*) for a period up to 90 days, on the basis of Article 65. The grounds on which this can be decided, are mentioned in Article 67a.

At the end of this period, the trial of the accused must have commenced.

1. Please describe the most common problems individuals face in their realization of the right in your country.

This right is generally recognized and upheld in the Netherlands. However, some problems may occur in pre-trial detention. A relatively large percentage of the population in detention in the Netherlands consists of pre-trial detainees (Statistics Netherlands (CBS), ‘Criminaliteit en rechtshandhaving 2011’, pp. 170-174). To issue an order for pre-trial detention, there have to be ‘grounds’ and ‘serious indications’ (*ernstige bezwaren*) against the suspect (Article 67 of the Code of Criminal Procedure determines in which cases an order for pretrial detention can be issued. Its last paragraph reads: “The previous paragraphs are only applied when it appears from the facts or circumstances that there are serious indications against the suspect”). First, the investigative judge (*rechter-commissaris*) will decide on this. At most fourteen days later, the council chamber (*raadkamer*) will decide on the continuation of the order. Often, the motivation of the court decision to order continuation of pre-trial detention is minimal. The Institute believes decisions concerning pre-trial detention require adequate motivation, so as to provide insight into the reasons for the decision and to be able to institute habeas corpus procedures. In these cases, a more elaborate motivation by the courts would be beneficial for understanding the decision.

1. How does your national institution assist individuals who do not enjoy the right to bring proceedings before the court?

The Institute itself cannot consider these complaints of individuals. However, the Institute has a front office, which can be reached by telephone and e-mail. This front office can redirect individuals who do not enjoy the right to bring proceedings before the court to the competent authority to help them.

1. Does your national institution assist your country in the realization and implementation of this right? If yes, please explain how.

The duties of the Institute include to report on and make recommendations about the protection of human rights. On the issue of pre-trial detention (see our answer under question 3) the Institute reported to the UN Committee against Torture in April 2013.

In addition, the Institute can provide advice (either at the request of a Minister or parliament) on acts, bills, orders in council, draft orders in council, ministerial orders and drafts of ministerial orders that relate directly or indirectly to human rights.

1. How would the general principles and guidelines that the Working Group has been entrusted to elaborate on the realization of the right to bring proceedings before court best support your work?

The principles and guidelines would best support our work if they would be more detailed and to the point than existing human rights standards, allowing us to use those principles and guidelines to further explain the content of the right to bring proceedings before court.

1. In your view, how would these general principles and guidelines best support your country?

These principles would best support our country, if they would point out the need for a substantive motivation of an order for pre-trial detention. Furthermore, they should be to the point and not lower existing human rights standards, including European human rights standards.