

Dutch and non-Dutch permanent residents of the Netherlands imprisoned in Germany, France and nine of the other older EU Member States

Results of an inquiry which serves to establish whether, and to which extent, the fundamental rights embodied in Articles 3 (Prohibition of torture), 5 (Right to liberty and security) and 6 (Right to a fair trial) of the European Convention for the Protection of Human Rights were respected.

Irene Sagel-Grande and Leo Toornvliet

Translated by Hans Warendorf

1. Introduction

By publication in the periodical ‘*GEZANT*’ the attention of detainees from the Netherlands incarcerated in one of the other EU-Member States was drawn to the EuroMoS questionnaire. The questionnaire is subdivided into 5 Chapters, commencing with:

- I. Personal data, followed by
- II. The nature and identification of the case involved;
- III. Questions in respect of the preliminary investigation;
- IV. The conditions of the detention, and it concludes with
- V. Complaints and observations.

The questions mainly consisted of closed-ended questions, so that there was a limited choice for the replies. However, some entirely or partially open questions gave the respondents an opportunity to raise special problems encountered by them or to comment on their reaction to a closed question.

50 Dutch or foreign detainees with their permanent residence in the Netherlands returned a completed questionnaire to EuroMoS. The information obtained in this way constitutes the basis of the following survey. No attention is given in this survey to replies from respondents from countries outside the EU or detained in countries outside the EU.

2. Personal data from the respondents

Amongst the 50 respondents there are only 3 women. The average age of the respondents is 44 years. The youngest prisoner is 23 and the oldest is 71 years of age. There are therefore no juveniles amongst the respondents. Nine of the respondents from the Netherlands are not Dutch nationals. Most of them (6) are also not a citizen of an EU country. Most of them have a command of the Dutch language. English is in most instances the second language which the prisoners speak amongst themselves, followed by German and, far between, French. Fifteen of the respondents are detained in Germany, 14 in France and 21 in other original EU-Member States. The respondents are mostly detained in the country where they were arrested. Of the 21 persons in the other EU- Member States, 4 are detained in Spain and 4 in the United Kingdom, 3 in Greece and 2 in Belgium, Finland and Austria. There was one respondent from Denmark, Italy and Portugal.

3. Nature and identification of the case

3.1 Nature of and/or reason for the criminal charge

The main criminal charges concern drug offences; in the second place, but to a lesser degree, the charges concern property offences, some sexual offences and even less, other criminal facts.

It appears likely from the figures in the following table that there are differences between the EU-countries in the type of offence giving rise to the arrest. Of the respondents detained in France, all were arrested on account of a drug offence. In Germany also property offences and a sexual offence played a role while drug and property offences gave rise to the arrest in the other 1 EU-States:

Table 1: Type of offence according to country of detention (in percentages)

	Country of detention		
	Germany	France	Other EU-countries
drug offence	75.0	100.0	68.8
property offence	16.7	-	25.0
sexual offence	8.3	-	-
other offence	-	-	6.3
N	12	13	16

3.2 Arrest pursuant to European Arrest Warrant

The following question was whether the arrest took place pursuant to a European Arrest Warrant. More than one half (53.3%) of all respondents were not arrested pursuant to a European Arrest Warrant. When we again classify the respondents in the three groups of detainees in Germany, France and in other EU-countries, then we find that there were relatively more persons in a prison in Germany and France pursuant to a European Arrest Warrant than in the other EU-countries:

Table 2: Arrest pursuant to European Arrest Warrant (in percentages)

	Country of detention		
	Germany	France	Other EU-countries
no	40.0	35.7	61.9
yes	46.7	50.0	33.3
question not answered	13.3	14.3	4.85
N	15	14	21

It is striking that in Germany and France relatively more respondents than in other EU-countries did not answer the question. It is quite possible that the respondents were not or insufficiently aware of what a European Arrest Warrant means and that, for that reason, the replies to that question should be interpreted with special care. This also applies to the differences between the categories of whether the arrest was or was not pursuant to a European Arrest Warrant when the case was heard and questions relating thereto, like whether a defence counsel was available.

Table 3. Subsequent events after an arrest pursuant to or without a European Arrest Warrant (in percentages)

		Arrest pursuant to an European Arrest Warrant		
		no	yes	missing
Defence counsel available	no		33.3	-
	yes	8.3	66.7	40.0
	missing	91.7	-	60.0
Appeal instituted	no	12.5	52.4	20.0
	yes	-	42.9	-
	missing	87.3	4.8	80.0
Surrendered	no	20.8	14.3	40.0
	yes	-	81.0	-
	missing	79.2	4.8	60.0
Surrendered for adjudication	no	12.5	14.3	40.0
	Yes	-	71.4	20.0
	missing	87.5	14.3	40.0
Surrendered to serve custodial sentence	no	12.5	57.1	-
	yes	-	23.8	20.0
	missing	87.5	19.0	80.0
Opportunity for engaging defence counsel	no	12.5	4.8	20.0
	yes, but for the own account	-	52.4	20.0
	yes, signed by the court	4.2	28.6	-
	missing	83.3	14.3	60.0
Co-operation between defence counsel	no	4.2	42.9	20.0
	yes	-	33.3	-
	missing	95.2	23.8	80.0
N		24	21	5

It is striking that the replies to the questions comprised in *table 3* - in respect of events relating to the prosecution following the arrest - show the considerable difference between the way the case was dealt with after an arrest pursuant to a European Arrest Warrant and an arrest without such a warrant and that the situation of persons prosecuted following a European Arrest Warrant generally appears to be better: more frequently a defence counsel will be available in the requested country, appeal is more often instituted, there are relatively more frequent opportunities to seek assistance from a defence counsel in the country requesting the surrender, either for the own account or by court assignment, while there

appears to be more co-operation between the defence counsel in the requested and requesting countries.

The fact that such a large number of respondents whose extradition was requested otherwise than pursuant to a European Arrest Warrant failed to reply to the question may be due to the respondents having been asked to skip some questions when they had not been arrested pursuant to a European Arrest Warrant.

3.3. Defence counsel in the country of arrest.

The question whether a defence counsel of the country where one was arrested provided assistance was answered in the affirmative by 85.1% of the respondents. It is remarkable that this result is not really at variance when the replies of the detainees in Germany, France and in other EU-countries are compared:

Table 4: Assistance by defence counsel in the country of arrest (in percentages)

	Country of detention		
	Germany	France	Other EU-countries
no	14.3	14.3	15.8
yes	85.7	85.7	84.0
N	14	14	19

In 42% of the cases a defence counsel providing assistance in the country of arrest was assigned by the court. Insofar as such assignment is concerned, there are significant differences between Germany, France and the other EU-states:

Table 5: Court assigned defence counsel according to the country of detention (in percentages)

	Country of detention		
	Germany	France	Other EU-countries
no	72.7	54.5	50.0
yes	27.3	45.5	50.0
N	11	11	15

In connection with the introduction of the European Arrest Warrant the EU-Member States reached an agreement to respect the fundamental human rights and to apply the provisions of the European Convention for the Protection of Human Rights. Anyone who is arrested is therefore entitled to have the assistance of an attorney at law. It appears from our inquiry that this condition was generally complied with. However, a word of caution is required, because the questionnaires were not always completed exactly and were probably not always fully understood. Before conclusions may be drawn any imprecise data need to be clarified by means of a further inquiry.

3.4. Knowledge of the language of the country of arrest

Another important right of persons who are arrested is the right to have the assistance of an interpreter. For that reason respondents were also asked whether they were in command of the language of the country of arrest. This proved not to be the case for about one half of the respondents to whom the question was put. Depending on the country of arrest there are, however, differences in this respect:

Table 6: Knowledge of the language of the country according to the country of detention (in percentages)

	Country of detention		
	Germany	France	Other EU-countries
no	15.4	78.6	57.1
yes	84.6	21.4	42.9
N	13	14	21

Especially in France detainees therefore needed an interpreter in order to maintain their rights.

4. Preliminary investigation

4.1 Introduction

The questions comprised under III. of the questionnaire relate to the interview situation, the presence of a defence counsel and an interpreter, the manner in which a record was made of the interview, the manner of questioning, the information given with regard to the rights of

the accused, possible inadmissible manipulation during the interview and the role played by the consular officer in connection with the case.

4.2 Location of the first interview

Tot the question where the first interview took place the respondents gave several answers as appears from table 7. Although admittedly differences appear on differentiation of the groups of countries, it is not apparent whether these differences have to do with a possibly different way in which detainees are dealt with by the public prosecution service or the judiciary in the respective countries or with special characteristics of the committed offence and the detainee.

Table 7: Location of the interview (in percentages)

		Country of detention		
		Germany	France	Other EU-countries
Police in police car	no	50.0	87.5	78.8
	yes	50.0	12.5	22.2
	N	12	8	18
Police at station	no	27.3	63.6	38.9
	yes	72.7	36.4	61.1
	N	11	11	19
Police elsewhere	no	63.6	50.0	62.5
	yes	36.4	50.0	37.5
	N	11	10	16
Public Prosecutor at the station	no	72.7	54.5	56.3
	yes	27.3	45.5	43.8
	N	11	11	16
Investigating Magistrate in Court	no	50.0	58.3	52.9
	yes	50.0	41.7	47.1
	N	10	12	18

4.3 Presence of an interpreter at the interview

While the respondents indicated quite clearly that they required an interpreter at the interviews (see table 8), only 6 of the 50 respondents stated that an interpreter was present at the police interview, the interview at the public prosecution service and, respectively, at the hearing by a judge. The presence of an interpreter at meetings with the defence counsel was also an exception and English was the main means of communication.

Table 8. Necessity of the presence of an interpreter according to the detainees (in percentages)

	Country of detention		
	Germany	France	Other EU-countries
no	38.5	7.1	28.6
yes	61.5	92.9	71.4
N	13	14	21

Table 9 shows that an interpreter was not always available for the detainees, especially in Germany. Relatively many detainees in Germany stated to be in command of the language of the country (see *table 6*), but nevertheless approx 60% also in Germany needed the assistance of an interpreter during the interviews. Against these 61.5% there are 41.6% cases in which an interpreter was in fact present according to the statement made by the detainees. Also in other EU-countries there is, according to this inquiry, a discrepancy between the wish and the actual possibility of having access to an interpreter. In France, on the other hand, the right of the arrested person to have the assistance of an interpreter is substantially guaranteed.

Table 9: Presence of an interpreter at interviews according to the country of detention (in percentages)

	Country of detention		
	Germany	France	Other EU-countries
no interpreter	58.3	7.7	47.6
at the interview	33.3	61.5	33.3
whenever requested by me	8.3	30.8	19
N	12	13	21

4.4 Presence of defence counsel at interviews and communication with defence counsel
 In Germany and France the defence counsel was generally not present at the police interviews while, to the contrary, this was the case in 42.9% of the cases in the other EU-countries.

Table 10 provides information about the time of the meeting with the defence counsel.

Table 10: Time of the meeting with the defence counsel according to country of detention (in percentages)

	Country of detention		
	Germany	France	Other EU-countries
none	7.1	-	14.3
prior to the interview	28.8	42.9	28.6
at the interview	-	14.3	9.5
after the interview	64.3	42.9	47.6
N	14	14	21

What the detainees mention about the time between the interview and the meeting of defence counsel with his client is of interest. Especially in Germany the interval between the interview and the meeting with the defence counsel may be as much as one month, while in France the interval is, in most cases, one to four days.

In Germany and France there is only in exceptional cases a possibility of consulting the defence counsel during the interview, while this is regularly possible in the other EU-Member States.

As common languages of the detainee and the defence counsel mention was made in Germany of German, English and Dutch, according to frequency, while in France French and English (about 40% of the detainees) and in the other EU-countries especially English, German and Dutch were mentioned.

4.5 Provision of information

75 % of the respondents in Germany, 84.6% in France and 76.2% in the other EU-countries replied in the affirmative to the question whether the interviewer had informed the accused of what he was suspected of having committed. This apparently means that not all the accused were informed of the accusations with which they were charged. It is, however, possible that, on account of unusual circumstances and/or language problems, it escaped the respondent that this information was provided. To a certain extent it is difficult to establish the objective facts. The question was also put to detainees on how they were informed about their rights in connection with the interview. The replies to this important question are summarised in *Table 11*.

Table 11: Manner of information on existing rights (in percentages)

	Country of detention		
	Germany	France	Other EU-countries
no information	30.8	57.1	23.8
oral information	69.2	42.9	66.7
handing of a <i>letter of rights</i>	-	-	9.5
N	13	14	21

4.6 Manner in which detainees were dealt with before, during and after the interviews
The question whether during (but also before and after) the interviews the interviewer was subjected to oral or physical pressure in order to induce him to make a statement which he would otherwise not have given was also very important.

The replies of the respondents are reflected in *Table 12*:

Table 12: Mental or physical pressure during the interviews according to country of detention (in percentages)

	Country of detention		
	Germany	France	Other EU-countries
no	38.5	46.2	40.0
yes	61.5	53.8	60.0
N	13	13	20

The means used to exert pressure mentioned by the respondents in their comments were virtually the same in all countries: threatening with particular severe sentences, promising to commute the sentence in the case of a quick confession, shouting, pushing about and withholding food and mail. In the other original EU-countries the detainees also stated that physical violence was used. In one instance mention was made of a fractured rib and a blue ribcage, in another case of being grabbed and throttled.

4.7 Signing of documents

Detainees were also asked whether they had possibly signed documents the contents of which they could not fully understand on account of the language. The replies to this question are summarised in *Table 13*.

Table 13: Signing of not fully understood documents according to the country of detention (in percentages).

	Country of detention		
	Germany	France	Other EU-countries
no	57.1	21.4	42.9
yes	42.9	78.6	57.14.5
N	15	14	21

The results in *Table 13* clearly show in particular how important the presence of interpreters and translators is and that, when detainees are more familiar with the language of the country of detention, the likelihood of signing documents which are not fully understood may be less but is still considerable.

Table 14 shows a clearly unacceptable situation as regards the translation of documents and comprehensive information on the contents of the documents in the case.

Table 14: Extent of written or oral information on documents regarding the criminal case according to country of detention (in percentages)

	Country of detention		
	Germany	France	Other EU-countries
no translation of the document	50.0	45.5	33.3
only an oral translation	33.3	36.4	58.3
a summary of the translation	-	9.1	8.3
a complete translation	16.7	9.1	-
N	6	11	12

The respondents who did not receive a translation of the documents in the other original EU-countries are detained in England, Greece, Spain and Portugal.

4.8 Written record of interviews

A written record was made of most interviews but use was also made of audio and video recording. However, some interviews were not recorded in writing at all. In Germany this appears to be the case in even 25% of the cases. In order to assess these facts more detailed information on the exact circumstances are required. Of course, the question whether a written record was made of interviews requires special attention when this is further investigated.

4.9 Information from and contact with consular representatives

In *Table 15* the replies to the question whether one knows whether the consular representative is aware of the arrest are summarised. The differences between the countries of detention are also noteworthy. The 8 respondents who feel that the consular representative in the EU-Member State where they were detained was not informed were imprisoned in Belgium (2), Austria (1), Greece (2), Denmark (1), England (1) and Italy (1).

Table 15: Was the consular representative informed?

	Country of detention		
	Germany	France	Other EU-countries
no	7.7	28.6	40.0
yes	92.3	71.4	60.0
N	13	14	20

The last question of III. concerns the visits to detainees by consular representatives. Their replies are summarised in *Table 16*.

Table 16: Visit of consular representatives according to the country of detention (in percentages)

	Country of detention		
	Germany	France	Other EU-countries
no visit	-	25.0	4.5
regular visit	30.8	25.0	36.4
seldom visit	69.2	50.0	59.1
N	13	12	21

Of course one must keep in mind, in connection with the frequency of visits made to prisoners, that consulates are not always established in the direct vicinity of the penitentiaries.

5. The detention situation

5.1 Introduction

The questions in this part of the questionnaire relate to the circumstances of the detention and the possible use of reprimands and punishment consisting of physical or mental violence.

5.2 Accommodation

Most prisoners are held in a prison cell or, according to Dutch terminology, in a living unit. While the majority (76.9%) of detainees in Germany have a cell for themselves, most prisoners (71.4%) in France are locked up in a cell with two or more other persons. In the other EU-countries most prisoners (40.4%) are locked in cells with two or with several other

prisoners (4-8) or even with 38 prisoners (in Greece). Solitary incarceration and/or a harsher detention consist of detention to which only an occasional detainee is subjected.

5.3 Meals

In general three meals are provided everywhere. A majority of the prisoners who commented on the food is negative about the food: “bad”, “no fruit and yoghurt”(in Germany), “mediocre”, “not edible”, “bad”, “pig feed” (in France), “too little and bad”, “poor”, “always cold” (in the other EU-countries).

5.4 Attitude of the prison wardens

The attitude of the prison wardens is regarded differently in the countries of detention. The results are summarised in *Table 17*:

Table 17: Estimation of the attitude of prison wardens (in percentages)

	Country of detention		
	Germany	France	Other EU-countries
neutral	28.6	71.4	55.0
aggressive	42.9	21.4	30.0
surreptitiously cooperative	28.6	7.1	15.0
N	14	14	20

5.5 Sanitary facilities

The sanitary facilities are about the same in Germany and France. The cell is generally equipped with a toilet and running water. If there is a shower, it is outside the cell. In Germany and also in the other EU-countries there are more shower facilities than in France. When assessing the sanitary facilities it is to be kept in mind the already under 5.2 discussed facts that most of the detainees in Germany are locked up in a one-man cell, while in France and the other countries the detainees must share a cell with mostly two and sometimes also more persons.

5.6 Medical care

Table 18 shows that in Germany the dissatisfaction about the care provided to sick and addicted detainees is greatest:

Table 18: Complaints in respect of medical care (in percentages)

	Country of detention		
	Germany	France	Other EU-countries
no	13.3	7.1	9.5
yes	86.7	92.9	90.5
N	15	14	21

Comments were given by more than one half of the detainees in Germany. Aside from one detainee who was quite satisfied, all other detainees were dissatisfied and mentioned that medical care was bad or even very bad, however without mentioning the deficiencies which they had encountered. The comments given by some detainees in France were, in general, somewhat less negative. It was mentioned that the care was “mediocre”, “minimal care”, “had to wait for weeks” and “good for addicts but not for the normal sick”. Detainees in the other EU-countries were, aside from some exceptions, also more or less negative.

5.7 Reprimands and punishment

The replies to this question are comprised in *Table 19*:

Table 19: Reprimands and punishment; physical pressure, physical violence (in percentages)

	Country of detention		
	Germany	France	Other EU-countries
no	46.7	61.5	52.4
yes	53.3	38.5	47.6
N	15	14	21

Detainees who have been reprimanded or punished were first asked for the cause of the reprimand or punishment. Subsequently, they were requested to describe in detail the method applied.

The question in respect of the cause or reason for a physical or mental reprimand or punishment resulted in numerous reactions which, however, in most cases did not give a clear answer to the question. They mainly consist of reproaches addressed to the public prosecution service and judiciary, mainly in connection with several attempts to obtain a confession (in Germany e.g. “extortion by the Staatsanwalt”), police (in France “after 13 months they are still busy with the investigation” and “was hit during the arrest so that I had to have medical treatment”) and the jail staff (in Germany “the prison wardens looked the other way when I was beaten up just like that” and “yelling, insolent wardens during the predetention” and, in one of the other countries “have had contact with Amnesty International whereupon all hell broke out. Bunker, beaten up, my things taken away”).

Some replies again mentioned language problems (in Germany “it is easy to break rules through language problem”, in France: “7 days in hospital without being able to make myself understood” and in one of the other countries: “I cannot understand the language, I needed medical help which they did not have and had for three months a very painful ribcage which is still fractured”).

In the eyes of a number of respondents the restrictions in communicating with family and friends and staying in especially bad cells (in France “had to sleep on the floor with my mattress, when it rained my mattress was wet. There was no window. Have had back complaints” and in one of the other countries “in a bare cell torture Am treated like a dog!!!”) are on a par with reprimands and punishment.

Remarkable is the information of a prisoner who writes that he lay on his “bed” “with his leg chained to the bed” during 7 days while hospitalised in France.

With regard to the question as to the methods applied when given physical or mental reprimands or punishment, mention is made inter alia in Germany “about Nazi-methods”, physical torture when being transported, broken bone in wrist, handcuffs tight causing extreme pain. Guard laughs and tightens the handcuffs if I complain” and “threaten with everything”. In France mention is made of methods “of withholding letters from family and friends” for 20 days or 8 weeks, respectively, and “kicking”. In the other countries it concerns cynical remarks, non-airing, different forms of physical punishment: “hitting with truncheons, putting on a chain, hitting on the head with a book” are mentioned.

By and large one may conclude that the described situations in prisons of the original EU-countries involved, if these really occurred in the way described by the respondents, inadmissibly violate the rights of prisoners in several respects. This should be a sufficient reason to clarify the actual situation as soon as possible and in a searching manner so as to ensure that the rights of prisoners are adequately safeguarded.

6. Complaints and comments

The last question of the questionnaire runs as follows:

This questionnaire may have allowed insufficient opportunity to express your experience.

If you feel that you could provide further information of importance on what you experienced, heard or saw, then you can mention this here.

The respondents fully used the opportunity offered to them to vent their feelings. Corruption of the police, the long duration of the preparation of the proceedings, the dragging on of the proceedings, failures and corruption of the public prosecution service, the judge and the legal aid/legal counsel, bad medical care, humiliations, being put in cold, wet cells, sometimes without water, etc. being the main reproaches raised, which were already mentioned in connection with the previous questions.

7. Conclusion

7.1 The replies from the respondents

Regretfully many respondents did not complete the questionnaire with sufficient care. Some respondents had difficulties with the Dutch language. Perhaps it was due to their bad physical condition or especially strong emotionality and unrest that they had difficulty in stating their thoughts clearly to express these in a clear and complete manner. In a number of cases it proved difficult and was sometimes even impossible to assess replies.

It is to be recommended that detainees are interviewed face to face and that their replies are then recorded and read out to them so as to give the respondents an opportunity to complete or improve their replies.

7.2 The questionnaire

From the answers of the respondents it appeared that they did not fully understand some parts of the questionnaire, principally when legal terms were mentioned. It further appeared that relatively many detainees were not imprisoned abroad pursuant to a European Arrest Warrant. For that reason it is desirable that the respondents complete all questions of the questionnaire. To this extent and in connection with some other defects the questionnaire should be revised.

7.3 Language problems

It appeared from the replies that there are considerable language problems which result in several misunderstandings. This aspect requires special attention when the inquiry is continued.

7.4 Objectivity

Of course, an important problem is the degree of objectivity of the information of the respondents.

When the correctness of the facts mentioned by the respondents is assumed, it appears that:

- Article 3 ECHR (Prohibition of torture) is violated rarely;
- Article 5 ECHR (Right to freedom and security) is not always safeguarded and
- Article 6 ECHR (Right to a fair trial) is relatively often not complied with.

The manner in which the replies were formulated and the fact that no explicit answer was given to questions in some instances point to a lack of required objectivity in at least some of the cases. It is of importance to convince the respondents that their situation can be improved only if sufficiently objective information is given. This may be better safeguarded in interviews than by sending questionnaires which the detainees complete on their own. Where the detention situation is concerned, a visit to the prisons constitutes the best way to check the information given by the respondents. Where complaints relate to the proceedings, the studying of the court file will provide a conclusive answer. The question whether defence counsel and interpreters were available and whether the pertinent documents are translated can also be investigated locally. From discussions with German judges it is clear that the normal course of affairs with regard to the translation of documents from the court file differs materially in Germany from what some respondents have stated. It is not improbable that language and other problems give rise to misunderstandings. Answers to all of these questions need to be sought when this inquiry is continued.