

#34: Paper over the cracks of the system

The recent decision of the European Court of Human Rights (ECHR) of [9 October 2018](#) in the case of Corallo vs. the Netherlands makes us wonder whether the human rights of the European Convention are taken seriously. In this case the suspect complains that the circumstances in his prison cell in the Sint Maarten police station where he had to await the decision on the request of Italy to extradite him were miserable. The defense attorneys had requested to ensure that his human rights would be taken seriously and therefore to suspend his arrest until a decision was taken or to take other measures. The poor decisions on these requests led to this complaint against the State of the Netherlands.

It started on 21 November 2017 when the court in Rome requested the arrest of the claimant in relation to an investigation into, amongst other things, tax evasion, money laundering and embezzlement. On 13 December 2016 Italy sent out a Red Notice via Interpol with the purpose to extradite the claimant to Italy. The claimant was arrested and stayed in a cell on the police station of Philipsburg in Sint Maarten until his extradition on 16 August 2017. At first he stayed in a cell with multiple others. Later on he was transferred to a cell on his own. His request to be transferred to a prison complex in Point Blanche instead of staying in a temporarily cell on a police station was impossible according to the authorities due to safety reasons. The claimant repeatedly requested suspension of his incarceration while awaiting the decision on the extradition request. However this was denied.

The claimant complains at the ECHR that article 3 of the convention is breached because of the poor circumstances he was kept in for months. In the decision of the ECHR is stated that he was kept in a 16 square meter cell for the period of

13 December 2016 until 29 March 2017. Also from 4 until 12 April 2017 he was kept there. That was not a cell for him alone, he continuously had to share the cell with 5 to 6 persons.

In the decision it the circumstances are described vividly:

“The toilet in the multi-occupancy cell had leaked and had not been covered. Detainees had partitioned off the sanitary area with towels and sheets. The multi-occupancy cell had been equipped with two sets of bunk beds for four detainees. It was the rule rather than the exception that one or two additional detainees were held in the cell, who during the night would sleep on mattresses on the floor.”

On behalf of the State it was argued that various improvements on the detention facilities of the police station in Philipsburg were made as recommended by ‘*the Committee for the Prevention of Torture and Inhuman or Degrading Treatment of Punishment*’ (CPT). The State further argued that because of a lack of detailed information they cannot respond to the circumstances as described by the claimant. These circumstances however were not denied. They were qualified as ‘not ideal’. However a breach of article 3 of the Convention was not the case according to the State.

The European Court however acts firmly upon this complaint of the claimant. The Court states that article 3 of the Convention has been breached because the claimant was detained for more than eight months – of which 114 days in a cell with multiple persons – in a cell of which the CPT was of the opinion that the cell is not suitable to keep detainees for a longer period than three days, and certainly not longer than ten days. The facility is simply not suitable to guarantee the minimum human rights for a longer period. The Court grants the complaint of the claimant and grants a compensation for damages of € 10.000.

This compensation of course is not more than paper over the cracks of the system the claimant had to endure. It should not be necessary to file a complaint against the State – also in areas overseas – for the miserable circumstances in prison. Human rights should be a higher priority on the agenda of the State. And not only of the State. A judge who is confronted with facts such as occurred in this case should give a strong signal to the authorities that the defense complaints cannot be put aside in such a case. Also if a solution is not easy accessible the judge still should order the authorities to put energy in finding a solution. And if that is not possible the judge should guarantee the human rights as laid down in the ECHR and suspend the detention. In our opinion that should have been the only right decision.

Do you have any questions about this subject, are you struggling with a related issue or would you like to discuss this with us? Please feel free to contact us via boezelman@hertoghsadvocaten.nl and boer@hertoghsadvocaten.nl.