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Meeting: 1537th meeting (September 2025) (DH)

Item reference: Action Plan (02/07/2025)

Communication from the Netherlands concerning the case of Hesselink v. the Netherlands (Application No. 24008/20) - *The appendices in Dutch are available upon request to the Secretariat.*

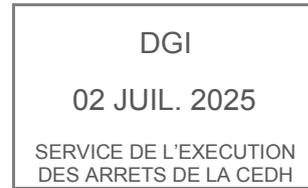
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Réunion : 1537^e réunion (septembre 2025) (DH)

Référence du point : Plan d'action (02/07/2025)

Communication des Pays-Bas concernant l'affaire Hesselink c. Pays-Bas (requête n° 24008/20) (**anglais uniquement**) - *Les annexes en néerlandais sont disponibles sur demande au Secrétariat.*



Action Plan
of the Government of the Kingdom of the Netherlands
on the implementation of the Court's judgment
concerning Application no. 24008/20

Hesselink

v.

The Netherlands

Judgment of 22 October 2024

Final on 22 October 2024

Introduction

1. On 11 June 2020 Mr Henk Jan Hesselink ("the applicant") submitted an application to the European Court of Human Rights ("the Court") under Article 34 of the European Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention").
2. On 17 April 2023 the Government of the Kingdom of the Netherlands ("the Government"), by way of unilateral declaration, acknowledged that the domestic authorities had not effectively investigated the force used in respect of the applicant during his arrest, and that the course of events was not in conformity with the procedural requirements of Article 3 of the Convention. The Government offered the applicant just satisfaction.
3. On 22 October 2024 the Court found a violation of Article 3 of the Convention.
4. Furthermore, the Court held, under Article 41 of the Convention, that the Kingdom of the Netherlands had to pay the applicant €525 in respect of pecuniary damage, €3,500 in respect of non-pecuniary damage and €4,598.60 in respect of costs and expenses.
5. With reference to the standard classification procedure¹ the Government wishes to present its action plan, with a view to informing the Committee of Ministers about the measures taken.

Case description

6. This case concerned the alleged disproportionate use of violence against the applicant by two civil servants with investigative powers (special enforcement officers, *buitengewone opsporingsambtenaren*, "BOA") who applied a so-called neck hold (*nekklem*) when arresting him. The Court held that the authorities failed to carry out an effective investigation into the relevant facts and, in particular, that they failed to establish whether the extent and nature of the use of force by the civil servants was strictly necessary to effect the applicant's arrest. The Court found that the Government had therefore failed to disprove the applicant's allegation of ill-treatment.

Just satisfaction

7. In its judgment the Court held that the Government had to pay the applicant €4,025 in respect of damages and €4,598.60 in respect of costs and expenses, plus any tax that may be chargeable, within three months from the date on which the judgment became final in accordance with Article 44, paragraph 2 of the Convention. The Government paid said amount and informed the Execution Department thereof by submitting the payment registration form by email dated 20 December 2024.

¹ As set out in CM/Inf/DH(2010)45 and CM/Inf/DH(2010)37E.

Individual measures

8. The Government is of the opinion that, having paid the just satisfaction claim, it has taken adequate individual measures concerning the violation of Article 3 of the Convention, as found in *Hesselink v. the Netherlands*.
9. The Government will not take any additional individual measures following the Court's judgment, because no consequences of the violation for the applicant persist.

General measures

Violation of the substantive limb of Article 3 of the Convention

10. The Government is of the opinion that the violation found is an isolated case. The Public Prosecution Service (*Openbaar Ministerie*), specifically the chief public prosecutor (*hoofdofficier van justitie*), has been appointed as supervisory authority with regard to special enforcement officers (*buitengewone opsporingsambtenaren*, "BOAs"). Under article 36 of the Special Enforcement Officers Decree (*Besluit buitengewoon opsporingsambtenaar*), the chief of police is the designated direct supervisory authority (*direct toezichthouder*). There are clear guidelines for exercising this supervision. It follows from article 38 of the Special Enforcement Officers Decree that the supervisory authority ensures that the special enforcement officer properly performs their task during an investigation and correctly exercises their investigative and police powers (including the use of appropriate force).
11. In cases where a complaint concerns the (incorrect) exercise of investigative powers and powers concerning the use of force, on the basis of article 42 of the Decree the chief public prosecutor provides a written decision to the employer regarding the use of such powers. The decision includes their position on the lawfulness and fairness of the exercise of such powers by the BOA. In addition, the Decree sets out that the supervisory authority and the direct supervisory authority must regularly discuss the performance of the BOAs they supervise.
12. In the capacity of its supervisory role the Public Prosecution Service has not received any indications suggesting any structural problems with regard to the exercise of investigative powers and powers concerning the use of force by BOAs. Nonetheless, greater efforts have been made in recent years at local level – in part as a result of this incident but also because of the expansion of the BOAs' tasks – to provide training regarding the use of investigative powers and powers concerning the use of force in accordance with the principles of proportionality and subsidiarity. The training that BOAs who work for the municipality of Enschede receive meets the legal requirements set out in the Administrative Rules for Special Enforcement Officers (*Beleidsregels Buitengewoon Opsporingsambtenaar*).² As of 2007, every year BOAs receive continual training

² See Administrative Rules for Special Enforcement Officers: <https://wetten.overheid.nl/BWBR0039766/2024-01-01>.

and retraining: the Training on the Use of Force (Review) Regulations (*Training Regeling Toetsing Geweldsbeheersing*, "RTGB").³ The Police College administers the exams for this training. The Government is of the opinion that BOAs are therefore well instructed in how to handle situations in which they decide to use force.

13. In addition, the Twente Environment and Planning Service⁴ and the municipality of Enschede have a protocol for dealing with aggression (see annexes 1 and 2). The protocol sets out what is considered aggressive behaviour by members of the public towards enforcement officers and how to respond to it.

Violation of the procedural limb of Article 3 of the Convention

14. With regard to the violation of the procedural limb of Article 3 of the Convention, the Government wishes to note that, since the incident, the national procedure surrounding the supervision of the use of force by BOAs has been formalised. Since the incident, the supervision of the use of force by BOA's has been thoroughly laid down in legislation and regulations. The chief of police is the designated direct supervisory authority (article 36 of the Special Enforcement Officers Decree). The direct supervisory authority acts as the complaint handler for any complaints about the use of force by a BOA (article 25, paragraph 3 of the Special Enforcement Officers Decree). In addition, the supervisory authority (the Public Prosecution Service) launches investigations into use of force incidents.

15. The procedure is as follows. Following a use of force incident, the BOA must report this use of force orally and in writing to the assistant public prosecutor and the direct supervisory authority. The BOA must also provide a copy of the results of the Training on the Use of Force (Review) Regulations showing that, at the time of the incident, they were authorised to use force. The municipality (as the employer of the BOA) also reports the incident orally and in writing to the assistant public prosecutor and the direct supervisory authority.

16. The assistant public prosecutor then determines whether to register the use of force incident. If they decide to do so, the subsequent process is the same as that for the use of force by a police officer. An investigation into the use of force is conducted by the National Criminal Investigation Department (*Rijksrecherche*) or the Security, Integrity and Complaints Division (*afdeling Veiligheid, Integriteit en Klachten*) of the police. The aim of the investigation is to establish whether the enforcement officer complied with the rules governing the use of force. The outcome of the investigation showing whether the use of force was proportional is first shared with the BOA and may be shared with the employer (in the present case, the municipality of Enschede).

³ See the Order of the Minister of Justice of 23 May 2007, no. 5484160/07/CBK, on establishing provisions concerning the assessment of special enforcement officers and civil servants employed by a special investigative service with regard to the use of force, arrest and self-defence skills, and marksmanship (Order assessing the use of force by special enforcement officers and civil servants employed by a special investigative service) <https://wetten.overheid.nl/BWBR0021973/2023-01-01>.

⁴ As a result of the establishment of the Twente Environment and Planning Service in 2017, some of the municipal enforcement tasks (environmental tasks) were transferred to the Environment and Planning Service. See for more information: <https://www.omgevingsdienst.nl/omgevingsdiensten/>.

In some cases, the BOA will be called in for an interview by the direct supervisory authority, or the BOA's licence granting investigative powers may be suspended or revoked (article 35 of the Special Enforcement Officers Decree). The suspension or revocation of a BOA's investigative powers is necessary when the reliability of the BOA concerned comes into question and/or the assistant public prosecutor and the direct supervisory authority are of the opinion that the BOA's conduct was not irreproachable (as a result of the incident reported). Ultimately it is the Minister of Justice and Security who decides, on the basis of the advice provided by the assistant public prosecutor and the direct supervisory authority, whether a person is reliable for the purpose of exercising investigative powers (article 17, paragraph 2 of the Special Enforcement Officers Decree).

17. If the investigation shows that the use of force was not proportional and resulted in a criminal offence, the Public Prosecution Service can institute criminal proceedings. If the Public Prosecution Service decides not to institute criminal proceedings, victims (and next of kin) can, in accordance with article 12 of the Code of Criminal Procedure (*Wetboek van Strafvordering*), lodge a complaint with the court of appeal. If, after examining the case, the court of appeal is of the view that criminal proceedings should have been instituted, it can order the Public Prosecution Service to do so (article 12i, paragraph 1 of the Code of Criminal Procedure).
18. In addition, the victim can submit a complaint regarding the use of force to the BOA's employer. The employer (in this case the municipality) must then request advice on the matter from the direct supervisory authority. The employer will then handle the complaint in accordance with the advice received. The Twente Environment and Planning Service will inform the victim of the legal protection provisions of which they can avail themselves if they so wish.
19. The Government is of the opinion that this offers sufficient safeguards to prevent a similar violation of the procedural limb of Article 3 of the Convention.

Additional information

20. As with all judgments of the Court, a summary of this judgment and the measures taken will be included in the Government's annual report to parliament, which was published in the spring of 2025. The annual reports are publicly available and widely disseminated to interested parties. A summary of the judgment will also be published on the website of the Centre for International Law (*Centrum voor Internationaal Recht*; www.centruminternationaalrecht.nl). The Centre for International Law is the Dutch centre of expertise for promoting awareness of, application of and compliance with international law. The judgment has also been published in various law journals and reported on in several newspapers in the Kingdom of the Netherlands.
21. Summaries and/or commentaries have also been published in (*inter alia*):
 - *Nieuwsbrief Rechtspraak Europa* no. 11 (November) 2024, p. 89.
 - *Nederlands Juristenblad* (NJB) 2025/192.

Conclusion

22. The Government believes that the measures taken fulfil the requirements that arise from the Court's judgment and that these measures will prevent similar violations in the future.

The Hague, 2 July 2025

A handwritten signature in blue ink, appearing to read 'V. de Graaf', with a long horizontal flourish extending to the right.

Vincent de Graaf

Deputy Agent of the Government of the Kingdom of the Netherlands