



THE NETHERLANDS: INSUFFICIENT IMPLEMENTATION OF THE ISTANBUL CONVENTION

AMNESTY INTERNATIONAL SUBMISSION TO THE GROUP OF EXPERTS ON ACTION AGAINST VIOLENCE AGAINST WOMEN AND DOMESTIC VIOLENCE (GREVIO) ON THE IMPLEMENTATION OF THE COUNCIL OF EUROPE CONVENTION ON PREVENTING AND COMBATING VIOLENCE AGAINST WOMEN AND DOMESTIC VIOLENCE IN THE NETHERLANDS

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1. INTRODUCTION

This submission, prepared for the first thematic evaluation round of the Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO), provides an overview of Amnesty International's main concerns about the Dutch government's compliance with its obligations under the Istanbul Convention. Those concerns include the protection of women against psychological violence and the rights of refugees and migrants. This submission is based on topics that Amnesty International has been researching and monitoring. It is not exhaustive and does not cover all topics in the [questionnaire](#) for GREVIO's first thematic evaluation round.¹

In 2024, the Netherlands adopted a consent-based legal definition of rape. The Sexual Crimes Act puts bodily integrity and sexual autonomy at the center. Under the new law, all non-consensual sexual acts are punishable. The use of coercion, force or threat is no longer a pre-condition for criminal liability, but is seen instead as an aggravating circumstance.

The explanatory memorandum to the law frequently refers to the provisions of the Istanbul Convention. Amnesty International welcomes the Act's alignment with the Istanbul Convention and other international human rights standards.

The act came into force on July 1st, 2024. This is an important move towards preventing and combatting sexual violence and improving access to justice for survivors. It is a long-awaited victory for survivors of sexual violence and a testament to years of tireless campaigning by activists and survivor groups. The Act was passed in the Senate, with 73 votes in favour and only 2 against.

¹ GREVIO, Questionnaire for the evaluation of the implementation of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence by the Parties 1st thematic evaluation round: Building trust by delivering support, protection and justice, Adopted by GREVIO on 13 October 2022, GREVIO/Inf(2022)31.

2. AREAS OF CONCERN

2.1 PSYCHOLOGICAL VIOLENCE

Article 33: Psychological violence

Par. 46 of GREVIO's thematic questionnaire: Please describe the efforts taken to identify and address all factors that contribute to attrition (the process whereby cases drop out of the criminal justice system) in cases of violence against women and domestic violence.

Psychological violence involves a mix of exerting control, isolating someone from family and friends, humiliation and threats. Currently, the Netherlands does not adequately address and protect people from psychological violence. Amnesty International is concerned that the current legal framework in the Netherlands is not aligned with international human rights law and standards, particularly that the Dutch legal framework does not meet the requirements of an 'effective, proportionate and dissuasive system', as required by the Istanbul Convention.²

There have been very few cases in the Netherlands in which psychological violence was punished under article 300 (assault) of the Criminal Code, but this almost exclusively concerned the abuse of children.³

Not all forms and elements of psychological violence are fully criminalised in the Netherlands and there is no adequate legal framework in place to prosecute and punish all forms of psychological violence. Certain elements or forms of psychological violence may fall under other criminal provisions in the Criminal Code (Sr), such as under article 284 Sr (coercion), article 285 Sr (threat), article 285b Sr (stalking) and article 300 Sr (assault). But the legal framework does not provide sufficient possibilities to prosecute and punish various other elements of psychological violence, such as coercive behaviour patterns in intimate partner relationships, and in practice, the current framework hardly leads to prosecutions.

Failing to recognise the distinctive nature of psychological abuse - its repetitive and cumulative impact and the coercive and controlling behaviours that underlie it - creates a crucial gap in the law.

Furthermore, Amnesty International emphasizes that the revision of the criminal law is only a piece of the puzzle in the fight against psychological violence and must be accompanied with other policies for prevention and capacity building of service providers, police and judiciary in sensitively responding to cases

² Amnesty International, NETHERLANDS: TAKE URGENT ACTION TO ADDRESS GENDERBASED PSYCHOLOGICAL VIOLENCE, 7 March 2024, (English version): www.amnesty.nl/content/uploads/2024/05/Def-ENGLISH-Statement-Amnesty-International-Psychological-Violence-March-2024.pdf Dutch version: www.amnesty.nl/content/uploads/2024/03/DEF-Statement-Amnesty-International-Psychisch-geweld-Maart-2024-PDF. Press release: www.amnesty.nl/actueel/nederland-stel-psychisch-geweld-expliciet-strafbaar

³ Prof. dr. J. Janssen, Prof. mr. W. Dreissen & drs. K. Juncker, Report: 'Towards a separate criminalisation of psychological violence? Arguments for and against', 6 April 2022, p. 28: "Of the eight cases that were found, seven cases concerned the abuse of children." See: [Naar een aparte strafbaarstelling van psychisch geweld? Voor- en tegenargumenten | Rapport | Rijksoverheid.nl](http://Naar%20een%20aparte%20strafbaarstelling%20van%20psychisch%20geweld?Voor-+en+tegenargumenten+I+Rapport+I+Rijksoverheid.nl)

of psychological violence and ensuring survivors can access timely and adequate services and support, justice and remedies.

On 7 June 2024, the Dutch government published its plan of action called 'Stop femicide!'⁴ The plan is an important development that is aimed at better recognition of signs of violence by the police, the judiciary and Safe Home and earlier intervention in cases of domestic violence to prevent escalation. Nevertheless, Amnesty International considers that it is a missed opportunity that the plan does not adequately address psychological violence.⁵ Psychological violence is seen by experts as a step that precedes femicide.⁶ In the plan of action, the government shares the view that in practice there is too little prosecution of psychological violence and that this must improve. However, their focus is on increasing knowledge about psychological violence and the possibilities offered by current criminal law, instead of initiating legal reform .

In addition, no financial resources are made available, so ambitious plans on paper cannot be implemented in practice. The ministries indicate that the efforts outlined in the action plan can be fully covered by the existing budgets for domestic violence and child abuse and for the emancipation policy. Specifically for femicide, there would currently be no room for additional financial commitment. That will be left to the new government. Amnesty International is concerned about whether these plans can be realized in practice without extra financial resources.

2.2 RIGHTS OF REFUGEE WOMEN WHO EXPERIENCED SEXUAL VIOLENCE

Article 60: Gender-based asylum claims

Article 61: Non-refoulement

Par. 56 of GREVIO's thematic questionnaire: Please provide information on new developments since the adoption of GREVIO's baseline evaluation report on your country concerning:

[...] e. emerging trends related to access to asylum and international protection for women victims of violence against women.

In March 2023, Amnesty International published the report "Sexual Violence: Blind spot in the Asylum procedure?"⁷ This report, based on an analysis of 80 cases from the Institute for Human Rights and Medical Research and 138 court rulings, focuses on the shortcomings in refugee status determination procedures by the Immigration and Naturalisation Service when assessing protection claims based on forms of gender-based violence, specifically sexual violence. The report found that the traumas that asylum seekers and refugees have suffered are not sufficiently taken into account by officials during the asylum procedure. The

⁴ www.rijksoverheid.nl/actueel/nieuws/2024/06/07/plan-van-aanpak-stop-femicide-gepresenteerd

⁵ www.amnesty.nl/actueel/actieplan-femicide-stelt-psychisch-geweld-helaas-niet-expliciet-straftbaar

⁶ European Institute for Gender Equality (EIGE), *Combating coercive control and psychological violence against women in the EU Member States*, 2022, p. 40: "The level of 'control' in a relationship has been found to predict future partner violence. Reviewing the literature, Stark (2012) cited a large, multi-city study in the United States that reported that the risk of intimate partner femicide in an abusive relationship increased ninefold in situations of a highly controlling perpetrator and the couple's separation after living together." See: eige.europa.eu/about/projects/coercive-control-and-psychological-violence-against-women

⁷ Amnesty International, *Sexual Violence: Blind spot in the Asylum procedure?*, March 2023,

www.amnesty.nl/content/uploads/2023/03/AMN_Rapport_Seksueel-geweld-.pdf

Amnesty International in the Netherlands started a project in 2022 to strengthen the protection of asylum seeking and refugee women who have experienced sexual violence. In this project, we aim to enhance the protection of asylum seeking and refugee women in legislation, policy, and practice. We consider all stages of the asylum procedure: from their arrival in the Netherlands and their stay in asylum reception centers (including access to assistance and protection) to the substantive assessment of their asylum request.

report also highlights other challenges; officials did not always grant applicants' requests for a female interpreter and signs of sexual trauma are insufficiently recognized during the asylum procedure.

The report found that asylum seeking and refugee women and girls who have experienced sexual violence do not always receive the protection and assistance they are entitled to under international treaties in the Netherlands.

The Government has stated in response⁴ to the report that the policy and implementation in the Netherlands are already gender-sensitive and that they do not see any reason to make changes to existing policies and practices.⁵

Since GREVIO's last report, there are still no specific guidelines in place regarding a gender-sensitive application of the Refugee Convention.⁸ As stated above, there are no guidelines and trainings for immigrations officials to conduct interviews in a gender-sensitive manner. GREVIO has previously criticized the speed of procedures in the Netherlands; no progress has been made in this area yet. GREVIO has also noted in its last report that in some countries on the 'safe countries' list, domestic violence, other forms of violence, and discrimination against women are common. Recently, there was a court ruling in the Netherlands addressing this issue in light of the Istanbul Convention. The judge ruled that the Istanbul Convention must be considered when determining whether a country is safe for return. The immigration service (IND) has appealed the case, which is now pending at the highest court of the Administrative Jurisdiction Division.⁹

⁸ GREVIO, Baseline evaluation report on legislative and other measures giving effect to the provisions of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention) Netherlands, 2020.

⁹ Court The Hague, No. NL23.11318, 15 February 2024, see: uitspraken.rechtspraak.nl/details?id=ECLI:NL:RBDHA:2024:1748

3. RECOMMENDATIONS FOR ACTION BY THE NETHERLANDS

AMNESTY INTERNATIONAL CALLS ON GREVIO TO URGE THE GOVERNMENT OF THE NETHERLANDS TO IMPLEMENT THE FOLLOWING RECOMMENDATIONS:

1. With regard to psychological violence:
 - 1.1 Revise the provisions in the Criminal Code to ensure that all elements and forms of psychological violence are adequately and explicitly criminalized within the law.
 - 1.2 Invest in prevention and in strengthening support services, assistance and access to justice and remedies for victims of psychological violence.

2. With regard to the rights of refugee women who experienced sexual violence:
 - 2.2 Ensure that gender-based violence is recognized as a form of persecution as per Article 1, A, paragraph 2, of the 1951 Refugee Convention, and as a form of serious harm which gives cause to complementary/subsidiary protection. Add gender to the list of grounds for persecution in national legislation.
 - 2.3 Ensure that gender-sensitive (and victim-sensitive) procedural safeguards are implemented in the asylum process to enable asylum seekers who are victims of sexual and gender-based violence and/or gender-related persecution to present their asylum applications in a fair and effective asylum procedure, without discrimination. Additionally, ensure that they are not retraumatized when recounting their experiences.
 - 2.4 Provide mandatory, initial, and ongoing training for immigration officers to enhance their understanding of the experiences, needs, and rights of asylum seekers who are victims of sexual and gender-based violence. Include gender-sensitive interviewing techniques to ensure fair treatment and early trauma recognition. Training should enable officers to identify trauma early, considering its effects on memory and the survivors' ability to tell their stories, avoiding negative impacts on the asylum process outcomes. Such training must also enhance officers' knowledge of intersectional discrimination and the needs and rights of victims.
 - 2.5 Ensure a gender-sensitive and intersectional interpretation of the grounds of the Refugee Convention when assessing whether someone meets the criteria of the refugee definition and ensure a gender-sensitive interpretation of the principle of non-refoulement.

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TO ONE PERSON, IT
MATTERS TO US ALL.**

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