

**MEIJERS COMMITTEE**  
STANDING COMMITTEE OF EXPERTS ON  
INTERNATIONAL IMMIGRATION, REFUGEE  
AND CRIMINAL LAW



HEIDAG 2014

# CRIMMIGRATION

EXPLORING THE RELATIONS BETWEEN  
MIGRATION AND CRIMINAL LAW ENFORCEMENT

20 June 2013  
Antropia Conference Centre  
Driebergen-Zeist

# INTRODUCTION

On its 2014 Heidag, the Meijers Committee will explore, through the concept of crimmigration, how migration law and criminal law are increasingly becoming merged and interact. Crimmigration is a term employed to indicate connected but different questions or themes relating to this interaction. On the heidag we will aim to focus on three topics of crimmigration:

## **Immigration detention**

Although in the Netherlands detention of migrants diminished since Fred Teeven took office as State Secretary for Security and Justice, it remains imposed against newly arrived asylum seekers and during the return process. These types of immigration detention is provided for in the Return Directive and also in the Reception Conditions Directive. Scholars have argued that immigration detention takes the form of a criminal sanction, but without the formal qualifications or procedures relating to criminal sanctions.

**Suggested questions** Which guarantees should be provided to detained migrants? How can the length of detention be controlled? What viable alternatives are there? Would input from the criminal justice system improve the position of migrants? How does immigration detention relate to general principles of EU law, in particular the principle of proportionality?

## **The relationship between migration and criminal law in practice**

As immigration laws are increasingly enforced through criminal law, practitioners struggle with the interplay between the two. In particular, the Dutch supreme court is now producing case-law on the relationship between the Entry Ban (*art. 197 Sr.: inreisverbod*), and the Return Directive. Another pressing issue is the consequences of a criminal conviction for residence status and subsequent removal.

**Suggested questions:** What is the relationship between article 197 Dutch Criminal Code and the Returns Directive? What are the consequences of the interplay between EU, criminal and migration law? To which extent shall the judge consider the annulment of the residence permit as a consequence of a criminal sentence? Shall removal be considered as a punishment? How do the goals of rehabilitation and reintegration into society relate to removal?

## **The criminalization of migration law violations**

Immigration law violations are increasingly addressed as criminal offences. Even though the planned criminalization of illegal presence has been cancelled by the current Dutch government, criminal law is increasingly used as a migration control tool. Crimes such as illegal and fraudulent entry, and illegal stay are found in the legislations of many Member States. This phenomenon seems to be connected with the securitization of migration, in particular its 'internal' implications.

**Suggested questions:** Which is the legal good violated by criminal law violations? How does this relate to criteria for criminalization, such as the

Principle of ultima ratio? Is criminal law targeting migrants still  
 Taetersstrafrecht? To what extent does criminalization increase stigma's  
 against migrants?

### Outcome

The Meijers Committee could contribute (perhaps also with a research publication) with proposals on how to embed these recent trends to be found in several legal orders into a 'principled' European law, taking into account constitutional and criminal law and theories, as well as European and international obligations.

## PROGRAM

Time	Item	Speaker
<b>10:00</b>	<b>Regular committee meeting</b>	
<i>12:00</i>	<i>Lunch</i>	
<b>13.30</b>	<b>Welcome and opening</b>	<b>Theo de Roos</b>
<b>13:40</b>	<b>"The administrative detention of migrants: a preventive, coercive or punitive mechanism?"</b>	<b>Serge Slama</b>
14:00	Discussant	Luisa Marin
14:10	Floor discussion	
<i>14:30</i>	<i>Coffee break</i>	
14:45	<b>The relationship between migration and criminal law in practice</b>	<b>Marq Wijngaarden</b>
15:05	Discussant	Teun van Os van den Abeelen
15:15	Floor discussion	
15:40	<i>Coffee break</i>	
15:55	<b>Migration as a Crime: Some Legal and Theoretical Perspectives</b>	<b>Allesandro Spina</b>
16:15	Discussant	Galina Cornelisse
16:25	Floor discussion	
<b>16:45</b>	<b>Closing</b>	<b>Theo de Roos</b>
<i>17:00</i>	<i>Reception and dinner</i>	

## SPEAKER BIOGRAPHIES

### **Serge Slama**

Prof. Serge Slama is a lecturer in public law at the University of Evry-Val d'Essonne, a member of CREDOF (Centre for Research and Studies on fundamental rights) and a former visiting scholar at Boston College Law School. Dr. Slama obtained his PhD at the University of Paris Ouest Nanterre La Défense in 2003. The title of his thesis was "Le privilège du national." His main areas of research are human rights litigation, immigration law, citizenship and discrimination law. He is also the editor of the blog "Combats pour les droits de l'homme" ("Struggles for Human Rights").

### **Alessandro Spena**

Prof. Alessandro Spena is a Professor of Criminal Law at the University of Palermo. Professor Spena defended his doctoral thesis at the University of Macerata in 2005. He has been a fellow and visiting academic at the Universities of Oxford, Barcelona and Mannheim. His research interests include criminalization, in particular the moral and political foundations and limits of criminal law, where he focusses on sovereignty, citizenship and borders and criminal law.

### **Marq Wijngaarden**

Mr. Marq Wijngaarden is a partner at Prakken d'Oliveira Human Rights Lawyers, where he has a practice in criminal, migration and asylum law. Mr. Wijngaarden has a long career as an attorney and litigated in a number of high profile cases. He is a frequent guest lecturer on the interplay of criminal and migration law and a member of the advisory committee of the Dutch Refugee Council.

### **Galina Cornelisse**

Dr. Galina Cornelisse is an assistant professor of European and international law at VU University Amsterdam. Dr. Cornelisse took her PhD at the European University Institute in Florence in 2007, where she did research on the intersection of immigration detention and human rights.

### **Teun van Os van den Abeelen**

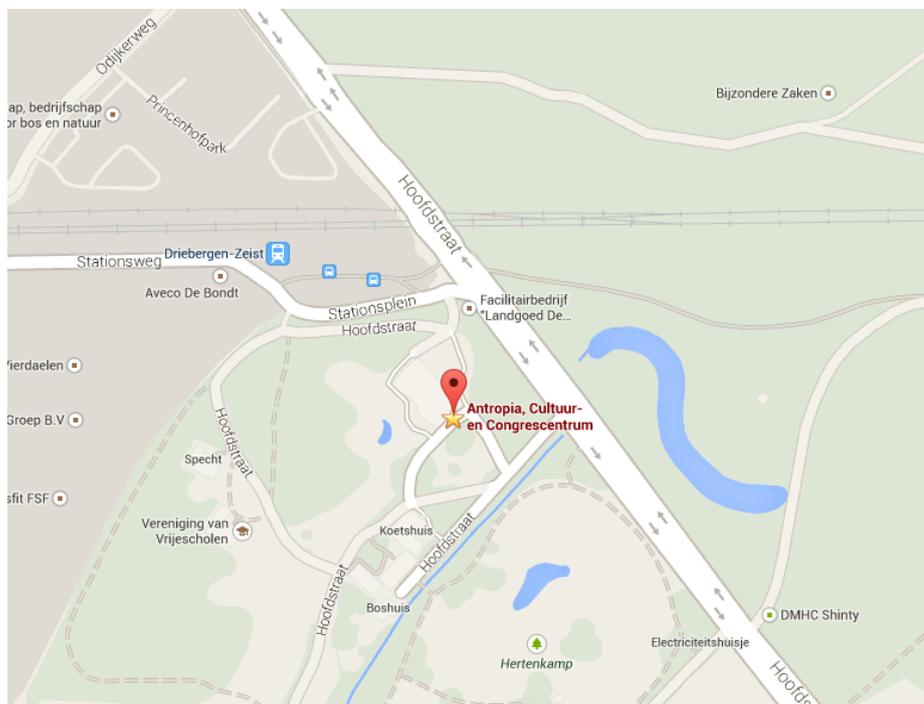
Dr. Teun van Os is a member of the Meijers Committee. He is a former chairman of the Advisory Committee on Migration Affairs of the Ministry of Security and Justice of the Netherlands and a former Vice President of the District Court of Amsterdam. He currently serves as a deputy justice of the Court of Appeals of The Hague.

### **Luisa Marin**

Dr. Luisa Marin is Assistant Professor of European Law at the University of Twente since November 2007. She is affiliated to the Centre for European Studies (CES), and Research Fellow of the Institute for Governance Studies (IGS). Dr. Marin holds a PhD in "Italian and European Constitutional Law" from the University of Verona.

## VENUE

The heidag takes place at Antropia, on the Landgoed De Reehorst estate on Hoofdstraat 8, 3972 LA Driebergen:



### By train

Take a train to *Driebergen-Zeist*, exit at the south side (near the bus station) and cross the road to the Landgoed de Reehorst Estate. There are four trains to *Driebergen-Zeist* from both Utrecht CS and Arnhem every hour.

### By car

*Coming from Utrecht*, follow the A12 to Arnhem, take exit 20 Driebergen/Zeist. At the end of the junction turn left in the direction of Zeist. Turn on the second driveway on your left to enter the estate. Follow the parking signs. Parking is free.

*Coming from Arnhem*, follow the A12 to Utrecht, take exit 20 Driebergen/Zeist. At the end of the junction turn right in the direction of Zeist. Turn on the second driveway on your left to enter the estate. Follow the parking signs. Parking is free.

**GPS: 52.05190, 5.28266**

## SUGGESTED READING

J.P. Stumpf, The Crimmigration Crisis: Immigrants, Crime, and Sovereign Power (2006). *American University Law Review*, Vol. 56, p. 367, 2006; *Lewis & Clark Law School Legal Studies Research Paper No. 2007-2*. Available at SSRN: <http://ssrn.com/abstract=935547>

N. Verschaeren and M.J.M. Peeters, Vreemdelingenrechtelijke verweren in een strafzaak (2013). *Strafblad*, p. 229. Available at [http://www.deroosenpen.nl/fileadmin/data/Publicaties/Nieke\\_Verschaeren2/artikel\\_strafblad\\_2013.pdf](http://www.deroosenpen.nl/fileadmin/data/Publicaties/Nieke_Verschaeren2/artikel_strafblad_2013.pdf)

J.P. van der Leun, *Crimmigration*, Apeldoorn/Antwerpen: Maklu 2010.

P. Boeles, Criminalisering van Illegaal Verblijf (2013). *Journal Vreemdelingenrecht*, nr 2, p. 146.

J.P. van der Leun, M.A.H van der Woude and S. De Ridder, Crimmigratie in de lage landen: smeltende grenzen? (2013). *Journal Vreemdelingenrecht*, nr 2, p. 153.

J.P. van der Leun en S. De Ridder, Het cumulatief punitief karakter van het migratierecht (2013). *Orde van de dag. Criminaliteit en samenleving* 61, p. 29-36.

J. Nijland, Vreemdelingenbewaring in crimmigratieperspectief. Over de rol van strafrechtelijke antecedenten en het ultimumremediumbeginsel voor de maatregel van bewaring in de rechtspraak (2012). *Proces*, p. 456-469.

G.N. Cornelisse (2013). Het Europese grensbewakingsbelang: De detentie van asielzoekers op Schiphol in EU-rechtelijk perspectief. *Asiel & Migrantenrecht*, 2013.

A. Spina (2013). Iniuria Migrandi: Criminalization of Immigrants and the Basic Principles of the Criminal Law, in *Criminal Law and Philosophy*, doi: 10.1007/s11572-013-9229-6