



NV: GEV-PA 12/2022

The Permanent Mission of the Kingdom of the Netherlands to the United Nations and other International Organisations in Geneva presents its compliments to the Office of the High Commissioner for Human Rights and, with reference to the joint communication of 8 December 2021 (UA NLD 4/2021) of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism; the Working Group on Arbitrary Detention; the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance; the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; the Special Rapporteur on trafficking in persons, especially women and children, and the Working Group on discrimination against women and girls, has the honour to inform the Office as follows.

The Special Rapporteurs and Working Groups brought to the attention of the Government of the Kingdom of the Netherlands ('the Government') a case concerning the withdrawal of an individual's Dutch nationality for posing a threat to national security, and the issuance of an exclusion order (*ongewenstverklaring*). They expressed their concerns regarding respect for the rights of the individual concerned and her two children, and asked a number of questions.

The Government first wishes to reiterate its full support for the respective mandates of the Special Rapporteurs and Working Groups. It recognises that the UN human rights mandate-holders fulfil a unique and fundamental role in the promotion and protection of human rights worldwide. Their statements and guidance on a broad range of human rights implications are pivotal in alerting the international community to human rights concerns and serve as useful tools for state governments to ensure human-rights-based approaches. The Government equally acknowledges that the proper fulfilment of the mandates may require investigations into individual cases.

The Government also wishes to point out that the Netherlands is a party to the individual complaints procedures under the International Covenant on Civil and Political Rights, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Convention on the Elimination of All Forms of Racial Discrimination and the Convention on the Elimination of All Forms of Discrimination against Women. In addition, the Netherlands is a party to various regional complaints mechanisms, most importantly the individual right to apply to the European Court of Human Rights under the European Convention for the Protection of Human Rights and Fundamental Freedoms. The Court's judgments are binding on the state. Complaints under all these procedures are taken extremely seriously and addressed in a most thorough and coordinated manner involving all relevant government services.

This means that individuals, including those involved in the present complaint, who are of the view that their rights have not been respected by the state have recourse to several judicial and quasi-judicial procedures at international level, provided of course that domestic remedies have been exhausted. The latter point is of particular importance to the Government, as national courts should be given the opportunity to rule on an alleged violation of rights raised by an individual.

One other important aspect of the individual complaints mechanisms is that there can be no doubts about the complainants' consent to share personal data with the international organ concerned. In the present communication the Government will not use the full name of the individual concerned, in order to protect her and her children's personal data, and would encourage the Special Rapporteurs and Working Groups not to reveal any names or other specific information that may lead to a violation of Ms H.'s or her children's privacy in any public remarks either.

The Government is open to dialogue with its international partners on the protection of human rights in the Netherlands. It is in this spirit that the Government has extended a standing invitation to all UN special procedures and it appreciates the opportunity provided by the Special Rapporteurs and Working Groups to respond to their questions. In doing so, the Government would note that national judicial proceedings are still pending, as acknowledged by the Special Rapporteurs and Working Groups. Therefore, the Government cannot comment on every aspect and question raised by the Special Rapporteurs and Working Groups. The Government does wish, however, to address the following issues in response to the Special Rapporteurs' and Working Groups' questions.

The withdrawal of Dutch nationality and issuance of an exclusion order

As regards the withdrawal of Ms H.'s Dutch nationality and the issuance of an exclusion order the Government wishes to make a number of observations.

First, the Government would note that the Special Rapporteurs and Working Groups refer to several instruments relating to statelessness. However, the Government wishes to emphasise in this regard that withdrawal of Dutch nationality on the basis of section 14, subsection 4 of the Netherlands Nationality Act (*Rijkswet op het Nederlanderschap*) is not permitted if it would lead to statelessness. In this particular case, Ms H. still has Moroccan nationality.¹ Therefore, in the Government's view, statelessness is not an issue in this case.

With regard to question 2 and the discharge of both decisions (i.e. the withdrawal of nationality and the issuance of the exclusion order) on the territory of the Dutch embassy in Turkey, the Government would describe the course of events (as communicated to the Dutch House of Representatives by letters of 31 October 2019,² 11 November 2019³ and 19 November 2019⁴) as follows. On 30 October 2019 two women returning from Syria presented themselves to the Dutch embassy in Ankara with a request for consular assistance to return to the Netherlands. One of them was Ms H., who was on that same day served with a decision to withdraw her Dutch nationality and an exclusion order. The day before, on 29 October 2019, the Minister of Justice and Security and the Minister for Migration had approved these decisions, after a thorough and substantive assessment of the case. The Immigration and Naturalisation Service (*Immigratie- en Naturalisatiedienst*, IND) had already initiated the process to withdraw Ms H.'s Dutch nationality when an official report (*ambtsbericht*) was issued by the General Intelligence and Security Service (*Algemene Inlichtingen- en Veiligheidsdienst*, AIVD) in September 2019. The decisions were published in the Government Gazette on 31 October 2019.

In response to question 3, the Government would note that withdrawal of Dutch nationality on the basis of section 14, subsection 4 of the Netherlands Nationality Act has no suspensive effect: it is immediately effective from the time of the decision. It is important to note that several procedural guarantees are in place. In particular, if an individual does not lodge an application for judicial review of the decision to withdraw Dutch nationality, the Minister of Justice and Security informs the district court *ex officio* of the withdrawal (section 22a, subsection 3 of the Netherlands Nationality Act). This notification has the same effect as an application for judicial review lodged by the individual in question, which means that the decision is always reviewed by a court.

Finally, the Government would emphasise that the withdrawal of Ms H.'s Dutch nationality is currently subject to judicial assessment by the Administrative Jurisdiction Division of the Council of State ('the Administrative Jurisdiction Division') in appeal proceedings. The Administrative Jurisdiction Division is the Netherlands' highest general administrative court. Because these proceedings are still ongoing, the Government can make no further comments in this regard.

¹ The fact that Ms H. still has Moroccan nationality was also communicated to the Dutch Parliament on 19 November 2019 (see [Parliamentary Papers, House of Representatives, 2019-2020, 29754, no. 535](#)).

² [Parliamentary Papers, House of Representatives, 2019-2020, 29754, no. 534](#).

³ [Parliamentary Papers, House of Representatives, 2019-2020, 29754, no. 531](#).

⁴ [Parliamentary Papers, House of Representatives, 2019-2020, 29754, no. 535](#).

Conviction for participating in a terrorist organisation

On 12 April 2021 Rotterdam District Court convicted Ms H. of participating in a terrorist organisation and preparing terrorist offences.⁵ The district court considered it proven that in the period from 21 November 2013 to 30 October 2019 Ms H. participated in a terrorist organisation, namely ISIS, which is included on the relevant lists of the European Union and the United Nations as a terrorist organisation and should therefore be regarded as such. The district court also considered that Ms H. provided others with the opportunity, means and/or information to participate in the armed jihadist struggle in Syria and therefore to commit terrorist offences. The district court also held that Ms H. tried to induce others to commit, procure the commission of or co-perpetrate the described terrorist offences (by participating in ISIS), to provide assistance in this connection or to afford opportunity, means or information for this purpose, by means of 'promoting' a life with ISIS in the conflict zone. On the basis of the foregoing, Ms H. was sentenced by final and unappealable judgment to a term of imprisonment of 48 months, of which 16 months were suspended, and subject to a probationary period of three years.

In response to question 4, the Government wishes to stress that there are no indications of human trafficking. Ms H. appears to have made no report to the police indicating human trafficking. During the criminal proceedings, Ms H. took the position that there were external and psychological circumstances affecting her competence to express her will. However, Rotterdam District Court rejected this defence, because it had been established that Ms H. had left for the conflict zone in Syria completely independently and had stayed there for years, without making it known that she wanted to leave, although she was in regular contact with her family. According to Rotterdam District Court, it had not been established that Ms H. was unable to leave. Her roommate and sister-in-law, with whom she shared a common household in a suburb of Aleppo, had in fact left the conflict zone at some point. Leaving the area therefore appeared to be possible. The district court also took into account that, although Ms H. had joined ISIS and contributed to the acts committed by ISIS, this was also an immature and impulsive act which Ms H. did not foresee the consequences of. In the Government's view, this does not have the hallmarks of human trafficking either. Moreover and for the record, Dutch nationality may be withdrawn only if someone *voluntarily* joins a terrorist organisation. With respect to the application of section 14, subsection 4 of the Netherlands Nationality Act, it must be established beyond reasonable doubt that the person concerned endorses the goals pursued by the terrorist organisation and that he or she has the intention to join the organisation.⁶ In addition, the person concerned must have carried out actual acts for or on behalf of the terrorist organisation.⁷ These requirements emphasise that it must be established that affiliation with the terrorist organisation was voluntary before withdrawal of Dutch nationality can take place. Moreover, these requirements exclude the possibility of withdrawing Dutch nationality in the case of coercion (which includes human trafficking).

In response to question 5, the Government wishes to point out that the legal grounds for Ms H.'s detention can be found in the aforementioned judgment of 12 April 2021 of Rotterdam District Court. As stated above, Ms H. has been sentenced by final and unappealable judgment to a term of imprisonment of 48 months, of which 16 months suspended, and is subject to a probationary period of three years.

Family life and the rights of the children

As regards Ms H.'s right to respect for her family life and the rights of her children, as addressed by the Special Rapporteurs and Working Groups in questions 6 and 7, the Government wishes to draw attention to the following.

First, the potential implications of withdrawing nationality and/or imposing an exclusion order for the individual's rights will be assessed as part of the appeal proceedings before the Administrative Jurisdiction Division, to which the Government referred above. Because the appeal proceedings in this case are still ongoing, the Government cannot make any statement in this regard.

Second, as regards the children's safety and well-being, the Dutch House of Representatives has been informed that the two children involved were transferred to the Child Care and Protection

⁵ See [ECLI:NL:RBROT:2021:3131](#).

⁶ Parliament Papers, House of Representatives, 2015-2016, 34356, no. 3.

⁷ *Ibid.*

Board (*Raad voor de Kinderbescherming*).⁸ The children now reside with Ms. H.'s sister and a supervision order (*ondertoezichtstelling*) is in place.⁹

Because the assessment of what is in the children's best interests in the present case is ongoing, the Government cannot make any further statements in this regard either.

The Permanent Mission of the Kingdom of the Netherlands to the United Nations and other International Organisations in Geneva avails itself the opportunity to renew to the Office of the High Commissioner of Human Rights the assurances of the highest consideration.

Geneva, 7 February 2022



Office of the High Commissioner for Human Rights

⁸ Parliament Papers, House of Representatives, 2019-2020, 29754, no. 535. In the Netherlands, the Child Care and Protection Board may carry out an investigation into the situation of a child if there are reasons for concern regarding the child's safety and development. The Board may also request a family court to issue a supervision order or out-of-home placement if the child(ren)'s interests are seriously threatened and voluntary assistance is no longer sufficient. Certified Institutions (*Gecertificeerde Instellingen*) are responsible for the execution of child protection measures, such as a supervision order, and for the monitoring of the child(ren)'s safety.

⁹ See also ECLI:NL:RBROT:2021:3131, under 8.